



CDSS

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DEPARTMENT OF SOCIAL SERVICES

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GOVERNOR

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

November 8, 2016

ALL COUNTY INFORMATION NOTICE NO. I-77-16

TO: ALL COUNTY CHILD WELFARE DIRECTORS
 ALL CHIEF PROBATION OFFICERS
 ALL ADMINISTRATIVE LAW JUDGES
 TITLE IV-E AGREEMENT TRIBES
 JUDICIAL COUNCIL STAFF
 COUNTY WELFARE DIRECTORS ASSOCIATION

SUBJECT: FOSTER YOUTH DATA SHARED BETWEEN LOCAL EDUCATION AGENCIES (LEA) AND CHILD WELFARE AGENCIES (CWA)

REFERENCE: 34 CODE OF FEDERAL REGULATIONS (CFR) 99.3; SENATE BILL (SB) [91](#) (CHAPTER 49, STATUTES OF 2013); WELFARE AND INSTITUTIONS CODE (W&IC) SECTION 16010 (a); EDUCATION CODE (ED CODE) SECTIONS [49061](#), [49076](#), [49085](#), AND [52066](#); ALL COUNTY LETTER (ACL) [16-75](#); [DEAR COLLEAGUE LETTER: JOINT GUIDANCE FOSTER YOUTH INFORMATION-SHARING](#)

The purpose of this All County Information Notice is to inform county child welfare and juvenile probation departments that the California Department of Social Services (CDSS), California Department of Education (CDE) and the Bureau of Children’s Justice at the California Department of Justice jointly prepared the attached letter entitled [“Dear Colleague: Joint Guidance Foster Youth Information-Sharing”](#) to summarize existing federal and state laws that permit, and sometimes require, the sharing of information and records between LEAs, CWAs and foster caregivers in a way that is both lawful and appropriate to ensure that foster youth receive appropriate supports and services to address their needs under the Local Control and Funding Formula (LCFF). Please also see attached, *Fact Sheet for Child Welfare Agency Staff, Sharing information Between Child Welfare and Local Education Agencies*, prepared by the California Foster Youth Education Task Force, outlining key points from the Dear Colleague Letter. The Dear Colleague letter strongly encourages counties, tribes and local educational agencies to create and implement protocols to exchange information and promote healthy collaboration to be able to deliver services to improve education

outcomes for children and youth in foster care in compliance with the Family Education Rights and Privacy Act and other state privacy laws.

Background/Overview

In 2013, SB [91](#) restructured the way schools are funded to serve the needs of particular student groups. Under SB [91](#), schools receive additional funding, LCFF, to support the needs of students who are either in foster care, or English language learners, or eligible for free or reduced-price meals or any combination of the three. Furthermore, under Ed Code section 52066, all school districts are required to develop Local Control and Accountability Plans which identify how they will address the needs of these students and increase their academic achievement. Weekly, CDSS identifies youth in foster care using Child Welfare Services/Case Management System and sends the data electronically to the CDE as a result of the passage of SB [91](#). The CDE matches the data with the student data in their statewide data system, referred to as the California Longitudinal Pupil Achievement Data System (CALPADS). The CALPADS conducts a match based on name, birthdate and school of enrollment. The CDE then provides local school districts with reports identifying which of their students are in foster care.

A research study conducted by the Stuart Foundation¹ found foster youth did not perform as well as the general population, nor as well as a sample population of students of the same age, race, language and socioeconomic backgrounds. Statewide and national data show that foster youth perform more poorly academically than other disadvantaged groups. Therefore, it is the goal of SB [91](#) to ensure additional funding for local schools so that foster youth students receive the necessary support to help them be successful academically.

Because sharing information can be a critical element to ensure the educational needs of children and youth in foster care are met, the Dear Colleague letter has summarized both federal and state law concerning four particular issues regarding the sharing of information:

- School officials' access to the LCFF Foster Match Information.
- Information LEAs may and must share with CWAs.
- Information CWAs may and must share with LEAs.
- Information that both may and must be shared with caregivers, even if the caregiver is not the education rights holder.

