

ADDRESSING *the*
EDUCATIONAL
NEEDS *of*
CHILDREN *in*
FOSTER CARE

A Guide for Judges,
Advocates and Child Welfare
Professionals



Dear Reader,


For every child, a consistent, appropriate education can clear the path to adult independence and opportunity. For children in foster care, appropriate schooling and educational services can additionally strengthen prospects for a stable, permanent home. Unfortunately, for many children in foster care, the pressures of school disruptions, learning difficulties and school failure diminish their well-being and undermine the family-building efforts of the child welfare system.

Children in foster care are among the most educationally vulnerable children in the nation. The factors leading to their entry into foster care, along with their experiences in the child welfare system, place them at great risk for educational failure. They often lack stability in school placement, continuity of educational services, and parental participation and advocacy in their school lives — each a critical ingredient for school success. And more than half of all children in foster care suffer from serious health problems, developmental delays and other disabilities that can compromise their potential.

Given the range of risks they face, it should not be surprising that the vast majority of children in foster care fall well behind their peers in academic achievement and drop out of school at twice the rate of children in the general population. Studies nationwide reveal that children in foster care with unmet educational needs are at substantial risk for homelessness, poverty, and criminal court involvement.

These findings are particularly alarming because children in foster care are entitled under federal and state laws to receive educational services to meet their needs. The federal






Adoption and Safe Families Act (ASFA) underscores that education of children in foster care is essential to their well-being and prospects for permanency. In New York, the 2005 Permanency Law identifies education as an integral component of permanency planning and requires both the judiciary and child welfare professionals to address the education of children in permanency proceedings. At every Family Court permanency hearing, child welfare professionals are required to submit a report that includes information on the child's educational progress and the steps taken to deliver appropriate educational services to the child.

This booklet contains ten basic questions that everyone involved in foster care cases can ask to spotlight a child's educational needs and integrate those needs with permanency planning and review. Each question is essential to ascertain the impact of foster care placement on a child's school success and permanency, and to address gaps in educational services. We hope you will use this guide as a companion to our booklet, *Ensuring the Healthy Development of Foster Children: A Guide for Judges, Advocates and Child Welfare Professionals*, to promote the education needs of children in foster care.

Judith S. Kaye

Chief Judge of the State of New York





Educational Portrait of Children in Foster Care

Children in foster care face unique challenges to success in the school environment. The vast majority is at particular risk for medical problems, developmental delays, and disabilities that can undermine their ability to learn and function well in school. The experience of foster care placement itself — with frequent movements in care, disruptions in schooling and educational services, and isolation from friends and teachers — can disrupt the rhythms of the already fragile life of a child in foster care and heighten the risk for poor educational outcomes. Perhaps most significantly, children in foster care too often lack the most fundamental resource for ensuring educational success — a lasting relationship with a caring adult who can observe their development over time, participate in their school lives, advocate on their behalf, and consent to evaluations and services. Research substantiates these grim realities:

- ***Children in foster care do not perform as well as other children, lagging in achievement, repeating grades and failing classes.*** A study in Washington State found that children in foster care scored 15 to 20% lower than other students on achievement tests. In Chicago, 96% of children in foster care scored below grade level in reading comprehension and 95% performed below grade level in math. A survey of high school students in foster care found that 26% repeated a grade at least once since seventh grade and 60% failed a class in the previous year.



- **Children in foster care experience frequent changes in placement, often moving from school to school.** In a study of over 16,000 children in foster homes in New York City, researchers found that 70% of the children experienced one or more transfers to a new school for noneducational reasons in the year following placement in foster care. A smaller survey found that more than 75% of children in foster care changed schools after entering foster care, and out of these children, 65% had transferred in the middle of the school year.
- **Children in foster care are twice as likely to drop out of high school as their peers.** In a national study following youth who exited foster care, only 50% had completed high school. A study of 11th graders in Washington State revealed that foster youth are 57% less likely to complete high school when compared to the general population. In Wisconsin, only 63% of youth had completed high school in the 18 months after their discharge from foster care.
- **School records of children in foster care are often lost, misplaced, or inaccessible, hindering timely school enrollment and appropriate school placement and services.** In a New York City study, lost or misplaced records postponed school entry for half of those who experienced a delay.
- **Children in foster care often experience gaps in school because of delays in school enrollment.** In a Wisconsin study, 20% of youth in foster care reported missing at least one month of school due to delays in school enrollment.



- **More than half the children in foster care exhibit medical problems, developmental delays and disabilities, including substantial behavioral and emotional problems that can compromise their ability to learn or function in school.** Studies nationwide document that 80% of all children in foster care have at least one chronic medical illness and 25 % had three or more chronic medical conditions. Research shows that children in foster care exhibit developmental delay about four to five times the rate among the general population.
- **Children in foster care often lack consistent advocacy and support from parents or other adults to help them meet the challenges of school.** A study of middle school-aged children in foster care found that adults in their lives often lacked a picture of their educational needs and that no one acknowledged primary responsibility for the educational progress of the children. In a study of foster youth, 65% of high school seniors reported that no parent or guardian had ever attended a teacher conference on their behalf and that adults in their lives were less likely to monitor homework or attend school functions.
- **Children in foster care receive special education services at three to five times the national rate for all children.** A study of children in foster care receiving special education found that children in foster care are nearly five times more likely to be in more restrictive settings than their disabled peers who were not in foster care.



