

**Assembly Committee on Human Services  
Informational Hearing**

**The Sharing of Foster Care Information**

Exploring the barriers, necessary privacy protections and recommendations on how to share educational and health information for the benefit of foster youth

**August 27, 2013**

**1:30 p.m., State Capitol Room 437**

**Background Paper**

**Purpose of this Informational Hearing**

This hearing is the second informational hearing on the sharing of foster care information. Its purpose is to build upon what was learned at the first hearing about what efforts state and local child welfare, educational, and probation agencies have taken, in coordination with child welfare advocates and the public, to facilitate the connection of data for children in foster care to improve their social, economic, health and educational outcomes. The intent is to take the next step in the facilitation of foster care information and data sharing. Specifically, the Committee wants to build upon the understanding of what state and local efforts are currently underway and focus on what local and state cultural, administrative or statutory changes are still needed, to better enable the sharing of foster care information and data in all counties and statewide.

On May 14, 2013, the Committee held its first informational hearing on the sharing of foster care information. The hearing featured four panels, which included state and local child welfare, educational, and probation agencies, child welfare advocates, researchers, and the public, all of whom shared their perspectives on why the sharing of foster care information and data is integral to providing for the best possible outcomes for youth in foster care. While every individual who provided testimony agreed that the sharing of foster care information and data was essential to providing and coordinating services for foster youth, many also discussed the need to simultaneously protect the individual privacy and identity of each youth in foster care so as not to re-victimize foster youth or put in jeopardy their personal identity.

Below are the major themes and areas of agreement from the first hearing:

**Foster care information vs. data**

Although sometimes used synonymously, it is important to distinguish between information and data in the context of foster care. Whereas information is considered to be specific to the individual on a case-by-case basis and can include sensitive and personally identifiable details relating to placement and status, data is information assembled in the aggregate and is not personally identifiable.

It is also important to discern what type of information and data is needed and where. Information sharing at the local level is imperative for individuals involved in providing for and

coordinating services and care for youth in foster care. Conversely, data is valuable at a higher level, such as within state departments and for researchers, where trends and themes can be identified and best practices can be developed to guide how and where resources should be allocated to improve outcomes for foster youth. Still, there was recognition of the value that individual-level information could present at the state level, as long as the necessary safeguards are in place to protect the individual identity of youth in foster care.

### **Delicate balance between privacy and the ability to share information and data**

Although it was generally recognized that information and data sharing is essential to providing for youth in foster care, there was an equal amount of focus on the need to ensure that the privacy and personally identifiable information of foster youth is protected. Identity theft is one of many consequences of increased information and data sharing, which can have a profound effect on foster youth. It can lead to increased challenges in improving their credit records and can negatively impact their ability to apply for college or acquire employment.

Due to their desire to be fierce protectors of youth in care and to avoid re-victimizing an already victimized youth through further abuse of their information or the theft of their identity, many agencies have worked to limit access to the personal information of youth in foster care. Although laudable, this has inadvertently led to state and local agencies becoming unwilling to share information and data even though they have a mutual responsibility to provide for a foster youth's needs. Providing for the safe and appropriate sharing of data and information could serve to establish a culture of communication, through which those involved in a foster youth's life can be better informed to make the best decisions possible for that youth. Considering the number of public agencies involved, including the juvenile court, the child welfare agency (CWA), school districts, health care providers, and caregivers, enabling and empowering agencies and authorized individuals to communicate effectively and share information is of paramount importance.

Recognizing that an individual's right and interest in controlling his or her own information is considered to be "protecting privacy," it was recommended that foster youth should have a say in how their information is shared. It was also suggested that as a part of the discussion on the sharing of information and data, principles of privacy protection should be taken into consideration. This could include establishing data quality and integrity standards, developing security measures, outlining user roles and responsibilities, and utilizing a set of information and data sharing privacy principles.

