



Education Advocacy in the Courtroom: Effective Skills to Improve Outcomes

Nebraska Children's Summit
Through the Eyes of A Child Initiative
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Today's Training

- Understanding the Educational Needs of Children in Care
- Role of the Court
- Specific Issues To Consider
- Clarifying the Education Decision Maker
- A Checklist for Attorneys & Judges
- Embedding Change: What Courts Can Do
 - Effective Models from NY, CA and PA
 - Data Collection

Why Education Matters

A high school drop out is

- Eight times more likely to be incarcerated
- 40% more likely to be on public assistance
- Far more likely to be unemployed
- More likely to become a drug addict
- Estimated cost of a youth who drops out and turns to crime & drugs -- \$1.7 to \$2.3 million

What Are the Barriers to Educational Success for System Involved Children?

- Delayed enrollment & low attendance
- Lack of school stability
- Confusion about who has educational rights
- Special education needs remain unidentified/unmet
- Absence of “active” involved decisionmaker
- Disproportionate referrals to disciplinary placements
- Need for remedial services, ESL, PBS etc.
- Credit transfers/diploma requirements
- Youth fail to engage in school & transition planning

As a result of these barriers, children in care are in educational crisis:

- **Only one third** receive high school diploma in four years;
- **Twice as likely to drop out**
 - Philadelphia study: **75.2% of youth in care dropped out of high school in 2005**
- **2-4 times as likely to repeat a grade**
 - California study: 83% of children in care in Los Angeles were held back in school by the third grade
- **Significantly below their peers on standardized tests**
 - lower reading levels and lower grades in core academic subjects
- While 70% of foster youth dream of attending college, 7-13% gain access to any higher education programs and **3% obtain bachelor's degrees.**

For Children in Dependent Care Educational Success....

- Provides **essential stability**
- Improves **current well being**
- Increases **opportunities for permanency**
(e.g., New York, California, Toledo, Ohio)
- Supports **transition to lifelong stability**

Role of Courts



- Ensure school stability
- Prompt enrollment
- Appropriate placement
- Address spec. ed needs
- Identify Ed. Decisionmaker
- Appoint Surrogate Parent
- Link to resources/programs
- Transition/Ed Planning
- Support youth engagement

WHAT ISSUES SHOULD COURTS ADDRESS?



- School stability (minimizing school changes)
- Ensuring appropriate education placement and progress
- Legally authorized decisionmaker
- Special Education & Disability
- Graduation & Transition

Ex: NY, CA and PA: Juvenile Act & Rules



Issue #1: School Stability

- **TWO Federal Laws:**
 - Fostering Connections Act
 - McKinney-Vento Act
- School proximity **MUST** be considered prior to determining living placement
- Presumption in favor of school stability
- Immediate enrollment in new school when in a child's best interest

School Stability: Fostering Connections Act of 2008

Placement:

In making placement decisions, child welfare agency must take into account:

- Appropriateness of current educational setting;
- Proximity to school where child is enrolled at time of placement.

School Selection

Child welfare agency must coordinate with LEA to ensure child remains in same school where he was enrolled at time of placement

- Except if not in the child's best interest, then immediate and appropriate enrollment, with prompt records transfer
- Schools "strongly encouraged" to enroll students

42 U.S.C § 675(1)(G)(ii) and (iii)

Questions to Ask in Court Under Fostering Connections

- Has child welfare agency taken into account the appropriateness & proximity of the child's current school in placing the child?
- Is school stability in the child's best interest?
 - Presumption in favor of school stability
 - Consider the current school, program, special education needs, access to voc tech etc.
 - Are there factors weighing against school stability?
 - What is the child's current goal & plan?
- Does the FSP include assurances of school stability?
- Does the FSP document all efforts? Transportation?

