Mythbusting

Breaking Down Confidentiality and Decision-Making Barriers to Meet the Education Needs of Children in Foster Care

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Defending Liberty
Pursuing Justice

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INTRODUCTION

SCOPE

This publication focuses on meeting the education needs of children in the child welfare system. The issues of confidentiality and decision making are addressed only in the context of meeting education needs. Primarily, confidentiality refers to education records, but access to child welfare records is also discussed as it relates to education needs. Decision making refers to education decisions only.

GOALS

The four goals of this publication are to:

1. Provide context and explain why there is a need to address the education needs of children in foster care.
The benefits of addressing this issue are highlighted, as well as the negative results when systems fail to do so.

2. Debunk the myths about confidentiality and decision making. Myths are organized by topic and audience, including children, parents, judges, child representatives, and others involved in meeting the education needs of children in foster care. Some myths are unique to specific audiences, while others overlap.

3. Explain the main federal laws that affect confidentiality of education records and decision making.
Guidance is offered on applying these laws to improve the process of accessing and transferring records and making timely decisions about the education needs of children in foster care. A frequently asked questions (FAQs) format is used to help readers easily break down the important provision of each law.

4. Suggest strategies to overcome confidentiality and decision-making hurdles when addressing the education needs of children in foster care.
This section also highlights examples of successful approaches and programs that can be replicated in any community.

AUDIENCE

This publication is written for a broad audience:

- parents
- youth
- foster parents/caretakers
- educators
- judges
- children's attorneys
- guardians ad litem
- court appointed special advocates

HOW TO USE THIS DOCUMENT

This document can be used in a variety of ways, depending on the audience, level of knowledge, and need.

- **To find information for a particular audience:**
  - ❑ Begin in Section Two where myths are organized by audience.
  - ❑ Continue to obtain more in-depth information by following links throughout the document.
- **To learn specifics about various laws that affect confidentiality and decision making:**
  - ❑ Begin in Section Three.
  - ❑ Then follow links to Section Four for examples of strategies and approaches related to the various laws.
- **To find out about a particular issue (e.g., special education decision making):**
  - ❑ Use the bookmark function on the left of the screen to either see the myths related to this issue, or
  - ❑ Jump ahead to the detailed discussion of the law or examples of strategies or programs in this area.

Icons are used throughout the document to help users understand where a link will take you.

takes you to Section Three and additional information about the leading relevant laws.

takes you to examples of promising practice and strategies to address the issues primarily found in section four but also to external websites when appropriate.

takes you to the Resources section.

takes you to a significant policy.

The document is a great resource when read in total, either in the online or printed version as it offers the big picture from the perspective of several audiences.

DISCLAIMER

This publication is not intended to be all encompassing. It is meant to help readers begin to understand some of the issues and questions related to confidentiality and decision making. When determining how these issues are addressed in a particular state or jurisdiction, consult state laws and regulations and other knowledgeable professionals for additional guidance. See the Resources Section at the end of this document for additional reading and research tools.

1

Issues & Barriers

NEED

Myth: Keeping children safe and finding them permanent families and connections will ensure future success.

Reality: While safety and permanency are critical to help children in foster care achieve success, meeting their education needs is an equally important well-being factor that cannot be left out of the equation.

Research shows children who obtain a solid education are more likely to succeed as adults. This especially applies to children involved in the child welfare system, whose educational needs are often overlooked.

Myth: Meeting education needs is solely a well-being issue and has no impact on permanency.

Reality: Meeting the education needs of children in foster care has a strong positive effect on permanency for children, be that reunification, adoption, or another permanent plan. Successful education advocacy can result in:

- a decrease in stressors for the child, parent/caretaker, and caseworker involved in the case;
- increased stability in the foster care placement; and
- the empowerment of birth and preadoptive parents and permanent caretakers by improving their skills and knowledge about education advocacy.

Myth: It is impossible to measure how addressing education needs impacts children in foster care.

Reality: Small, incremental changes resulting from improved education attention and advocacy for these children's education needs have been measured. Examples of these changes include:

- improved enrollment policies,
- fewer changes in school placements,
- more school advocacy, and
- improved school services for children.

Improving Education Outcomes

In California, the Foster Youth Services Program provides education services to children in foster care. Several studies found that when school programs focus on the education needs of children in care:

- educational performance improves,
- maladaptive behaviors decrease, and
- drop-out rates decline.

All of these aid successful transitions to employment or higher education.

Click here for more on this program.

Source: Ayasse, Robert H. "Addressing the Needs of Foster Children: The Foster Youth Services Program." *Social Work in Education* 17(4), 1995, 207-216.

Project Achieve: Helping Children Involved with the Child Welfare System

Project Achieve, an education advocacy program in a private New York City child welfare agency, found that:

- students whose families received both preventive services from the agency and education advocacy from Project Achieve were not placed into foster care placement.
- 21% of the cases in which Project Achieve intervened resulted in the child proceeding toward adoption or the agency closing the case without going to court.

Click here for more on Project Achieve.

Source: "Advocates for Children's Project Achieve: A Model Project Providing Education Advocacy for Children in the Child Welfare System." Advocates for Children of New York, Inc., March 2005, 35.

Are Foster Children Getting Enrolled in School?

The school board of Broward County, Florida discovered that:

- 12% of children in foster care were not enrolled in school by the 20th day of classes in September 2002.

After an extensive campaign to apprise child welfare and school system staff of the issues and ways to resolve the problem, an evaluation in September 2003 revealed that:

- 98% of the children in foster care were enrolled by the 20th day.

Source: See research brief available at: http://www.floridaschildrenfirst.org/04_reports/proj/Education/State/Broward/Broward_foster_care_report.pdf

Myth: Children in foster care do not need any additional attention paid to their education needs.

Reality: Numerous studies and reports show the bleaker picture when education needs are not met for children in foster care. The long-term effects are devastating: higher risks for homelessness, poverty, public assistance, and juvenile or adult court involvement.

Data from Casey Family Programs' Northwest Alumni Study (2005) on education outcomes for young adults formerly in foster care tell us:

- **Alumni obtain a G.E.D. in lieu of a high school diploma at a much higher percentage than the general population.** This leads to less likelihood of pursuing further education and lower job incomes.
- **Many alumni who begin higher education programs do not complete such programs.** This can be due to emotional problems, needing to work, pregnancy, and losing interest.
- **Alumni suffer from high rates of homelessness** (studies have shown anywhere from 11% to 22.2%), much greater than the general population (1%).[1]

The short-term effects are equally alarming. The articles and studies listed at the end of this publication in the Resources Section repeatedly list the following education issues for children involved with the child welfare system:

- **Frequent school placement changes:** Children in foster care frequently move between child welfare placements. This often results in a need to change school placements.
- **Lengthy delays in getting education records transferred:** Because children in foster care often change placements, which can result in school changes, it is hard to ensure complete educational records follow them. Often jurisdictions require such record transfers, but provide no guidance on timelines for transferring school records. This problem can lead to delays in school enrollment.
- **Inability to gain access to education records:** Not only can it be difficult to facilitate the transfer of education records from one school to another, it can also be challenging for foster parents and other individuals involved in the child welfare system to gain access to the education records.
- **Missing, incomplete or inaccurate education records, once accessed:** Education records of children in foster care are not always kept up-to-date. Incomplete, inaccurate, or lost records prevent appropriate and timely school placements and services.
- **Failure to identify school issues and needs:** Youth in foster care who need regular, supportive education services or special education services, may not be identified for or receive these services. Lack of continuity in school placements, and the many adults involved with the child (foster parents/caretakers, caseworkers, guardians ad litem, attorneys) may result in a failure to identify and advocate for the child's academic needs.

- **Inappropriate special education services and placements:** Many children involved in the child welfare system are never identified and assessed for special education services. There is also a reverse problem with children who do not need special education services being identified as needing them. Children in foster care are referred to special education over three times more frequently than their peers who are not in foster care.[2] Often, such referrals are made quickly without assessing the entire picture, and a child can be inappropriately placed in special education.
- **Higher rate of discipline, including suspensions and expulsions:** Children involved in the child welfare system are more likely to be suspended and expelled from school than non-child welfare system youth.[3]
- **Lack of involvement in extracurricular activities:** Often extracurricular activities are not options for children in foster care. Even when there is some level of education advocacy for the youth by their caretaker or caseworker, it does not usually include extracurricular activities. They are sometimes viewed as "not important" on a continuum of education needs. However to the children and youth involved, participating in extracurricular activities may be essential to become or stay engaged with school.
- **Higher drop-out rates:** Youth who have been forced to change schools and/or have lost earned credits because of midyear moves or lost or incomplete education records, often become frustrated and leave school before graduating. Youth in care may not have positive role models and may not see the importance of completing high school. Or, they may be too distracted by the instability in their family situation to focus on completing school.
- **Less frequent entry into and completion of postsecondary education:** Too little attention is paid to helping youth in foster care strive for and complete postsecondary education opportunities. A recent study of foster care alumni found that 42.7% of alumni had received some higher education, but only 20.6% had completed a degree or certificate program. Less than 16.1% had completed a vocational program and 1.8% had completed a bachelor's or higher degree. Although this rate increased as alumni got older, it was still lower than for the general population.[4]

Barriers

For children in foster care to achieve academic success, judges, attorneys, CASAs, GALs, caseworkers, foster parents, schools, and other advocates in the child welfare and school systems must work together to overcome hurdles to meeting education needs. Two significant hurdles are **confidentiality concerns** and **not understanding who has education decision-making authority**. These barriers often cause the failure of or delays in appropriate education programming and delivery of services for youth in foster care. Overcoming these barriers is an important first step toward successfully addressing the education needs of children in foster care.

How Many Foster Children Leave Special Education?

A 2002 study of school children in New York City found that:

- only 1 in 50 children in foster care placed in special education returned to the regular classroom

versus

- 1 in 10 children not in foster care.

Source: Carter, Charlene. "Separate But Not Equal Why Do So Many Foster Youth Get Stuck in Special Ed?" September 9, 2002, available at: http://www.youthcomm.org/FCYU-Features/FCYU-2002-09-6.htm.

How Do Foster Children Perform in School?

A preliminary study from Los Angeles Unified School District (a school district that reports having approximately 7,500 students in the foster care system) compared performance of children in foster care to other students in the same schools and classrooms, and learning from the same teachers. Some of the results indicated children in foster care:

- performed half to one-third as well on standardized English language and math performance tests,
- were three times more likely to be expelled or suspended from school, and
- were half as likely to be in gifted programs.

Source: "Preliminary Analysis: Data Match Between the Los Angeles Unified School District and the Los Angeles Department of Children and Family Services." Los Angeles, CA: Education Coordinating Council, 2005. (Unpublished study)

Confidentiality

Child welfare and education systems share responsibility to ensure children in the child welfare system receive an appropriate education. Both systems, and the numerous individuals involved with each system, need access to relevant information to ensure this education is provided. This typically will involve some level of information sharing, including exchanging records. However, confidentiality rules and regulations that control the release of education and child welfare records are often unclear, and can hinder the appropriate transfer and disclosure of information.

The competing goals of the child welfare and education systems add to the complexity of this issue. In addition, confidentiality laws and policies protect the privacy of the child and family, preserve their dignity, and guard them from needless embarrassment. Child welfare and education systems also try to access information to protect and serve children, and have mechanisms to share relevant information with each other. The conflict between confidentiality and protecting children's privacy creates hurdles to accessing and sharing records.

Information Sharing Tensions

- Protect privacy
- Preserve dignity
- Avoid embarassment

Restrict Access

Grant Access

- Protect child
- Ensure child receives appropriate services and education
- Support collaboration with other entities and agencies by sharing relevant information

A clearer understanding of the Family Educational Rights and Privacy Act (FERPA), the Child Abuse Prevention and Treatment Act (CAPTA), and provisions under Title IV-B and IV-E of the Social Security Act provide guidance and help overcome some record access hurdles.

Accessing records is an important issue in all states. The Child and Family Service Reviews (CFSRs), a federal review of all state child welfare systems, included "availability of school records" as a factor used in determining whether a state is meeting the education needs of children in foster care.[5] Final reports from all 50 states indicate that 19 states have problems with missing educational records from case files or such records not being provided to foster parents; 13 states report school/agency cooperation and communication is a problem.[6] Of these states, nine specifically addressed these problems in their Program Improvement Plans (PIPs). Examples of PIP action steps include:

- **Florida:** creating a model working agreement between the child welfare agency and the Department of Education to address confidentiality of information, promote information sharing, and involving school personnel in the case planning process;
- **Maryland:** Office of the Attorney General meetings with local school attorneys to discuss barriers workers face in obtaining education records;

Click here for more on Florida's effort.

- **South Carolina:** developing/implementing use of the Education and Health Passport for all foster children to help maintain children's records regardless of placement;
- **Washington**: developing interagency agreements that include protocols for effective information sharing.

Click here for more on education and health passports.

Education Decision Making

- **Who is an "Education Decision Maker"?**
  An education decision maker is the individual with legal authority to make education decisions for a child. Typically this individual is a child's parent, but when children are in foster care, someone other than the parent may have this authority. Unfortunately it is not always clear who has the authority.
- **What is the Difference Between an Education Decision Maker and an Education Advocate?**
  Confusion over who is the education decision maker affects more than the legal decision-making process. Education decision-making issues also affect general education advocacy for the child. We can usually assume the legal decision maker for the child will also be a strong education advocate. But in the child welfare system, education advocacy is not limited to just the individual with the right to make education decisions. Even if an individual is not the education decision maker, the individual can still play an important role in education advocacy for the child. The right person to take the lead in education advocacy may differ depending on the case, or even the education issue. Just because an individual is not the decision maker should not prevent them from being an education advocate for the child, and in fact some of the best education advocates (e.g., court appointed special advocates, guardians ad litem, teachers, school administrators) may not be the education decision maker in a child's life.

Examples of Education Advocacy Role

- A **child welfare caseworker** (who cannot be the legal decision maker for a child with a disability qualifying under IDEA) can play an important role in attending Individual Education Plan (IEP) meetings and supplying necessary information to the IEP team.
- A **foster mother** who has raised several children with special needs and has years of experience advocating for special services in the school system may be the likely individual to take the lead in school advocacy, whether she is or is not the education decision maker.
- The **guardian ad litem or child attorney** may be the right individual to take the lead advocacy role for a child at risk for suspension or expulsion, because of their experience handling disciplinary proceedings and the similarities of those proceedings to court hearings.

Special Education Decision Making

- **Who is an Education Decision Maker Under the Individuals with Disabilities Education Act (IDEA)?**
  Determining the education decision maker is more complex when children in foster care have special education needs because additional rules apply. Confusion over roles and responsibilities abounds, including who can act as the parent and when a surrogate is needed. Often, children needing special education services are not appointed a surrogate, as required by IDEA. It is not always clear who is authorized to sign consent forms and IEPs. Appointed surrogates often do not know the child, and do not represent the best interest of the child. In states where foster parents can be appointed as the surrogate and the child later changes foster homes, the child loses that surrogate. These foster parents and others also often lack adequate training as surrogates.

Endnotes

[1] Casey Family Programs. "Improving Family Foster Care Findings from the Northwest Foster Care Alumni Study." 2005, 35-37, available at: http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm

[2] Godsoe, Cynthia. "Caught Between Two Systems: How Exceptional Children in Out-of-Home Care are Denied Equality in Education." *Yale Law & Policy Review* 19:81, 2000, 99.

[3] Kortenkamp, Katherine & Jennifer Ehrle. "The Well-Being of Children Involved With the Child Welfare System: A National Overview." The Urban Institute, January 2002, available at: http://www.urban.org/UploadedPDF/310413_anf_b43.pdf

[4] Casey Family Programs."Improving Family Foster Care Findings from the Northwest Foster Care Alumni Study." 2005, 36, available at: http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm

[5] 45 C.F.R. §1355.34(b)(iii)(B).

[6] States with problems of records not being in the case file and/or educational records not being given to the foster parent(s) include: AL, AR, CO, FL, ID, IA, MD, MI, MN, NE, NV, NM, NY, OK, OR, PA, SD, WA, WV; AR noted poor record keeping, and RI noted delays in transfer of documents. States with problems in cooperation or communication between agencies and schools include: AL, FL, KY, MD, MI, MS, NE, NC, RI, SC, WA, WV, WY; NC specifically mentioned confidentiality problems.

2

Myths & Realities

The following are the most common myths among people involved in the child welfare and education systems related to **confidentiality**, **general education decision making**, and **special education decision making**. For each topic the myths are listed by audience type (see glossary for descriptions of these audiences).