Checklist to Meet the Educational Needs of Children in Foster Care

- 1 Is the child attending school?
- 2 How is this child faring in school?
- 3 How does this placement impact the child's school continuity and stability?
- 4 Are school records in the child's case file?
- 5 What are the medical, developmental, and emotional needs that impact this child's educational performance?
- 6 Does this child require general education support services?
- 7 Does this child require special education evaluation or services?
- 8 Who is this child's educational decision-maker?
- 9 Is this preschool-aged child enrolled in an early childhood education program?
- 10 What is the transition plan to address this older child's educational and vocational needs and goals?



Questions and Commentary

1. Is the child attending school?

Studies nationwide reveal that children in foster care who transfer schools often miss many days of school because of delays in their school enrollment. Enrollment is often delayed by the lack of appropriate documentation needed for school registration, missing school records, uncertainty about who has responsibility or authority to enroll a child, and lack of timely transportation.

Upon transfer to a new school, a child should be enrolled in a timely manner to minimize gaps in attendance and services. While each school district has its own enrollment practices, all schools require basic documentation for school registration and enrollment. Typical required documents include a birth certificate, immunization records, a certificate of a current physical examination, and proof of residency in the school district. When such records are not readily available, some states require school districts to assist in obtaining needed documents, rather than barring a child from school. To ensure timely and appropriate class placement and services for the child, it is critical that the school have current educational records reflecting the child's grade placement, credits, and specialized services and programs received in the general or special education curriculum.

Typical Documentation for School Registration and Enrollment

- Birth Certificate or other proof of school age
- Immunization record
- Certificate of a physical examination
- Prior school records
- Proof of residency in the school district



To facilitate a smooth enrollment process, foster parents, caseworkers and parents should have the appropriate legal documentation – for example, a letter from the Commissioner of social services or a court order — indicating the child’s placement in foster care and authorizing enrollment of the child in school. The documentation for school registration and enrollment should be part of the child’s case record and shared with those responsible for enrollment. All those involved in a child welfare proceeding need to ensure that decisions about placement changes and attendance concerns are shared with school personnel.

Decisionmakers also should ask whether the child is attending school regularly. In some states like New York, foster parents have an obligation to ensure regular school attendance. Judges and others can identify obstacles to regular school attendance such as inadequate transportation, foster home concerns, or unaddressed health needs. To enhance attendance, judges can write orders that ensure transportation to appointments and school, reschedule court and medical appointments after school hours, and provide counseling to the child and family.

2. How is this child faring in school?

Research confirms that children in foster care generally do not perform as well in school as other children — often repeating classes, failing grades and performing substantially below grade level. They are twice as likely to drop out of high school as other youth and more likely to drop off their schools’ radar screens. While frequent changes in placement, delays in



school enrollment, gaps in attendance and disproportionate health problems are all significant factors contributing to poor school performance, children in foster care also face challenges to school success that are unique to their foster care experience. Children in foster care often are distracted by worries, fears and a sense of loss associated with separation from their family and placement in foster care. They may avoid making peer and school connections because they are ashamed of their foster care status or anticipate changes in school placement. They may have difficulty studying and completing homework without adult help after school.

The adults involved with children in foster care, including permanency decisionmakers, need to watch for the red flags identifying a child at risk for school failure or in need of specialized services. While report cards, transcripts, and standardized test results are measures of how a child is faring in school, success in school is more than

Red Flags for Identifying Students at Educational Risk

- **Poor school attendance or frequent tardiness**
- **Poor academic performance on report cards, teacher progress reports, statewide assessments or standardized testing**
- **History of grade retention**
- **Poor organizational, language, attention or motor skills**
- **Poor or unusual school behavior or frequent disciplinary actions taken against student**
- **Poor or limited peer or adult relations in school**
- **Unaddressed medical or health needs**
- **Not well known to school staff**
- **Not involved in extracurricular and social activities**
- **Limited parental or caretaker involvement in child's school life**



The 2005 New York Permanency Act requires the local social service district to submit permanency hearing reports to the court before each permanency hearing. The report includes an update on the child's educational progress and documents the steps taken to enable the prompt delivery of appropriate educational and vocational services to the child, including:

- referral of infants, toddlers and preschoolers for early intervention and preschool special education evaluation and services
- enrollment of youngsters in pre-kindergarten programs, as available
- referral of school-age children who may have disabilities for special education evaluation and services
- enrollment of diploma-bound youth in appropriate high school programs

academics. School success also involves a child's social, emotional, and physical well-being and safety. Children who experience school as a positive force in their lives are typically engaged in their school community and participate in non-academic activities including athletics, the arts, student clubs and school-sponsored social events. Children who have adult and peer connections in school are more likely to view their schools as a supportive and safe haven.

