

Date: December 7, 2018

To: District Administrators and Foster Care Points of Contact

From: Mike Thompson, PhD
Deputy State Superintendent
Department of Public Instruction

Subject: Permanency Plan Hearing for Children Placed In Out-of-Home Care

Notification of Permanency Plan Hearings and the School's Role in Providing Information

Pursuant to 2017 Wisconsin Act 251, school districts will now receive notice when a hearing on, or review of, a child's permanency plan* is scheduled. Wisconsin law requires each child living in an out-of-home care placement to have a written permanency plan in place if certain conditions exist.

These reviews may be held by the court or, if the court so determines, by an administrative review panel. The court or agency is required to notify, among others, the child's school of the time, place, and purpose of the hearing, of the issues to be determined at the hearing, and that they may have an opportunity to be heard at the hearing by submitting written comments. The school must be provided notice in writing not less than 30 days before the hearing. The notice to the school must include the name and contact information for the caseworker or social worker assigned to the child's case.

The Department of Public Instruction (DPI) recommends that when schools receive such notification, they provide written comments not less than 10 working days before the review.

Pupil Records and Permanency Plan Hearings

When sharing information about a student for the purpose of a permanency plan hearing or administrative review, it is important that school districts adhere to state and federal laws governing the confidentiality and disclosure of pupil records. Under Wisconsin law, pupil records can only be disclosed in three situations: with written authorization from a parent; by the order of a court**; or by statute.

Since Wis. Stat. §118.125(2)(q) allows the school to disclose pupil records to a county caseworker under certain conditions, school districts may decide to send to the caseworker the information they determine relevant for a permanency plan hearing; who could then redisclose this information to a court or panel.

When sharing information about a student for this purpose, it is important to consider not only the requirements of the law, but to adhere also to ethically sound practice. Information shared should be factual, backed by evidence, and include professional opinion only. Personal opinion is neither warranted nor appropriate. Information related to any educational goals that were established may be particularly relevant.

Schools should provide employees with training on any procedure the district establishes related to the disclosure of pupil record information in response to a notice under this statute. Districts may wish to delegate responsibility for compiling information on a student from relevant staff members to specific positions within the district, such as the school social worker or school counselor.

Examples of written comments schools may include:

- The student rides the bus for 1.5 hours each way, each day, and has expressed feeling tired upon arrival to school.
- The student has expressed multiple times that they wish they could be in a home with their sibling.
- In my professional opinion, as a school social worker, since this student has shown gains when in a structured environment, an even more structured environment or treatment setting may be appropriate.
- A list of any barriers to the child accessing their education as evidenced by facts.
- The student's needs related to additional work completion, tutoring, after-school help, and nightly homework completion.
- A student's daily attendance and behavioral reports.

* The permanency plan is designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long term stability. The permanency plan must be developed by the agency that either placed or arranged the placement of the child or the agency assigned primary responsibility for providing services.

The permanency plan must include certain content [see Wis. Stat. §48.38(4) and 938.38(4)], including documentation if, as a result of the placement, the child has been or will be transferred from the school in which the child is or was most recently enrolled (i.e., school of origin); that a placement maintaining the child in that school is either unavailable or inappropriate; or that a placement resulting in the child's transfer to another school would be in the child's best interest.

The court is required to hold a hearing to review the permanency plan and make required determinations regarding the child's placement, services, and permanency goals no later than 12 months after the child was first removed from the home, and every 12 months after a previous permanency hearing. In addition, the court must review the permanency plan no later than six months after the date of removal from the child's home, and every six months after a previous review.

**A notice from a court indicating that the school may submit information about a student is not a court order. There are a few laws that your local educational agency's (LEA's) attorney may wish to review in order to provide guidance to the district on what information should be shared for this purpose.

Wis. Stat. §118.125(2)(c) 1. The judge of any court of this state or of the United States shall, upon request, be provided by the school district clerk or his or her designee with a copy of all *progress records* of a pupil who is the subject of any proceeding in such court.

34 CFR 99.31(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by 34 CFR 99.30 if the disclosure meets one or more of the following conditions:

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes 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, unless the disclosure is in compliance with...

Wis. Stat. §118.125(2)(q) On request, a school board may disclose pupil records that are pertinent to addressing a pupil's educational needs to a caseworker or other representative of the department of children and families, a county department under Wis. Stat. §46.215, 46.22, or 46.23, or a tribal organization, as defined in 25 USC 450b (L), that is legally responsible for the care and protection of the pupil, if the caseworker or other representative is authorized by that department, county department, or tribal organization to access the pupil's case plan. A department, county department, or tribal organization that receives pupil records under this paragraph may not further disclose those pupil records or any personally identifiable information contained in those pupil records except as follows:

1. To a person who is engaged in addressing the pupil's educational needs, who is authorized by that department, county department, or tribal organization to receive that disclosure, and to whom that disclosure is authorized under this section or under a substantially similar tribal law.
2. Upon request, to any court of this state or of the United States that needs to review those records or that information for the purpose of addressing the educational needs of a pupil who is the subject of a proceeding in that court.

Links:

Wisconsin Children's Court Improvement Program E-Learning activity module on Permanency Hearings: http://wicciptraining.com/Content/permanency_latest/story_html5.html

If you have any questions, please contact Kyle Peaden, State Foster Care Point of Contact at william.peaden@dpi.wi.gov or (608) 266-5404.