GLOSSARY

Child
All children and youth currently in foster care and those emancipated from care.

Parent
Birth and adoptive parents.

Foster Parent/Caretaker
All placements provided through the child welfare agency, including placements with foster parents and relative caretakers.

Judge
Judicial officers who oversee child welfare cases.

Child Representative
Legal and lay child advocates, including child attorneys, guardians ad litem (GALs), court appointed special advocates (CASAs), etc.

Caseworker
Frontline caseworkers and supervisors in public and private child welfare agencies.

Educator
All staff in a school system that would interact or need to know information about a child in foster care. This includes teachers, administrators, school social workers, guidance counselors, etc.

CONFIDENTIALITY

Child Myths	Child Realities
#1: "The whole world knows everything about me!"	False, if the law is followed appropriately. However, children often correctly assume that all professionals talk to each other about everything, and fear that personal and painful details of their lives have been shared with everyone around them. Some children recall incidents at school when sensitive information was revealed over the loudspeaker for the entire school to hear. For example, announcing that the child's social worker was there to see the child. This can be due to thoughtlessness or lack of training provided to teachers, school officials and administrators about the rights and needs of children in the foster care system.[1] When systems take confidentiality laws seriously, all parties will understand the parameters of what can and should be disclosed and what information is protected. The children will quickly understand their privacy will be respected and ultimately their trust will be gained. Click here for more about specific confidentiality laws. Click here for strategies to protect a child's right to privacy.

2. "I can't access my own education records."

False. Youth age 18 and over have an independent right to access a copy of their education records. Youth under age 18 can access a copy of their records by obtaining consent from the person considered the parent under the Family Educational Rights and Privacy Act (FERPA).

Click here for more about the law.

Click here for an example of a youth education rights wallet card from California.

Parent Myths	Parent Realities
# 1. "When the child welfare system takes custody of our child, we can no longer obtain information about our child's education."	False. Parents continue to retain the right to access education records related to their child, even when the child is not in their custody unless there is a court order or statute limiting access. The child welfare agency or the foster parent may also have a right to access. But, even if the child welfare agency and/or the foster parents are determined to be the parent under the Family Educational Rights and Privacy Act (FERPA) and have access, the parents still have an additional right to access. There may be a question in this situation over whether the parent still retains the right to challenge what is in the child's records. Click here for more about the law.

Foster Parent/Caretaker Myths	Foster Parent/Caretaker Realities
# 1. "We can automatically be considered the parent for the purpose of obtaining education records for children in our care."	Not necessarily. You may be considered the parent under the Family Educational Rights and Privacy Act (FERPA) definition (person acting in the place of a parent in the absence of the parent), but this determination is not automatic. Much depends on how your state and jurisdiction interpret FERPA. Click here for more about the law. Click here for tools to search for state law.
# 2. "Caseworkers cannot share education records of children in our care with us."	False. Federal law requires caseworkers to maintain education records as part of their case plan and share education records with foster care providers at the time of placement. Click here for more about the law.

Judge Myths	Judge Realities
# 1. "We have no authority to order schools to release education records for children who are under the court's jurisdiction without parental consent."	False. A court order for the education records is one of the exceptions to the Family Educational Rights and Privacy Act's (FERPA) parental consent requirement. Click here for more about the law.

Child's Representative Myths	Child's Representative Realities
# 1. "We have an automatic legal right to obtain education records from a school when we are appointed by the court to be an advocate for a child in a child welfare case."	False. Similar to caseworkers, there is no automatic legal right, even if state law provides that advocates have access to education records. You need to: ▪ obtain consent from the parents; ▪ obtain records through the child welfare agency or foster parent if they are viewed as the parent under the Family Educational Rights and Privacy Act (FERPA) and will grant you access; or ▪ obtain a court order allowing access. Click here for more about the law. Click here for examples.

Caseworker Myths	Caseworker Realities
#1. "We automatically have a right to access education records when our agency has custody of a child."	False. While usually there will be a mechanism to access records, the right is not automatic. Typically your right to access can be obtained through consent of the parents, a determination that your agency is considered the parent for purposes of the Family Educational Rights and Privacy Act (FERPA), or through a court order allowing access. Click here for more about the law. Click here for examples of local and state provisions allowing agency access.
#2. "We have no right to access education records for a child we are working with unless we obtain parental consent."	False. Parental consent is just one way for caseworkers and agencies to obtain the education records. Other ways include being considered the parent for purposes of FERPA, or through a court order allowing access. Click here for more about the law.
#3. "We have no obligation to maintain education records as part of a child's case file."	False. Federal law requires child welfare agencies to maintain education records as part of the child welfare case file. Click here for more about the law. Click here for examples.
#4. "We can never share child welfare records with educators working with a child in our custody."	Not necessarily. When a state either has a statute authorizing the sharing of foster care information with the school system or when the school system demonstrates a need for certain information to protect the child from abuse and neglect, certain child welfare records and information can be shared with educators working with children involved in the child welfare system. Click here for more about the law.

#5 "We cannot share education records with foster parents."

False. If the child welfare agency has received copies of the education records because they are being considered the parent under FERPA, then they are free to share the records with any appropriate individual working with the child, including foster parents. If the child welfare agency has received the records through a court order or parental consent, the release to the foster parent must be made clear in that consent or court order, otherwise it may be prohibited. Federal law requires states to include the child's school record as part of the child welfare agency's case plan and to have a system in place to supply those records to the foster care provider. Therefore, child welfare agency representatives should try to obtain the education records in a manner that allows them to share the records with the child's caretaker.

Click here for more about the law.

Click here for more about sharing records with foster parents.

 # 6. "When a child entering, or in, foster care must change schools, we play no role in the transfer of school records from the former to the new school. That is up to the schools to sort out."

False. Caseworkers must play a role in expediting record transfers among schools or districts. Often caseworkers will be responsible for enrolling students in a new school and notifying the old school of the child's move and need for records transfer.

Click here for more about the law.

Click here for state examples of a caseworker's role in expediting record transfers.

Educator Myths	Educator Realities
# 1. "We should be able to access all information related to a student's child welfare case."	False. Child welfare records contain a great deal of private information about children and families, only some of which may be related to educators' need to provide for the education of the child. States typically have mechanisms in place to allow child welfare agencies to share relevant information from a child welfare case with the school providing for that child's education. Click here for more about the law.
#2. "We can't share education information with anyone without parental consent."	False. Parental consent is just one way that educators can release records to individuals involved in the child welfare system. Schools can release records to child welfare agency representatives or foster parents if they are considered to be the parent under the Family Educational Rights and Privacy Act (FERPA) definition, or if there is a court order authorizing the release. Click here for more about the law.
#3. "When confidential information from a child welfare case is shared with a school administrator, it should not be shared with any other staff."	False. Important information about a student and issues related to the student's education, need to be shared with all school staff that work with the student. If important information related to the student does not "trickle down" to the staff working directly with that student, information sharing does not achieve the intended benefit.

#4. "A child's involvement in foster care is usually common knowledge among staff and peers."

False. While sharing information among school staff who have a legitimate interest in working with a student is necessary, schools must be careful not to violate the privacy of students who are in foster care by sharing information with others who do not have a need to know.

Click here for more about the law.

Click here for examples of maintaining a student's privacy.

 # 5. "Unless we receive notice from the parent, we hold no responsibility in getting education records to a new school when a child transfers out of our school."

False. Schools must transfer records to a new school when a student is transferring. This transfer falls under an exception to FERPA and does not require consent of the parent.

Click here for more about expediting record transfers for youth in foster care.

#6. "We can never enroll a child into school without the required documentation (e.g., immunization records, birth certificate, etc.)."

False. Schools must immediately enroll students who are eligible under the McKinney Vento Act, regardless of certain records being produced at the time of enrollment. Certain children in foster care may be eligible under this federal law or eligible under state law that makes provisions for immediate enrollment for children in foster care.

Click here for more on the federal law.

Click here for more on example of state laws.

EDUCATION DECISION MAKING—GENERAL

Child Myths	Child Realities
1. "We never have a say in our own education decisions."	False. Children's opinions should be heard, considered, and voiced by whomever is acting as their education advocates. They should be given flexibility to choose classes, enroll in summer school, and other programs to ensure they graduate on time. When youth are over age 18, they have a clear say in their general education decisions, and may have power under state law to make special education decisions. Some states go further and give youth under age 18 control over certain education decisions (i.e., right to leave school at age 16). Click here for examples of materials geared toward youth.
#2. "I don't know whom to turn to as my advocate when I am having problems or issues at school."	Too often this is true. The child welfare system needs to send clearer messages to children about who the education decision maker is, and who can advocate for them. Children need to be informed about who is making ultimate decisions as well as who can help them navigate school and education issues. Click here for more about the law.

#3. "I don't have a right or a say to bring up my educational status during permanency hearings."

False. However, permanency and other hearings are often scheduled during school hours. Thus, children do not always get to attend and raise their concerns. Even if they do get to attend, they may think they are not allowed to raise questions about their education, especially if the judge, GAL, attorney, or caseworker does not bring it up. Children are definitely allowed, and should be encouraged to bring up all issues related to their schooling so they may be addressed in a timely and appropriate manner by the court, caseworkers, and attorneys. In addition to, or instead of, speaking themselves, children can ask their caseworker, attorney, GAL or CASA to voice their opinion in court.

Click here for examples of ways education issues are being raised at court hearings.

Parent Myths	Parent Realities
#1. "Once a child is removed from our care, we no longer have a right to make education decisions."	Not necessarily. Typically a parent's right to make education decisions on behalf of their child continues unless there is a state law or court order that takes away that right. Click here for more about the law. Click here for examples of laws removing this authority.
#2. "We always remain our child's education decision maker unless our parental rights have been terminated by the court."	Not necessarily. Some states have provisions that allow courts to limit education decision-making rights before parental rights are terminated. Click here for state law examples.

Foster Parent/Caretaker Myths	Foster Parent/Caretaker Realities
#1. "When a child is placed in our care, we are automatically given the right to make education decisions for the child."	Not necessarily. The child's parent may retain decision-making authority. Even if the parent's education decision-making rights are limited, the court may designate someone else to make the decisions. The child welfare agency, for example, may have the authority (but note that caseworkers and child welfare agency staff may not make special education decisions). Remember, even if foster parents and caretakers are not the decision maker, there is still an advocacy role to play. Click here for more about the law. Click here for examples.

Judge Myths	Judge Realities
#1. "We can't help determine the education decision maker for a child. That is the school's decision."	False. Judges can play an important role in determining the education decision maker for the child; this is not a decision that schools should make. This involves judges making decisions about when a parent's education decision-making rights should be curtailed. While it is clear that this occurs at termination of parental rights , judges may also curtail education rights before termination, if it is warranted and in the best

interest of the child. In fact, judges often do this simply by ordering that a particular individual has the authority to make all education decisions for the child. Whether by termination of parental rights or other court order, once education rights are no longer with the parent, the judge needs to clarify who has taken over education decision-making authority. Judges may be in the best position to know someone who is knowledgeable about the child and is interested in the child's education to serve in this important role.

Click here for a state law example.

#2. "We can appoint a surrogate parent for a child in foster care, even if that child does not receive special education services."

False. Surrogate parents can only be appointed when a child is receiving, or suspected of needing to receive, special education services. For children in general education, an education decision maker may need to be identified, but that person would not be the "surrogate parent" as that term is specific to IDEA and special education.

Click here for more about the law on special education and appointing surrogates.

Child's Representative Myths	Child's Representative Realities
#1. "As the court-appointed advocate for the child, we are entitled to make education decisions on the child's behalf."	Not necessarily. Unless your appointment includes a court order specifically giving you education decision-making authority, you cannot be the education decision maker for the child. Remember, this does not mean that you cannot advocate for the child's education needs (in fact you should). Click here for more about the law. Click here for examples.

Caseworker Myths	Caseworker Realities
#1. "When a child is in our agency's custody, we're automatically empowered to make all education decisions about the child's education."	Not necessarily. Look to state law to see what education decision-making powers are given to the child welfare agency when it obtains custody of the child. Typically states give agencies authority to enroll the child, but state law may not specify what other decisions the agency is empowered to make. Parents may still retain some education decision-making rights. It is important to distinguish this from IDEA, which specifically prohibits caseworkers from being the education decision maker. Click here for more about the law. Click here for examples.
#2. "When a child is in our agency's custody, we no longer need to involve the parent(s) of the child in education decision making."	False. Regardless of whether the agency has the power to make general education decisions once a child is in agency custody, the agency has an obligation to work with the parents. Prior to a termination of parental rights, unless the agency has obtained a finding from the court that no reasonable efforts to reunify are necessary[2] (or education rights have

been limited by the court), part of reasonable efforts to reunify a family should include involving the parent in education decisions.

Click here for more about the law.

Click here for examples.

Educator Myths	Educator Realities
#1. **"When a caseworker or foster parent arrives at school with a child we automatically assume that caseworker stands in the shoes of the parent."**	False. While this may in fact happen, it is an inaccurate assumption for schools to make. The caseworker or foster parent may have parental type authority for certain issues, but the school needs to confirm that authority (i.e., by asking to see the court order). Click here for more about the law. Click here for examples.
#2. **"We can appoint a surrogate parent for a child in foster care, even if that child does not receive special education services."**	False. Surrogate parents can only be appointed when a child is receiving, or suspected of needing to receive, special education services. For children in general education, an education decision maker may need to be identified, but that person would not be the "surrogate parent" as that term is specific to IDEA and special education. Click here for more on special education and the appointment of surrogates.

EDUCATION DECISION MAKING—SPECIAL EDUCATION

Child Myths	Child Realities
#1. **"There is no one in the special education process speaking up for me or voicing my opinion for me."**	Too often this is true. However, a child's parent or surrogate should be considering the child's views and sharing with members of the team what they believe to be in the best interest of the child's education. Children and youth should also be part of the meeting whenever appropriate so they can raise their own issues and concerns. Click here for more on the law. Click here for unique example of improved advocacy for youth.
#2. **"Once I enter special education, I cannot get out, nor do I have a right to request a reevaluation."**	False. Children have a right to be reevaluated to determine if they still need special education services. If such reevaluation is not being done, they should ask their parent or surrogate parent, as well as their teacher, social worker, and educational advocate (if they have one) to request a reevaluation immediately. In some circumstances, students who are age 18 or older have the power to make their own special education decisions in these cases. Thus, the child may ask the school for a reevaluation without going through a parent.

#3. "If I enter a new school, I have to get an entirely new evaluation and new education plan to obtain special education services at the new school."

False. The law requires special education services to continue when a child moves. If delays occur because records are not transferred, the parent or surrogate should complain to the school or file a formal complaint with the state.

Click here for more about the law.

Parent Myths	Parent Realities
#1. "We automatically lose parental decision-making rights under IDEA when our child enters the custody of the child welfare system"	False. Birth parents retain education decision-making rights under IDEA unless state law or regulation or court order limits those rights. Click here for more on the law regarding decision-making authority under IDEA.
#2. "We always retain education decision-making rights for our child in special education, even when the child is not in our custody, as long as our parental rights have not been terminated."	Not necessarily. Some states have statutes that allow for curtailing of parental education decision-making rights before terminating parental rights. Judges in other states rely on their authority to act in the best interest of the child to limit education decision-making rights of parents short of terminationg parental rights. Click here for state statute examples.
# 3. "If we do not have education decision-making rights, then there is no role for us to play in education planning for our child and we may not even be allowed to participate in meetings."	A parent without education decision-making rights *could* have a role in education planning. Because that parent may have valuable information and insight about the child (e.g., developmental history, strengths, and learning challenges), it is best practice for the school and/or the substitute education decision maker to include the parent when appropriate. Even if a birth parent is unable to attend a meeting there may be other ways for that parent to provide input to the team. For states that automatically limit education decision-making rights of the birth parents when a child enters child welfare agency custody, including the birth parent is critical as reunification may likely be the permanency goal for the child. Click here for legal information about parents without decision-making authority playing an advocacy role.
#4. "If a surrogate parent is appointed, that means we do not have education decision-making rights"	It depends. While in MOST states, the appointment of a surrogate happens only after a determination that the birth parents' education-decision making authority has been limited, in some states a surrogate can be appointed without a determination that the birth parents don't have education decision- making rights. In these situations, a birth parent may retain rights related to participation and even decision making, even though there is a surrogate appointed to the child. Click here for more about the law. Click here for examples of different state interpretations of surrogate parents.

