

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 233 (Beall) – As Amended June 29, 2017

**[This bill was double referred to the Committee on Human Services, and was heard by that Committee with respect to issues in its jurisdiction.]**

**SENATE VOTE:** 39-0

**SUBJECT:** Foster children: records

**SUMMARY:** Expands the list of caregivers who may access a currently enrolled or former students' educational records, expands the types of school records which may be accessed, and clarifies the rights and duties of a foster caregiver relative to school records, including the responsibility to notify the educational rights holder of any educational needs requiring the consent or participation of that educational rights holder. Specifically, **this bill:**

- 1) States the importance and responsibilities of caregivers in the educational success and well-being of students in foster care.
- 2) Expands the types of student records which may be accessed by caregivers of currently or formerly enrolled students over whom they have jurisdiction (but not necessarily educational rights) to include records relating to grades, transcripts, attendance, discipline, online communication on platforms established by schools for students and parents, and 504 plans.
- 3) Extends this authorization to:
  - a) short-term residential therapeutic program (STRTP) staff responsible for the education or case management of a student
  - b) a caregiver who has direct responsibility for the care of the student, including a certified or licensed foster parent
  - c) an approved relative or nonrelated extended family member (NREFM), or a resource family, as specified.
- 4) Allows a caregiver, as specified, to access these records regardless of whether the caregiver has been appointed as the student's educational rights holder as defined in current law.
- 5) Allows a foster family agency, STRTP, or caregiver to review and receive student records as specified by the provisions of this bill for purposes of monitoring the student's educational process, updating and maintaining the student's education records as required by current law, and ensuring the student has access to educational services, supports, and activities, as specified.
- 6) Requires a caregiver who is not the student's educational rights holder, if direct communication between a caregiver and an educational rights holder is appropriate, to notify the student's educational rights holder of any educational needs of the student that require the educational rights holder's consent or participation, including, but not limited to:

- a) school placement decisions
  - b) decisions on whether to invoke or waive school of origin rights
  - c) consent for special education assessments and IEPs
  - d) meetings or hearings regarding attendance or discipline
  - e) decisions regarding graduation
- 7) Requires the student's social worker, if direct communication between a caregiver and an educational rights holder is inappropriate, to direct the caregiver to communicate the information, as specified, with the student's social worker or attorney instead of the educational rights holder.
  - 8) States that if direct communication between a caregiver and an educational rights holder is inappropriate, the student's social worker shall direct the caregiver to communicate the information with the student's social worker or attorney instead of the educational rights holder.
  - 9) Specifies that nothing in the provisions of the bill related to authorized access to information and communication with the education rights holder affects the responsibilities of a placement agency with regard to the education of a student or the duties of a local educational agency related to informing and involving educational rights holders in educational decisions affecting the child.
  - 10) States that nothing in the provisions of this bill shall be construed to alter or increase a social worker's or an attorney's decision-making rights or responsibilities regarding a student.
  - 11) Permits a foster family agency with jurisdiction over a currently enrolled or former student, STRTP program staff responsible for the education or case management of a student, and a caregiver who has direct responsibility for the care of the student, as specified, to access particular records relevant to legitimate educational interests of the requester, as specified.
  - 12) Preserves the rights and obligations of a foster parent, relative caregiver, NREFM, or resource family to access and maintain health and education information pursuant to current law, regardless of the person or persons currently holding the right to make educational decisions for the child, as specified.
  - 13) Requires the health and education summary, as specified, including the name and contact information of the person or persons currently holding the right to make educational decisions for a child, to be included in:
    - a) the evaluation of the child's medical, developmental, scholastic, mental and emotional status mandated to be included, whenever the court orders a hearing to terminate parental rights, in the assessment the agency supervising the child and the county adoption agency is directed by the court to prepare
    - b) the factual discussion of the health and education of a child that is required to be contained in the mandated supplemental report related to the periodic status review of a dependent child in foster care

- 14) States that in instances where it is determined that disclosure of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, that contact information shall be redacted or withheld from the summary.
- 15) Requires the case plan of a child placed in foster care to include the name and contact information of the person or persons currently holding the right to make educational decisions for the child.
- 16) States that in instances where it is determined that disclosure of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, that this contact information shall be redacted or withheld from the evaluation.
- 17) Allows the health and education summary included in the youth's case plan to include the contact information for the nearest Foster Youth Services Coordinating Program.
- 18) Assigns a child's caregiver the responsibility of reviewing and receiving student records pursuant to current law, as specified.
- 19) Specifies that when a foster family agency is required to take all necessary steps to assist the caregiver in obtaining relevant health and education information, as mandated by current law, the steps include, but are not limited to: directly obtaining the educational records to share with caregivers, providing documentation caregivers can present to school districts to show their right to access, and explaining caregiver rights and responsibilities with regard to accessing educational information as specified in current law.
- 20) Includes a copy of the health and education summary as required by current law, with the name and current contact information of the person or persons currently holding the rights to make educational decisions for the child, among the basic information caregivers should have in order to provide for the needs of children placed in their care.
- 21) States that, in instances where it is determined that disclosure of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, the contact information shall be redacted or withheld from the health and education summary within the supplemental report.
- 22) Specifies that caregivers should have knowledge of the importance of the caregiver's role in education, educational protections specific to foster youth under state and federal law, and the rights and obligations of caregivers to access and maintain educational and health information, as specified.
- 23) Requires, in addition to current requirements established by law, the case plan to include all of the following:
  - a) the health and education summary, as defined in current law, including the name and contact information of the person or persons currently holding the right to make educational decisions for the child; States that in instances where it is determined that disclosure pursuant of the contact information of the person or persons currently holding