Judges, advocates and child welfare professionals can ask a child, as well as school staff, about a child's daily school life, including friendships and participation in school activities and extracurricular programs.

When a child is not known well by school staff, it is important to find out why and to connect the child with supportive school personnel. In addition, it is important to inquire whether a child in foster care is receiving or needs adult assistance with homework and studying.



3. How does this placement affect the child's school continuity and stability?

Placement in foster care can profoundly affect a child's school life. The transient nature of foster care often means that children are abruptly and frequently uprooted from one school and placed in another. Every school transfer requires a child to adjust to new teachers, curricula, classmates and expectations. For some children, a change in school may offer a fresh start, better services or freedom from physical danger or emotional harm. For others, particularly adolescents, it can mean separation from friends, community and support systems that serve as a foundation for future success. For every child, school transfers can result in lost school records, delayed school enrollment and interruption in educational services. These disruptions can thwart a child's promotion to the next grade or prevent a student from receiving needed high school credits. A change in school can significantly affect a child's emotional well-being and compromise success in school and at home, creating stress for caregivers and undermining stable placements.

Federal and state laws require that school location and continuity be considered in determining the child's initial foster care placement and subsequent placement changes. Some states, such as California and Washington, have laws providing that

By reviewing education records at the initial hearing to place an eight-year-old in foster care, Judge Joan Cooney, Supervising Judge, Westchester Family Court, noted that the child was thriving in school. She ordered social services to keep the child in her school and either locate a foster care placement in that school district or provide transportation to that school from a new community.



McKinney-Vento Homeless Education Assistance Improvement Act of 2001, Pub. Law 107-110, Title X, § 1032, (reauthorized under the No Child Left Behind Act).

- Entitles homeless children to continuity of school placement, avoiding school disruption during periods of homelessness
- Requires school districts to appoint a liaison to help homeless students and their families navigate the school system and access community resources
- Establishes procedures governing school selection and enrollment, transfer of school records and transportation

children may remain in their school of origin when it serves their best interests, no matter where they are placed in foster care. Around the country, some jurisdictions have adopted similar policies through agreements between the local governmental social service agency and participating school districts. Several jurisdictions are using laws governing the

education of homeless children as a model to promote stability and continuity.

In all jurisdictions, judges, advocates and child welfare professionals should ask whether school transfers are necessary for children, and if so, whether they are timely, planned and supportive. They should gather input from the child's current school and ascertain the child's preferences and concerns. They should investigate services that can prevent school transfers such as foster care recruitment in the child's neighborhood and, when the child must be placed in a new community, arrange transportation to the child's school of origin. When transfers are necessary, they should be timed so as to avoid changing schools during critical junctures such as examination periods or near the end of the school term. Before



entering a new school, a child should receive a school orientation, a tour and necessary school supplies.

4. Are school records in the child's case file?

To address a child's educational needs and ensure school continuity, it is essential, at the beginning of a case, to gather and review records concerning the child's school history. In addition to basic education information, these records often contain school and social histories, multidisciplinary and other evaluations, Individualized Education Programs, health records and notes from teachers. Federal law requires child welfare professionals to ask schools for educational records and share that information with the foster parents. To make meaningful decisions for children in foster care, all permanency decisionmakers, advocates and foster parents need immediate access to school records.

School records can help child welfare professionals to understand a child's needs and school status and to participate in

Federal Requirements for School Records in the Child's Case Plan

Education records of each child, along with health records, should be included and updated in the child's case plan and supplied to the foster parent or foster care provider at the time of each placement. Records should include:

- names and addresses of the child's health and educational providers
- child's grade level performance
- child's school record
- record of the child's immunizations
- child's known medical problems
- child's medications
- other relevant health and education information concerning the child determined to be appropriate by the state agency



educational planning. Judges need the information contained in school records to make decisions about foster care, school placement and services. Attorneys for children need these records to effectively advocate for a child's educational needs.

Examples of Useful School Records

- Attendance records
- Transcripts and report cards
- Standardized testing results
- Discipline records
- Health records
- Individualized assessments and evaluations
- Individualized Education Programs (IEPs)

Attorneys for parents need them to promote parent involvement in their child's schooling. Foster parents need school information to adequately address the daily needs of the child and communicate with teachers and school staff. Finally, schools enrolling a foster child as a new student require timely access to prior school records to provide appropriate and continuous services.

Children's education records are confidential and schools may disclose them only if authorized under the Federal Educational Rights and Privacy Act (FERPA). Parents are entitled to access their children's education records and may authorize schools to release records to third parties, including child welfare agencies. Judges, advocates and child welfare professionals should facilitate parental consent to disclose a child's school records to all those involved in permanency planning for the child. Where necessary, court orders can ensure that a child's school records are made part of the child's uniform case record and court file, and provided to the child's caregivers and new school. School representatives such as a guidance counselor



or pupil personnel staff can often help identify and locate meaningful records. In some states, children in foster care and their caregivers are provided with an “education passport” that ensures that records move with the child and facilitates transitions to new school settings.