Foster Parent/Caretaker Myths	Foster Parent/Caretaker Realities
#1. **"When a child is placed in our care, we are automatically considered to be the education decision maker."**	Not necessarily. First, parents may retain education rights. If they don't, the foster parent or caretaker may meet the definition of parent and have education decision-making authority. Another option is that the foster parent may be appointed as a surrogate for the child, giving the foster parent decision-making authority as well. Click here for more about the law. Click here for examples.
#2. **"We can only be the education decision maker if we have been formally appointed as the child's surrogate parent."**	Not necessarily. The 2004 IDEA statute clearly adds foster parent to the definition of parent without a need for a formal surrogate appointment. The regulations that predated the new IDEA gave additional requirements for when foster parents can be considered the parent, but these additional requirements may not be part of the new IDEA regulations when they become finalized in the near future. However, the new federal statute and proposed regulations do not prohibit states from appointing foster parents through the formal surrogate process. Therefore, some states (through their statutes or regulations) may require foster parents to be appointed as the surrogate in order to be the education decision maker for the child (e.g., Vermont). Click here for more about the law. Click here for examples.
3. **"If we attend special education meetings and the parents are there and still hold education decision-making rights, we do not really have a role at the meeting or a right to speak."**	False. Foster parents can still play a role in education advocacy, even when they are not the education decision maker. They can raise issues (i.e., watch to see if timelines are being met if parent is not aware) and provide information to the team. As the child's day-to-day caretaker, the foster parent may have the best grasp of the child's current education needs. Click here for more about the law.

Judge Myths	Judge Realities
#1. **"We cannot appoint a surrogate parent for a child in special education. That is a decision that must be made by the school system."**	False. IDEA now clearly gives child welfare judges (in addition to the education agency) authority to appoint surrogate parents for children who need them. Judges are also specifically authorized to appoint a representative for the child when a child needs consent for an initial evaluation to determine eligibility under IDEA, under certain conditions. Click here for more about the law. Click here for examples.

#2. "Other than our new authority to appoint a surrogate parent when one is needed, there is no other role for us to play in clarifying decision-making authority under the Individuals with Disabilities Education Act (IDEA)?"

False. Similar to general education, judges can also play a role in determining who is viewed as the parent (and has decision-making authority) under IDEA. This is because some individuals in a child's life may be automatically considered the parent under IDEA, and would not require a formal surrogate appointment.

Click here for more on the law.

Click here for more strategies.

Child's Representative Myths	Child's Representative Realities

#1. "We can never be appointed as a surrogate parent for a child we represent."

Not necessarily. Some states' statutes and regulations specify who can be a surrogate for a child in foster care, and include child representatives. States may allow child representatives to be the surrogate even without a specific statute or regulation. One concern for children's attorneys who represent the child's wishes (as opposed to using a best interest model) is the potential conflict between the role as surrogate (requiring best interest of the child) if your client disagrees with your position as the surrogate.

Click here for more about the law.

Click here for an example of a California statute specifying CASAs can be the surrogate.

Click here for example of Florida policy permitting guardians ad litem to serve as surrogate parents.

#2. "If we are not the surrogate for the child there is no role for us to play in special education advocacy for our client."

False. Even when you are not the decision maker for the child there can still be a role to play to advocate for the child's education needs and to oversee that the process is progressing appropriately.

Click here for more information on the law.

Click here for an example of an innovative program to improve special education advocacy.

Caseworker Myths	Caseworker Realities

#1. "We can always make special education decisions for a child in our agency's custody."

False. IDEA **prohibits** caseworkers from being the special education decision maker for the child.

Click here for more about the law.

#2. "Because we are forbidden from being the special education decision maker, there is no role for us to play in special education matters."

False. There is a difference between being an advocate and being the legal education decision maker. Just because you are not permitted to be the legal education decision maker under IDEA, does not mean that you cannot play an important advocacy role in the child's education.

Click here for more about the law.

Click here for examples of ways to improve advocacy.

Educator Myths	Educator Realities
#1. **"When a child is in the custody of the child welfare system we cannot allow the parent to be part of education meetings."**	False. In fact, it is possible that for some cases where the child is in the custody of the child welfare system, the parent maintains education decision-making rights. Even if the parent does not maintain education decision-making rights, the parent still may be permitted to attend school meetings and be kept informed of school progress and decisions. Educators should also consider seeking input from the parent as they may have important information that is critical to the child's education plan. Educators need to depend on child welfare system professionals to give them documentation about the parent's legal status to make education decisions. Click here for more about the law when parents retain decision-making authority. Click here for examples of parents without decision-making authority playing advocacy role.
#2. **"We must automatically appoint a surrogate parent for all children who have been removed from their parents and placed in foster care or a group home."**	Not necessarily. The proper procedure in these situations is very dependent on state law and regulations. For example, in some states (e.g., Arizona) it is the judge's job to appoint the surrogate when appropriate, so the school system is not involved. However, in a majority of states, the school system may need to appoint a surrogate for the child. The school must first determine that no one meets the definition of parent already (this could include the birth parent, a foster parent, or someone else acting in the place of the parent). If another individual meets the IDEA definition of parent, then a surrogate may not need to be officially appointed, unless your state law requires those individuals who meet the definition of parent to be appointed as the surrogate (e.g., Vermont). Click here for more about the law. Click here for examples.
#3. **"The education system is the only entity that can appoint a surrogate parent."**	This is clearly false in all states as of July 2005. Before that time, only a few states had provisions that allowed judges to appoint surrogates (e.g., Arizona). Now, the federal IDEA statute makes clear that the education agency and a child welfare judge can appoint surrogates. Click here for discussion of new IDEA provisions related to judge's appointing surrogate parents. Click here for examples.
#4. **"We only need to include the person meeting the definition of parent or the surrogate parent in special education meetings for the child. No one else in the child welfare case needs to be invited."**	False. Federal law requires the parent or surrogate to be invited. But the IDEA federal regulations also require schools to include (at the discretion of the parent or the school) people who have knowledge or special expertise regarding the child. Therefore, either the school or the parent (or surrogate) should invite anyone involved with the child (such as the foster parent or caseworker). If the meeting involves transition

planning, the school must invite (when appropriate and when the parent consents) a representative from any agency providing or paying for transition services. Since child welfare agencies have a responsibility to provide transition services to all older youth as part of the child welfare system case, this means a child welfare agency representative must be invited to a school meeting discussing a student's transition services as outlined in the child's education plan.

Click here for more about the law.

Endnotes

[1] "Promoting Educational Success for Young People in Foster Care," National Foster Youth Advisory Council (2005), available at http://inpathways.net/adv_council_statement.pdf

[2] 45 C.F.R. §1356.21(b)(3).

3

Laws

This section highlights key federal laws addressing confidentiality and decision-making issues, and reviews common questions and answers about how these laws apply to meeting the education needs of children involved in the child welfare system.

Confidentiality

Family Educational Rights and Privacy Act (FERPA)

Passed in 1974, this federal law protects the privacy interests of parents and students regarding students' education records.[1] Generally, FERPA requires states to provide for a parent's right to access their child's education records, and to keep those records confidential unless the parent consents to disclosure. FERPA specifies the following rights to parents:

- to prevent release of education records to third parties without their written consent;[2]
- to access and review their child's education records maintained by the school;[3] and
- to a hearing challenging what is in the student's education record.[4]

[1] 20 U.S.C. §1233(g); 34 C.F.R. Part 99. FERPA has been amended several times since enacted in 1974, most recently by the No Child Left Behind Act of 2000.
[2] 20 U.S.C. §1232(g)(b).
[3] 20 U.S.C. §1233(g)(a)(1)(A). The law requires states to establish procedures for giving parents access to this information, which can be no later than 45 days after a request is made. In addition to FERPA, IDEA also specifies a parent's right to access their child's educational records. 20 U.S.C. §1415(b)(1).
[4] 20 U.S.C. §1233(g)(a)(2). This hearing can result in correction, deletion, or insertion of information if the record is inaccurate, misleading, or violates the student's privacy rights.

Q&A

What are considered education records?

FERPA defines education records as those materials maintained by the educational agency or institution, containing personally identifiable information directly related to a student. However, the following are not included in this definition (and therefore not subject to FERPA restrictions):

- oral information based on personal observation or knowledge and not based on an education record. (i.e., caseworker contacts child's teacher to seek teacher's observations about the child's classroom behavior);
- records/notes solely possessed by the individual who created them, used only as a personal memory aid and not accessible or revealed to any other person except a temporary substitute for the individual. (i.e., classroom teacher keeps a "cheat sheet" at her desk to remind her of issues related to the students, and it is shared with substitute teachers); and
- records of the law enforcement unit of an educational agency or institution.

How does FERPA define parent?

The FERPA statute uses the term parent exclusively when talking about their rights under the law, without defining the term. The FERPA regulations define parent as "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 guardian."[1]

Under what circumstances can education records be disclosed to individuals involved with the child welfare system by the education agency?

Generally, there are three ways for individuals involved with the child welfare system to obtain access to a student's education records (each is detailed below) under FERPA:

- parental consent (or consent of a youth over 18);
- child welfare agency personnel or foster parent being considered the parent; or
- through one of the FERPA exceptions.

Child welfare agencies may need to take the lead in overcoming this confidentiality hurdle and using one of these methods to access records.

Click here for examples of strategies to obtain education records.

What needs to happen to secure parental consent for education record disclosure?

Generally, when anyone in the child welfare system wants to access a child's education records, a first step is to gain parental consent. A parent working diligently toward reunification, and even parents who disagree with their children being out of their care, may nevertheless consent to release this education information, as the child welfare agency and the foster care provider will need to know how the child is functioning educationally.

Click here for a sample parental consent form.

Can a representative from the child welfare agency be considered the parent under FERPA?

A jurisdiction may consider a representative from the child welfare agency to be the parent for FERPA purposes when a child is in the agency's custody. This may be because the agency is considered the guardian of the child, and/or acting as the parent in the absence of the parent or guardian. Remember that FERPA does not put any restriction or clarification on "guardian" (in contrast, IDEA specifically excludes the child welfare agency from the term guardian). Nor does the law explain what it means for a parent to be absent, so that someone who is "acting in the place of a parent," like the child welfare agency, can be considered the parent for FERPA purposes. Being "absent" could mean that the biological parent is unknown, cannot be found. It might even mean the biological parent is unable or unwilling to be involved with the child's education. But, even if the child welfare agency is considered a parent under FERPA in these situations, the biological parent will still be entitled to access the child's education records in addition to the agency.

Click here for examples of state and local interpretation of the parent definition.

Defining the Parent FERPA vs. IDEA

The FERPA definition of parent:
The FERPA statute uses the term parent exclusively when talking about their rights under the law, without defining the term. The FERPA regulations define parent as "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 guardian."
34 C.F.R. §99.3.

IDEA 2004 includes the following definition of parent:

(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

(B) a guardian (but not the State if the child is a ward of the State);

(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(D)… an individual assigned … to be a surrogate parent.

20 U.S.C. § 1402 (23).

Can a foster parent or caretaker be considered the parent under FERPA?

Jurisdictions may also consider a foster parent or other caretaker as the parent under FERPA and therefore grant each the right to access education records. This could be in addition to the parent or the child welfare agency. This interpretation is supported in the comments that preceded the FERPA regulations when they were first issued. In response to concern about the lack of a provision addressing the rights of foster parents to access education records, the United States Department of Education responded:

> The regulations already define the term parent in §99.3 to include 'a parent of a student and includes a natural parent, a guardian, or an individual acting as the parent in the absence of a parent or a guardian.' Thus, foster parents who are acting as a child's parent would have the rights afforded parents under FERPA with respect to that child's education records.[2]

When child welfare agency personnel or a foster parent is considered the parent, under FERPA, what is the impact on the parent's right to access the same education records?

When the child welfare agency or foster parent is considered the parent under FERPA, parents still maintain the right to access records. A 2002 federal circuit case, *Taylor v. Vermont Department of Education* [3] clearly establishes that a noncustodial parent has the right to *access* education records. Although this is a child custody case, not a dependency court situation, an analogy can be made to dependency cases. Parents and the child welfare agency can both be considered the parent, and therefore each have the right to access, even if one or the other holds the legal right to make education decisions. However, birth parents will typically lose their right to access education records if their parental rights are terminated (as opposed to just a limiting of education decision-making rights).

Click here for full text of the *Taylor* opinion

What rights do youth age 18 and over have under FERPA?

When youth turn 18, they have the legal right to obtain a copy of their education records, and to consent to release these records.[4] Youth are often unaware of these rights. Often no one has helped the youth obtain a complete set of education records because of frequent turnover of professionals in the child welfare system (e.g., attorneys, GALs, caseworkers). Youth need to be provided assistance to contact their last school of attendance to request a copy of their complete education file.

Click here for an example of efforts to help youth over 18 know their legal rights.

When youth turn 18, they have the legal right to obtain a copy of their education records, and to consent to the release of these records. Youth are often unaware of these rights.

What are the exceptions to FERPA?

Numerous exceptions exist to the requirement for written consent from the parent before disclosing education records.[5] The most relevant exceptions to child welfare professionals that permit disclosure without prior consent are to:

- other school officials, including teachers, with legitimate educational interest in the child;[6]
- appropriate persons in connection with an emergency, when the information is needed to protect the health and safety of the student or other persons[7] (Note: used for health and safety emergencies where immediate release of the information is necessary to control a serious situation);
- officials of other schools when a student is transferring schools;[8]
- state and local authorities within the department of juvenile justice, if your state statute permits disclosure[9] (Note: currently only Florida and Illinois have such statutes); and
- appropriate persons when the release of information is needed to comply with a judicial order or subpoena.[10]

How can these FERPA exceptions assist individuals involved with the child welfare system to gain access to education records?

Of the FERPA exceptions the compliance with a judicial order or subpoena exception is most helpful to child welfare professionals seeking access to education files. Since the juvenile court is already involved in the case, mechanisms exist to obtain such orders from the court. Any party to the child welfare case can file a motion to request a court order to release records. These motions could be made in an expedited fashion if access to records is time sensitive.

Click here for some sample court order language.

Does it make a difference whether the child welfare system professionals gain access to records because they meet the definition of "parent" or whether they gain access through a FERPA exception?

Yes. When records are disclosed under an exception, the person or agency receiving the records may not redisclose the information, unless the redisclosure also fits under one of the FERPA exceptions. Entities that inappropriately redisclose information obtained under a FERPA exception may be barred from accessing education records from that school for a period of time.

Practically speaking, this means if a child welfare agency or foster parent is given access to education records through the court order exception, the agency or foster parent may not share the records with anyone (other than the parent or school who already have access to the records) who does not also fall under a FERPA exception.

In contrast, if the child welfare agency, foster parent, or other caretaker is considered the parent under FERPA, they are free to redisclose to whomever they choose. However, they must take into

account the agency's policies and procedures on releasing information related to a child in care.

Does FERPA permit disclosure of records among education staff and various education institutions?

FERPA specifically allows education institutions to share information among staff with a legitimate education interest in the child. Therefore, FERPA should never act as a barrier to having all school staff who work with the child and have a need to know from obtaining specifics about the child's education history or programming.

FERPA should act a barrier to sensitive information in a child's education record being accessed by all school staff and individuals who do **not** have a need to know about the child. FERPA also allows education institutions to share records with another education institution when a student is transferring schools. Therefore, FERPA should never act as a barrier to timely education record transfers when a child is transferring to a new school.

What happens if education records are inappropriately disclosed?

School systems that repeatedly violate disclosure laws as outlined under FERPA risk losing federal education funds.[11] While a parent has a right to file a complaint with the U.S. Department of Education for a FERPA violation, parents may not sue a school system for money damages based on these violations.[12]

Once records are obtained, what are the other roles/ rights of individuals involved with the child welfare system?

Obtaining copies of education records is important to ensuring a child's education history is appropriately understood and documented. With the high mobility rates for children in foster care, making sure that documentation from each school and each course completed (or even partially completed) exists is critical to helping that child successfully complete school. After obtaining a child's academic record, advocates should review the documents with the child and other professionals serving the child. Advocates should:

- understand the education history of the child and in turn better represent and serve the child; and
- ensure the school has accurate records of courses completed, child's education needs, etc. to be sure the school is programming appropriately for the child.

Click here to see examples of tools to assist with education advocacy

Who has responsibility to transfer education records when a child changes schools?

Primarily it is the school's responsibility to transfer records when a child changes schools. However, the old school must receive notice of

the child's transfer. Although state law may place some burden on the new school to contact the old school, individuals involved with the child welfare system can play a significant role by providing timely notice to the school of such school changes and helping to facilitate the transfer of records.