¹ [At Greater Risk: California Foster Youth and the Path from High School to College](#), The Stuart Foundation, 2013.

Schools Officials' Access to the LCFF Foster Match Information

In order to ensure the pupils in foster care receive appropriate educational supports and services, the following information is shared by CDSS with the CDE. This information is referred to as the LCFF Foster Match Information and it includes:

- Foster ID,
- Case start/end date,
- Episode start/end date,
- Social worker name and contact phone number,
- Educational rights holder,
- County of jurisdiction,
- Whether parental rights are terminated, and
- Responsible agency (Child Welfare or Probation).

Please refer to ACL [16-75](#) for details regarding accurate and timely data entry for the sake of sharing up-to-date information.

Information LEAs May and Must Share With CWAs

To coordinate services to pupils in foster care, federal law permits, and state law requires, LEAs to share education records with CWAs for children and youth for whom the CWA has legal responsibility. Education records may include the number of school transfers, grades, academic proficiency scores, credits earned towards graduation, grades and individualized education plan, if applicable.

Information CWAs May and Must Share With LEAs

To better assist children and youth in foster care in reaching their full academic potential it is important for CWAs to share records and information related to pupils' educational needs, consistent with state and federal law. The CWAs must notify LEAs when a pupil is placed in a "licensed children's institution" and of any placement changes which may result in school transfers. The CWA caseworker must promptly notify an LEA representative about such placement and school changes at the time of placement. As described in the joint guidance, CWAs may also disclose additional information regarding students who are foster youth to LEA staff, when permitted by law and necessary for the purposes of coordinating, providing or overseeing services.

Educational Information that LEAs and CWAs May and Must Share With Caregivers Who are Not the Educational Rights Holders

Parents retain rights to make educational decisions for their child or youth in foster care. Courts can limit those rights and instead appoint an Educational Rights Holder (ERH) to make educational decisions for the pupil. An ERH can be the pupil's caregiver or another person appointed by the court. The ERHs are generally entitled to the same records as a parent.

Foster youth frequently live with caregivers who have not been designated as their ERH. However, these non-ERH caregivers are entitled to certain educational related information included in the health and education summary, which may be referred to as the Health and Education Passport (HEP), as soon as possible but no later than 30-days of initial placement. Under state and federal law, CWAs are responsible for compiling, updating and providing a child's HEP to caregivers. The education related information included in the HEP must include, but is not limited to, the names and addresses of the child's education providers, grade level and performance, assurance that the child's placement takes into account proximity to school in which the child is enrolled in at the time of placement, number of school transfers the child has experienced, educational progress including academic proficiency scores and credits earned towards graduation.

If you have any questions about this All County Information Notice, please contact the Permanency Policy Bureau (916) 657-1858.

Sincerely,

Original Document Signed By:

VALERIE EARLEY, Chief
Child and Youth Permanency Branch
Children and Family Services Division

Attachments

Sharing Information Between Child Welfare and Local Education Agencies



California Foster Youth Education Task Force

Federal and state law permits, and in some cases, requires Local Education Agencies (LEAs) and Child Welfare Agencies (CWAs) to share information regarding foster youth.

The CA Department of Education (CDE), the CA Department of Social Services (CDSS), and the Bureau of Children’s Justice at the CA Department of Justice (DOJ) recently released a “Dear Colleague Letter” on foster youth information sharing. This fact sheet outlines key points from the Dear Colleague Letter regarding how CWAs may share personally identifiable informationⁱ with LEAs and caregivers of foster youth. This exchange of information allows LEAs and CWAs to coordinate services in order to best serve the educational needs of foster youth. California’s Local Control Funding Formula (LCFF)ⁱⁱ addresses the need for such coordination by providing LEAs with specific funding to meet the educational needs of foster youth.