5. What are the medical, developmental, and emotional needs that affect this child’s educational performance?

Children in foster care are at particular risk for medical and emotional problems, developmental delays and disability. Study after study reveals that they have far more fragile health than other children and are far less likely to receive adequate health care. Lack of attention to the health needs of children in care compromises their healthy development and creates additional stresses that can disrupt stable placements and undermine family-building efforts. These health problems also can interfere with regular school attendance, which adversely affects a child’s ability to learn or function in school.

At the earliest possible juncture, and at every subsequent court appearance, judges, advocates and child welfare professionals should inquire how a child’s medical, developmental and emotional needs affect his or her educational performance. Federal and state law mandates that child welfare policy and practice ensure a child’s well-being. Under federal Medicaid law, through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) provisions, children in foster care are entitled to receive comprehensive health care including hearing and vision screening, developmental assessment and

Checklist for the Healthy Development of Children in Foster Care

- 1 Has the child received a comprehensive health assessment since entering foster care?
- 2 Are the child's immunizations up-to-date and complete for his or her age?
- 3 Has the child received hearing and vision screening?
- 4 Has the child received screening for lead exposure?
- 5 Has the child received regular dental services?
- 6 Has the child received screening for communicable diseases?
- 7 Has the child received a developmental screening by a provider with experience in child development?
- 8 Has the child received mental health screening?
- 9 Is the child enrolled in an early childhood program?
- 10 Has the adolescent child received information about healthy development?



immunizations. Federal and state special education laws further mandate that children with suspected disabilities be identified, evaluated and if eligible, receive appropriate services and accommodations in the form of Individualized Education Programs (IEPs) or Section 504 Accommodation Plans.

Health records from the child's primary and specialist health care providers, developmental assessments and clinical evaluations, as well as information about a child's participation in the early intervention or preschool special education programs, should inform educational planning and decisionmaking for children. Judges, advocates and child welfare professionals can ask a child's pediatrician, therapist or other clinical service provider to provide specific examples of how a child's medical, developmental and emotional needs may affect school placement and success and to suggest the types of school services, accommodations and other supports that can enhance the child's educational success. Inquiries also should determine whether the child has access to necessary health monitoring by a school nurse, equipment such as asthma inhalers, glasses and hearing aids, and accommodations that permit the child to access school programs and services.

Children enter foster care with adverse life experiences and, once placed in care, must cope with the separation and loss of their families and the uncertainty of out-of-home care. The cumulative effects of these experiences can create emotional health issues that warrant counseling by school or mental health professionals or further evaluation by a mental health professional. Permanency decisionmakers can ask whether a



Red Flags for Identifying Medical, Developmental and Emotional Problems

- Premature birth or low birthweight
- Hearing and vision problems
- Delays in achieving developmental milestones
- History of abuse or neglect
- Multiple foster care placements

child's mental health needs have been addressed and how they impact the child's education placement and progress. They should ensure that a child's educational decisionmakers have access to this information, as needed, to help schools provide services that support and accommodate the child's mental health needs.

6. Does this child need general education support services?

Children enter foster care with a broad array of gifts and needs. They, like all other children, may benefit from school services ranging from programs for the academically gifted to the severely challenged. General school support services can promote better educational outcomes for children in foster care and prevent placement in more restrictive foster care and school settings.

General education support services are most often used to provide academic assistance to children in the regular education classroom. General education support services can include services to students at risk of falling short of learning standards. Examples include guidance, counseling, programs to enhance English proficiency and study skill support services. School districts typically have a range of services short of special education. In New York State, for example, children at



risk of failing to perform at expected levels on state assessments can receive academic intervention Some school districts may provide educationally related support services to enhance a student's academic achievement and attendance such as counseling, speech and language therapy, occupational and physical therapy, small group instruction, modified curricula and individualized tutoring. General education support services also may include gifted and talented assessments and programs.

Unlike special education services, in many states children typically have few guaranteed entitlements to general education support services. As a child moves from school to school, the types and amount of these services may vary. Judges, advocates and child welfare professionals should inquire whether the child has been assessed for general education support services, the result of assessments and where eligible, if the child is receiving

Examples of General Education Support Services

- Educational and vocational guidance
- Counseling and social work services
- Remedial and supplemental academic instruction
- Study and organizational skills instruction
- Curriculum and testing modifications
- Speech and language improvement services
- Occupational and physical therapy
- Enrichment for gifted students
- Vocational education
- Programs for pregnant and parenting teens
- Drug/alcohol prevention services
- Resources for homeless students



needed services. Where services are unavailable in the school district, efforts should be made to explore community resources.

Several other school programs may provide children in foster care with educational services. Additionally, children living in poverty may be eligible for federal Title I services.

Decisionmakers can ask whether a child attends a school in need of improvement and whether the child is eligible for supplemental education services or school choice under the federal No Child Left Behind services.

