

**Assembly Committee on Human Services
Informational Hearing**

The Sharing of Foster Care Information

Identifying the challenges, barriers, necessary protections, and benefits to help strengthen the sharing of foster care data and improve the outcomes of children in California's child welfare system

May 14, 2013

9:00 a.m., State Capitol Room 127

Background Paper

Purpose of this Informational Hearing

Through this hearing, the Committee seeks to learn more about and explore the 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.

Sharing information about foster youth

According to California's CWS Case Management System (CWS/CMS), which is collaboratively operated by the California Department of Social Services (DSS) and the University of California, Berkeley's School of Social Work, more than 30,000 children are removed from their homes due to abuse or neglect each year. At any given time, there are more than 56,000 children in the state's CWS system and 5,000 delinquent children who are placed under the care of the state's juvenile probation system.

Although small in comparison to the total number of minors under the age of 18 in California, children and youth in foster care represent a unique and important population that is entitled to and deserves an array of services and supports, including health, educational, and social services. In order to better facilitate the provision of services and enhance their coordination, steps need to be taken to connect the branches of government and public agencies that provide integral health, educational, social and other related services for foster youth.

In a recent February 2013 report to Congress, the United States Government Accountability Office concluded:

The steps the federal government and some states and localities have taken to provide more seamless and standardized data exchange promote greater interoperability across

health and human services programs. Advances in technology, in some locations, have also increasingly allowed agencies to better manage exactly who has access to what information. Yet, even with the technology to share data, state and local agencies may be stymied by uncertainties regarding what can or cannot be shared consistent with the myriad of privacy laws and requirements that affect the delivery of human services. Absent more explicit clarification on what data sharing is permitted under these requirements, as well as specific examples and tools related to how some states and localities are actually sharing data in new ways while fully maintaining client privacy protections, other state and local agencies may be stalled in their efforts.¹

Additionally, in May 2009 the California Blue Ribbon Commission on Children in Foster Care released its Final Report and Action Plan titled "Fostering a New Future for California's Children." In this report, the commission made the following finding and recommendation relating to the sharing of foster care information:

One of the greatest challenges to reforming the juvenile dependency and foster care systems is the difficulty of exchanging data and information among courts and their partner agencies. The difficulty results from a variety of factors, including confidentiality laws, and in many instances the way in which they are interpreted and implemented; automated case management systems that are unable to communicate with each other; and a lack of communication and collaboration among agencies and between agencies and the courts.

Key Recommendation

The Judicial Council, trial courts, and the California Department of Social Services should work cooperatively with all departments, agencies, and other stakeholders to ensure optimal sharing of information to promote decision-making that supports the well-being of children and families in the child welfare system.²

Challenges of Children in Foster Care

It is an unfortunate reality that children in foster care face many more challenges, and are often at greater risk than their peers, when it comes to their physical and social-emotional developmental, and health and educational outcomes. Often removed from their home due to abuse, neglect, or abandonment, children who are placed into foster care face substantial challenges, ranging from coming to terms with why they were removed from their parents' custody, to adapting to life in foster care and preparing for what life will be like when they exit California's child welfare services (CWS) system.

¹ HUMAN SERVICES – "Sustained and Coordinated Efforts Could Facilitate Data Sharing While Protecting Privacy," United States Government Accountability Office Report to Congressional Requesters. February 2013

² "Fostering a New Future for California's Children: Ensuring Every Child a Safe, Secure and Permanent Home," Final Report and Action Plan. California Blue Ribbon Commission on Children in Foster Care. May 2009

Children and youth in foster care represent some of the most vulnerable populations in California, and are less likely to graduate from high school, are more likely to face economic hardships while in foster care and later in life, are more likely to have negative encounters with law enforcement, and oftentimes are in greater need of medical and mental health services. In a recent report released by the Stuart Foundation, nearly 75 percent of children and youth in foster care remain in foster care for two or more years and will experience three or more placements during that time.³ Furthermore, when compared with non-foster youth of similar demographic risk factors, such as socio-economic disadvantage or disabilities, foster youth are more likely to be enrolled in lower performing schools, more likely to perform below grade level, and are at a greater risk of dropping out of high school.