Remember that even if an individual has not yet established their right to access the education records, they can play an advocacy role by ensuring these records are transferred promptly. An individual with the right to access the records can play an active role in expediting the transfer of records (i.e., driving records to the new school).

Click here for examples of state laws and regulations that address timely education record transfers.

What can a child welfare advocate do upon determining records are missing or are inaccurate?

FERPA outlines procedures to delete, amend, or add information to records that are inaccurate or incomplete. Again, this right lies with the parent, someone that meets the FERPA definition of parent, or a child age 18 or over.

Guidance on record access and record amendments is found in a 2002 federal circuit case, *Taylor v. Vermont Department of Education. Taylor* addressed a noncustodial parent's right to amend or delete records under FERPA.[13] While the case clearly established that a noncustodial parent has the right to *access* education records, it did not give the noncustodial parent the right to amend records because legal rights over education are with the custodial parent. Although *Taylor* is a domestic relations case, not a dependency court situation, an analogy can be made to dependency cases. Parents and the child welfare agency can both be considered the parent, and therefore each have the right to access, even if one or the other holds the legal right to make education decisions. However, the case seems to support an interpretation that only the person with legal education rights can delete, amend, or add information to the record.

Click here for full text of the *Taylor* opinion.

Child Abuse Prevention and Treatment Act (CAPTA)

CAPTA was originally signed into federal law in 1974 and was amended and reauthorized in 2003. CAPTA provides guidance for state child protective services systems, including obligations to report and investigate child abuse and neglect. One purpose of CAPTA funding is to support and enhance collaboration among agencies (including linkages with education systems) around child abuse and neglect prevention and treatment services. CAPTA also includes requirements related to confidentiality and information sharing in child abuse and neglect cases.

Q&A

What does CAPTA say about reporting child abuse and neglect?

CAPTA requires states to pass laws that impose mandatory reporting requirements by certain individuals and entities.[14] State laws vary on who is required to report child abuse and neglect. For a summary of the mandatory reporting requirements in each state by the National Clearinghouse on Child Abuse and Neglect Information visit: http://nccanch.acf.hhs.gov/general/legal/statutes/manda.cfm.

For summaries of all state law provisions related to reporting procedures (visit: http://nccanch.acf.hhs.gov/general/legal/statutes/repproc.cfm) and reporting penalties for failure to report and false reporting (visit: http://nccanch.acf.hhs.gov/general/legal/statutes/report.cfm).

What does CAPTA say about collaboration between child welfare and education agencies?

CAPTA states that one purpose of receiving federal CAPTA funds is to improve the child protective services system of each state in "supporting and enhancing collaboration among public health agencies, the child protection system, and private community based programs to provide child abuse and neglect prevention and treatment services (including linkages with education systems) and to address the health needs, including mental health needs, of children identified as abused or neglected, including supporting prompt, comprehensive health and developmental evaluations for children who are the subject of substantiated child maltreatment reports."[15]

What does CAPTA say about confidentiality of foster care records?

The law requires states to have laws in place that protect the confidentiality of all records, but also specifies when these records can be shared.[16] Individuals and entities listed as appropriate to share records with include:

- the subject of the report of abuse or neglect;
- federal state or local government entities that have a need for such information to carry out their responsibilities to protect children from abuse or neglect;
- a grand jury or court; and
- other entities or people specified by state law.

How could CAPTA be interpreted to allow foster care agencies to share information with the education system?

A state needs either:

- to have a statute authorizing the sharing of foster care information

with the school system; or

- to establish that the school system needs certain information to protect the child from abuse and neglect.

This later argument would base the release of foster care agency records to the education system on a broad interpretation of "protection from abuse and neglect" that would include all services provided by a school system to a child involved with the child abuse and neglect system.

Which states have statutes that allow for release of child welfare records to education personnel?

Many states specify in their state statutes or regulations that some school officials are permitted access to this foster care information. For a complete overview of state confidentiality provisions, including which states allow release to education professionals, see http://nccanch.acf.hhs.gov/general/legal/statutes/confide.pdf.

Can CAPTA be interpreted to allow release of education records to individuals involved with the child welfare system?

CAPTA generally guides confidentiality of child welfare records and the release of those records. CAPTA can also apply to the release of education records to individuals involved with the child welfare system. CAPTA allows the state to share information with any government entity if the entity needs such information to carry out responsibilities to protect children from abuse and neglect. One could interpret this provision to require the state education department to release confidential education records to other state or local government agencies (e.g., child welfare agency). It would follow that the child welfare agency would need such information to carry out its responsibilities to protect children from abuse and neglect.

Adoption Assistance and Child Welfare Act (AACWA)?

AACWA is a federal law passed in 1980 that established programs of foster care and adoption assistance under Title IV-E of the Social Security Act and child welfare services and family preservation and support under Title IV-B of the Social Security Act. AACWA requires child welfare agencies to maintain confidentiality of information related to children and families under the act.

Q&A

What does AACWA require agencies to keep in their case plans related to education information?

AACWA requires agencies to keep health and education records as part of their written case plan, to the extent available and accessible, that include:

- names and addresses of the child's health and educational providers;
- child's grade level performance;
- child's school record;
- assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
- record of the child's immunizations;
- child's known medical problems;

- child's medications; and
- other relevant health and education information concerning the child, determined to be appropriate by the state agency.[17]

Click here for examples of state-specific efforts to ensure education records are part of a child welfare case file.

What does AACWA say about child welfare agencies sharing education records with foster parents and caretakers?

AACWA requires states to have a system in place to review and update a child's education records, and to supply them to the foster care provider.[18]

McKinney Vento Act

The McKinney Vento Act is a federal law, most recently reauthorized as part of the No Child Left Behind Act of 2001, that ensures education access to children and youth who meet the definition of homeless. The act allows children and youth who are homeless to remain in their school of origin even if they are moved outside that school's boundaries. The act also allows for immediate enrollment into a new school, even if typical required documentation, such as immunization records, birth certificates, or guardianship documentation is not immediately available.

Click here to learn more about the McKinney Vento Act

Q&A

How does the McKinney Vento Act define "children and youth who are homeless"?

The definition includes "children awaiting foster care placement." The law and regulations do not provide further details about this definition, leaving it up to states to determine which children in foster care may be McKinney eligible. States have handled this issue in a variety of ways. Some states have created agreements between their state child welfare and education agencies as to how the "awaiting foster care placement" will be interpreted.

Click here for Massachusetts' policy. (Scroll to Massachusetts and Children Awaiting Foster Care)

Click here for Connecticut's policy.

Click here to see examples from other states that have passed legislation that either applies all, or many, of the McKinney Vento provisions to all children in foster care.

When do children in foster care need an education decision maker?

For children under age 18, it must be resolved whether the parent, foster parent, child welfare agency representative, or other individual makes education decisions for the child. The answer may differ from state to state, jurisdiction to jurisdiction, and case to case. The answer also may differ when dealing with regular education decisions or special education decisions.

When youth turn 18 they are no longer minors and can consent to their own general education decisions. In some states, youth over age 18 also have authority to make their own special education decisions (the law requires parents and youth over 18 to be notified by the school system, if this rule applies to your state).

Federal Law on General Education Decision Making

There is no federal law that speaks to how to determine who has education decision-making authority in a child welfare case. Advocates must look to state law, regulations, or policies (when they exist) for guidance on this issue.

Click here for tools to help search state laws and regulations.

Q&A

What are some of the important regular education decisions that must be made for children in foster care?

Regular education decisions can be as basic as who has the right to sign permission slips for a child in foster care. Even basic issues are complicated if it is unclear who has the authority to decide. Regular education decisions can also involve important decisions about what school to attend (e.g., charter schools) and services for which the child may be entitled. Some examples of regular education decisions include:

- *McKinney Vento*: If a child in foster care is considered eligible under McKinney Vento, decisions need to be made whether to keep the child in their school of origin or seek immediate enrollment in a new school.
- *No Child Left Behind*: Children attending schools that are designated in need of improvement for a number of consecutive years may have a right to transfer to a higher functioning school and/or a right to supplemental education services. The child's education decision maker would need to determine if a transfer is appropriate for the child and what supplemental education services to access.

When a child is in the custody of a child welfare agency, who is responsible for making regular, day-to-day education decisions?

When a child enters foster care, the child welfare agency typically assumes responsibility for enrolling the child in school.[19] However, absent a specific state statute or court order authorizing the agency to make education decisions on the child's behalf, the parent(s) needs to be involved in every step of the process and in education decisions. If there is a question at any point about the parents' availability, willingness, or ability to make important education decisions, consult state law or policies for guidance on when and how courts may intervene.

What do you do when the parent is viewed as the decision maker and you feel someone else should be making decisions?

Seek a court order clarifying who is authorized to make education decisions on behalf of the child. This may involve asking the court to curtail the parent's education decision-making rights and clarify who should be making education decisions for the child.

Click here for an example of a CA law related to limitation of parents right to make education decisions.

Click here for an example of a CA court form: Order Limiting Parent's Right to Make Education Decisions and Appointment of Responsible Adult (JV-535 Form).

Who is the decision maker when parental rights have been terminated but the child is not yet in a permanent placement?

Termination of parental rights in a child welfare case will clearly limit the parent's right to make education decisions. This should make the question of who has decision-making rights easier, but sometimes it is still unclear. State law or a child welfare court should clarify who makes decisions when the parent's rights are clearly extinguished.

EDUCATION DECISION MAKING—SPECIAL EDUCATION

Individuals with Disabilities Education Act (IDEA)

IDEA is a federal law first enacted in 1975 as the Education for All Handicapped Children's Act (EAHCA), and has been amended and reauthorized numerous times over the years, most recently in 2004.[1] IDEA provides federal dollars to states to ensure all children with disabilities that impact their ability to succeed in school receive a free, appropriate, public education in the least restrictive environment possible. IDEA sets certain criteria for special education services that must be met, but states have some room for variations in their own policies.

[1] 20 U.S.C. § 1400 et. seq.

Q&A

If a child in foster care is in need of or receiving special education services, does this affect who is the education decision maker?

Yes, IDEA guides decision-making authority for children eligible for special education services, including children in foster care. These rules about who is the education decision maker can be complicated and may vary from state to state, but the federal law establishes some basic principles and criteria.

How does IDEA define parent?

The 2004 reauthorization of IDEA includes the following definition of parent:

> (A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);
>
> (B) a guardian (but not the State if the child is a ward of the State);
>
> (C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
>
> (D) … an individual assigned … to be a surrogate parent.[20]

A determination must be made to see if someone in the child's life meets the definition of parent under IDEA. This can be the parent, even if the child is not currently in their custody, but can also be a relative, foster parent, or other caretaker. A representative of the child welfare agency can not be considered the parent because of the specific exclusion under (B) above. If no one else meets the definition of parent under IDEA, then a surrogate parent will need to be appointed.[21]

Is this the only time a surrogate can be appointed?

It depends on your state law and regulations. Some states will only appoint surrogates when there is no one else that meets the definition of parent, while other states will appoint surrogates whenever the child is in the custody of the child welfare agency or meets their state definition of ward of the state (see more on this below).

Click here for examples of various state provisions on decision making and surrogate appointments.

How does IDEA define *ward of the state*?

The 2004 reauthorization for the first time defines *ward of the state*. This definition is important, because the new law gives juvenile court judges some authority to appoint decision makers for children who meet this definition. (See below) *Ward of the state* is defined as "a child who, as determined by the state where the child resides, is a foster child, is a ward of the state, or is in the custody of a public child welfare agency."[22] The definition includes an exception, that "the term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23)."[23]

What does the reauthorized IDEA definition of *ward of the state* mean?

This provision means that a foster child who already has a foster parent who can act as the parent will not be considered a ward of the state because that foster child already has a clear education decision maker. The new statute does not clearly distinguish between a foster parent who can act as the parent and one who cannot.

Doesn't the new definition of parent mean any foster parent can act as the parent under IDEA?

While this may be an understandable misreading of the statute, it does not appear that the intent of the new statute was to automatically have all foster parents meet the definition of parent. The definition of ward of the state implies that not all foster parents can act as the parent. Final regulations for the new IDEA statute will need to resolve this confusion. The draft regulations attempt to resolve this issue by clarifying that parents take priority over others that meet the definition of parent.[24] While this clarification would resolve the issue that parents and foster parents are not equally considered the parent in all circumstances, it does not resolve when a foster parent meets the definition of parent and when they do not. The upcoming final regulations may further clarify this issue.

Who else, besides foster parents, can 'act as the parent' without the need for an appointment as a surrogate?

As we see from the definition of parent, adoptive parents and guardians explicitly meet the definition. In addition, the statute includes:

> "an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare"

This provision can be interpreted broadly to include any caretaker where the child resides, or anyone with legal responsibility for the child. For example, California law created the designation of a "responsible adult," allowing courts to appoint any individual they deemed

appropriate to make education decision for the child.

Click here for more information about CA law on appointing an education decision maker when the child is eligible for special education.

Click here for information about CA court forms related to appointing a surrogate parent.

What is a surrogate and when do you know one is needed?

The IDEA statute requires states to have procedural safeguards in place for the special education process, including "… procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the state, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the state educational agency, the local educational agency, or any other agency that is involved in the education and care of the child."[25]

Schools (and now judges, see below) must decide whether a surrogate is needed in light of the laws and regulations in their state. Federal law provides the three situations where a surrogate may be appointed:

- parents are not known,
- agency cannot locate, OR
- child is a ward of the state.

In other words, just because a child's parent is unknown, can't be located or the child is a ward of the state, may not automatically mean a state must appoint a surrogate. If someone else in the child's life meets the definition of parent, state law can allow that individual to serve as the parent without a surrogate needing to be appointed. On the other hand, a state may chose to automatically appoint surrogate when any of those three situations occur.

Remember, the possibility to appoint a surrogate under IDEA only applies when a child is eligible for special education or suspected of being eligible and needs to be assessed. Children not in special education and who are not suspected of being eligible for special education will not be eligible for appointment of a surrogate.

How are surrogates appointed?

Under the 2004 reauthorization of IDEA, federal law now permits the appointment of a surrogate for wards of the state to not only be made by the education agency, but alternatively by a judge overseeing the child's case.[26] This is a significant change as the court can now determine who the most appropriate individual is to act as the child's education decision maker. The court will ideally be familiar with the child's history and the adults involved in his/her life and will therefore be in a better position to determine who should make educational decisions. State law and regulations, local policies and procedures may determine other specifics about surrogate appointments in individual jurisdiction.

Click here for an Arizona statute that gives judges exclusive authority to appoint surrogates.

Click here for a California statute giving the court priority over the education agency in appointing the special education decision maker under IDEA (through the responsible adult appointment provision).

Click here to see an example of California form JV-536 (Response to JV-535 – Appointment of Surrogate) used when school needs to appoint surrogate (only used in CA when court is unable to appoint a person to act as the parent for purposes of IDEA).

Who can be appointed as a surrogate?

Schools and judges can appoint anyone to be a surrogate parent for the child who meet the criteria listed in the upcoming final regulations.

The draft regulations contain the following criteria for both school and judge appointed surrogates:

- cannot be an employee of an agency that is involved with the education or care of the child (but a surrogate will not be considered an employee merely because they are paid by the agency to serve as surrogate).

The draft regulations have the following additional criteria for school-appointed surrogates:

- has no personal or professional interest that conflicts with the interest of the child he or she represents; and
- has knowledge and skills that ensure adequate representation of the child.

Consult the forthcoming final regulations to determine if there are changes to these criteria.

Best practice dictates that an individual with knowledge about the child, and with whom the child has a relationship, would be a better person to appoint than a stranger. While schools often have pools of individuals available to appoint as surrogates, these individuals would not have any prior knowledge of the child. Schools are free to appoint someone already in the child's life, but may need help identifying such a person. Foster parents, caseworkers, child attorneys or GALs should work with the school and suggest appropriate individuals to be appointed as surrogates. Some states make such preferences part of their law and regulations.

Click here to see example of a CA law that requires the education agency to give preference to relative caregivers, foster parents, and CASAs when appointing a surrogate.

With the 2004 reauthorization of IDEA, judges can now alternatively appoint surrogates. This should help ensure surrogates known to the child are filling this role. The juvenile court is in a better position than the school to know the adults involved with the child and who may be well suited to be the surrogate parent. Through court reports and

court hearings the judge has the opportunity to know if there is a relative, foster parent, CASA, or other adult support person available and willing to be the surrogate.