7. Does this child require special education evaluation or services?

Children in foster care have high rates of developmental delays and disabilities. For many, general education services and accommodations may not be adequate to address their educational needs. These children may be eligible to receive special education services under the federal Individuals with Disabilities Education Act (IDEA). The IDEA requires states and school districts to reach out into their communities to identify, locate, and evaluate all children with disabilities, including children in the custody and care of the state. While the IDEA provides a framework for providing special education services to eligible students, each State has its own laws and regulations.

Reauthorized and amended in 2004, the IDEA requires states to guarantee all eligible students with disabilities a “free appropriate public education.” Although standards may vary among states, the IDEA establishes a floor, or minimum, for eligibility. Under the IDEA, children must fit one of 13 categories of disability that adversely affect the child’s education.




It can be difficult to distinguish the affects of a disability from those of child abuse, neglect, and foster care placement. Children in foster care are both overidentified and underidentified for special education. Those who are overidentified may be improperly classified as emotionally disturbed, without adequate consideration given to alternative interventions to address their personal family and social history. At the same time, children in foster care need appropriate evaluations and services to ensure that their health, neurological, language, motor and other developmental needs are understood and addressed.

Permanency decisionmakers can help children in foster care receive special education by sharing important information with school staff about a child's foster care history and by ensuring that the educational evaluations are conducted by individuals with sufficient expertise to assess the child's status and needs.

In keeping with the IDEA, state laws establish a procedure for the referral and evaluation of children. A team, comprised of the child's parents and

Key Principles of the IDEA

- a “**free appropriate public education**”
- **education in the least restrictive environment** meeting their needs, alongside their non-disabled peers to maximum extent possible
- **comprehensive, multidisciplinary evaluation**
- **parental participation in the evaluation, planning and decision-making process within the special education arena**
- a detailed **individualized education program (IEP)** that includes the child's disability, educational performance and needs, program and services, including duration, frequency and intensity and measurable educational goals and objectives
- **due process safeguards and procedures**, including the right to an impartial hearing to challenge school district's actions or decisions regarding the child's special education program



Thirteen Categories of Eligibility for Services under the IDEA:

- Autism
- Deafness
- Deaf-blindness
- Emotional disturbance
- Hearing impairment
- Visual impairment, including blindness
- Specific learning disability
- Mental retardation
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Speech or language impairment
- Traumatic brain injury

prescribed school personnel — including teachers and others familiar with the child — determines the child's eligibility for services and, if the child is eligible, develops an Individualized Education Program (IEP) for the child.

The IEP is a written plan designed to address the child's academic, emotional, social, physical and other related school needs. The IEP must describe the child's levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. The IEP details the child's special education program and services, along with measurable academic and functional annual goals for the child.

Under the IDEA, by the time a child reaches age 16 (or earlier, if required by state law), the IEP must include a transition services component to facilitate the child's movement from school to post-school activities.

To ensure continuity of special education services as children move from one school to another, the IDEA requires schools to honor the IEPs of transfer students by providing them with services comparable to those on the IEP. To avoid a gap in



services, all schools are required to promptly obtain or respond to requests for education records of children with disabilities.

Children with disabilities who are ineligible for special education services under the Individuals with Disabilities Education Act but who have a physical or mental impairment that affects a major life activity (including learning)

may qualify for services and accommodations under § 504 of the federal Rehabilitation Act. For example, a child with juvenile diabetes may need accommodations to ensure that his or her blood glucose levels are checked and that appropriate snacks are available in the classroom. A child with attention deficit disorder who needs medication or classroom strategies to stay on task may also benefit from an accommodation plan.

The Special Education Process:

- Referral
- Multidisciplinary Evaluation
- Eligibility Determination and IEP Development
- Implementation
- Annual Review
- Re-evaluation at least every 3 years

8. Who is this child's educational decisionmaker?

All too often, children in foster care lack the most fundamental ingredient for educational success — a stable relationship with an adult who knows them, can observe their development over time, advocate on their behalf and consent to services. A study conducted by the Vera Institute in New York City revealed that foster parents and caseworkers rarely were aware of the academic needs of children in foster care and that school staff had little knowledge of the children's foster care background and its bearing on the children's schooling. The absence of stable,



educational decisionmakers for children in foster care is alarming given the research showing that children whose parents are involved in their education have greater success in school.

At the earliest point, judges, advocates and child welfare professionals should identify who will gather and share school information, communicate with school personnel, participate in educational planning, monitor school performance and determine who is responsible for making educational decisions. They should know who will ensure that a child has adequate transportation, clothing, school supplies and funds to participate in a full school day and extracurricular activities. While parents typically fulfill all these roles in the lives of their children, children in foster care may need several individuals to ensure frequent communication and information-sharing. Every educational decisionmaker should know the child well, have the capacity to participate consistently in educational planning and decisionmaking and be responsible for communicating the child's educational needs, progress and gaps in services to permanency decisionmakers. Judges can convene educational decisionmakers at court appearances to facilitate information-sharing.

