

“DRAFT” ORDER TO THE SCHOOL DISTRICT TO RELEASE EDUCATIONAL INFORMATION

EDUCATION AS A PRIORITY IN THE CHILD WELFARE SYSTEM

Because of growing concern over the poor educational outcomes of children in the child welfare system, Congress enacted the Adoption and Safe Families Act (“ASFA”) of 1995. This Act requires states to address the educational needs of children in the child welfare system and makes educational outcomes, a child well-being indicator, which is used to measure the performance of the state. In recognition of the importance of early intervention, the Act requires the states to measure educational needs of children from birth to age 21.

The need for a good education is especially critical for these children. Youth in the child welfare system enter adulthood with fewer resources to fall back on than most other children whose families are available to provide support. A good education may be a child’s only ticket to economic stability and success in adulthood.

EDUCATIONAL CHECKLIST AND EDUCATIONAL RECORDS REQUESTS

In an effort to regularly review the education status of the children and youth in the child welfare system, the court will issue an order to the School District authorizing the release of educational information addressing the areas covered by the **EDUCATIONAL CHECKLIST** (See attached order and checklist) The educational checklist will be piloted at School District 2.

In this process, educational issues may surface that need to be addressed and monitored. The Order will also allow access via pin and password to information in the school district’s parent/student internet system for access to attendance, behavior issues, student schedules, report cards/marks and graduation requirements. The purpose of this educational monitoring is to make sure the educational needs of the child are being met and to improve the child’s educational outcomes.

LAW RELATING TO EDUCATIONAL RECORDS

The Family Education and Privacy Act of 1974 (FERPA), 20 U.S.C § 1232g(6)(b) provides an exception to the parental consent requirement for the release of student educational records and authorizes the Release of education records to comply with a court order or subpoena. 34 CFR § 99.31(a)(9)(i) allows the educational agency to disclose identifiable information from an educational record of a student without the parental consent required by CFR § 99.30 if the disclosure is to comply with a judicial order or lawfully issued subpoena. The agency or institution must make a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance so that the parent or eligible student may seek protective action.

FERPA LEGAL DEFINITIONS

34 CFR § 99.31 provides:

“Disclosure means to permit access to or the release or transfer or other communication of personally identifiable information contained in educational records to anyone by any means including oral, written or electronic means.”

“Education record” is defined in FERPA as those records that are directly related to the student, and are maintained by an educational agency, or by a party acting for such agency.

34 CFR § 99.3 defines *record* as “any information recorded in any way, including but not limited to handwriting, print, *computer media*, video or audiotape, film, microfilm and microfiche.”

These definitions of *disclosure*, *education record* and *record* would encompass internet student record systems and automated phone calls and emails from the school district computer systems relating to unexcused absences, grades below a C, and discipline reports.

PERSONS/AGENCIES AUTHORIZED TO RECEIVE AND EXCHANGE EDUCATIONAL RECORDS

The proposed order allows the school to release the educational records to the following persons, agencies and their representatives who are connected to the case:

1. School District
2. El Paso County Department of Human Services
3. Court Appointed Special Advocate
4. Court Appointed Guardian ad Litem
5. Presiding Judicial Official
6. Respondent Counsel
7. Defense Counsel
8. Child's Probation Officer

The order would be presented to the school district. Those persons, agencies and their representatives who are connected with the case (1 through 8 above) are not only given access to the records but also have "authorization to exchange educational records and information" among themselves.

In *Rios v. Reed*, 73 F.R.D 589 (1977) The Court ruled, in a FERPA context that, "when disclosure to a private party is directed by court order, it would seem sensible to require the disclosure order that the recipients of the student records avoid revealing the data to individuals unconnected with the litigation..."

Colorado Revised Statutes §19-1-303(1)(a). addresses the exchange of information in delinquency and dependency and neglect cases and states:

(1)(a) The *judicial department* or *any agency* that performs duties and functions under this title with respect to juvenile delinquency or dependency and neglect cases or any other provision of this title may exchange information, to the extent necessary, for the acquisition, provision, oversight, or referral of services and support with the judicial department or any other agency or individual that performs duties and functions under this title with respect to such cases. In order to receive such information the judicial department or the agency shall have a need to know for the purposes of investigations and case management in the administration of their respective programs. The judicial department or the agencies shall exchange information in accordance with paragraph (b) of this subsection (1).

(b) The judicial department or agency described in paragraph (a) of this subsection (1) shall exchange information with the judicial department or similar agencies who have a need to know to the extent necessary for the acquisition provision, oversight, and referral of services and support and if provided in the course of an investigation or for case management purposes.

Colorado Revised Statutes §19-1-302 specifically mentions schools and school districts sharing information with those charged with performing duties under Title 19 of the Children’s Code in both juvenile delinquency and dependency and neglect cases. This would include court appointed guardian ad litem (C.R.S. §19-3-203), court appointed CASA volunteers (C.R.S. §19-1-206), the department of human services (C.R.S. §19-3-100.5), probation officers (C.R.S. §19-2-913), the judicial department (C.R.S. §19-1-1-303 (1)(a)), respondent counsel (C.R.S. §19-1-105), and defense counsel (C.R.S. §19-2-706).

This “proposed order authorizing the school district to release educational information” has been reviewed by the Model Court Truancy Committee, the Model Court Education Committee and the Model Court Legal Education Committee.

EDUCATIONAL CHECKLIST AND PERIODIC UPDATES

Also attached to the order is a Request for Completion of Educational Checklist which will be sent out to the school district where the student attends school. This will be sent out by the Court following the Preliminary Protective Proceeding in order to get a snapshot of the child’s educational status.

The Order to the School District to Release Educational Information can be used to obtain periodic updates from the school relating to the child’s educational status. The court order is necessary to comply with Family Education Rights and Privacy Act (FERPA).

HOW THE GUARDIAN AD LITEM’S ORDER OF APPOINTMENT HAS BEEN USED TO OBTAIN EDUCATIONAL RECORDS

The Office of Guardian ad Litem has used an Order similar to the proposed Order to the School District Authorizing Release of Educational Information to obtain educational records including access to the internet and phone systems used by the school districts.

The following are the steps used by the Legal Secretary at the GAL office to gain the release of educational information from the school district:

1. Contact the school Registrar and explain who the GAL is and ask whether they have an internet or phone system to notify parents of students attendance, behavior issues etc.
2. Fax to the school district a cover letter explaining that the GAL wants to be notified of attendance, grades, behavior issues etc. Attach the Order of Appt.
3. Usually the school will contact the Legal Secretary with the information that the GAL has been added to the phone system or they will contact the Legal Secretary with a PIN and password to log on to their internet system.

The web sites are user friendly and self explanatory. The Legal Secretary for the GAL office can log on at any time and check the students progress and report back to the GAL.

SCHOOLS CONTACTED FOR RELEASE OF EDUCATIONAL INFORMATION USING THE GAL APPOINTMENT ORDER

DISTRICT 11

Mitchell High School
Palmer High School

Wasson High School
Coronado High School

West Middle School
North Middle School

East Middle School

DISTRICT 49

Sand Creek High School

Horizon Middle School

DISTRICT 3

Widefield High School
West Valley Alternative
Pinello Elementary

Mesa Ridge High School
Sproul Jr. High
French Elementary

DISTRICT 2

Harrison High School

Panorama Middle School

Since January 2007 the GAL Office Order of Appointment has been sent to 17 schools involving 27 children.

All of the schools that have received the orders have complied with the order without objection.