How quickly should surrogates be appointed?

A new provision in the 2004 reauthorization provides that "States shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate."[27] Best practice calls for appointing surrogates as soon as possible to prevent unnecessary delay in the child receiving appropriate evaluations and/or services.

What are the special procedures under IDEA for wards of the state obtaining an initial evaluation to determine if they are eligible for special education services?

Under the 2004 reauthorized IDEA, specific rules are set up for initially evaluating wards of the state.[28] The law requires education agencies to make reasonable efforts to obtain informed consent for the initial evaluation from the parent when the child is a ward of the state and is not residing with their parent. However, the law provides three exceptions, which allow the school to conduct an initial evaluation on a ward of the state without parental consent if:

- Despite reasonable efforts, the agency cannot discover the whereabouts of the parent;
- Parental rights have been terminated; or
- The rights of the parent to make educational decisions have been subrogated by the judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. [29]

What happens when a student with an Individual Education Plan (IEP), or a student in the middle of an evaluation, transfers to a new school?

IDEA 2004 clarifies that when children with IEPs transfer to a new school, the new school must provide "services comparable to those described in the previously held IEP" and ensure the child is receiving a free appropriate public education (FAPE) until the new school formally adopts the old IEP or negotiates a new IEP with the parent.[30]

When a student is in the process of an evaluation and moves schools, the evaluation should still be completed within 60 days or whatever timeline designated by state law. In the case of a school move, the school may extend the timeline, but only if the parent agrees and the school ensures prompt completion of the evaluation.

What are the knowledge and skill requirements to be a surrogate?

The proposed IDEA regulations require surrogate parents to have "knowledge and skills that ensure adequate representation of the child, however they do not expand with specifics on this requirement"[31] Some

states provide specific requirements, but not many do so in the detail needed to ensure quality representation by surrogate parents.

Click here for examples from CA law and Indiana's administrative code on requirements of a surrogate.

How can states recruit and train surrogate parents?

The current federal regulations allow states to use IDEA funds to recruit and train surrogate parents.[32] Even if this direct language is removed from the final regulations yet to be released, other language in IDEA supports the use of IDEA funds for the legitimate and important purpose of recruiting and training surrogate parents.

What rights do individuals involved in the child welfare system have if they are not the education decision maker under IDEA?

Individuals involved in the child welfare system who have contact with and knowledge of the child, should be part of the special education process. These individuals can, and should be invited by the school or the parent or surrogate to participate in all parts of the special education process.

The conference report accompanying the reauthorized IDEA statute specified that the intent was for IDEA assessments to be made "in collaboration with parents (including foster parents) and, where applicable, surrogate parents, homeless liaisons…court appointed special advocates, a guardian *ad litem* or a judge."[33]

As for participation in IEP meetings, the federal regulations require the parent (or surrogate) or the agency to invite "other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate…"[34]

If the meeting involves transition planning, "to the extent appropriate" and "with the consent of the parents or a child who has reached the age of majority" the education agency "must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services."[35]

Who has the right to file for mediation, a due process hearing, or a state department of education complaint under IDEA?

Only the education decision maker can file for mediation and or due process if they do not agree with the education decisions reached by the education team. However, even when individuals involved with a child under IDEA are not the education decision makers, they may still be able to file complaints under IDEA to the state department of education.

Click here to learn of a unique provision in NY regulations about special representation for children (education GALs) in due process hearings.

Endnotes

[1] 34 C.F.R. §99.3.

[2] 61 Fed. Reg 59291, 59294 (1996). Comments to FERPA regulations.

[3] 313 F.3d 768 (2d Cir. 2002).

[4] 20 U.S.C. §1232(g)(d); 34 C.F.R. § 99.3 and 99.5.

[5] For a complete list of exceptions, refer to the FERPA statute and regulations.

[6] 20 U.S.C. §1232(g)(b)(1)(A).

[7] 20 U.S.C. §1232(g)(b)(1)(I).

[8] 20 U.S.C. §1232(g)(b)(1)(B).

[9] 20 U.S.C. §1232(g)(b)(1)(E).

To date only Illinois and Florida have adopted such statutes.

[10] 20 U.S.C. §1232(g)(b)(1)(J).

[11] 20 U.S.C. §123(g)(d). To date, no state has ever lost federal funding for violating FERPA.

[12] *Gonzaga v. John Doe*, 536 U.S. 273 (2002) (Supreme Court ruled that students and parents may not sue for damages under 42 U.S.C. § 1983 to enforce provisions of the Family Educational Rights and Privacy Act (FERPA)).

[13] 313 F.3d 768 (2d Cir. 2002).

[14] 42 U.S.C. §5106(a)(b)(2) (2003).

[15] 42 U.S.C. §5106(a)(a)(14) (2003).

[16] 42 U.S.C. §5106(a)(b)(2)((A)(viii)-(ix) (2003). Specifically the statute requires states to certify that they have in effect and are enforcing a state law or program that include: "methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purposes of this title shall only be made available to— individuals who are the subject of the report; Federal, State, or local government entities, or any agent of such entities, as described in clause (ix); child abuse citizen review panels; child fatality review panels; a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose; (ix) Provisions to require a State to disclose confidential information to any Federal, State, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;"

[17] 42 U.S.C. §675(1)(c). The term "case plan" means a written document which includes at least the following: … (c) To the extent available and accessible, the health and education records of the child, including — (i) the names and addresses of the child's health and educational providers; (ii) the child's grade level performance; (iii) the child's school record; (iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement; (v) a record of the child's immunizations; (vi) the child's known medical problems; (vii) the child's medications; and (viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

[18] 42 U.S.C. § 675 (5)(D).

"(5) The term "case review system" means a procedure for assuring that … (D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in

foster care."

[19] For example, see New York City Chancellor's Regulation A-101, granting foster parents and agencies the right to enroll a student.

[20] 20 U.S.C. § 1402 (23).

[21] For support of this interpretation, see *Converse County School Dist. No. Two v. Pratt*, 993 F. Supp. 848 (D.Wyo. 1997).

[22] 20 U.S.C. § 1402 (36)(A).

[23] 201 U.S.C. § 1402 (36)(B).

[24] IDEA Regulations, 70 Fed. Reg. 35782, 35839 (Proposed June 21, 2005)(to be codified at 34 C.F.R. §300.30(b)(1).

[25] 20 U.S.C. §1415(b)(2).

[26] 20 U.S.C. §1415(b)(2)(A)(i).

[27] 20 U.S.C. §1415(b)(1)(B).

[28]20 U.S.C. §1414(a)(1)(D)(iii).

[29] 20 U.S.C. §1414(a)(1)(D)(iii)(II)(aa)-(cc).

[30] 20 U.S.C. §1414 (2)(C)(i)-(ii).

[31] IDEA Regulations, 70 Fed. Reg. 35782, 35874 (Proposed June 21, 2005)(to be codified at 34 C.F.R. §300.519(d)(2)(iii)).

[32] 34 C.F.R. §300.370(a)(1) and (b)(2).

[33] H.R. Rep. No. 108-779, pt. 151, p. 35. Available at: http://thomas.loc.gov/cgi-bin/cpquery/?&&dbname=cp108&&&r_n=hr779.108&&sel=TOC_542193

[34] IDEA Regulations, 70 Fed. Reg. 35782, 35866 (Proposed June 21, 2005) (to be codified at 34 C.F.R. § 300.321(a)(6)).

[35] IDEA Regulations, 70 Fed. Reg. 35782, 35866 (Proposed June 21, 2005) (to be codified at 34 C.F.R. § 300.321 (b)(3)).

4

Promising Practices

This section shares strategies and examples of promising practices used in the field. They are designed to illustrate the information-sharing and education decision making concepts described in the earlier sections.

. . . communities must unite around the importance of allowing the child welfare system to access education information about a child who is in the custody of the child welfare system.

Strategies to Encourage Information Sharing and Overcome Confidentiality Barriers

Establish the importance of sharing education information with the child welfare system

As a starting principal, communities must unite around the importance of allowing the child welfare system to access education information about a child who is in the custody of the child welfare system. Getting consensus on this issue may involve extensive efforts to encourage collaboration in your community. This may be through creation of committees or interdisciplinary task forces, or other means to bring all necessary entities to the table. Once the issue of sharing important information is addressed, it may be important to memorialize this goal.

- **Example: Florida statute requiring statewide interagency agreement**
  Florida HB 723 passed in 2004 (creating section 39.0016 of the Florida Statutes) requiring state and county agencies to enter into interagency agreements between education, child welfare, and other key stakeholders. This law has lead to the establishment of the first-ever statewide interagency agreement in Florida. In this agreement, Florida addresses the issue of confidentiality and provides mechanisms for agencies to overcome the barriers. See the following excerpts:

  "Each Party agrees:

  a) to promote to the fullest extent permissible and in compliance with federal law, Florida Statutes, and Administrative Rules, … the sharing of information on children known to the department, when it is relevant to their educational growth including post secondary pursuits, job training, employment and other benefit;

  b) that it may be necessary to restrict information sharing due to statutory prohibitions other than those enunciated in section

39.202, Florida Statutes. It is understood that the sharing of student records with parental or custodial consent does not abrogate the confidentiality of the records as to other non-designated parties;

…

e) DCF shall take all steps necessary to promote consent by the court, natural parent(s) and/or legal guardians of the children to enable school districts and AWI staff to provide to DCF the educational and job training records for children known to the department. Local School Districts have consent forms for this purpose.…[1]

- **Example: Standardized forms for parental consent to release education records.** See Appendix A.

Pursue legislative or regulatory changes to clarify how individuals involved in the child welfare system can obtain access to education records.

Under FERPA, the definition of "parent" found in the federal regulations leaves room for state interpretation. Some states and jurisdictions have overcome the potential FERPA barrier for child welfare professions by including those individuals in the definition of parent.

- **Example: New York City Board of Education regulation—definition of parent includes representative from foster care agency**
  The New York City Board of Education regulations related to access to education records use the following definition of parent:

  Parent means a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian, *including the representative of a foster care agency, who provides ongoing custodial care* (emphasis added).[2]

  By specifically adding the representative from the foster care agency to the definition of parent, the regulation makes clear that education records can be shared.

- **Example: Florida education code definition of parent**
  Florida's statute related to education defines parent as:

  > either or both parents of a student, any guardian of a student, any person in a parental relationship, or any person exercising supervisory authority over a student in place of the parent.[3]

  Schools base disclosure of education records to child welfare agencies on the "supervisory authority" provision.

Other states have attempted to clarify who is entitled to access education records through state legislation and regulations. While these efforts are commendable, there still needs clarification as to how these statutes comply with FERPA (i.e., do these individuals meet the definition of parent or is access being acquired through the court order exception).

- **Example: Washington state statutory provision allowing child welfare agency and GALs access to education records RCW § 28A.150.510 and RCW § 13.34.105**

A Washington State law establishes the child welfare agencies' ability to access education records, when requested. The law states:

> "… education records shall be released upon request to the department of social and health services provided that the department of social and health services certifies that it will not disclose to any other party the education records without prior written consent of the parent or student unless authorized to disclose the records under state law. The department of social and health services is authorized to disclose education records it obtains pursuant to this section to a foster parent, guardian, or other entity authorized by the department of social and health services to provide residential care to the student."[4]

Another Washington State law also establishes that guardians ad litem have a right to access education records through their court order of appointment. The language of the statute is as follows:

> "the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian *ad litem* to inspect and copy any records relating to the child or children involved in the case without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law."[5]

Both of these statutes establish the intent that child welfare agencies and GALs be permitted access to education records. However, both need to be read in light of FERPA. The child welfare agency statute can be resolved with FERPA by interpreting this provision as establishing that the child welfare agency is viewed as the parent for FERPA purposes. However, the addition of the no-redisclosure (except to caregivers) provision, adds some limitations to the child welfare agency as "parent" that would not otherwise be required under FERPA (note: FERPA would require no redisclosure if the release of education records was through a FERPA exception).

As for the GAL statute, in light of the final clause (unless otherwise specifically prohibited by law), it would still be important to show that this disclosure is compliant with FERPA. This can be done by reiterating the intent of this statute in a court order appointing the GAL.

Improve court attention to confidentiality barriers and methods to make information sharing between child welfare and education agencies easier.

It is critical that courts consider FERPA requirements when issuing orders related to access of education records. Use of forms or standard language can help alleviate FERPA concerns.

Click here for some sample court order language.

- **Example: Sample court order language that complies with FERPA**

Create training materials that help break down information sharing obstacles.

Click here to see copy of the Field Guide.

- **Example: Washington State's Field Guide for Information Sharing**
  This guide provides basic information on the information-sharing law in Washington State and is a designed to help foster parents, educators, guardians ad litem, CASAs, social workers or birth parents. The guide includes a decision-making tree that takes readers step-by-step through the appropriate analysis of when and what information can and cannot be shared.

Create methods for the child welfare agency to keep education records for children in foster care complete and easy to access and transfer as children move placements and schools.

- **Example: Requiring key documents to be kept in the child welfare agency file**
  For states lacking McKinney-Vento type legislation ensuring immediate enrollment when children in foster care have to change schools, other steps can be taken to expedite enrollment. Pennsylvania is revising its child welfare regulations to require child welfare agencies to keep copies of the records required for school enrollment (e.g., birth certificate, immunization records, etc), in the child's child welfare agency file. Therefore, delays should never be the result of the child welfare agency not having needed documentation to enroll the child in a new school. While this type of reform should help cases for children already in the child welfare system (i.e., caseworker should have had an opportunity to ensure those documents are in file), it does not address speedy enrollment for a child new to both child welfare and a school placement (McKinney-Vento type legislation is still needed for that).

Click here for more information about California's health and education passport.

- **Example: Health and education passports and e-passports**
  California: California established a health and education passport for children in foster care as part of its state Education Code in the late 1980s.[6] This passport ensures education records follow children as they change child welfare placements and schools. The passport includes information on grade level performance and school records. Within 30 days of placement the child welfare agency must provide the caregiver with the passport. Both caregivers and child welfare agency workers are responsible for updating the information.

Click here for more information about the Washington State passport program.

Washington: In 1997, Washington State established a similar program called the "Foster Care Passport Program." As in California, the passport includes educational information. The goal is to keep foster parents, caseworkers, social workers, court personnel, and others up to date with the child's needs.[7] Improvements that have been made to the system include automated, computerized educational data transfers so passport information remains current. The educational database includes information on grade level, any disabilities, enrollment status, and grade point average. A confidential identification number is used in accordance with confidentiality guidelines for access to student records.

While creating mechanisms like the education passport programs is a positive step to systematizing information exchange, the programs can only be successful if the information contained in the passports is updated timely. States with passport programs report that education information is often not updated, due to factors such as case overload, and inability to get records from schools.

Click here for a copy of this unsuccessful 2002 senate bill and then enter S2657. While this bill did not become law, federal action on this issue may be seen in the future.

Federal Effort: In 2002, an unsuccessful attempt was made at the federal level (Senate Bill 2657 from the 107th Congress) to enact legislation that would have supported states in creating health and education passports for youth in foster care and youth aging out of care. The provision would have allowed up to 10 states to receive federal grants to create, among other things, an electronic opportunity passport for youth. The passport could consist of an electronic card or secure internet database and would contain vital information, including school transcripts.

Improve efforts to respect child's right to privacy related to involvement in child welfare system, while allowing important information to be exchanged with schools to ensure quality education and programming.

Inherent in the need to share information across systems is the need to balance this openness with respect for the child's right to privacy about personal details of his or her life and family, including involvement in the foster care system. Efforts must be made to discover and implement strategies that will allow for information exchange that limits the privacy impact on youth.

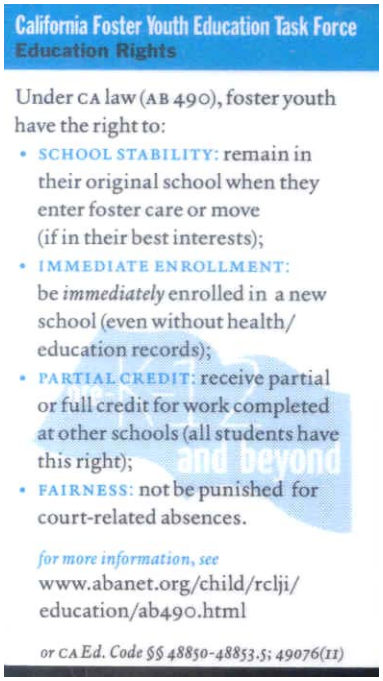
- **Example: Broward County, Florida's efforts**
  One example of how minimal efforts can help protect a child's right to privacy is the use of a specially selected color registration form to be used when enrolling youth who are in foster care. In this way a caseworker does not need to arrive at the school wearing a child welfare identification badge, or announce in the registration office in front of other teachers or students that a student in foster care is being enrolled. The foster parent or caseworker merely presents a registration form of the designated color. All registration office workers in the district have been trained to know the form represents a child in foster care.