The Dear Colleague Letter does not create new laws. Instead, it clarifies existing requirements and permissions under California state law, including the Welfare and Institutions Code (WIC) and Education Code, and federal law, including the Family Educational Rights and Privacy Act (FERPA).

Under federal and state law, LEAs must share information with CWAs if parents sign a consent form to release educational records, or if a court order authorizes release of the educational records.ⁱⁱⁱ This Dear Colleague Letter clarifies when LEAs must or may share information with CWAs if there is no parental consent form or court order.

INFORMATION FLOWING FROM CHILD WELFARE TO LOCAL EDUCATION AGENCIES AND CAREGIVERS

What information must CWAs share with LEAs under LCFF?

CDSS must share information about foster youth with CDE through a weekly, statewide LCFF Foster Match. In addition to the LCFF Foster Match, LEAs may conduct local matches with CWAs to accurately match student enrollment data with CWS/CMS data.

What type of child welfare information does CDSS provide to CDE through the Foster Match?^{iv}

CDSS provides the following: Foster ID, case start/end date, placement start/end date, social worker name and phone number, whether parental rights are limited, Education Rights Holder name and phone number, and county of jurisdiction and responsible agency (CWA or Probation).

What additional information must CWAs share with LEAs?^v

CWAs must notify LEAs when students are placed in “licensed children’s institutions” and/or when students in foster care must transfer out of their current schools due to a change in placement.^{vi} CWAs must notify an LEA representative, such as the District Foster Youth Liaison, AB 490 Liaison or a counselor working with the student, about such placement and school changes. CWA caseworkers should use the appropriate CWA education form^{vii} to notify LEAs at time of placement.

What information may CWAs share with LEAs?^{viii}

CWAs may share **juvenile court records** with an appropriate LEA representative (superintendent or designee of the school district) for inspection purposes only. LEAs cannot make copies of juvenile court records without a court order from the presiding judge of the juvenile court.

CWAs may also disclose a foster student’s **receipt of public social services** to LEAs for purposes of federal assistance program eligibility, such as the free and reduced school lunch program.

Finally, CWAs may re-disclose **health, mental health, and medical-related information** to LEAs for the narrow purpose of coordinating health care services, medical treatment, mental health and special education services for foster students, if the disclosure is authorized by law. Disclosure of this information should be limited to LEA representatives who coordinate, provide, or oversee such services, such as the school nurse, school psychologist, and special education coordinator.

(Continued on next page)

What educational information can CWAs share with caregivers, including caregivers who are not Education Rights Holders (ERHs)?^{ix}

Parents retain the right to make education-related decisions for their children, even if their children are in foster care, unless the court limits their rights and appoints a new ERH such as a relative, caregiver, or Court Appointed Special Advocate (CASA). CWAs should treat ERHs as parents, for purposes of sharing education information.

If the caregiver is not the ERH, CWAs *must* provide foster youths' current education information to the caregiver such as in the Health and Education Passport, as soon as possible or within 30 days of initial placement. CWAs should also provide educational updates to caregivers who are not ERHs to ensure that the student's educational needs are being met. CWAs *may* re-disclose educational records they receive from LEAs to non-ERH caregivers who are authorized by the CWA to receive the disclosure and are engaged in meeting the educational needs of foster children in their care, if the information is directly related to the care of the foster youth.^x

INFORMATION FLOWING FROM LOCAL EDUCATION AGENCIES TO CHILD WELFARE AGENCIES

What information must CWAs request and receive from LEAs?

If the requesting CWA caseworker has "legal responsibility" for the care and protection of the student *and* the records are relevant to the "legitimate educational interests" of the caseworker, CWAs can request school records, and LEAs *must* comply.^{xi} This situation is an exception to federal and state laws' general rule that LEAs may not share personally identifiable information in school records without written parental consent.^{xii} CWAs have "legal responsibility" for any student who is in foster care placement^{xiii}; in California, this includes students who are placed in 24-hour out-of-home care *and* are subjects of a juvenile dependency court petition *and/or* a delinquency court petition.^{xiv}

What type of information can CWAs receive from LEAs as a result of these requests?