### **Laws and policies both enable and inhibit the sharing of information and data**

Under current federal and state law, there are numerous acts that have been established to provide for the sharing of specific information, but only under certain circumstances. These include the Health Insurance Portability and Accountability Act (HIPAA), the California Confidentiality Medical Information Act (CMIA), evidentiary privilege enumerated in the Evidence Code, the federal Family Educational Rights and Privacy Act (FERPA), and others. Although they provide mechanisms to enable sharing of information and data, each is limited in their own way and can create conflicts that result in limitations on the sharing of information and data. Still, it is important to ensure that any changes that are made to develop a culture of

communication with regard to foster care information and data are supportive of, and positively interact with, existing law where appropriate.

### **Training is equally important to information and data sharing**

Training is an essential component of ensuring that those who are authorized to have access to sensitive information take the necessary steps to avoid inappropriate and unlawful redisclosure of that information. Efforts are currently underway at the California Department of Social Services (DSS) and the California Department of Education (CDE) to jointly author a guidance letter informing CWAs and local education agencies (LEAs) how they can share data and information. Additionally, in recognition of foster parents' daily responsibilities in caring for their children, and the fact that social workers are often restricted from sharing important information with foster parents, DSS is currently working on an All County Letter (ACL) to help inform counties on what types of information may be shared with foster parents.

Some counties have worked with the education and health counterparts to establish memorandums of understanding (MOU) to govern the sharing of information and data. However, this has led to varying data and information sharing policies throughout the state, which has led to inadvertent conflicts of policy and practice between counties.

### **Is there information or data that should not be shared?**

Yes. Bad information and data should not be shared. A great deal of attention was given to testimony in the first hearing that highlighted the double-edged sword foster youth currently face. On one hand, agencies can be reluctant to share important and beneficial information and data that could improve outcomes for foster youth out of a concern or fear for jeopardizing the youth's personal information. However, on the other, there exists little guidance or training on how not to share inappropriate or inaccurate information about a foster youth. This can lead to negative outcomes for foster youth, whereby integral information, such as mental health and educational needs go unshared and unaddressed, but anecdotal or otherwise unfounded information is often shared.

### **Disconnect Between the Law and Information and Data Sharing Authority**

Over the last ten years, focus has increased on legislative and programmatic changes to improve outcomes of children in our child welfare, educational and health systems, both at the state and federal levels. However, many of these efforts, although well intended, lack the specificity needed to provide for appropriate and protected data and information sharing in order to ensure their intended outcome is met. Below are brief descriptions of some of these laws and programs. These descriptions are not intended to be comprehensive; rather they are intended to demonstrate how many of these well intentioned efforts inadvertently inhibit themselves or conflict with each other, as well as raise questions that were left unanswered in the first hearing.

### **Title IV-E and IV-B of the Social Security Act – Federal Foster Care Case Plan**

Under the Federal Foster Care Program, states are required to develop and maintain a case plan to provide for the ongoing oversight and coordination of services for a child in foster care. The plan includes a wide array of information, including health, education, and other personally sensitive information.

In the most recent reauthorization of Title IV-E and IV-B, by the federal Fostering Connections to Success and Increasing Adoptions Act additional focus on the educational outcomes of youth in foster care are required of CWAs. Specifically, CWAs are now required to undertake efforts to help maintain the child's educational stability while in foster care, including continuing the child's enrollment in his or her current school whenever possible. This was problematic because, prior to the adoption of the Uninterrupted Scholars Act (Scholars Act) earlier this year, it has been generally interpreted that, pursuant to FERPA, school districts could not share educational information and records of individual students outside the public education system without a court order, subpoena, or the consent of the parent.

With the recent adoption of the Scholars Act school districts will be able to share educational information with CWAs. However, little exists in the way of policy and guidance on how school districts and CWAs should share information and what information should be shared.