Ensure youth over age 18 understand their legal rights.

It is not enough to develop strategies to overcome confidentiality concerns; the information needs to be conveyed to youth- particularly youth over age 18 and aging out of care.

- **Example: CA education rights wallet card**
  California has just completed a wallet card designed to quickly inform youth of their basic rights related to their education. This small, laminated card is being distributed statewide to youth in care and aging out of the foster care system.

For more information on how to receive a copy of the card or online version contact Erin Saberi with Casey Family programs at her email: esaberi@casey.org



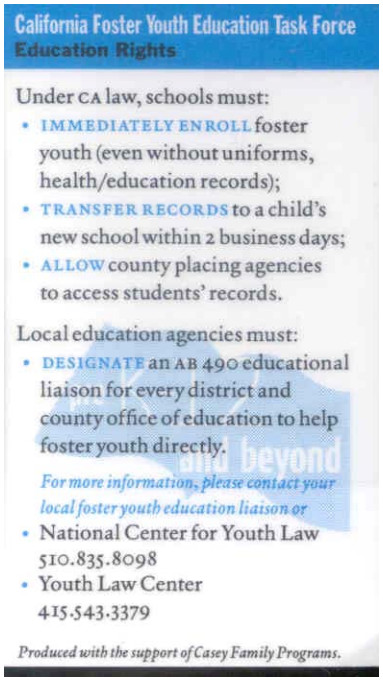
California Foster Youth Education Task Force
Education Rights

Under CA law (AB 490), foster youth have the right to:

- SCHOOL STABILITY: remain in their original school when they enter foster care or move (if in their best interests);
- IMMEDIATE ENROLLMENT: be *immediately* enrolled in a new school (even without health/education records);
- PARTIAL CREDIT: receive partial or full credit for work completed at other schools (all students have this right);
- FAIRNESS: not be punished for court-related absences.

for more information, see
www.abanet.org/child/rclji/education/ab490.html

or CA Ed. Code §§ 48850-48853.5; 49076(11)



California Foster Youth Education Task Force
Education Rights

Under CA law, schools must:

- IMMEDIATELY ENROLL foster youth (even without uniforms, health/education records);
- TRANSFER RECORDS to a child's new school within 2 business days;
- ALLOW county placing agencies to access students' records.

Local education agencies must:

- DESIGNATE an AB 490 educational liaison for every district and county office of education to help foster youth directly.

For more information, please contact your local foster youth education liaison or

- National Center for Youth Law 510.835.8098
- Youth Law Center 415.543.3379

Produced with the support of Casey Family Programs.

Create procedures that expedite the transfer of education records when a child changes schools.

One important purpose of allowing the child welfare system access to education records for children in the state's custody is to ensure the child welfare agency has all necessary information to arrange for a change in school placement. It is well known that children who enter or remain in foster care often must endure school moves. States have been making efforts around the issue of speedy education record transfers to ensure that record transfer delays do not slow enrollment.

Click here for more information about AB490.

- **Example: California—AB490**
  California law include the following provisions related to record transfers:

  Duty of Placing Agency to Notify School District of Date of Transfer:
  As soon as the county placing agency becomes aware of the need to transfer a pupil in foster care out of his or her current school, the county placing agency shall notify the local educational agency of the date that the pupil will be leaving the school and request that the pupil be transferred out.[8]

Duty of Local Education Agency to Transfer Records:
Upon receiving a transfer request from a county placing agency or new local educational agency, the local educational agency shall, within two business days, transfer the pupil out of school and deliver the educational information and records (including determination of seat time, full or partial credits earned, classes, grades, immunizations, and IEP).[9]

Duty of New District to Request Records:
The foster care liaison for the new school shall, within two business days of the foster child's request for enrollment, contact the school last attended to obtain all records.[10]

Click here for PA:

- regulations
- Department of Education circular discussing implementation of new enrollment regulations
- child welfare agency bulletin discussing implementation

- **Example: Pennsylvania enrollment regulations**

In 2004, Pennsylvania passed new enrollment regulations to expedite record transfers for all youth. These regulations should have a positive effect on children in foster care who experience frequent school moves. The regulations provide the following:

- A school district or charter school shall normally enroll a child the next business day, but no later than five business days of application.
- Application must be made by the parent, guardian, or other person having control or charge of the student.
- The new school district must request educational records from the old school districts. Old school district shall forward records within 10 business days of receiving such a request.[11]

Click here for this VA legislation.

- **Example: Virginia Statute § 63.2-900(D)**

In 2005, Virginia passed new legislation that requires the sending and receiving school districts to expedite the transfer of education records when they receive notice that a foster care placement has caused a child in foster care to be moved to a new school district.[12] A school system memorandum on implementation of this law construes this to mean immediate.

Click here for this MD legislation.

- **Example: Maryland SB 426**

Effective July 1, 2005, a new law in Maryland requires educational records to be transferred within five (5) school days for any child in agency care that changes to a new school.

Create procedures that ensure children in foster care can remain in school of origin even when they no longer reside in the schools jurisdiction, or, if remaining is not feasible, then immediate enrollment in a new school

While stabilizing school enrollment may seem like a different issue than confidentiality and access to education records, it is closely related. If a child does not need to change schools, then the access and transfer of records issues are dramatically decreased. Likewise, if enrollment in a new school is automatic, access to records issues do not become barriers to enrollment.

- **Example: State laws that incorporate some or all McKinney-Vento type provisions for children in the child welfare system.** A number of states have passed McKinney-Vento type legislation to specifically address education issues for children in the foster care system. See the following examples for their treatment of the right to remain in the school of origin and the provision of transportation:

Click here for more information about CA AB490.

- **California AB 490**: Went into effect January 2004. Allows for children in foster care to remain in the school of origin and gives youth the right to transportation but is silent on what agency is required to provide such transportation. Also requires immediate enrollment in new school.

Click here for the full text of the DE legislation.

- **Delaware HB 279:** Went into effect Summer 2005, all children in foster care are included in the definition of "awaiting foster care placement" and are therefore eligible under McKinney-Vento (meaning right to remain in school of origin with education agency responsible for transportation as well as right to immediate enrollment).

Click here for the full text of the OR legislation and frequently asked questions about the new law.

- **Oregon HB 3075**: Passed in Summer 2005. Allows youth in foster care to remain in school of origin if determined by the juvenile court to be in the child's best interest to do so. Law requires child welfare agency to be responsible for transportation.

Decision-Making Authority

Pursue legislative or regulatory changes to clarify the court's authority to curtail a parent's education decision-making authority before terminating parental rights, and to appoint an alternative education decision maker.

Clarifying decision-making authority for children in the foster care system is a critical component of meeting education needs. Very few states have clear statutory guidance on determining who is the decision-maker. A fundamental principle is that a birth parent retains decision-making authority unless that authority has been limited in some way. However, without guidance on appropriate methods to limit that authority, in addition to methods to appoint a replacement decision maker, states may be left scrambling to resolve this issue.

- **Example: California's "responsible adult" statute**
  California law allows courts to limit the parent's rights to make education decisions for children that have been adjudicated dependent. The law requires the court to not impose limits that exceed what is necessary to protect the child. The law also requires the limitation to be addressed in a court order.

  In addition to the right to limit education rights, the law also allows the court to appoint a replacement education decision maker. California law refers to this individual as the "responsible adult."

Full text of the relevant provisions follows:

"In all cases in which a minor is adjudged a dependent child of the court…. the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make education decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into a planned permanent living arrangement…."[13]

In 2005, California law was further amended to allow the court to temporarily limit a parent's education decision-making authority before the adjudication and disposition hearing.[14]

- **Example: California Court Rules regarding who is appointed as responsible adult**
  In California, state court rules specifically recognize that when designating a responsible adult to serve as educational representative for a child "the court should consider appointing a responsible adult relative, non-relative extended family members, foster parent, family friend, mentor, or Court-Appointed Special Advocate" as the education decision maker.[15]

- **Example: Maryland limited guardianship provision**
  In Maryland, state law allows the court to limit a parent's education decision-making authority beginning at the dispositional phase of a child abuse and neglect case. The statute reads: "the court may…grant limited guardianship to the [child welfare agency] or an individual or both for specific purposes including medical and educational purposes or for other appropriate services if a parent is unavailable, unwilling or unable to consent to services that are in the best interest of the child."[16]

Ensure issues of education needs, including decision-making authority, are raised at all appropriate court hearings.

The NCJFCJ checklist can be found at http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/judicialeducationchecklist.pdf

The technical assistance brief can be found at http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/judicialeducationtabrief.pdf

- **Example: NCJFCJ education checklist**
  A newly released judicial tool has been created through the joint efforts of Casey Family Programs, Team Child, and the National Council of Juvenile and Family Court Judges (NCJFCJ). This education checklist reviews key information that judges need to know to ensure a child's education needs are being met. The checklist is accompanied by a more detailed technical assistance brief, providing judges additional insight into the items on the list. The checklist may also be used as a template for states and jurisdictions interested in tailoring the checklist to specific state law, regulation, and practice.

Click here for a copy of JV-535.

Click here for more on special education application of this form.

- **Example: Use of court forms to assist in decision-maker determination**
  In California, the state courts have created court forms to assist in clarifying appropriate practices when addressing the educational needs of children in foster care. One form, JV535: "Order Limiting Parents' Right to Make Educational Decisions for the Child and Appointing Responsible Adult as Educational Representative—Juvenile," allows the court to limit either or both parents' education decision-making rights as well as specifically state who is making education decisions. This includes when a caretaker can be considered the parent without a court appointment as well as when an individual is appointed as the "responsible adult." This "responsible adult" appointment can be for both general education and special education students.

Improve education advocacy and training among practitioners

Many states have created training materials specific to their law and jurisdiction. But there are advocacy training tools for other states to use as a framework to aid state training efforts.

Click here for an on-line version of the Manual.

For more information on the Toolkit e-mail questions@teamchild.org or call 206/381-1741.

- **Training for child welfare system**
  Example: Team Child Advocacy Manual
  TeamChild, a nonprofit organization in Washington State, with support from Casey Family Programs, created a "Toolkit for Change," a guide providing resources to help states establish education advocacy programs. Based on the successful training and outreach that TeamChild and Casey provided to foster parents, caseworkers, and juvenile courts in Washington, the Toolkit provides templates for training materials, brochures, and a comprehensive resource manual for advocates including user-friendly guidance for advocacy in special education and disciplinary proceedings, and enrollment issues. The Toolkit also contains instructions on tailoring the material to other states' unique laws and needs, without starting from scratch. The Toolkit is designed to be useful for a variety of different state needs, be it initial trainings for child welfare professionals, or to help create a direct advocacy program.

For more information about Endless Dreams, contact Debbie Staub at Casey Family Programs at dstaub@casey.org.

- **Training for education system**
  Example: Endless Dreams
  Casey Family Programs has created a curriculum, Endless Dreams, for school teachers, administrators, and other staff about the unique needs and academic challenges of youth in out-of-home care in order to improve education outcomes. The curriculum consists of a video, training materials, and additional resource tools to aid trainers in educating school staff.

To see a copy of this manual, visit http://www.nfpainc.org/training/onlineTraining.cfm?page=4

- **Training for Foster Parents:**
  The National Foster Parent Association has created an advocacy manual to help train foster parents to be better education advocates for children in their care.

Designate additional staff resources, so specific attention can be paid to education issues for children involved with the child welfare system.

For more information and examples of jurisdictions using liaisons see p. 88 of *A Road Map For Learning* at http://www.casey.org/resources/Publications/RoadMapForLearning.htm.

- **Example: Liaisons**
  It is essential that the school system, child welfare agency, and court communicate regularly. One way to foster communication is to designate staff members to serve as liaisons between the school system, child welfare agency, and the court. Designated liaisons within school systems not only should be the point people when education issues arise, but they can also initiate systemic reform, and educate school administrators and staff about the foster care system and the issues these children face. Schools must first know about the unique needs of children in foster care before they can be expected to aid these children. Such communication is especially important in special education cases. States such as Texas, have hired education specialists in regional offices throughout the state and they are employed by the Department of Family and Protective Services.

Click here for a full report on Project Achieve.

- **Example: Internal education units or staff within child welfare agencies**
  Advocates for Children, New York City—Project Achieve
  Advocates for Children (AFC) created Project Achieve in New York City as a model for bringing AFC's education expertise and advocacy directly to families and staff members at foster care and preventive services agencies. Key components of the project include: providing individual case assistance and advocacy; building the capacity of agency service staff to identify and solve routine school-related issues; and empowering and educating birth and foster parents and, where appropriate, young people, to navigate education agencies and service providers, and to be actively involved in educational planning and progress.

Special Education Decision-Making Authority

Understand how special education decision-making authority and surrogate appointments occur in your state or jurisdiction.

IDEA provides some guidance to states related to who can be considered the parent under IDEA and when surrogates need to be appointed. However, the federal law is subject to interpretation by the states, as is evidenced by the numerous variations in how and when surrogates are appointed.

- **Example: California law designates preferences for individuals involved with the child welfare system to be appointed as child's surrogate.**
  California law mandates that education agencies give preference to relative caregivers, foster parents, and CASAs when appointing a surrogate for a child in foster care.[17]

- **Example: Florida policy to allow guardians ad litem to serve as surrogate parents.**
  The Florida Department of Education has issued a policy paper addressing common questions related to surrogate parents and has issued the following policy related to guardians ad litem.[18] The policy states that if a guardian ad litem meets the legal criteria for serving as a surrogate that is listed in the federal IDEA regulations then they are permitted to serve in this role.

- **Example: Only judges appoint surrogates in Arizona**
  Prior to the new federal provision in IDEA, Arizona already had given judges the statutory authority to appoint surrogate parents for children in foster care. "A petition for the appointment of a surrogate parent for a child with a disability shall be made to a court of competent jurisdiction…"[19]

Click here for CA form JV 535.

Click here for CA form JV536.

Create court tools that address decision-making issues for students eligible, or potentially eligible for special education.

- **Example: California court forms: JV 535 and JV 536**
  As discussed above, the JV 535 form (Order Limiting Parents' Right to Make Educational Decisions for the Child and Appointing Responsible Adult as Educational Representative-Juvenile) can be used by the court to specify who has decision-making authority for a child who is receiving either general or special education services. Should the court be unable to identify a "responsible adult" to act as the special education decision maker, the court then must refer the child to the education agency to appoint a surrogate parent (by the education agency). The education agency must notify the court within 21 calendar days of the appointment, via JV536 form (LEA Response to JV-535 – Appointment of a Surrogate), of the identity of the appointed surrogate.

Institute training requirements for foster parents, caretakers, and surrogates related to their role as education decision makers.

Regardless of who is the education decision maker for the child, that individual needs to be trained in special education advocacy. States are urged to provide, and sometimes require, individuals working with children in foster care, to have this necessary special education training.

- **Example: Florida statute Section 39.0016(5)**
  (5) The department shall incorporate an education component into all training programs of the department regarding children known to the department. Such training shall be coordinated with the Department of Education and the local school districts. The department shall offer opportunities for education personnel to participate in such training. Such coordination shall include, but not be limited to, notice of training sessions, opportunities to purchase training materials, proposals to avoid duplication of services by offering joint training, and incorporation of materials available from the Department of Education and local school districts into the department training when appropriate. The department training components shall include:

  (a) Training for surrogate parents to include how an ability to learn of a child known to the department is affected by abuse, abandonment, neglect, and removal from the home.

  (b) Training for parents in cases in which reunification is the goal, or for preadoptive parents when adoption is the goal, so that such parents learn how to access the services the child known to the department needs and the importance of their involvement in the education of the child known to the department.

  (c) Training for caseworkers and foster parents to include information on the right of the child known to the department to an education, the role of an education in the development and adjustment of a child known to the department, the proper ways to access education and related services for the child known to the department, and the importance and strategies for parental involvement in education for the success of the child known to the department.

  (d) Training of caseworkers regarding the services and information available through the Department of Education and local school districts, including, but not limited to, the current Sunshine State Standards, the Surrogate Parent Training Manual, and other resources accessible through the Department of Education or local school districts to facilitate educational access for a child known to the department.

