

*Helping Foster Children
Achieve Educational
Stability and Success*

A Field Guide
for Information Sharing

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This Field Guide provides basic information on the information sharing law in Washington State. While it provides information on the law, it is not legal advice, and is not in any way intended to be a substitute for legal advice or representation. If you need legal advice, please contact a lawyer who can look at the specifics of a particular situation and apply the law.

Keep in mind that laws change and that the law explained in this Field Guide may have changed since it was written. Consult with an attorney who knows this area of law to make certain that it is still valid.

INTRODUCTION

If you are a foster parent, educator, Guardian ad Litem or CASA volunteer, DCFS social worker or biological parent of a foster care child that attends school, this Field Guide is for you. It has been designed to improve communication between school staff and people who support the academic success of a student in foster care.

It is not uncommon to be confused about how much information you can share about a student who is in foster care, or know to whom you are able

THE GOAL OF THIS FIELD GUIDE IS TO IMPROVE THE EDUCATIONAL STABILITY, CONTINUITY, AND SUCCESS FOR CHILDREN WHO ARE IN FOSTER CARE.

to speak. This booklet will clarify what you can share, how much you can share, and to whom you can give information about that student.

This Field Guide is designed to help people who are working with children who are in out of home placement because of their shelter care or dependency status. For purposes of this Field Guide, a child is in shelter care if the child has been placed in protective custody

by law enforcement or by court order after the filing of a dependency petition. A child is a dependent child if a court has entered a finding of dependency under Washington State Law.

What you'll find inside

1. **Introduction and Overview of Information Sharing Laws**
2. **Player's Guide:** The who's who for children in out of home care.
3. **Decision Making Tree:** Ask yourself these questions to guide your decision to share information. Use this Decision Tree together with the Overview of Laws on Information Sharing.
4. **Outline of Laws on Information Sharing:** Follow this outline to understand the legal authority for information sharing. You'll find a section for
 - Parents,
 - CASAs and GALs,
 - DCFS social workers,
 - School staff and educators, and
 - Relative and licensed caregivers.
5. **Resources & Conclusion:** Explore links to more information on education advocacy and resources for children in out of home care.

DISPELLING MYTHS

Confused about who can share what about whom? You are not alone! It's hard to separate myth from fact when it comes to sharing information about foster children, and this is especially true when large systems intersect (or, as some would say, "collide"). Here are some favorites – along with corresponding sources that provide the facts.

MYTH # 1 All information, including school records, about children in foster care is confidential and may not be shared by anyone except the child's parents or DCFS Social Worker.

FACT: Depending on your role, you may provide and/or receive information about a child's school records when the child has been placed in out of home care.

MYTH # 2 FERPA prohibits schools from sharing information with anyone other than a child's parents.

FACT: FERPA is the Family Educational Rights and Privacy Act, a federal law that describes when schools can release a student's educational records. In most circumstances, schools must obtain a parents' consent before releasing educational records. There are a number of circumstances when schools can share this information without parental consent. Check out page 10 and 11 of the Field Guide to learn more about those situations.

OVERVIEW OF LAWS ON INFORMATION SHARING

Agencies, lawyers, education personnel and other professionals working with families with children receiving services from DCFS must follow many federal and state laws and rules governing the sharing of information and records. It is the goal of these laws and rules to strike a balance between protecting the privacy rights of individuals and families and allowing professionals and agencies working with children and families to share information essential to help children be successful in school.

Your ability to share information for purposes of educational planning depends on your role in the child's life. This Field Guide provides several tools to help you decide when and how to share information. It also identifies the laws that authorize the sharing of information for education planning.

This Field Guide will answer some basic questions about information sharing. But remember, this Field Guide is not intended to be legal advice. Some situations will require you to consult your supervisor or a lawyer to fully understand the laws that apply.

Even if the law gives you authority to share information, many situations require you to use good judgment about what information you should share, how and when to share it, and with whom. Foster children and their families are dealing with very sensitive issues. Respect their privacy and only share information relevant to education planning. Remember, once released, information is difficult to retrieve. Regularly consult your supervisor (or DCFS social worker if you are a licensed or relative caregiver) if you are unsure about whether and how to share information.