### **Section 827 of the Welfare and Institutions Code (WIC)**

Section 827 of the WIC specifies a long list of individuals who are authorized to have access to a foster youth's case plan. This list can include upwards of 20 individuals, including but not limited to the juvenile court judge, court personnel, any attorneys involved with the youth's case, the youth in foster care, the youth's parents or guardians, educational staff, CWA staff, and any other person who may be designated by the juvenile court. However, the case plan can include a wide array of sensitive information, which is shared with a variety of individuals and agencies without much direction on how that information is used. Although this is a form of information sharing, guidance on the use of the case plan is lacking, and it is unclear whether each individual and agency should have access to the entirety of the information in the case plan, whether the information can be redisclosed, and for what purpose it can be used.

### **California Foster Youth Health and Education Passport**

The purpose of the Passport (WIC 16010) is primarily to ensure that a foster youth's caseworker has immediate access to important and necessary educational and health records in order to help support and provide for positive outcomes for the foster youth assigned to him or her. It includes a vast array of information relating to educational records, school enrollment, contact information for teachers and medical physicians, and any other relevant medical records, including mental health information and prescribed medication.

The passport has become a critical informational tool for social workers, as it allows for current and up-to-date information to be readily accessible to ensure they can provide for the needs of their foster youth in a timely manner.

### **Drawbacks within the Case Plan and the Passport**

Although federal and state law prescribes the types of information that should be included in both the case plan and the Passport, social workers are limited in their access to records that are protected from disclosure that would otherwise be considered important to the coordination of care and services to a child. This results in limited access for foster youth, as well. There are also concerns about the lack of funding for the Passport, which has resulted in varying levels of information included in the Passport for each CWA.

### **Foster Youth Services Educational Liaison Program**

As established by AB 490 (Steinberg), Chapter 862, Statutes of 2003, the Foster Youth Services (FYS) Educational Liaison is tasked with helping school districts identify students in foster care and coordinating educational, health and related services for the youth. Although the purpose of the program is to improve the educational performance and personal achievement of students in foster care, the program's reach is limited because school districts were not regularly made aware of youth in foster care who are enrolled in their schools. However, this is beginning to change with the adoption of the Local Control Funding Formula.

### **Local Control Funding Formula and the Local Control Accountability Plan**

On July 1, 2013, the Governor signed Assembly Bill 97 (Chapter 47, Statutes of 2013) to enact the Local Control Funding Formula (LCFF). A fundamental change in the manner in which the state funds local school districts, the LCFF replaced a decades-old school funding methodology with a weighted student funding formula.

For the purpose of foster youth information and data sharing, one of the LCFF's most important impacts is the requirement for real-time, regular updates of California's youth in foster care from the Child Welfare Services Case Management System (CWS/CMS) to be input into the CDE's statewide student data system; the California Longitudinal Pupil Achievement Data System (CALPADS). Specifically, the LCFF requires CALPADS to be updated on a weekly basis by CWS/CMS to enable school districts to be informed how many enrolled students are in foster care. This is essential for students in foster care as it will enable school districts to more readily know whether they have students who are in foster care and receive additional funding to provide for their educational needs.

Another important benefit of the LCFF is that it requires school districts to establish a Local Control Accountability Plan (LCAP), which will require schools to meet specified academic achievement goals for statistically significant subgroups, which will include students in foster care for the first time. Currently in development by the CDE and the California State Board of Education (SBE), the LCAP will help focus local school district resources on specifically providing for improved academic outcomes of foster youth.

However, it remains to be seen how school districts and CWAs will use this new authority. Although the LCAP will hold districts accountable for the academic achievement of foster youth, should they meet state significant subgroup requirements, it does not require nor provide additional services for students in foster care. It is also unclear how and whether CWAs will be informed about what this means in relation to their requirement to comply with federal Title IV-E and IV-B educational outcomes requirements.

### **Family Educational Rights and Privacy Act (FERPA) and the Uninterrupted Scholars Act**

Until recently, FERPA provided three general exemptions under which a pupil's educational records may be accessed; consent of the student's parent if he or she is under 18 years of age or the student him or herself if he or she is 18 years of age or older; by subpoena or court order; or if there is an emergency. The Scholars Act amended FERPA to specifically allow school

districts to share the individual level educational information of a foster care pupil with the caseworker to whom that foster youth is assigned.

