

Foster Care & Education

Q&A

HOW CAN COURTROOM RESOURCES SUPPORT JUDGES TO ADDRESS THE EDUCATION NEEDS OF CHILDREN IN CARE?

Q: Why do the educational needs of children in foster care need special attention?

A: Studies demonstrate that students in foster care experience: high rates of school mobility when they enter care and when they change living placements, delays in enrollment when school changes occur, school suspensions and expulsions at higher rates than their peers not in foster care, lower standardized test scores in reading and math, high levels of grade retention and drop-out, and far lower high school and college graduation rates.

Research has shown that abuse and violence can have a negative impact on children's cognitive development and ability to learn. Many children experience a lack of school stability, with enrollment delays and the loss of earned credits when they change schools. Students in care are disproportionately placed in restrictive school programs or residential settings. Despite their disproportionate need for special help, including special education, these students are often unidentified or underserved. These problems are compounded by frequent confusion over who has educational decision-making authority or the lack of any legally authorized decisionmaker or advocate.

Q: Why do judges need to help?

A: Judges are required to address the child's safety, permanency, and well-being needs – which of course include education. A specific focus on education is now also mandated by federal (and increasingly state) law. To see a chart detailing the federal and state laws that address school stability for children in foster care, please see

http://www.fostercareandeducation.org/Database.aspx?EntryId=1861&Command=Core_Download&method=inline. These laws require child welfare agencies, and in some cases school districts, to ensure that children in care attend school, that they remain in the same school when their living placement changes unless this is not in their best interest, and that they are enrolled in school promptly with all of their school records when a change in schools occurs.

In addition, if children in care are receiving special education services, they must have parents to represent them or alternatively, competent and legally authorized education decisionmakers who are not employed by agencies that are involved with the education or care of the child.

Judges are needed to oversee all of these legal requirements and to ensure that agencies and parties before the court are complying with the law.

Q: How are judges well-positioned to help?

A: Because of the multiple systems involved, judges are often essential to ensure that each system meets its responsibilities. Without clear direction from the courts, caseworkers and child service providers may not prioritize education issues. They also lack the court's authority to appoint an education decisionmaker or authorize a person to consent to a special education evaluation. Judges can order a party before the court to arrange and/or pay for transportation when needed for the child to remain in the same school or make sure that the agency is making school selection decisions in the child's best interest.

Q: How can court rules, other standardized policies, or tools help improve

children’s educational outcomes? Which jurisdictions have good models?

A: Children’s educational needs need to be reviewed, systematically and for each child, when: the child enters care; at each stage of judicial proceedings; and whenever a placement change is proposed. A number of states, including California, Colorado, New York, Oregon, and Pennsylvania have adopted judicial rules or statutes that require judges to make education inquiries, findings, and orders.

For example, Judicial Rules in Pennsylvania adopted in 2011 require juvenile courts to consider, make findings, and issue appropriate orders around education at each stage of the judicial process – from the initial shelter hearing to the permanency hearing. They consider various issues: a child’s educational program and progress, whether school changes are being minimized, and whether the child has an authorized educational decisionmaker.

Q: What judicial tools or checklists are available?

A: In 2008, the National Council of Juvenile and Family Court Judges (NCJFCJ) released an updated version of a judicial checklist of education issues. http://www.fostercareandeducation.org/Database.aspx?EntryId=1889&Command=Core_Download&method=inline. Jurisdictions in many states, including Arizona, Iowa, New Jersey, Ohio, Oregon, Texas, and Utah, as well as Washington, DC, are using protocols and checklists to systematize their courts’ review process. For examples of checklists, see <http://www.fostercareandeducation.org/Database.aspx?search=att11>.

The Legal Center for Foster Care and Education has worked collaboratively with Hamilton County Juvenile Court and the Legal Aid Society of Southwest Ohio to enhance how education issues are being addressed in Cincinnati, Ohio. Through a project known as “Kids in School Rule!,” Hamilton County Jobs and Family Services has committed two education specialists to help support the education needs of children in Cincinnati Public Schools. Through their efforts, an “Education Court Report” form was developed as a supplement to the court report submitted by the student’s case worker. This Education Court Report provides detailed information about a child’s education needs, performance, and participation in school.

Furthermore, the data gathered from these reports will be collected to evaluate progress over time. The Legal Center for Foster Care and Education has adapted this tool and created a template for other jurisdictions available here

http://www.fostercareandeducation.org/Database.aspx?EntryId=1888&Command=Core_Download&method=inline.

Finally, the Legal Center for Foster Care and Education has developed a short **School Stability Best Interest Checklist** to support jurisdictions in making the “best interest” determinations as required by the education components of the Fostering Connections Act. This checklist will help child welfare staff respond to courts’ inquiries regarding how school stability decisions have been made for specific children. See http://www.fostercareandeducation.org/Database.aspx?EntryId=1617&Command=Core_Download&method=inline.

Q: How can courts track education outcomes of children to ensure systems are responding appropriately?

A: In addition to increasing attention to education within the courtroom, judges can also play an important role in elevating education success for children in foster care at a systemic level. To guide courts in identifying education measures to track through court automated systems, the National Center for State Courts worked collaboratively with organizations and experts from around the country to develop specific measures for education, detailed in **Educational Well-Being: Court Outcome Measures for Children in Foster Care** available at http://www.fostercareandeducation.org/Database.aspx?EntryId=1819&Command=Core_Download&method=inline.

Q: Where can I find out more about this topic?

A: The Legal Center for Foster Care and Education provides training and technical assistance and has a number of tools and resources available. Please visit our website to access the **Q&A Factsheet: Courtroom Education Advocacy**, available at http://www.fostercareandeducation.org/Database.aspx?EntryId=1489&Command=Core_Download&method=inline. Contact us at ccleducation@americanbar.org with questions or to share examples of what is happening in your jurisdiction on this topic.