- **Example: Tennessee foster parent training**
  Tennessee has an Administrative Policy for its child welfare agency that requires foster parents to have two hours of in-service training per year on education services/issues for the child in child welfare agency's custody.[20]

Improve education advocacy related to special education in your community

Children in foster care need strong education advocates, regardless of whether the advocates are the children's ultimate decision makers. There are numerous individuals who can play an advocacy role for the child. Some communities are creating unique programs or mechanisms to ensure quality advocacy for the child.

- **Example: Collaborations between child welfare advocates and students pursuing advanced degrees in education**
  In Los Angeles County, the Children's Law Center, with the assistance of the Juvenile Court, has formed a collaboration with California State University, Los Angeles to develop an education advocacy program allowing educators seeking advanced degrees to assist children's attorneys in child welfare cases to identify and acquire the most appropriate resources for clients with special needs that might otherwise remain unmet.

- **Example: Education GAL provision from New York regulations**
  Regulations in New York contain a unique provision to ensure the rights of a student are protected in a due process hearing. The hearing officer may appoint a guardian ad litem for the child in certain circumstances. The language of the regulation follows:

  > "(ix) In the event the impartial hearing officer determines that the interests of the parent are opposed to or are inconsistent with those of the student, or that for any other reason the interests of the student would best be protected by appointment of a guardian ad litem, the impartial hearing officer shall appoint a guardian ad litem to protect the interests of such student, unless a surrogate parent shall have previously been assigned. The impartial hearing officer shall ensure that the procedural due process rights afforded to the student's parent pursuant to this section are preserved throughout the hearing whenever a guardian ad litem is appointed."[21]

Institute judicial training on new IDEA provisions that give child welfare system judges specific authority.

It is critical to train judges involved in child welfare cases on the IDEA, especially in light of recent judge provisions clearly granting juvenile courts more authority related to determining education decision-making authority.

Consider establishing minimum requirements of surrogates.

Some states have chosen to expand on the federal requirements for individuals appointed to serve as surrogates for children. Especially in situations where the surrogate is a stranger to the child, it is important to set basic expectations for individuals serving this role.

- **Example: California Government Code regarding surrogate parent duties**
  California legislation expanded on the role of the surrogate parent,

specifying some minimum duties of someone serving in that role. Although it does not cover all duties and best practices of a surrogate parent, it is a positive example of how state law can be used to expand on the "knowledge and skill" general requirement in the federal regulations.

California law specifically *requires* surrogates to:

- Meet with the child at least one time.

The law also provides that the surrogate *may*:

- Meet with the child on additional occasions.
- Attend the child's individualized education program meetings.
- Review the child's educational records.
- Consult with persons involved in the child's education.
- Sign any consent relating to individualized education program purposes.[22]

- **Example: Indiana's Administrative Code**
  Indiana's administrative code provides specific responsibilities of a surrogate parent:

  - Participate in case conferences or other parent-teacher conferences.
  - Grant or deny written permission for evaluation, services or change of placement.
  - Access and review the student's educational record.
  - Request mediation, a due process hearing, or file a complaint.
  - Exercise on behalf of the student any other rights that a parent may exercise under this article."[23]

Endnotes

[1]Excerpts from Sharing of Information. From Florida Statewide Interagency Agreement, §2.06.

[2]NYC: New York City Board of Education, Regulations of the Chancellor, A-820 III (D)- (Student Records: Confidentiality, Access, Disclosure and Retention).

[3] Fla. Code Ch. 29 §1000.21(5).

[4] Wash. Rev. Code §28A.150.510.

[5] Wash. Rev. Code §13.34.105.

[6] Cal. Welf. and Inst. Code §16010.

[7] Ibid, 28.

[8] Cal. Educ. Code § 49069.5(c).

[9] Cal. Educ. Code § 49069.5 (d) and (e); Cal. Educ. Code § 48853.5(d)(4)(C).

[10] Cal. Educ. Code § 48853.5(d)(4)(c).

[11] 22 Pa. Code Ch. 11.11.

[12] Va. Stat. Ann. § 22.1-189(E).

[13] Cal. Welf. & Inst. Code § 361(a).

[14] Cal. Welf. & Inst. Code § 319(g)(1).

[15] Cal. Rules of Court, Rule 1499(c)(1).

[16] Md. Code Ann., Cts. and Jud. Proc. §3-819(c)(ii).

[17] Cal. Govt. Code §7579.5(b). ”When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.”

[18] Florida Technical Assistance Paper, available at http://floridaschildrenfirst.org/fcf_051_education.htm

[19] Ariz. Rev. Stat. §15-763.01

[20] www.state.tn.us/youth/policies/Chapter%2021%20Education/21-14%20Serving%20the%20Educational%20Needs%20of%20the%20Child-Youth%20in%20.pdf

[21] 8 N.Y. Comp. Codes R. & Regs. tit.8 §200.5(i)(3)(ix).

[22] Cal Gov. Code §7579.5(d)

[23] Ind. Admin. Code tit. 511, 7-24-2.

5

Resources

Sources for Searching State Statutes

www.statescape.com	Allows for searching all state codes by topic, keyword, or bill number, legislative and bill tracking available. Bill searching is free, but you have to register for it.
http://straylight.law.cornell.edu/states/	Allows for searching by state or by topic or keyword. Links to Lexis/Nexis table of contents for individual state codes, but the service is free. When you pick a topic, it lists a chart of the 50 states and where in their code the provisions regarding that topic are found. Helpful for going to the state websites themselves and finding the topic. Excellent place to start state legislation searches if you don't have Lexis or Westlaw.
www.findlaw.com www.prairienet.org/~scruffy/f.htm www.business.com/directory/law/state_law/	Links to individual state's code, regulations, and constitutions. Searching is limited to whatever searching each state has provided on its site.

Sources for Researching State Education Regulations or Policies

U.S. Department of Education

Click on desired state:

Alabama	Hawaii	Massachusetts	New Mexico	South Dakota
Alaska	Idaho	Michigan	New York	Tennessee
Arizona	Illinois	Minnesota	North Carolina	Texas
Arkansas	Indiana	Mississippi	North Dakota	Utah
California	Iowa	Missouri	Ohio	Vermont
Colorado	Kansas	Montana	Oklahoma	Virginia
Connecticut	Kentucky	Nebraska	Oregon	Washington
Delaware	Louisiana	Nevada	Pennsylvania	West Virginia
Florida	Maine	New Hampshire	Rhode Island	Wisconsin
Georgia	Maryland	New Jersey	South Carolina	Wyoming
				District of Columbia

Studies, Reports, Articles

http://www.advocatesforchildren.org/pubs ProjectAchievefinal.doc

Advocates for Children's *Project Achieve*: A Model Project Providing Education Advocacy for Children in the Child Welfare System

by the Advocates for Children of New York, Inc. (March 2005)

This report summarizes findings from *Project Achieve*, a project piloted at a private foster care agency in New York City from Fall 2002-Spring 2004. The project is being replicated at two more sites. Project components include staff support, technical assistance, and case assistance. The findings include positive and long-term effects, including an increased ability of agency staff to identify educational problems, less emergency situations, and the development of training programs, protocols, and materials.

http://www.clcla.org/Images/pdfs/pdfs_whatsnew_columns/DJ%20Forum_Treating.pdf

Treating Problems Piecemeal Won't Help Foster Children

by Miriam Krinsky
Children's Law Center of Los Angeles (February 2005)

This article reflects on the problems our child welfare system has with sharing information and coordinating services. There is often a lack of collaboration and communication when addressing the needs of children in foster care. The article also describes several collaboration models, including, the Children's Cabinet in Arizona which includes all government agencies that provide services to children in foster care, with the goal to coordinate services.

http://www.casey.org/Resources/Publications/RoadMapForLearning.htm

A Road Map for Learning: Improving Educational Outcomes in Foster Care

by Casey Family Programs (2004)

This publication is divided into five main topics and 11 objectives for helping children in care succeed in their educational aspirations. Topics include transfer, collaboration, services, preparation, and public policy. Each objective includes background information, resources, checklists, and steps for meeting the objective.

http://www.clcla.org/Images/pdfs/pdfs_whatsnew_columns/Collaborative.pdf

Educating All Foster Children Will Require Collaborative Spirit

by Miriam Krinsky
Children's Law Center of Los Angeles (2004)

This article describes the education hurdles many children in foster care face, including school placement changes, delays in transferring and enrollment, and problems receiving credits. It discusses the need for: data and statistics on educational progress and outcomes for children in foster care, free exchange of data, and adequate training on laws, roles, and responsibilities of different systems that help children in foster care meet education goals. These were some of the issues tackled at the 2004 Los Angeles Education Summit.

Child Abuse and Neglect, Volume 28, pp. 917-923 (2004).
Article available for purchase at http://www.sciencedirect.com/

Understanding the Plight of Foster Youth and Improving Their Educational Opportunities

by Andrea G. Zetlin, Lois A. Weinberg (2004)

This article describes barriers children in foster care face to receiving full educational opportunities, and examples of how to improve their educational outcomes. Topics include the effects of abuse and neglect on education, how transfers and mobility affect performance in school, how schools and other agencies can minimize such problems, and programs that address the education needs of these children.

http://www.youthlaw.org/downloads/YLN_Education.pdf

Advocates Seek Improvements in Education for Foster Youth

by Sara Woodward
National Center for Youth Law (October-December 2004)

This article summarizes several ways states and the federal government are meeting the education needs of children in foster care. Examples include expanding the definition of "homeless" under the McKinney-Vento Homeless Assistance Act and individual state Departments of Social Services and Education's interpretations of "awaiting foster care placement."

http://www.vera.org/publication_pdf/241_452.pdf

Foster Children and Education: How You Can Create A Positive Educational Experience For the Foster Children

Vera Institute of Justice (July 2004)

This publication focuses on the individual and systemic barriers children in foster care struggle with to attain a proper education. The publication is divided into three parts: 1) meeting the challenges of educating children in foster care, 2) the role of adult involvement, and 3) steps to get children in foster care enrolled in school, including timely and efficient school transfers. Checklists and sample forms are included.

http://www.abanet.org/child/rclji/education/educationsummitreport2004.doc

2004 Los Angeles Education Summit Report and Recommendations on "Closing the Education Achievement Gap for Foster and Probation Youth" (May 2004)

The 2004 Los Angeles Education Summit focused on overcoming barriers that cause an achievement gap for Los Angeles' youth in foster care. This report highlights the discussion and recommendations of participants in eight areas: 1) role of judiciary, 2) empowering caregivers, 3) probation youth, 4) special education, 5) nonpublic schools, 6) early childhood education, 7) school stability, and 8) data collection.

http://www.abanet.org/child/rclji/pub.html

Learning Curves: Education Advocacy for Children in Foster Care

Kathleen McNaught
American Bar Association, Center on Children and the Law
2004

This book is a culmination of an article series that appeared in the ABA Child Law Practice and addresses numerous topics, including: General education advocacy strategies; Education rights and key federal laws; Special education process; Educational needs of young children; How school discipline policies impact children in foster care; and Creative approaches to address education barriers for children in foster care. It includes at-a-glance practice tips, commonly used psychological tests, education advocacy resources, and excerpts from key federal laws and regulations.

http://www.aap.org/advocacy/hfca/FosteringFuturesAwareness2.pdf

Transition Planning for Foster Youth with Disabilities: Are We Falling Short?

Fostering Futures Project (Spring 2004)

This publication focuses on the lack of or poor transition planning for children in foster care and how this effect life after foster care. The publication focuses on five key factors: 1) lack of a consistent advocate, 2) lack of child welfare involvement in special education, 3) lack of awareness by educators, 4)lack of integrated child welfare and school transition planning, 5) foster parents' need for information about the special education process. Recommendations to address these factors are described, including 1) appointing and training educational surrogates, 2) promoting high expectations for youth, and 3) training professionals appropriately.

http://www.financeproject.org/Publications/foster%20care%20final1.pdf

Connected by 25: A Plan For Investing in Successful Futures For Foster Youth

Youth in Transition Funders Group Foster Care Work Group (March 2004)

This publication provides tools and strategies for building the economic and financial capacity and well-being of children in foster care and those aging out. These strategies include educational attainment, access to workforce development, financial literacy, encouraging savings, and promoting entrepreneurship. The publication then provides national, community, and individual methods to achieve results, and methods to measure and assess performance. An appendix lists publications, organizations, and initiatives for each of the five strategies.

http://www.casey.org/Resources/Publications/NationalAlumniStudy.htm

Assessing The Effects of Foster Care: Early Results From the Casey National Alumni Study

Casey Family Programs (2003)

This study analyzes outcomes for foster alumni served by Casey Family Programs over a 20-year period, from 1996 to 1998. The study showed many alumni graduated from high school and retained employment. It found a correlation between outcomes and the characteristics of alumni and services provided to them. These characteristics and services

include completing high school, existence of academic hurdles, use of alcohol and drugs, participation in clubs while in care, gender, ethnicity, and completion of life skills programs.

Available from the Children's Law Center of Los Angeles at 323/980-1700, or http://www.clcla.org

The Court, Advocates and DCFS Work Together to Improve Educational Outcomes for Dependent Youth

by Miriam Krinsky

Children's Law Center of Los Angeles (2003)

This article summarizes the issues discussed during the first education summit in Los Angeles in May, 2003. Topics discussed include 1) the need for coordination among stakeholders, 2) school stability, and 3) legislative reform.

http://www.ncsl.org/programs/cyf/cpieducate.pdf

Educating Children in Foster Care

by Steve Christian
National Conference of State Legislatures (December 2003)

This article summarizes statistics on the academic success and performance of children in foster care, major obstacles to success, and state programs and initiatives that promote the education of children in foster care.

http://www.cwla.org/articles/cwjabstracts.htm#0307

Educational Experiences and Aspirations of Older Youth in Foster Care

by Curtis McMillen, Wendy Auslander, Diane Elze, Tony White, and Ronald Thompson
Child Welfare League of America (July/August 2003)

This publication documents the results of a study of 262 adolescents in foster care in a county in the Midwest who were enrolled in an independent living program. The study focused on questions such as if the adolescents planned to finish high school or go onto college, whether they had positive experiences in high school, and what problems with peers and teachers they encountered.

http://www.abanet.org/child/rclji/education/2003educationsummitrecommendations.doc

2003 Los Angeles Education Summit on Needs and Challenges Facing Foster Youth: "Identifying Obstacles and Forging Solutions" (May 2003)

This report is a summary of this first-ever summit focusing on identifying key issues, challenges, and reforms related to the educational needs of foster youth in LA County. These challenges include 1) ensuring school and placement stability, 2) accessing and transfering education records, crafting effective enrollment/disenrollment procedures, handling issues with school credits, 3) administering non-public schools, 4) developing an academic support network for foster youth, and 5) creating a foster youth literacy initiative. The report highlights recommendations for action in each of these areas.

http://www.ylc.org/GettingOutofth%20RedZone-October2003.pdf

Getting Out Of The "Red Zone" Youth From The Juvenile Justice And Child Welfare Systems Speak Out About The Obstacles To Completing Their Education, And What Could Help

by Sue Burrell
Youth Law Center, Expanding Educational Opportunities for Vulnerable Youth Project (April 2003)

This study identifies the issues faced by children in the juvenile justice and child welfare systems in meeting their educational and employment goals. It suggests methods for change. Interviews and focus groups were used to determine the issues. This six-year project, includes studies in three sites. Work has been ongoing in the first site, Fresno County, California.

http://www.aap.org/advocacy/hfca/FosteringFuturesAwareness1.pdf

Are We Ignoring Foster Youth With Disabilities?: An Awareness Document For Parents, Professionals and Youth

Fostering Futures Project (Spring 2003)

This report investigates children in foster care and special education, and how that affects academic achievement in six areas: 1) special education needs are overlooked or unknown, 2) children in care are less likely to receive needed services, 3) children in care suffer from social isolation, 4) children in care do not have educational advocates, 5) there is no coordination of transition planning in child welfare and special education, and 6) inadequate information exists on such youth.

http://www.cwla.org/pubs/pubdetails.asp?PUBID=8676

Improving Educational Outcomes for Youth in Care: A National Collaboration

by Elisabeth Yu, Pamela Day, and Millicent Williams
Child Welfare League of America (2002)

This publication describes the educational experiences of children in care, including the higher risk of low achievement, the effect of placement stability versus instability, and other factors that affect educational attainment, such as collaboration between agencies and schools, the positive effect of high educational attainment, what children in care believe is needed to succeed academically, and how systems can create a positive educational experience for such children.

http://www.childtrends.org/files/FosterCareRB.pdf

Youth Who "Age Out" of Foster Care: Troubled Lives, Troubling Prospects

by Richard Wertheimer
Child Trends (December 2002)

This brief reflects on the enormous hurdles children in foster care face to be successful adults. It summarizes general trends in foster care, common characteristics of these children, characteristics of those aging out, and how programs can better meet the needs of this population, including comprehensive independent living programs that provide the skills and resources to help youth transition successfully. The brief summarizes a report entitled "Aging Out of Foster Care: Young Adults with Special Needs."

http://www.youthcomm.org/FCYU-Features/FCYU-2002-09-6.htm

Separate But Not Equal: Why Do So Many Foster Youth Get Stuck in Special Ed?

by Charlene Carter
Youth Communication (September 2002)

This article describes the problems many children in foster care face when they are improperly placed in special education. It is very hard to get out of special education once placed, and many suffer academically and do not graduate from high school.