the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, this contact information shall be redacted or withheld from the health and education summary.

- b) the factual discussion of educational decisions, as specified; and
  - c) an assurance that the placement agency provided the health and education summary to the current caregiver and explained to the caregiver his or her rights and responsibilities, as specified, and assisted the caregiver in obtaining the information needed for the health and education summary to comply with existing law.
- 24) Includes, as part of the training requirements that must be completed by resource family applicants, training on the importance of the caregiver's role in education, educational protections specific to foster youth, and the rights and obligations of caregivers to access and maintain educational and health information, as specified.
- 25) Makes technical changes.

**EXISTING LAW:**

- 1) Authorizes foster family agencies with jurisdiction over currently enrolled or former students to access records of grades and transcripts and any IEPs that may have been developed pursuant to current law, as specified, maintained by school districts or private schools of those students.
- 2) Authorizes parents of currently enrolled or former students to access any and all student records related to their children that are maintained by school districts or private schools.
- 3) Allows the court, at the initial hearing upon filing a petition or anytime thereafter up until the time that the minor is adjudged a dependent child of the court or the petition is dismissed, to temporarily limit the right of a parent or guardian to make educational or developmental services decisions for the child, and temporarily appoint a responsible adult to make educational or developmental services decisions for the child, as specified.
- 4) Authorizes parents of currently enrolled or former students access to any and all student records related to their children that are maintained by school districts or private schools.
- 5) Prohibits a school district from permitting access to student records to a person without parental consent or under judicial order, with some exceptions including a county placing agency, and an agency caseworker or other representative of a child welfare agency.
- 6) Specific to special education, provides that a foster parent may exercise, to the extent permitted by federal law and with specified exceptions, the rights related to his or her foster child's education that a parent has under existing law, unless the court has excluded the foster parent from making educational decision for the student. The foster parent is authorized to represent the foster child for the duration of the foster parent-foster child relationship in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising an individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child.

- 7) The federal Family Educational Rights and Privacy Act (FERPA) prohibits federal funds from being provided to any educational agency or institution which has a policy or practice of permitting the release of a student's educational records to any individual, agency, or organization without the written consent of the student's parents. FERPA exempts from the general parental consent requirement certain kinds of disclosures, including disclosures to state and local officials for the purposes of conducting truancy proceedings, a criminal investigation, auditing or evaluating an educational program, or in relation to the application for financial aid. (United States Code, Title 20, Section 1232g and Code of Federal Regulations, Title 34, Sections 99.31)
- 8) The federal Uninterrupted Scholars Act amended FERPA to require school districts to allow access to student records to an agency caseworker or other representative of a state or local child welfare agency, or tribal organization, who has the right to access a student's case plan, when such agency or organization is legally responsible for the care and protection of the student. The Uninterrupted Scholars Act prohibits the records or information from being disclosed by the agency or organization except to an individual or entity engaged in addressing the student's educational needs and authorized by such agency or organization to receive such disclosure and the disclosure is consistent with applicable state or tribal laws protecting the confidentiality of a student's education records. (20 USC § 1232g(b)(L))
- 9) Establishes a number of rights for students in foster care. Among them are rights to immediate enrollment, rights to have educational records transferred in a timely manner, rights to remain in students' schools of origin, rights to exemptions from locally adopted graduation requirements in excess of state requirements, and the right to have partial credit awarded for coursework.

**FISCAL EFFECT:** According to the Senate Appropriations Committee on a prior version of this bill, potentially significant costs for increased social worker administrative time for documenting necessary information in the supplemental court report twice a year as part of the case plan and for facilitating initial contact between a caregiver and the student's educational rights holder if direct communication is not appropriate. (General Fund)

**COMMENTS:**

***Need for the bill.*** According to the author's office, "A foster youth's caregiver is not always their educational rights holder, but is responsible for addressing their daily educational needs. Existing law is not clear in regards to what education information school districts can share with these caregivers regarding a foster youth's educational progress. This bill would clarify that caregivers have the right and responsibility to access current or most recent education records for the purpose of monitoring the youth's educational progress, updating and maintaining the youth's education records for the Child Welfare Agency, and ensuring the youth has access to necessary educational services and supports, including, but not limited to, enrolling the child in school, assisting the child with homework, or enrolling the child in tutoring or extracurricular activities."