Permanency decisionmakers must consult with the child's educators, health care providers and therapists to understand the learning requirements for caregivers to meet the child's educational needs. Caregivers need the cognitive, physical and organizational capacity to ensure that the child attends school regularly and is prepared to learn, and that the child receives needed testing and services. The number of other children in the home and their needs can provide clues about a




caregiver's capacity and resources. In choosing educational decisionmakers, judges, advocates and child welfare professionals should assess whether the individual has physical or cognitive limitations that need accommodation or can interfere with the ability to participate in school meetings, assist the child with school assignments and adhere to education plans. They should also assess a caregiver's willingness to partner with the school and service providers, as well as birth parents during reunification efforts. Caregivers may require services to help them understand the education and health needs of their child and opportunities for individualized training to help them advocate for their child's educational success.

For all children in special education, parents are critical for building and sustaining successful school programs. As equal participants in the special education planning process, parents have the authority to consent to evaluations and services and to invoke due process procedures to challenge school district

Key Questions For Educational Decisionmaking

- Who will gather, maintain, update and share information about the child's educational history and needs?
- Who will communicate with school personnel, participate in parent-teacher conferences, and monitor the child's performance and status in school?
- What are the learning requirements for caregivers to meet the child's educational needs?
- If the child is referred to or serviced by special education who will serve as the child's "parent"?
- Is there a need to appoint a surrogate parent for the child?



Federal Special Education Definition of Parent

- a natural, adoptive or foster parent (unless a foster parent is prohibited by state law from serving as a parent)
- a guardian (but not the state if the child is a ward of the state)
- an individual acting in the place of a 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
- a surrogate parent who has been appointed in accordance with the law.

actions. Though child welfare professionals, birth parents and foster parents may share responsibilities for attending to a child's school needs, only an individual qualified under the federal Individuals with Disabilities Education Act (IDEA) may make education decisions for a child in special education. To increase the odds that each child has an active, involved parent in the special education process, the IDEA broadly defines "parent" to include not only the child's birth or adoptive parent, but other individuals as well, including a

foster parent (if state law so permits), legal guardian or other person acting in the place of the parent, such as a stepparent or grandparent. Though a child welfare agency may refer a child for special education evaluation, the federal law bars state officials, including child welfare professionals, from acting as the child's parent. For children whose parents are unknown or cannot be located, a "surrogate parent" must be appointed. Any child who is a "ward of the state" also is entitled to a surrogate parent appointment. Under the IDEA, the "surrogate parent" can be appointed by the school district or in some instances, the court. The "surrogate parent" represents the interests of a child with a disability in the educational decision-making



process and has all the rights and responsibilities of a parent under the IDEA.

9. Is this preschool aged child enrolled in an early childhood education program?

A substantial body of scientific evidence makes clear that the early years of a child’s life are the building blocks to social and emotional development and education success. Recognizing the links among early development, school readiness and later school performance, Congress set forth a national goal that “all children should enter school ready to learn.” For children in foster care, quality early care and education programs create an opportunity to experience stable, nurturing environments. For their families, they offer information, links to other resources, and sometimes direct services to address challenging problems. Early care and education programs also can support foster and kinship parents. They also can provide child welfare agencies and the court with important information about the needs of a young child.

The Early Intervention Program under IDEA, also known as Part C, is an entitlement for children birth to age three who are experiencing developmental delay or who have a physical or mental condition with a high probability of resultant delay — eligibility requirements that more than half of all young children in foster care can meet. Services for eligible children are enumerated in an Individual Family Service Plan (IFSP) developed collaboratively by the family, the evaluator and early intervention professionals. Under the newly reauthorized IDEA and Child Abuse Prevention and Treatment Act (CAPTA), all



children from birth to their third birthday who are subjects of a substantiated case of abuse or neglect must be referred to the Part C program.

Children age three through five who have a disability that affects their ability to learn receive special education and related services under the federal Preschool Grants Program. This program is governed by the federal special education law and is typically administered by school districts, but services are provided through a distinct preschool delivery service system. Evaluations and service plans from these programs should be reviewed by the child's educational decisionmaker, child welfare professionals and court to better understand the needs of the young school-aged child and his/her caregiver.

In addition to Early Intervention and Preschool Special Education programs, many children in foster care are eligible for early childhood programs such as Head Start and publicly funded pre-kindergarten programs for four-year-olds. For many children in foster care, early childhood education professionals provide an extra pair of eyes to observe and enhance a child's safety and development. Child welfare professionals and permanency decisionmakers should seek information from these professionals as part of education planning and decisionmaking.

10. What is the transition plan to address this older child's educational and vocational needs and goals?

For youth in foster care, the transition to adulthood can be perilous. The vast majority exit foster care at high risk for poverty, homelessness, unemployment and incarceration.



Many youth exiting foster care report difficulties in accessing medical care despite significant physical, mental and emotional health needs. All too often, foster care youth are discharged from care without adequate preparation, resources and planning for independent living.

Transition service plans that promote successful movement from adolescence to adulthood can help avert poor outcomes. ASFA, and the federal Foster Care Independence Act, mandate that child welfare professionals and courts promote efforts to prepare all children in foster care for independent living — regardless of their permanency plans. The Foster Care Independence Act, through the Chafee program, contemplates that foster youth will take an active role in designing and participating in their own plans for independent living. At the same time, education laws require school districts to provide all students with education and career guidance, and special education students with a broad spectrum of transition services to promote their successful transition to adulthood.