Available for purchase at the California Western Law Review at 619/525-1477. or lawreview@cwsl.edu

Adding Insult to Injury: California's Cruel Indifference To The Developmental Needs Of Abused And Neglected Children From Birth To Three

by Jennifer R. Meiselman Titus
California Western Law Review, Volume 39 (Fall 2002)

This article critiques California's current Early Intervention System and proposes reforms to ensure that abused and neglected children from birth to age three get the stability they need for normal brain development. Suggested reforms include appointing an educational advocate who oversees the process and connects with all interested parties, limiting parental involvement to participation instead of parental control of education decisions after children have been removed from the home, and providing services from a single center for the duration of the case.

http://vera.org/publication_pdf/169_280.pdf

What Keeps Children In Foster Care From Succeeding in School? Views of Early Adolescents and the Adults in Their Lives

by Marni Finkelstein, Mark Wamsley, and Doreen Miranda
Vera Institute of Justice (July 2002)

This study draws on interviews with foster children and adults to better understand how being in foster care affects a child's education on a day-to-day basis. Researchers interviewed 25 children in foster care and 54 key adults in their lives (school staff, foster parents, and caseworkers) to learn what they regard as obstacles to the children's educational success. The study includes excerpts from the interviews with foster children and adults to provide a more complete overview of the obstacles foster children face in schools. After discussing the perceptions of each group of participants, the report concludes with several recommendations for reform.

http://www.fosterclub.org/training/upload/fosterclub_219.pdf

Education Issues Brief: Improving Special Education for Children with Disabilities in Foster Care

by Claire van Wingerden, John Emerson, and Dennis Ichikawa
Casey Family Programs (June 2002)

This publication summarizes the educational needs and issues of children foster care, and suggests methods to improve outcomes. These areas of need include coordination between the child welfare and education systems, consistent and timely tracking of children and transfer of their school records, early intervention, using education advocates and surrogates, and improving transition and mental health services.

http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/EducationalOutcomes/improvingeducationaloutcomesfulldoc.pdf

Improving Educational Outcomes For Youth in Foster Care: Perspectives from Judges and Program Specialists

by Melissa Litchfield, Sophia I. Gatowski, Maureen McKissick
National Council of Juvenile and Family Court Judges (June 2002)

This publication summarizes survey information provided from judges and program specialists on how educational needs of children in foster care are currently being met and areas for improvement. Also studied is how educational experiences are related to transition into independence, and what practices exist that increase the chances of positive experiences and successful transitions.

http://www.urban.org/UploadedPDF/310413_anf_b43.pdf

The Well-Being of Children Involved with the Child Welfare System: A National Overview

by Katherine Kortenkamp and Jennifer Ehrle
The Urban Institute (January 2002)

This brief focuses on the well-being of at-risk children in foster care, and compares children within foster care as well as at-risk children not in foster care. The brief explores four main areas of well-being: 1) behavior/emotional issues, 2) school experiences, 3) health, and 4) well-being of care providers and interactions with the children. The brief includes information and findings in both narrative and table format.

Child Welfare, Volume 80, Number 6 (November/December 2001)
Abstract available at
http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=11817658&dopt=Abstract

Foster Youth Transitions to Adulthood: A Longitudinal View of Youth Leaving Care

by Mark E. Courtney, Irving Piliavin, Andrew Grogan-Kaylor, and Ande Nesmith (November/December 2001)

This article presents the early descriptive findings of a study investigating the post care experiences of a group of youth formerly in out-of home care in Wisconsin. The study involved a series of three interviews with youth who had experienced relatively long out-of-home placements. The article summarizes the findings of the first two of three waves of interviews conducted when youth were about to age out of foster care and 12 to 18 months after leaving care, and concludes with preliminary observations about what the findings might mean for child welfare practice.

http://www.wsipp.wa.gov/rptfiles/FCEDReportES.pdf

Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care

by Mason Burley and Mina Halpern
Washington State Institute for Public Policy (November 2001)

This report focuses on the population of children in foster and group homes in Washington state. It summarizes existing studies of how children in foster care achieve academically, compares test scores of children in foster care against their non foster care peers, graduation rates and likelihood of graduation of children in foster care against their non foster care peers, and how to promote information sharing and the positive impact that would have on the educational outcomes for children in foster care.

http://cssr.berkeley.edu/BASSC/pdfs/educf27.pdf

Education for Foster Children: Removing Barriers to Academic Success

Bay Area Social Services Consortium (April 2001)

This study of Bay Area children in foster care focuses on: 1) if educational services are received or not, and if so, if they are timely, 2) the relationship between foster care placement and receipt of services, and 3) how model programs can help children in foster care meet their educational goals. The study includes statistics compiled from telephone surveys and case file reviews on topics that include enrollment of children in foster care in school and level of cooperation between schools and agencies. Examples of discussion areas are children with special education needs, difficulties in transferring records, and responsibility for enrolling children in school. Finally, the study includes recommendations to schools, child welfare agencies, and legislatures.

http://www.csef-air.org/publications/related/LCI_final.pdf

Education of Foster Group Home Children, Whose Responsibility Is It? Study of the Educational Placement of Children Residing in Group Homes

California Department of Education (January 2001)

This report focuses on the education placements of children in group homes in California, the levels and types of coordination between agencies and how this affects the education of children in group homes. The report was compiled based on surveys, interviews, and site visits. Report findings include the need for more collaboration and the creation of a statewide information system.

School Social Work Journal, Volume 24, Issue 2, pp. 68-88 (2000).
Available for purchase at
http://lyceumbooks.com/sswjournal.htm

Assessing the Educational Outcomes of Children in Long-Term Foster Care: First Findings

by Sherri Seyfried, Peter J. Pecora, A. Chris Downs, Phyllis Levine, and John Emerson

This article summarizes existing data on the education of children in foster care, and summarizes a study of 312 older children in 26 child welfare agencies across 14 states. The study focused on the stability of placement of children in the Casey Family long-term foster care program, and how they functioned emotionally, physically, and academically. Academic indicators included attendance, special education, and disruptions due to suspensions, transfers, and dropouts.

Journal of Child and Family Studies, Volume 9, Number 1, pp. 87-103 (2000).
Available for purchase at
http://www.springerlink.com

Behavior Problems, Academic Skill Delays and School Failure Among School-Aged Children in Foster Care: Their Relationship to Placement Characteristics

by Bonnie T. Zima, Regina Bussing, Stephanny Freeman, Xiaowei Yang, Thomas R. Belin, and Steven R. Forness (2000)

This study is based on interviews with foster parents, children in foster care, and teachers from a sample of 302 children, ages six to 12 in foster care. The article summarizes the relationship between behavior, problems in school, and school placement. The results indicated high percentages of students having these problems, but not always a strong relationship with placement.

Yale Law and Policy Review, Volume 19:81, pp. 81-164 (2000).
Available for purchase at
http://www.yale.edu/ylpr/

Caught Between Two Systems: How Exceptional Children in Out-of-Home Care Are Denied Equality in Education

by Cynthia Godsoe (2000)

This article considers the relationship between children in foster care and at-risk children in education, specifically focusing on special education. Topics include shared risk factors of children in foster care and in special education, positive and negative roles of special education, and how these children can help themselves attain full educational opportunities and rights.

http://www.advocatesforchildren.org/pubs/FCrep7-11.doc

Educational Neglect: The Delivery of Educational Services to Children in New York City's Foster Care System

Advocates for Children, Inc. (July 2000)

This report focuses on the relationship between placement in foster care and poor academic performance, specifically looking at children in foster care in New York City. Topics include 1) current research on foster care and academics, 2) how children in foster care receive education services in New York City, 3) hurdles children in foster care face with schooling, and 4) how to meet the educational needs of this population. The report summarizes over 280 surveys filled out by foster children, foster parents, social workers, attorneys, and others. The survey questions focused on enrollment, continuity of services, and quality of services.

http://www.advocatesforchildren.org/pubs/foster.doc

The Educational Needs of Children in Foster Care: The Need For System Reform

The Child Welfare Fund (November 1998)

This publication is based on surveys, focus groups, and interviews of staff and parents at the Center Without Walls on the educational needs of children in foster care. It reveals the hurdles to school placements and their impact on educational attainment by children in foster care in New York City. Survey results indicated parents want to be involved in school decision making for their children, but need support. Poor interagency collaboration when providing special education services, and poor information sharing between parents and professionals are also problems. Issues related to school placements include enrollment delays, denial of enrollment without immunization papers, and loss of school records. Negative results include inappropriate classroom placements, decisions made by people unfamiliar with the specific child, and other unmet needs.

Child Abuse and Neglect, Volume 21, Issue 9, pp. 889-905 (1997).
Available for purchase at
http://www.sciencedirect.com

Problems in Educating Abused And Neglected Children With Disabilities

by Lois A. Weinberg (1997)

This article summarizes a study to determine whether abused or neglected children have their special education needs met appropriately. The study was based on interviews and case file reviews of 12 children with special education needs. Findings included hurdles related to 1)

identifying children appropriately, 2) meeting timelines, 3) inadequate resources, 4) knowledge, and 5) coordination.

Child and Adolescent Social Work Journal, Volume 14, Number 1, pp. 41-53 (February 1997).
Available for purchase at
http://www.springerlink.com

What Happens to Foster Kids: Educational Experiences of a Random Sample of Foster Care Youth and a Matched Group of Non-Foster Care Youth

by Wendy Whiting Blome (February 1997)

This article discusses a study using data from 1980 to 1986 comparing the high school and after high school experiences of a sample of 167 children in foster care with children not in foster care. The study findings indicate that children in foster care have a much higher drop-out rate, discipline and disruption problems, and are less likely to attend higher education.

Journal of Emotional and Behavioral Disorders, Volume 4, Number 1, pp. 30-39 (January 1996).
Available for purchase at
http://www.proedinc.com/store/index.php?mode=product_detailandid=jebd-2

School-Related Problems of Special Education Foster Care Students with Emotional or Behavioral Disorders: A Comparison to Other Groups

by Karen Shelly Smucker, James M. Kauffman, and Donald W. Ball

This study investigated and compared the school-related problems of 1) children in foster care and special education because of emotional or behavior disorders, 2) children in either foster care or in special education because of emotional or behavior disorders, and 3) children who were not in either category. The study was conducted in a mid-Atlantic school district of 75,000 students. Findings included that 1) children who were in both placements had the most school problems, 2) children in neither category had the least problems, and 3) children just in foster care did not experience more issues than children just in special education, or vice versa.

Oregon Law Review, Volume 74, p. 1339 (Winter, 1995).
Available for purchase at
http://www.law.uoregon.edu/org/olr/subscriptions.php

The Individuals With Disabilities Education Act (IDEA): Parental Involvement and The Surrogate Appointment Process

by Tara J. Parillo (1995)

This article describes the surrogate appointment process and analyzes its effectiveness. Beginning with an overview of the requirements of parental involvement under IDEA, the article goes on to describe when a surrogate is necessary, the process for appointing a surrogate, and the duties and responsibilities a surrogate assumes. The author identifies three problems with the surrogate appointment process including difficulties in monitoring compliance with the IDEA surrogate requirements, failure of the states to adequately implement the appointment requirements under the IDEA, too much control over the process by educational agencies. Improvements are suggested.

Social Work in Education, Volume 17, Number 4, p. 207 (1995)
Available for purchase at
http://www.naswpress.org/publications/journals/children/csintro.html

Addressing the Needs of Foster Children: The Foster Youth Services Program

by Robert H. Ayasse (1995)

This article describes the Foster Youth Services program in California. Key components of the FYS programs that help children succeed in school include records tracking, tutorial assistance and counseling. The

article highlights one program that employs a social worker to facilitate interagency cooperation and communication, includes examples of youth who participated in FYS programs, and notes the positive effects the programs had in helping foster children achieve academic success.

Oxford Review of Education, Volume 20, Number 3, pp. 267-279 (1994).
Available for purchase at
http://www.tandf.co.uk/journals/titles/03054985.asp

Educating Children in Residential and Foster Care

by Sonia Jackson (1994)

This article reviews the consistent findings that although education is crucial to a successful adult life, children in foster care and residential care do not always receive the resources and attention they need to succeed in school. The article highlights several initiatives to address these findings.

Child Abuse and Neglect, Volume 17, pp. 581-589 (1993).
Available for purchase at
http://www.sciencedirect.com/

Maltreatment and The School-Aged Child: School Performance Consequences

by P. David Kurtz, James M. Gaudin, Jr., John S. Wodarski, and Phyllis T. Howing (1993)

This article is based on a study of 139 school children located in nine Georgia counties. The child subjects had either been abused, neglected, or neither. The study focused on school performance, development, and adaptive behavior. Findings included that abused children had problems in school and development, and neglected children suffered developmentally. Both groups, though, had high strengths in adaptive behavior.

Developmental Psychology, Volume 29, Number 1, pp. 53-62 (1993).
http://content.apa.org/journals/dev/29/1/53.htm

School Performance and Disciplinary Problems Among Abused and Neglected Children

by John Eckenrode, Molly Laird, and John Doris (1993)

This article summarizes a study of he relationship between abuse and neglect and achievement and disciplinary problems in school. The study compared 420 maltreated children in kindergarten to twelfth grade with 420 nonmaltreated children in kindergarten to twelfth grade. Results showed maltreated children scored lower on standardized tests, were more likely to repeat a grade, and had higher rates of discipline problems and suspensions.

Child Abuse and Neglect Volume 18, Issue 7 (1994).
Abstract available at
http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=7522940&dopt=Abstract

Available for purchase at
http://www.sciencedirect.com/

School Performance Of Children in Kinship Care

by Richard J. Sawyer and Howard Dubowitz
The Academy for Educational Development (1994)

This study focused on the school performance of children placed in kinship care in Baltimore City on a given day in April 1989. Teacher, caseworker, and school questionnaires, as well as standardized test results were used to determine that children in kinship care suffer from academic, cognitive, and language deficits. They are frequently placed in special education, and perform poorly in core areas including reading and math.

Appendix A:
CONSENT TO RELEASE OF EDUCATION RECORDS

_____

Child's/Student's Name (First, Middle, Last)

_____ _____

Child's/Student's Date of Birth **Name of Last School Attended**

_____ _____

Physical Location of School **Child's/Student's SSN, if known**

In accordance with the Family Educational Rights and Privacy Act of 1974 and Arizona State law, I/we authorize any school, district, individual or entity maintaining records as to the child named above, to release records to, and discuss them with representatives or agents of the Arizona Department of Economic Security.

The Department, its attorney, other agents, foster care providers or other persons/entities having physical custody of the child, an educational representative, including a surrogate parent, and members of any multidisciplinary team working on or implementing a case or service plan for the above named child, may receive and review/use any and all education (including special education and early intervention) records, including, but not limited to, attendance, academic, medical, social, psychological, discipline, developmental, speech-language, achievement test, and other records of the above named child.

I/we understand that the Department may use and share these records with the Court, the Foster Care Review Board, a guardian ad litem for the child, an attorney for the child or for the parent(s)/legal guardian(s), a court appointed special advocate or educational representative, including a surrogate parent for the child, or a Citizen Aide Ombudsman, as appropriate. I/we understand that Department use of any records is governed by A.R.S. ' 8-807 and other applicable state and federal laws.

_____ _____

Signature of Parent/Guardian/Date **Signature of Parent/Guardian/Date**

_____ _____

Print Full Name of Parent/Guardian **Print Full Name of Parent/Guardian**

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