The health outcomes for foster youth are equally challenging. According to the Children's Partnership:

Children in foster care are three to six times more likely than those in the general population to have significant psychological or behavioral problems. They are also more likely to suffer from a range of acute and chronic physical health problems. And, significant numbers experience frequent upper respiratory infections, dermatologic disorders, dental caries, and malnutrition.⁴

These challenges faced by children and youth in foster care fall into the hands of the state, as it is the state that is responsible for playing the role of "parent" while the foster youth remains a dependent or ward of the court. However, instead of having one or two adults serving as a child's parent, there are often ten or more individuals who are involved in the life of a child in foster care, each with their own important yet separate roles and responsibilities related to children in care. The individuals who make decisions regarding a foster child's care can include:

1. **Juvenile Court Judge** – Responsible for determining whether a child should or should not be ruled a dependent or ward of the state and makes decisions in the best interest of the child while he or she is in foster care based upon recommendations of the social worker assigned to the child.
2. **Minor** – Depending on the age of the child, and the matter being discussed, the child can express his or her wishes before the court and make decisions on his or her own behalf.
3. **Minor's Counsel** – Appointed by the court, unless otherwise hired by the minor, the minor's counsel represents the foster youth in court and assists him or her in obtaining necessary support services.

³ Frerer, Kristine et al, "At Greater Risk: California Foster Youth and the Path from High School to College," Stuart Foundation. Page 7.

⁴ Morrow, Beth, "Electronic Information Exchange: Elements that Matter for Children in Foster Care," The Children's Partnership and the State Policy Advocacy and Reform Center. Page 1.

4. **Parent(s)** – Depending on the ruling of the court, a child's biological parent may retain some portion of his or her "care, custody, and control" rights, which may include the ability to make educational and medical decisions on behalf of the child.
5. **Parent's Counsel** – Either appointed by the court or hired by the parent, the parent's counsel represents the child's parent(s) in court and assists the parent(s) in navigating the legal process and addressing the reasons for removal of the child, and when appropriate, resolving why the child was removed from the home.
6. **Court Appointed Special Advocate (CASA) for children** – Appointed by the court, the CASA is a volunteer advocate who speaks on behalf of the child before the court to ensure that the court's actions and the appointed services and programs, including the minor's counsel, are acting in the child's best interest.
7. **Social Worker/Caseworker or Probation Officer** – Assigned by the responsible CWS agency or probation department, the social worker or probation officer is responsible for overseeing the child's out-of-home placement, coordinating services, maintaining necessary records, and acting as the main point of contact for the child in foster care.
8. **Educational Rights Holder** – In cases where the parent has their educational decision making rights removed, the court can appoint a person, other than the CASA or social worker/probation officer, to make educational decisions for the child. This can include acting on behalf of the child in making special education decisions, e.g., Individualized Education Program (IEP) development.
9. **Foster Parent or Legal Guardian** – A foster parent is a licensed provider under the California Community Care Facilities Act, who operates a foster family home or group home in which a child in foster care is placed. A foster parent can become the legal guardian of a child placed under his or her care, which can include the right to make educational and medical decisions on behalf of the child.
10. **Surrogate Parent** – When the court has not appointed an educational rights holder and either the parent no longer has authority to make educational decisions on behalf of a child or the parent cannot be located, a school district, for purposes of providing special education services to a pupil, may appoint a surrogate parent to stand in as the parent to make special education decisions for the pupil, whether or not they are in foster care.
11. **Medical Provider or Physician** – Current law requires every child taken into temporary custody to undergo a physical exam by a licensed medical physician. Based upon observational assessments and other medical exams, the physician provides treatment to the child, upon receiving consent, and makes recommendations to the social worker or probation officer to be relayed to the court for the approval and provision of future services, as necessary. This can include mental health and substance abuse treatment.

12. **Guardian ad litem** – Appointed by the court, a guardian ad litem is typically a relative or other close individual, such as the minor's counsel, who can make decisions on behalf of the child, depending on the child's age.

13. **Educational Agency**

- a) Foster Youth Services (FYS) Coordinator and Foster Youth Liaison – Typically one school district staff person responsible for coordinating school-level support services for all identified pupils in foster care, and communicating and collaborating with other agencies, such as the CWS agency or probation department, in assisting and coordinating services for the child in foster care.
- b) Administrators and Teachers – Responsible for the academic instruction and achievement outcomes of pupils in foster care, they often work with the FYS Coordinator and/or Foster Youth Liaison to provide individualized educational instruction, counseling and support services for pupils in foster care.

The large number of entities represented in this cadre of well-meaning and important individuals presents substantial challenges in how services and programs are coordinated to serve children in foster care. They represent different branches of government and multiple state and local agencies, all with the intention of facilitating positive outcomes of foster youth. However, all parties come with their own federal, state or local confidentiality and privacy protection requirements. This creates challenges and barriers to programmatic collaboration and service coordination, as each entity is limited in how it can share information and what type of information can be shared with the other entities.