Still, even with this additional permission, limitations on how school districts and county CWS agencies can coordinate services for their foster youth remain. While the Scholars Act provides social workers or probation officers access to a foster care pupil's educational records, it does not ensure that the social worker or probation officer duly informs the school district of a pupil's foster care status, nor whether additional communication or coordinated services are needed for that pupil.

### **Medical, Mental Health and Substance Abuse Health Information**

Medical confidentiality laws, such as the Health Insurance Portability and Accountability Act (HIPAA), are set up to allow for information sharing amongst health care providers, but also provide for the protection of privacy of those receiving care. Recognizing that children in foster care are more likely to need medical services, such as mental health or substance abuse treatment services, as well as the ability of youth 12 years of age and over to consent to medical care, where do barriers exist in relation to information sharing? Also, health care records contain sensitive medical information that, when disclosed, can place individuals, especially children, in jeopardizing and vulnerable situations. To what extent should medical records or information be shared amongst the adults who provide or coordinate services for youth in foster care? Are there specific user roles and responsibilities that should be prescribed to ensure that information is shared appropriately and discreetly?

### **Foster Parents**

Current law is also vague on what a foster parent may or may now know about a youth placed in his or her care. For example, under current law, a foster youth's social worker has the authority to consent to medical care, develop and present evaluations of the foster youth to the court, and make formal recommendations as to where the youth should be placed and go to school. However, there is no requirement to provide foster parents with comprehensive health information about a foster youth placed under their care, no requirement to provide a foster parent medical consent authority, including in emergency situations, nor are foster parents required or allowed to make educational decisions for the child unless ordered by the court to do so (i.e., educational rights holders).

Although a social worker is an integral person in the identification, coordination and provision of services and supports for a youth in foster care, they do not have the regular day-to-day interaction with their assigned foster youth like a foster parent would. Should foster parents be provided more authority to act on behalf of the needs of youth under their care? What should this authority include, i.e. the right to consent to medical care, the right to be informed about the health needs of children under their care, or the right to make educational decisions on behalf of the child?

### **Foster Youth**

Similar to permissions for foster parents, the law is also vague on how much involvement foster youth may have in the maintenance and sharing of their own information. Current law does establish the Foster Youth Bill of Rights (WIC 16011.9), however, it does not specifically

provide the right for a foster youth to have input on how their information is shared and with whom. Should additional considerations be given to a foster youth as it relates to what information may be shared and how? Under HIPAA, foster youth, like any other youth, may consent to medical services if they are 12 years of age or older. Provided a youth is deemed competent to make his or her own medical decisions, should that foster youth be allowed to provide input on how his or her information is shared?

## **Conclusion**

We know from numerous reports and studies that youth in foster care face many more challenges and obstacles than other comparable peer groups. Foster youth are more likely to face mental health challenges due to the trauma of being removed from their home because of abuse and neglect; they are more likely to drop out and experience some form of substance abuse in their lifetime; and they are more likely to be incarcerated than their peers. In many cases, readily accessible services could avert many of these circumstances from occurring with the simple ability of those agencies and individuals responsible for providing care to foster youth being able to share information effectively.

This Committee believes that it is in the state's best interest to enhance information and data sharing among agencies that serve children in foster care in order to improve their educational and socio-economic outcomes. Having established a foundation upon which public agencies, foster youth, stakeholders, and the public can agree that the sharing of foster care information and data is a priority and is needed, the Committee hopes this hearing will help lay out the steps necessary to make foster care information and data sharing a reality. Specifically, this Committee seeks specific recommendations on what cultural, administrative, and statutory changes need to occur to enable foster care information and data sharing so that the state and counties can continue to improve outcomes for youth in foster care.