

IOWA DEPARTMENT OF EDUCATION

In the Matter of	)	[Cite as 26 D.o.E. App. Dec. 250 (2012)]
	)	
Access to Student Records	)	SUPERVISORY ORDER &
	)	INTERPRETATION OF SCHOOL
By Guardians ad Litem.	)	LAW AND SCHOOL RULES

SUPERVISORY ORDER

For the reasons I state below and effective immediately, IT IS ORDERED as follows. Any individual appointed by a juvenile court order to serve as guardian ad litem ("GAL") for a child who is subject of the jurisdiction of the juvenile court shall be considered the child's "parent" for purposes of the Family Educational Rights and Privacy Act ("FERPA") and its implementing state and federal statutes and regulations.

INTERPRETATION OF SCHOOL LAW AND SCHOOL RULES

The Iowa Department of Education has participated in the Children's Justice State Council since its inception. Based on that participation, as well as data compiled by my colleagues at the Department and other education and social science researchers, I am aware of the large gap between the school achievement between children who are in foster care or otherwise subject to the jurisdiction of the juvenile court and those children who are not. I agree with Judy Jeffrey, my predecessor as Director of Education, who noted in September 2009 that this achievement gap is "unacceptable."

One of the many ways to address this achievement gap is to improve information sharing among those who serve children in foster care, including parents, schools, the Judicial Branch, and the Iowa Department of Human Services, and other service providers. The Department believes that information sharing, to the maximum extent permitted by state and federal law, is essential to helping children in foster care achieve the educational standards expected of all children, as well as being essential to helping children and families attain the goals in their case permanency plans.

Iowa law requires schools to maintain student records as confidential, unless federal law permits their disclosure. Iowa Code § 22.7(1) (2011); Iowa Admin. Code r. 281 – 12.3(4) (2012). FERPA, the applicable federal law, allows schools to release personally identifiable information contained in student records upon the consent of a parent. 20 U.S.C. § 1232g(b) (2006 & Supp. V 2011).

FERPA does not define "parent," but its implementing regulations contain the following definition of "parent": "'Parent' means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent

or a guardian.” 34 C.F.R. § 99.3. FERPA’s regulatory definition is illustrative and non-exhaustive. For example, adoptive parents are not listed as parents, though undoubtedly they are. The fundamental issue is who falls within this non-exhaustive definition of parent. In answering this question, I invoke my statutory authority to “interpret the school laws and rules relating to the school laws.” Iowa Code § 256.9(16) (2011); *Iowa Ass’n of Sch. Bds. v. Iowa Dep’t of Educ.*, 739 N.W.2d 303 (Iowa 2007).

After having consulted FERPA, FERPA’s implementing regulations, and the applicable regulatory history, I conclude that GALs fall within the definition of parent under FERPA. FERPA’s legislative history provides that information access for parents is important to “protect the interests of their” children. *Joint Statement In Explanation of the Buckley/Pell Amendment*, 120 Cong. Rec. 39862, 39862 (Dec. 13, 1974). The history of the FERPA regulation that defines “parent” points toward broadly reading that definition: for example, there is regulatory history indicating that foster parents could be considered as parents for FERPA purposes under the regulation now found at 34 C.F.R. § 99.3.¹ *Final Rule on Education Records*, 41 Fed. Reg. 24662, 24670 (June 17, 1976).

When I broadly read the definition of “parent” in light of FERPA’s purpose, it is apparent that GALs fall within the definition’s scope. GALs are appointed “to represent the interests of a child” in juvenile court, and have the responsibility to gather information about the child, including information about the child’s education. Iowa Code § 232.2(22). By virtue of their office, GALs are authorized to inspect and copy relevant records, which may include education records. *Id.* Based on my review of the applicable state and federal education law, I conclude that the function served by GALs under Iowa law so closely aligns with the rights and responsibilities traditionally undertaken by biological or adoptive parents or by guardians that FERPA and Iowa law regarding student records permit a reading that includes GALs within the meaning of “parent.” GALs may exercise all rights provided to parents under FERPA, including the right to inspect and review education records (34 C.F.R. §§ 99.10-12), the right to request amendment of education records (34 C.F.R. §§ 99.20-22), and the right to consent to the release of personally identifiable information contained in education records (34 C.F.R. § 99.30).

However broadly I interpret “parent” under 34 C.F.R. § 99.3, I am not yet persuaded that it includes employees of the Department of Human Services. While DHS workers perform work that is of incalculable value to children in foster care, I am constrained by FERPA’s legislative history. That legislative history indicates that unrestricted releases of information by schools to child welfare workers were one of the practices prompting FERPA’s enactment. *Family Educational Rights and Privacy Act of 1974*, 120 Cong. Rec.

¹ Please note that Iowa does not ordinarily permit foster parents to perform the functions of a FERPA “parent,” under controlling interpretations of Iowa law made by the Iowa Department of Human Services.

36529, 36530 (Nov. 19, 1974). For this reason, I cannot conclude that child protection workers employed by the Department of Human Services are "parents" under FERPA.

I am aware of proposed legislation that would amend FERPA to permit child protection workers to have access to personally identifiable information in students' education records; however, that legislation has not been enacted, and schools must apply the law as it now exists. Furthermore, the fact that legislative correction is deemed necessary to address this issue confirms for me that child protection workers are not included in the FERPA definition of "parent."

While GALs meet the definition of "parent" contained in the FERPA regulations, this conclusion is subject to the following clarifications. First, the fact that a GAL may be appointed to a child in foster care does not limit the rights that the child's established parents or guardians may have under FERPA. *See, e.g.*, 34 C.F.R. § 99.4. Second, the fact that GALs meet the definition of "parent" under FERPA's regulations does not establish that GALs meet the definition of "parent" under other state or federal education statutes or regulations. *See, e.g., id.* § 300.30. The analysis in this order is limited to FERPA and its implementing regulations. Third, the fact that GALs may consent to release personally identifiable information in education records shall not limit the circumstances in which disclosures of personally identifiable information may occur without consent, such as when a child transfers from one school or school district to another, *see id.* §§ 99.31(a)(2), 99.34, or pursuant to a court order, *see id.* §§99.31(a)(9).

I am also aware that GALs often have dual roles: they often serve as GAL and as attorney for the child. In situations where two people fill these roles, this order extends only to the person serving as GAL.

As a concluding thought, it is critically important that schools know which children are in foster care. Educators may only fulfill their significant legal and professional obligations to children in foster care when educators know to whom they owe those obligations. Please also understand that FERPA governs education records containing references to a child's status as a child in foster care.

Please contact the Department if you have any questions about this order at 515-242-5614.

Done on September 21, 2012, in Des Moines.



Jason E. Glass, Ed.D.
Director, Iowa Department of Education

Copies to LEA Superintendents
 AEA Chief Administrators
 AEA Directors of Special Education
 Director, Iowa Department of Human Services
 State Public Defender
 Administrator, Child Advocacy Board
 State Court Administrator
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