The child welfare, education and vocational rehabilitation laws can be powerful tools to access resources that ease foster youth into meaningful, productive lives. At every court appearance, decisionmakers and advocates need to ask about a child's future, encouraging a long-term perspective on school and its connection to permanency and the transition to independent adulthood. Additionally, decisionmakers should help adolescents in foster care to identify those adults who can serve as mentors and provide them with adequate supports and services beyond foster care and into adulthood. In some jurisdictions, courts employ benchmark hearings to bring



Benchmark Hearings

The Circuit Court of Cook County, Illinois conducts comprehensive Benchmark Permanency Hearings for foster teens. The hearings are held when the teens reach ages 14 and 16, as well as six months before case closure. The hearings are designed to assure that foster youth receive appropriate assessment, planning and supportive services. Those who attend the hearing include the youth, the caseworker, the child's guardian ad litem, a representative of the Chicago Public Schools and an adult chosen by the youth as someone he or she can rely on and maintain contact with over the coming years. When the youth cannot identify such an adult, the court makes efforts to find one. At the hearing, the court conducts a detailed inquiry about the child's educational status, the plan for transition to independence, and documentation needed to facilitate the transition to independent adulthood and family relationships.

together all the key adults in a child's life in an effort to create a network of services and supports for the future.

The federal IDEA requires schools to develop a detailed transition services plan for children with IEPs. As a result, from age 16 on (or younger, if appropriate or required by state law), foster youth who are classified as disabled and receive special education services under the IDEA carry an additional entitlement to "transition services." When needed, the transition services plan should include collaboration between schools and service providers and agencies outside the school, including links to adult services.



Conclusion

This guide is one component of a toolkit to assist judges, attorneys, Court Appointed Special Advocates (CASAs), caseworkers, parents and educators to promote the educational success of children in foster care. The toolkit is composed of three elements: this working guide; *Education Matters* (a training manual containing amplified answers to the questions in this guide); and an in-depth law review article “Children Adrift: Addressing the Educational Needs of New York’s Foster Children,” which is a roadmap through relevant federal and state laws for judges and attorneys. Each tool is undergirded by guiding principles that address the educational needs of children in foster care and integrate them into meaningful permanency planning and review. This comprehensive toolkit can help you whatever your role in promoting the educational needs and permanency of children in foster care.



Guiding Principles for the Education of Children in Foster Care

Children in foster care should be enrolled in school and attend regularly. Education laws mandate that all children within the required age range attend school. Children in foster care are no exception. Whether under the care of a parent or the state, each child should attend school regularly. Child welfare professionals must ensure that upon transfer to a new school, a child is enrolled immediately to avoid gaps in attendance.

Children in foster care generally benefit from continuity in family, social, community and school relationships. Children in foster care benefit from relationships and routines that promote feelings of normalcy, acceptance and inclusion in their home, community and school environments. The child's need for continuity in school is an important factor that the court and child welfare professionals should consider in determining the child's foster care placement.

Children in foster care's educational records should follow the child. As children in foster care move from school to school, their educational records should accompany them. An adult should be designated to gather records and share necessary information. The child's important school-related records should be maintained and updated in a known, accessible, convenient fashion.



Children in foster care who have unique medical, developmental or emotional needs or a suspected disability should be referred to general education support services or special education. For many children, general education support programs such as counseling or reading assistance will address their educational needs. If the child is suspected of having a disability that adversely affects his or her education, the child is entitled to a timely evaluation and review of a suspected disability. If eligible, for programs or services, a child in foster care is entitled to timely placement in an appropriate setting consistent with his or her individualized education program (IEP).

Children in foster care should have at least one adult in their lives who routinely participates in educational planning. Children in foster care have a better chance of school success when their parents or other responsible adults are involved in their school life. If needed, an adult should be designated to make educational decisions and advocate for the child.

Children in foster care who are pre-school aged should be enrolled in early childhood programs that promote their healthy development and school readiness. Quality early childhood programs nurture children, protect their health and safety, and help to ensure that they are ready to learn. Early childhood professionals have daily opportunities to observe and impact children's development. Many children in foster care are eligible for Early Intervention and Preschool Special Education Program, Head Start, Early Head Start and publicly funded pre-kindergarten programs for four-year-olds.



Children in foster care who are adolescents should be prepared for entry into the adult world by receiving services that facilitate their transition to adulthood. By adolescence, children in foster care should be preparing to enter adulthood, with supports to promote their independence. They are entitled to receive appropriate career and vocational guidance in school and vocational and independent living services under the child welfare laws.