WHERE YOU'LL FIND INFORMATION SHARING AND CONFIDENTIALITY LAWS

WASHINGTON STATE LAWS

- Keeping and Release of Records by Juvenile Justice or Care Agencies, RCW 13.50
- Juvenile Court Act, RCW 13.34
- Juvenile Justice Act, RCW 13.40
- Uniform Health Care Information Act, RCW 70.02
- Mental Illness, RCW 71.05
- Common School Provisions, RCW 28A
- Treatment for Alcoholism, Intoxication, and Drug Addiction, RCW 70.96A
- Control and Treatment of Sexually Transmitted Diseases, RCW 70.24
- Mental Health Services for Minors, RCW 71.34.200

You can find any of these state laws at <http://www.leg.wa.gov/rcw>

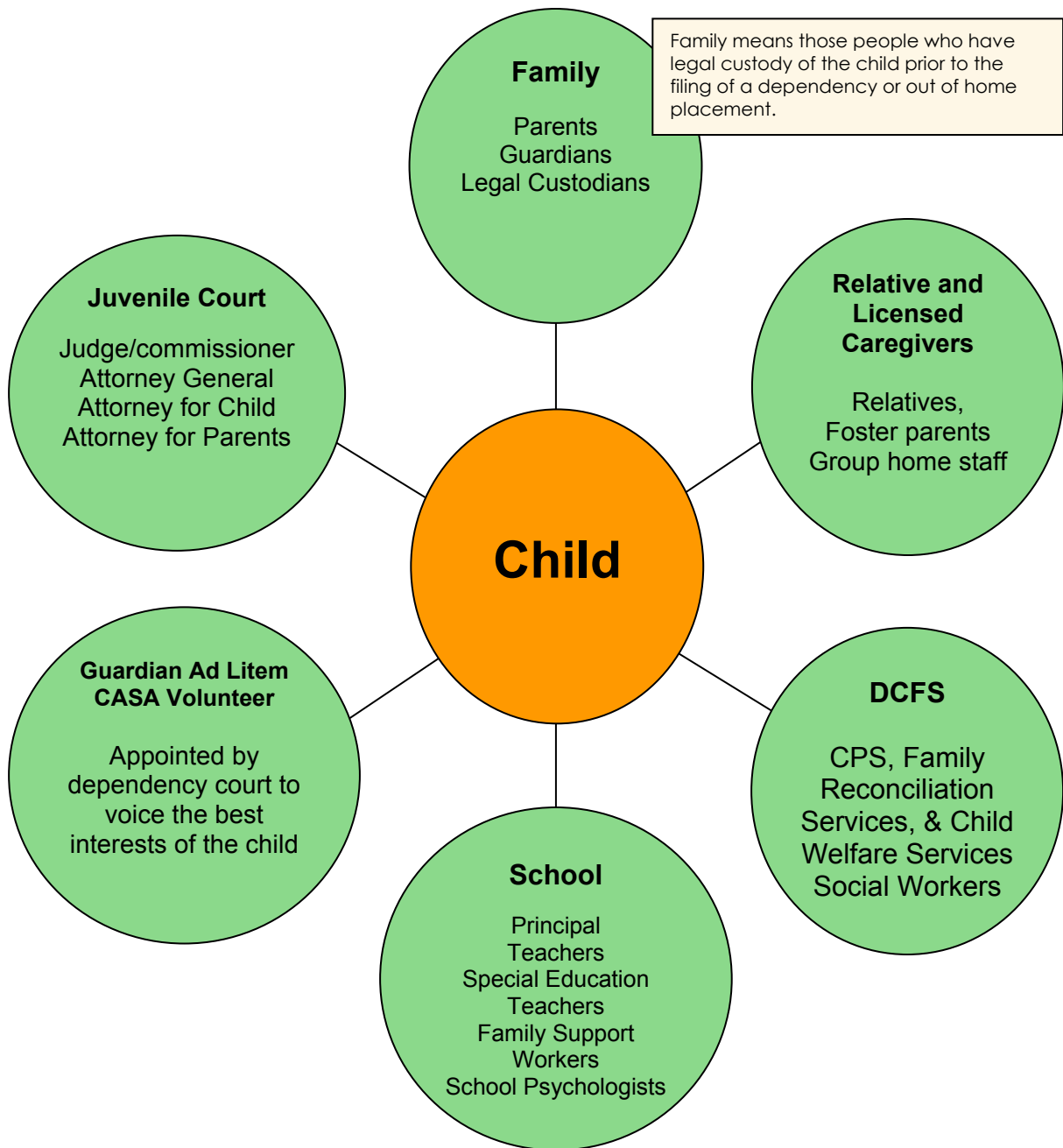
FEDERAL LAWS

- Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232g, 34 CFR § 99
- Health Insurance Portability and Privacy Act (HIPPA), 42 USC § 201, 45 CFR § 160, 164

You can find any of these federal regulations at <http://cfr.law.cornell.edu/cfr/>

PLAYERS GUIDE

A child in shelter care or dependency status will have a variety of caring people, agencies and systems involved in their lives. Information needs to be shared among these players to ensure the educational stability, continuity and success of the child. The chart below identifies the primary people who have a role in information sharing.