***Education rights holders and caregivers.*** An education rights holder is the individual responsible for making educational decisions for a minor student. Generally, a child's education rights holder is her biological parent. However, when a petition is filed with the court to adjudicate a youth a dependent of the juvenile court, and up until the point when the youth is adjudged a

dependent of the court, the court has the authority to either maintain the parent as the holder of educational rights, or temporarily limit a parent's educational rights and appoint another individual to hold them. If the court limits the parent's educational rights, it must then determine if there is an adult relative, NREFM, or other adult who is known to the child and is available and willing to serve as the educational representative for the youth. In the event that there is not an available adult to serve as the minor's educational representative, the court may appoint a representative or surrogate to make educational decisions on the child's behalf.

Educational rights holders are involved in many decisions affecting the education of students in foster care, including developing and signing IEPs for students with exceptional needs, making school enrollment and placement decisions, participating in school discipline proceedings, and signing students up for extracurricular activities. Education rights holders are also involved in the exercise of rights specific to students in foster care under state law, such as the right to remain in the student's school of origin, the right to immediate enrollment, and the right to have local graduation requirements waived under certain circumstances.

As noted above, the court may maintain education rights with a parent or designate another individual to hold them. Foster parents are often not the holders of educational rights, because the biological parents may retain educational rights while their child is in out-of-home care. However, caregivers, such as foster parents and group home staff, are responsible for students' day-to-day educational experience. They are responsible, for example, for making sure that students attend school, complete their homework, are able to participate in extracurricular activities, and receive services as required by their IEPs. In order to carry out these responsibilities, caregivers who do not hold educational rights often require information contained in school records, such as the student's IEP.

This bill is intended to broaden both the types of school records available to caregivers, as well as the types of caregivers to whom the access is provided, so that caregivers can ensure that students in their care are appropriately served.

***The "Invisible Achievement Gap."*** A 2013 report by the Center for the Future of Teaching and Learning at WestEd, titled "The Invisible Achievement Gap," for the first time linked education and child welfare data to identify the achievement gap for students in foster care relative to their peers. It found, based on 2009-10 educational data, that students in foster care experience significant educational challenges and needs. Among the findings in this report were that foster youth:

- have among the lowest scores in English-language arts
- have the lowest scores in mathematics of any subgroup
- have the highest dropout rate, nearly three times the rate of other students
- have the lowest high school graduation rate of any subgroup

The report also found that students in foster care are more likely to change schools during the school year, more likely to be enrolled in low-performing schools, less likely to participate in state assessments, and significantly more likely to be enrolled in nontraditional schools.

***Recommended amendment.*** Current law authorizes foster family agencies with jurisdiction over currently or formerly students to access specified records maintained by school districts or

private schools. This bill would expand the types of entities which could receive those records, and also expand the kinds of records which could be accessed. Current law does not appear to extend to students enrolled in other types of schools, such as charter schools, schools operated by county offices of education (such as juvenile court schools), and non-public schools (as distinct from private schools). *Staff recommends that the bill be amended* to include those entities.

**Related and prior legislation.** AB 854 (Weber) Chapter 781, Statutes of 2015 restructured the existing Foster Youth Services program by shifting the primary function from direct services to coordination, and allows program funds to be used to support all students in foster care, irrespective of placement.

AB 379 (Gordon) Chapter 772, Statutes of 2015 makes complaints regarding the educational rights of students in foster care subject to the Uniform Complaint Procedures process.

AB 224 (Jones-Sawyer) Chapter 554, Statutes of 2015 requires that a notice of educational rights of foster youth be created and disseminated.

AB 490 (Steinberg) Chapter 862, Statutes of 2003 expands and stipulates authority for school records of foster, homeless, and incarcerated youth.

SB 1677 (Alpert) Chapter 785, Statutes of 2002 strengthened and clarified requirements regarding surrogate parents and responsible adults who make educational decisions for children.

AB 2453 (Runner), Chapter 67, Statutes of 2000, gave foster family agencies access to records of grades and transcripts and IEPs maintained by districts or private schools.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Alliance for Children's Rights (co-sponsor)  
National Center for Youth Law (co-sponsor)  
Public Counsel (co-sponsor)  
Aspiranet  
Beta Foster Care  
California Alliance of Caregivers  
California Teachers Association  
National Association of Social Workers, California Chapter  
Our Children's Keeper Child and Family Services  
Santa Clara County Board of Supervisors  
Santa Clara County Office of Education  
Special Education Local Plan Area Administrators of California

### **Opposition**

None on file

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