CWAs can receive school records such as grades, transcripts, names of educational providers, school transfer history, credits earned toward graduation, and individualized education plans.^{xv}

For more detailed information on the contents of this fact sheet, see the CDE/CDSS/DOJ Dear Colleague Letter: Foster Youth Information-Sharing, available at https://oag.ca.gov/system/files/attachments/press_releases/FosterYouthGuidance_9_1_2016_0.pdf

ⁱ Personally identifiable information is information that would allow a reasonable person in the community to identify the specific student with reasonable certainty. The Dear Colleague Letter further explains this important distinction between personally identifiable information and "directory information." See Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (2-3).

ⁱⁱ LCFF FAQs, <http://www.cde.ca.gov/fg/aa/lc/lcffffaq.asp#FOSTER>

ⁱⁱⁱ See Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g(b); Cal. Ed. Code. § 49076.

^{iv} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (5-6).

^v Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (15).

^{vi} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (15-16).

^{vii} For example, Los Angeles County caseworkers utilize the form entitled "Notification to School of Pupil's Foster Care Status and/or Request for Transfer of Pupil and Records" (DCFS 1399).

^{viii} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (16-17).

^{ix} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (18-19).

^x See *id.*

^{xi} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (10-11).

^{xii} See 20 U.S.C. § 1232g(b); Cal. Ed. Code. § 49076.

^{xiii} U.S. Department of Education, *Guidance on the Amendments to the Family Educational Rights and Privacy Act by the Uninterrupted Scholars Act* at 6 (May 27, 2014), available at <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>.

^{xiv} See WIC § 11400(f) (defining "foster care").

^{xv} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (12).

Sharing Information Between Local Education and Child Welfare Agencies



California Foster Youth Education Task Force

Federal and state law permits, and in some cases, requires Local Education Agencies (LEAs) and Child Welfare Agencies (CWAs) to share information regarding foster youth.

The CA Department of Education (CDE), the CA Department of Social Services (CDSS), and the Bureau of Children's Justice at the CA Department of Justice (DOJ) recently released a "Dear Colleague Letter" on foster youth information sharing. This fact sheet outlines key points from the Dear Colleague Letter regarding how Local Education Agencies (LEAs) may share personally identifiable informationⁱ with Child Welfare Agencies (CWAs) and caregivers of foster youth.

The Dear Colleague Letter does not create new laws. Instead, it clarifies existing requirements and permissions under California state law, including the Welfare and Institutions Code (WIC) and Education Code, and federal law, including the Family Educational Rights and Privacy Act (FERPA).

Under federal and state law, LEAs must share information with CWAs if parents sign a consent form to release educational records, or if a court order authorizes release of the educational records.ⁱⁱ This Dear Colleague Letter clarifies when LEAs must or may share information with CWAs if there is no parental consent form or court order.

INFORMATION FLOWING FROM LOCAL EDUCATION AGENCIES TO CHILD WELFARE AND CAREGIVERS

Why might CWAs request education records from LEAs?

CWAs may need to monitor and support the educational progress of the child, ensure the educational stability of the child, ensure that a student is receiving appropriate services and interventions, and/or include educational updates in caseworkers' court reports.

Under what circumstances must LEAs share information with CWAs?

LEAs must comply with CWAs' requests for education records, if the requesting CWA caseworker has "legal responsibility" for the care and protection of the student *and* the records are relevant to the "legitimate educational interests" of the caseworker.ⁱⁱⁱ CWAs have "legal responsibility" for any student who is in foster care placement^{iv}; in California, this includes students who are placed in 24-hour out-of-home care *and* are subjects of a juvenile dependency court petition and/or a delinquency court petition.^v This situation is an exception to the above-stated rule that LEAs need written parental consent or a court order to share personally identifiable information in school records.^{vi}

Types of school records that LEAs can share with CWAs in

the above circumstances include, but are not limited to, grades, transcripts, names of educational providers, school transfer history, credits earned toward graduation, and individualized education plans.^{vii}

What records should LEAs maintain regarding information they share with CWAs?