Federal Building Blocks to Meet the Educational Needs of Children in Foster Care

Adoption and Safe Families Act (ASFA): Establishes the federal framework for child welfare policy and practice, building on its predecessor, the Adoption Assistance and Child Welfare Act (AACWA). ASFA focuses on ensuring permanence, including adoption, for all children in foster care as well as ensuring their safety and well-being. Both laws require that permanency decisionmakers address the educational needs of children in foster care as a key indicator of child well-being. The laws require caseworkers to include and update children’s education records in the case plan and to supply education records to the foster parent or foster care provider at the time of each placement and to develop a written description of the services for children age 16 and older to help prepare them for independent living.

Child Abuse and Prevention Act (CAPTA): Requires States to refer children under age three who are involved in a substantiated case of child abuse or neglect to early intervention services funded under Part C of the Individuals with Disabilities Education Act (P.L. 108-36 §106(2)(A)(xxi)). The federal referral provisions respond to the national indicators confirming the serious risk of developmental delays and disability among maltreated children.

Early Intervention Program for Infants and Toddlers (Part C of the Individuals with Disabilities Education Act):



Provides an entitlement to services for infants and toddlers from birth to third birthday who experience developmental delays and disabilities or physical or mental conditions with a high probability of resulting in delay. States set specific eligibility criteria. The law permits parents, which include biological and adoptive parents, a relative with whom the child is living, a legal guardian, and in some instances, a foster parent and other caregivers, to receive services to enhance the development of the child. These services are based on an Individualized Family Service Plan (IFSP) that is developed with professional and family input. All children from birth to their third birthday who are involved in a substantiated case of abuse or neglect must be referred to the Part C program.

Preschool Special Education Grant Program of the Individuals with Disabilities Education Act: Provides an entitlement for children aged three through five to special education and related services subject to the regulations of Part B of the IDEA. Allows states to choose to continue Early Intervention Program eligibility standards; otherwise children must meet eligibility standards established under Part B of the IDEA. Allows states to avoid premature labeling of children by meeting standards for developmental delay without specific diagnosis or classification.

Special Education for School Age Children with Disabilities: Part B of the Individuals with Disabilities Education Act (IDEA): Establishes federal entitlement for eligible children ages 3–21 years with disabilities to receive a “free appropriate public education.” Establishes federal framework for states to identify and evaluate children with



suspected disabilities and classify and service eligible children. The law requires school districts to designate a multidisciplinary team to conduct comprehensive evaluations of children and develop an “individualized education program” (IEP) for those who are eligible for services. The law identifies child’s parent as equal and key participant in education decisionmaking and establishes procedural safeguards and due process entitlements.

John H. Chafee Foster Care Independence Program of the Foster Care Independence Act of 1999: Provides flexible federal funding to states to promote independent living for youth in foster care ages 16 to 21 in realms of housing, employment, health, life skills and education, including vouchers for college tuition and expenses. The law mandates that states involve community partners in developing programs and provides youth a role in tailoring their own programs. The law provides funding for state initiatives, but Chafee services are neither legally mandated nor a legal entitlement.

McKinney-Vento Homeless Assistance Act: Addresses the education of homeless children and their need for educational stability and continuity. The law requires school districts to follow procedures regarding school selection, school enrollment, record transfers, school transportation, and the appointment of a liaison to help homeless students and their families navigate the school system and access community resources.

Federal Educational Rights and Privacy Act (FERPA): Governs confidentiality and disclosure of students’ education



records for educational institutions that receive funding including schools operated by public and private agencies that accept children in foster care as public placements. The law requires confidentiality of education records containing “personally identifiable information.” It entitles parents to inspect, review, and in some cases, control disclosure of, their child’s education records. Schools may release records to third parties upon the written request or consent of the parent or judicial order. Students age 18 and older may have access to education records.

The No Child Left Behind Act: Federal law holding states and school districts accountable for student achievement in keeping with state learning standards and assessments. Mandates a series of interventions for individual schools identified in need of improvement. Children attending schools in need of improvement may be eligible for school choice and, for children in poverty, supplemental educational services delivered by approved school providers beyond the school day.

Section 504 of the Rehabilitation Act: Bars recipients of federal financial assistance, including schools, from discriminating on the basis of disability and requires reasonable accommodations for eligible individuals with disabilities. Children with disabilities who do not meet eligibility criteria under the IDEA may be eligible for a Section 504 Accommodation Plan which provides programs, services or accommodations to address disability-related needs in the school setting.



Additional Resources, Organizations, and Websites

**New York State Permanent Judicial Commission
on Justice for Children**

www.nycourts.gov/ip/justiceforchildren

Albany Law Review

www.als.edu/journals/index.html

Casey Family Programs

www.casey.org

Vera Institute of Justice

www.vera.org

**U.S. Department of Education, in cooperation with Council
for Exceptional Children**

www.idea.practices.org

**Office of U.S. Department of Education, Office of Special
Education and Rehabilitative Services**

www.ed.gov/offices/osers/osep/index.html

National Dissemination Center for Children with Disabilities

www.nichcy.org/index.html

**National Child Welfare Resource Center on
Legal and Judicial Issues**

www.abanet.org/child/rcjji/education

National Resource Center for Youth Development

www.edu/NYCYS/programs.htm

The Center for Law and Education

www.cleweb.org/



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