INFORMATION SHARING – DECISION MAKING TREE

**START
HERE:**

Is the information I have relevant and important to the child's educational planning and access?

- | | |
|--------------------------------------|---|
| E
X
A
M
P
L
E
S | <ul style="list-style-type: none"> ▪ attendance/truancy ▪ credits earned/needed ▪ discipline/behavioral issues ▪ enrollment ▪ extra-curricular activities ▪ family involvement in school progress ▪ grades/academic performance ▪ health issues ▪ IEP/504 planning ▪ meals received at school ▪ post-secondary planning ▪ school history ▪ transitions between schools ▪ transportation |
|--------------------------------------|---|

Yes

Is it my information to share?

Who am I?
What is my role?

Yes

Is the recipient of the information legally entitled to it?

Who is the person?
Why is this person requesting information?
How will the information be used?

Yes

▲ Share the information, and be sure to...

1. Use common sense! Remember the purpose of the exchange and the role of everyone involved.
2. Consider timelines and priorities - share critical information promptly.
3. Think about where and how the information will be exchanged. Consider the purpose and type of information to be shared, the parties involved, and timelines when selecting the setting for exchange.

No

Direct the request to the original source of information

Unsure?

Consult your supervisor. Foster parents and relative caregivers consult the child's DCFS social worker

No

Do not share the information

Unsure?

Clarify the person's role and intent with your supervisor. Foster parents and relative caregivers consult the child's DCFS social worker.

Don't stop here! Be sure to check the law! Use this Decision Making Tree with the Overview of Information Sharing Laws in this Field Guide.

QUICK REFERENCE GRID ON INFORMATION SHARING LAWS – FOR CHILDREN IN SHELTER CARE OR DEPENDENCY STATUS

		RECEIVERS OF INFORMATION					
		Department (DCFS Social Worker)	SCHOOL STAFF AND EDUCATORS	PARENT or LEGAL CUSTODIAN	GAL/CASA VOLUNTEER	RELATIVE OR LICENSED CAREGIVER	OTHERS
GIVERS OF INFORMATION	Department Division of Children and Family Services (DCFS) Social Worker	DCFS social workers can share all information within DCFS.	DCFS can share information necessary for case planning. RCW 13.50.100(3), RCW 26.44	DCFS shares all information with a few exceptions. RCW 13.50.100	DCFS shares everything with CASAs. RCW 13.34.105(3) ¹	DCFS shares information with caregivers necessary for case planning. RCW 74.13.280, RCW 26.44.030(7)	
	SCHOOL STAFF and EDUCATORS	Schools can release to DCFS in an emergency, under court order or subpoena, and when a child is dependent or in shelter care. See specific conditions and exceptions under the "Schools" section in this Guide.	Enrolling district must request records from the district student previously attended. Prior district must send info within 2 school days. RCW 28A.225.330(2)-(3), 34 CFR 99.31.	Schools must release ed records to bio parents unless a court order limits parental access to specific information. 34 CFR § 99.4; 34 CFR § 300.562	Schools must release ed records to CASA. RCW 13.34.105(3) ²	The best practice is for caregivers to get written consent for info sharing, signed by the DCFS caseworker assigned to the child. School staff and educators are allowed to discuss with others their personal observations about a child.	
	PARENT or LEGAL CUSTODIAN	Retains control over information and can share with others, unless limited by a court order.					
	Guardian ad Litem (GAL) OR CASA (Court Appointed Special Advocate) VOLUNTEER	CASA volunteers and Guardians ad Litem may only disclose information to the court or to others allowed by court order. In addition, CASA volunteers and GALS may disclose information to perform duties assigned by the court, such as advocacy. RCW 13.34.105.					
	RELATIVE AND LICENSED CAREGIVERS ³	Can share all information with DCFS	Can share information related to education needs of child. WAC 388-25-0900	WAC 388-25-0900 - Dictated by DCFS licensing contracts and individual care plans. This includes information necessary to provide adequate care for the child.			

¹ & ² Exceptions are spelled out on page 9 of this Field Guide.

³ "Caregiver" means person with whom the child lives as a result of placement by the court or DCFS.

OVERVIEW OF LAWS – OUTLINE

PARENTS

When and what information can parents share?