LEAs must document when they disclose education records to CWAs and include information about the requesting party and reason for request.^{viii} However, LEAs do not need to document disclosure of records to CWAs if the records are disclosed pursuant to written parental consent or a court order.

When may LEAs not share information with CWAs?

LEAs may not disclose information for students who are **not** subjects of a dependency court petition, but may be receiving other services through the CWA, such as voluntary family maintenance services or tutoring.^{ix} LEAs also may not share test results from the California Assessment of Student Performance and Progress (CAASPP) with CWAs without the written consent of a parent or guardian.^x

What information may LEAs share with parents?

Parents retain the right to make education-related decisions for and access educational information about their children, even if their children are in foster care, unless the court limits their rights and appoints a new ERH, such as a

relative, caregiver, or Court Appointed Special Advocate (CASA).

What information may LEAs share with non-parent Education Rights Holders?

LEAs should treat ERHs as parents, for purposes of sharing education records.

What information may LEAs share with caregivers who are not parents or Education Rights Holders?

LEAs may not share information regarding a student's current educational needs with a non-ERH; "in order to access records from an LEA, non-ERH caregivers need authorization from the child's ERH or through a court order."^{xi} However, state and federal law allow CWAs to disclose information received from LEAs to an individual or entity with a legitimate educational interest, which may include a non-ERH caregiver.^{xii}

INFORMATION FLOWING FROM CHILD WELFARE AGENCIES TO LOCAL EDUCATION AGENCIES

What information must CWAs share with LEAs?

CWAs must notify LEAs when students are placed in "licensed children's institutions" and/or when students in foster care must transfer out of their current schools.^{xiii} CWAs must also share Local Control Funding Formula (LCFF) Foster Match information with LEAs on the state level. Essential Foster Match information, as determined by CDE and CDSS, includes the student's Foster ID, case start and end dates, placement start and end dates, and caseworker contact

information.^{xiv}

Which school officials may have access to LCFF Foster Match information?

School officials who are involved in providing, coordinating or overseeing services for foster youth and who have legitimate educational interests in the Foster Match information may access it. Such school officials include but are not limited to Foster Youth Education Liaisons, school administrators, teachers, front office staff, school counselors, and special education coordinators.^{xv}

What information may CWAs share with LEAs?

CWAs may do the following, subject to state and federal law: permit LEAs to inspect juvenile court records; share health and mental health information for the purpose of coordinating care; and share information regarding public social services the student is receiving.^{xvi}

For more detailed information on the contents of this fact sheet, see the CDE/CDSS/DOJ Dear Colleague Letter: Foster Youth Information-Sharing, available at

https://oag.ca.gov/system/files/attachments/press_releases/FosterYouthGuidance_9_1_2016_0.pdf.

ⁱ Personally identifiable information is information that would allow a reasonable person in the community to identify the specific student with reasonable certainty. The Dear Colleague Letter further explains this important distinction between personally identifiable

information and "directory information." See Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (2-3).

ⁱⁱ See Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g(b); Cal. Ed. Code. § 49076.

ⁱⁱⁱ Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (10-11).

^{iv} U.S. Department of Education, *Guidance on the Amendments to the Family Educational Rights and Privacy Act by the Uninterrupted Scholars Act* at 6 (May 27, 2014), available at <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>.

^v See WIC § 11400(f) (defining "foster care").

^{vi} See 20 U.S.C. § 1232g(b); Cal. Ed. Code. § 49076.

^{vii} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (12).

^{viii} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (14).

^{ix} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (10).

^x Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (13).

^{xi} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (19 n. 100).

^{xii} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (19).

^{xiii} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (15-16).

^{xiv} See Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (6), for a complete list of Foster Match information.

^{xv} See Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (8-9), for a list of recommended school officials.

^{xvi} Dear Colleague Letter: Foster Youth Information-Sharing, Sep. 2016, (15-17).