It can also limit access to important and accurate records for a foster youth, especially when the youth emancipates from foster care or enters into extended foster care as a nonminor dependent. However, the confidentiality and privacy of foster youth is of paramount importance. The sharing of information to better coordinate services is of great benefit to children and youth in foster care, but it should not be conducted at the sacrifice of a foster youth's personal identity or put the youth at greater risk of identity theft or other abuses of personal or sensitive information.

Overview of Records and Data Requirements and Confidentiality and Privacy Laws

Below is a general description of state and federal CWS agency requirements pertaining to documenting and arranging for necessary services for children in foster care. Also included are brief descriptions of federal and state confidentiality and privacy laws.

The descriptions below are not comprehensive, nor do they capture the full array of applicable requirements and protections under the law. Rather, they are intended to demonstrate that, although numerous efforts have been made to facilitate communication regarding the provision of services and protections for children, accompanying confidentiality and privacy protections may, either purposefully or unintentionally, limit how information can be safely and effectively shared to help improve outcomes for children in foster care.

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 but not limited to the following:

- A description of the type of home or institution in which the child is to be placed.
- A plan for ensuring that the child receives safe and proper care and that appropriate services are provided to the parents, child, and foster parents:
 - To improve the conditions in the parents' home;
 - To facilitate the child's return to his or her own safe home or the alternative permanent placement of the child;
 - To address the child's needs while in foster care.
- Efforts to maintain the child's educational stability while in foster care, including continuing the child's enrollment in his or her current school whenever possible.
- To the extent available, the child's health and education records.
- Where appropriate, for a child age 16 years or older, a description of programs and services that will help the child prepare for independent living.
- If the permanency goal for the child is adoption, documentation of the steps being taken to find an adoptive family.

California Foster Youth Health and Education Passport⁵

The purpose of the passport 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 provides for 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 and important 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

⁵ Welfare and Institutions Code Section 16010

protected from disclosure that would otherwise be considered important to the coordination of care and services to a child. This also results in limited access for foster youth, as well.

Privacy and Confidentiality Laws

There are a number of federal and state confidentiality and privacy laws that permit disclosure in one circumstance, but limit or prohibit it in another. These inherent conflicts lead to misunderstandings of how a foster child's records may or may not be shared, which not only burdens the CWS system's ability to serve the child but also limits the potential positive outcomes for the child.

Federal Family Educational Rights and Privacy Act (FERPA)

Within the federal Family Educational Rights Privacy Act (FERPA), there are three general exemptions under which a pupil's educational records may be accessed:

- a) By written consent of the pupil's parent or the consent of the pupil if he or she is 18 years of age or older;
- b) By subpoena or court order; or
- c) By appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons.

State pupil privacy law⁶ provides more specified permissions for the sharing of a pupil's educational records in alignment with FERPA, which includes:

- a) Educational officials and school employees who are authorized representatives of the school district in which the pupil is enrolled or seeks to be enrolled, (e.g., in the case of an inter-district transfer);
- b) Authorized representatives of the Comptroller General of the United States, the Secretary of Education, and state and local educational authorities, or the United States Department of Education's Office for Civil Rights;
- c) A judge, probation officer, or district attorney or their office who is participating in or conducting a truancy mediation program;
- d) A probation officer, district attorney, or counsel of record for a minor for purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation;

⁶ Education Code Sections 49076 and 49076.5

- e) Higher education institutions for which the pupil has applied for admission for purposes of determining eligibility for financial aid;
- f) A county elections official, limited to the pupil's directory information, for the purpose of identifying pupils eligible to register to vote, or for conducting programs to offer pupils an opportunity to register to vote;
- g) Accrediting associations in order to carry out their accrediting functions; and
- h) Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction.

Until recently, only the school district in which a pupil is enrolled and the pupil's parent could have access to a pupil's educational records. FERPA also prohibits the re-disclosure of a pupil's educational records, except under specified circumstances outlined in FERPA and state law.

Uninterrupted Scholars Act (Scholars Act)

In February of this year, responding to concerns that FERPA was inadvertently limiting the ability of social workers and CWS agencies to provide for and help improve the educational outcomes of foster youth, Congress passed the Uninterrupted Scholars Act. This 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.

Prior to its adoption, a foster youth's social worker had to undergo the administrative, and often time-consuming, burden of requesting and obtaining a court order simply to gain access to the youth's educational records to determine educational needs and additional assistance the youth would need to improve his or her educational outcomes. Still, even with this additional permission, limitations on how school districts and county CWS agencies can coordinate services for their foster youth remain. In many cases, school districts are unaware of whether any or all of their enrolled students are receiving foster care services because of either perceived or actual limitations on the ability of CWS agencies and school districts to share information.