Parents have the power to share all information in their possession with others unless such power is modified by court order. Parents also have the power to consent to the release of information held by others except for information about counseling, psychological, psychiatric, or medical services that the child voluntarily sought and had the ability to secure on his or her own.

CASA VOLUNTEERS OR GUARDIANS AD LITEM

When can court appointed CASA Volunteers or Guardians ad Litem share information?

CASA volunteers and Guardians ad Litem may only disclose information to the court or to others allowed by court order. In addition, CASA volunteers and GALs may disclose information to perform duties assigned by the court, such as advocacy. RCW 13.34.105.

DCFS SOCIAL WORKERS

As a general rule, Division of Children and Family Services (DCFS) records and information are confidential. See RCW 13.50.100. Under many circumstances, the DCFS may share information about children in shelter care and dependency status in order to meet the child's needs.

1. When can the DCFS social worker share information with schools?

A child's DCFS social worker can release records to a school only when it has an open case and the child is enrolled in school. RCW 13.50.100(3). Then, the DCFS social worker can share information necessary for case planning with the school. RCW 26.44.030(7). For example, specific information about abuse and neglect may not be necessary for educational planning. Remember to consult your supervisor if you are unsure about what information to share and how to share it.

2. When can the DCFS social worker share information and records with a child's parents?

The DCFS social worker must release information about a child to his or her parents. RCW 13.50.100(7). The exceptions to this general rule are when the:

- i. Information is likely to cause severe psychological or physical harm to the child or his/her parents;
- ii. Information contains the names and identifying information of persons or organizations who have reported alleged abuse or neglect.
- iii. Information is about counseling, psychological, psychiatric, or medical services that the child voluntarily sought and had the ability to secure on his or her own. For example, the Department should not give parents the mental health counseling records of a child age 13 or older without the child's written consent or a court order authorizing the release.

3. When can the DCFS social worker share information/records with CASA volunteers and Guardians ad Litem?

In general, the DCFS social worker must release all information about the dependent child to a court appointed CASA volunteer or Guardian ad Litem. The exceptions to this general rule are when the:

- i. Information is likely to cause severe psychological or physical harm to the child or his/her parents;
- ii. Information contains the names and identifying information of persons or organizations who have reported alleged abuse or neglect; or
- iii. Information is about counseling, psychological, psychiatric, or medical services that the child voluntarily sought and had the ability to secure on his or her own. For example, the DCFS social worker should not give CASA volunteers the mental health counseling records of a child age 13 or older without the child's written consent or a court order authorizing the release.

RCW 13.50.100(7), RCW 13.34.105(3).

4. When can the child's DCFS social worker share information/records with relative or licensed caregivers?

The DCFS social worker must share information about the child and the child's family with the relative or licensed caregiver. This may include educational, mental health and medical information about the child. Information about HIV status and/or sexually transmitted diseases should not

be shared by the DCFS social worker to the caregiver without going through the required DFCS procedures. RCW 74.13.280, RCW 70.24.105.

The DCFS social worker may disclose education records to the residential care provider of the child. Children's Administration Case Services Policy Manual 5641 and RCW 28A.150.510.

5. When can the DCFS social worker share information and records with "Others"?

The DCFS social worker may release information to other juvenile justice and care agencies with an open case concerning the child or having supervision responsibility for the child. RCW 13.50.100(3).

The DCFS social worker may release information to others necessary for case planning purposes when the information is related to reports of suspected child abuse or neglect. RCW 26.44.030(7).

RELATIVE AND LICENSED CAREGIVERS

Children in out-of home care under a shelter care order or a dependency are assigned a social worker from the Division of Children and Family Services (DCFS). The child's caregiver should get direction from the DCFS social worker about what information can be shared and with whom.

1. When can relative and licensed caregivers share information with the DCFS social worker?

Relative and licensed caregivers can share all information about the children in their care with the DCFS social worker. WAC 388-25-0090, RCW 13.34.130(5).

2. When can relative and licensed caregivers share information with schools?

Under the direction of the DCFS social worker, relative and licensed caregivers can share all information necessary for case planning and educational planning with schools. WAC 388-25-0090, RCW 13.34.130(5).

3. When can relative and licensed caregivers share information with child's parents?

Relative and licensed caregivers can only share information with the child's parents at the direction of the DCFS social worker. WAC 388-25-0090, RCW 13.34.130(5)

4. When can relative and licensed caregivers share information with CASA Volunteers and Guardians ad Litem?

Relative and licensed caregivers must share information about the child with the CASA volunteer or Guardian ad Litem assigned to the child's case, except as explained on page 8, 3 i-ii.