The Scholars Act maintains existing privacy protections for youth in foster care. CWS agencies can only re-disclose education records to "an individual or entity engaged in addressing the student's education needs" that is authorized by the CWS agency to receive the records, consistent with federal and state confidentiality laws. 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.

Health Insurance Portability and Accountability Act (HIPAA)

HIPAA provides for the confidentiality and privacy of individual medical records. Under HIPAA there are two general rules⁷ that dictate an individual's rights with respect to the administration of health information:

- 1) Privacy Rule – Provides federal protections for personal health information held by covered entities, while at the same time permitting the disclosure of personal health information needed for patient care and other important purposes.
- 2) Security Rule – Specifies a series of administrative, physical, and technical safeguards for covered entities to use to ensure the confidentiality, integrity, and availability of electronic protected health information.

Specifically, HIPAA's privacy and security rules protect the confidentiality of "protected health information," which is defined as individually identifiable health information in all forms that is created or received by a health care provider, health plan, employer, or health care clearinghouse and relates to the past, present, or future physical or mental health or condition of an individual.⁸

For children in foster care, HIPAA does permit disclosure of health care information without consent to the parent(s) or individuals assigned to be the guardian or responsible adult for the child. However, it defers to state law when that law is more protective of a patient's privacy.⁹

California Confidentiality of Medical Information Act (CMIA)

The CMIA, like HIPAA, provides for the confidentiality and privacy of individual medical records in California. In regards to children in foster care, it permits a health care provider to disclose medical information to a county social worker or probation officer or any other person who is legally authorized by the court to have custody of the child for the purpose of coordinating health care services and medical treatment.¹⁰

It further specifies in the Welfare and Institutions Code that a social worker may, upon permission of the court, provide consent to medical treatment for a child in foster care, as well as retain and maintain all necessary medical and health records for the child in his or her case plan.

California Lanterman-Petris-Short Act (Lanterman Act)

In addition to HIPAA and the CMIA, the Lanterman Act provides additional confidentiality and privacy protection for health information and records for individuals with developmental disabilities. Similar to the CMIA, it permits a health care provider to disclose health information, including information regarding developmental services and mental health services, to a social worker or probation officer for a child in foster care, without consent or permission

⁷ Understanding Health Information Privacy. United States Department of Health and Human Services website: <http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>. Accessed May 9, 2013.

⁸ Title 45, Code of Federal Regulations, Section 160.103

⁹ Title 45, Code of Federal Regulations, Section 160.203(b)

¹⁰ California Civil Code, Sections 56.10(c)(20) and 56.103

from the court, if the provider deems it necessary for the purpose of coordinating the treatment and care of the child.¹¹

Conclusion

Numerous reports and studies have identified impediments to effective information sharing for children in foster care as one of the most significant obstacles to helping improve outcomes for foster youth. This committee believes that it is in the state's best interest to enhance information sharing among agencies that serve children in foster care in order to improve their educational and socio-economic outcomes. The Committee hopes this hearing will help lay the foundation for state and local governments to work together to identify the cultural, administrative, and statutory issues that may need to be addressed to achieve this goal.

Additional Resources

California Child Welfare Council

Statement on Data Sharing

<http://www.courts.ca.gov/documents/CWCPolicyStatementonInfoSharing.pdf>

California Administrative Office of the Courts

Sharing Information about Children in Foster Care Briefings

- Education Information
http://www.courts.ca.gov/documents/CFCC_Brief_EDUC.pdf
- Health Information
http://www.courts.ca.gov/documents/CFCC_Brief_HealthCare.pdf
- Mental Health Care Information
http://www.courts.ca.gov/documents/CFCC_Brief_MentalHealthCare.pdf
- Substance Abuse Treatment Information
http://www.courts.ca.gov/documents/CFCC_Brief_Substance.pdf

United States Government Accountability Office

Report to Congressional Requesters: Human Services

Sustained and Coordinated Efforts Could Facilitate Data Sharing While Protecting Privacy

<http://www.gao.gov/products/GAO-13-106>

The Stuart Foundation

At Greater Risk – California Foster Youth and the Path from High School to College

<http://www.stuartfoundation.org/docs/default-document-library/at-greater-risk-california-foster-youth-and-the-path-from-high-school-to-college.pdf?sfvrsn=6>

¹¹ California Welfare and Institutions Code Section 5328.04 and California Civil Code Section 56.103

WestEd's Center for the Future of Teaching and Learning

Sharing Data Between Child Welfare and Education to Improve Outcomes for Children in the Foster Care System

<http://www.wested.org/cs/we/view/rs/1174>