SCHOOLS

The Family Education Rights and Privacy Act or FERPA is a federal law that assures confidentiality of, and parental access to, education records. In general, FERPA prohibits the disclosure or release of a student's education records unless the student's parent consents in writing or the release is specifically authorized by FERPA.

Education Records are defined as records that are directly related to a student and maintained by an educational agency. School staff can share directory information without parent consent, such as name, date of birth, attendance. School staff and educators are allowed to discuss with others their personal observations about a child. These personal observations are not considered education records under FERPA.

Keep in mind, limits on a schools' power to release education records to others should not prevent a child from enrolling in school or obtaining educational services.

1. When can school staff and educators share education records with the child's DCFS social worker?

Schools can share information with the child's DCFS social worker in connection with an emergency and when necessary to protect the health and safety of the student or another person. 34 CFR § 99.36, RCW 26.44.

School staff and educators can disclose records in order to comply with a court order or lawfully issued subpoena. If responding to a subpoena, the school must make reasonable efforts to notify the parent of the student before releasing the records. School staff should check with their districts regarding possible exceptions to this rule. 20 USC § 1232g(b)(1)(J)(ii); 34 CFR § 99.31(a)(9).

Once an order of dependency is entered, school staff and educators can release education records to the DCFS social worker as long as the DCFS social worker certifies that the information will not be further disclosed without parental consent unless authorized by state law. RCW 28A.150.510. Keep in mind that state law does permit the DCFS social worker to share educational information needed for case management purposes to licensed and relative caregivers. RCW 28A.150.510. RCW 74.13.280. WAC 388-25-0090. See first section regarding DCFS' ability to disclose records.

2. When can school staff and educators share information and education records with parents?

Unless a child's parents' rights have been limited or terminated, schools must share education records with a child's parents. 34 CFR § 99.10. Information about a child's placement and the foster parents' names and address may be withheld from the parents if ordered by a court. 34 CFR § 99.4. This type of order is common. Schools should take steps to verify whether such an order exists. Contact the DCFS social worker assigned to the case to find out if a court order limits the release of information.

3. When can school staff and educators share information and education records with CASA volunteers or GALs?

When a CASA volunteer or GAL presents to the school the court order appointing him/her to the child's case, school staff must allow inspection or copying of all education records to a CASA without the consent of the parent or of the child, with the following exceptions:

- i. Information is likely to cause severe psychological or physical harm to the child or his/her parents;
- ii. Information contains the names and identifying information of persons or organizations who have reported alleged abuse or neglect; or
- iii. Information about counseling, psychological, psychiatric, or medical services that the child voluntarily sought and had the ability to secure on his or her own. For example, school staff should not give CASA volunteers the mental health counseling records of a child age 13 or older without the child's written consent or a court order authorizing the release.

RCW 13.34.105(3), RCW 13.50.100.

4. When can schools share information and education records with relative and licensed caregivers?

The law does not give a clear answer about when schools can share education records with a relative or licensed caregiver. The best practice is to have the DCFS social worker authorize the release of education records to the child's caregiver. School staff and educators are allowed to discuss with others, including relative and licensed caregivers, their personal observations about a child. These personal observations are not considered education records under FERPA.

RESOURCES

Office of the Superintendent of Public Instruction	http://www.k12.wa.us/
DSHS Resource Family Training Institute	http://www1.dshs.wa.gov/ca/fosterparents/
DSHS Children's Administration	http://www1.dshs.wa.gov/ca/general/index.asp
WA State CASA	www.washingtonstatecasa.org
Foster Parent Association of Washington	http://www.fpaws.org/
TeamChild	www.teamchild.org
Casey Family Programs	http://www.casey.org/Home

Information Sharing, A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs. Bussiere, A., English, A., Teare, C., National Center for Youth Law & The ABA Center on Children and the Law, 1997. <http://www.ed.gov/policy/gen/guid/fpco/pdf/sharinginfo.pdf>

CONCLUSION

The laws and rules on information sharing aim to strike a balance between protecting the privacy rights of individuals and families and allowing professionals and agencies working with children and families to share information essential to help children be successful in school. Your ability to share information for purposes of educational planning depends on your role in the child's life. Even if you have the authority to share information, many situations require you to use good judgment about what information you should share, how and when to share it, and with whom. Regularly consult the law and your supervisor to make sure that you follow these guiding principles for information sharing:

Respect for children and families
Stability and continuity in education
Prompt delivery of meaningful educational services
Success for all children