School Stability: McKinney-Vento

Children who are homeless, including those awaiting foster care placement and unaccompanied youth have a right to:

- Remain in school of origin when in child's best interest
- Right to "pendency" and notice
- Transportation provided by school district
- Comparable services
- Immediate enrollment
- Right to Appeal

42 U.S.C. § 11431, *et seq.*

Issue # 2:

Appropriate School Placement

- Regular Education
- Special Education
- Alternative Education for Disruptive Youth
- On-Site School
- Cyber School
- Homebound Instruction
- Least restrictive environment
- Home School Option

“Right” Educational Placement

- School Placement:
 - Homebound: ONLY if medically necessary
 - Charter & Cyber charter schools: Review of laws
 - Children in residential placements – public or on-site?
 - Rights
 - Best Interest
 - Alternative Education placements
 - Requirements for placement
 - Procedural Rights
- Students are entitled to specified hours of instructional time?
- Rights under Constitution? Rights under Statute?
- Advocate for “best interest”: Inform the Court

Special Placements – Children in Residential Settings

- Children lose ground & are more likely to drop out
- Right to attend the public school
- Requirements governing on-site placement
- Special Education considerations
- WHO makes the decision
 - Role of “parent” or foster parent to determine this
 - Role of caseworker
- Placement cannot be conditioned on attendance at on-site schools.
- IDEA Standards STILL Apply: Least Restrictive Environment
- Section 504 Considerations

Right to Transfer: *No Child Left Behind Act*

- Unsafe School Choice, 20 U.S.C. 6316
 - Victims of Violent Crimes at School
 - Students in Persistently Dangerous Schools, *For more info click on “persistently dangerous schools” to get info. on both programs)*
- TIP: There are **deadlines** to apply for certain transfers & services under NCLB



Out-of-Neighborhood School Options

- Charter Schools
- Magnet Schools
- Cyber Schools
- Out of District or Catchment Area
- Bullying: Rights and Obligations
- An emancipated minor may apply for a transfer **WITHOUT** parent consent.

Issue # 3: Prompt Enrollment

- Enrollment delays ARE significant.
- Right to “immediate” enrollment
- Children in have the *right* to attend school from age 5 by Oct. 15th until age 21.
- Access to Pre-School and Kindergarten
- Older Youth’ s right to attend
- FERPA: No consent for transfer of records
- IDEA: Lack of IEP cannot delay enrollment

Issue #3: Prompt Enrollment

- MUST be treated in the same manner as resident children re enrollment.
- Have a right to school stability under McKinney-Vento Act and Fostering Connections Act.

Issue # 3: Enrollment Rules

State law requirements are typically:

- AGE
 - Birth certificate, notarized statement by the parent, etc.
 - TIP: try old school records if you have them
- IMMUNIZATIONS & MEDICAL FORMS
 - Can be oral assurance from old district or a doctor with the record to follow later
- RESIDENCY PROOF
 - Agency letter of placement & foster parent provides proof that he or she is a resident.
- SWORN STATEMENT OF DISCIPLINARY RECORD

WHO CAN ENROLL THE CHILD?

TIME FRAME REQUIREMENT

What Information Cannot be Required?

- Child's (or parent's) Social Security Number
- Photo ID
- Visa/immigration documents
- Affidavit from biological parents re why
- Court order concerning placement or guardianship (unless being used to show residency)
- Reasons the child is living in the district



Compulsory Attendance

- Children must attend school or participate in an approved education program from **age 6** (prior to Jan. 1) to age 18.
 - Attendance issues may signal other problems
 - Truancy record
 - Bullying
 - Address proactively
- Nebraska Revised Stat. 79-201

Issue # 4: School Progress

- Is child in appropriate grade & setting?
- Is child receiving appropriate hours of instruction?
- Does he need a special education evaluation?
- Does he need special accommodations?
- Does he need remedial help, credit recovery?

Issue # 4: School Progress

- Has child repeated a grade?
- Has child ever been in special education?
- Is child “on track” to graduate?
- Does child need access to credit recovery?
- Who will issue the child’s diploma?
- Does child need credit waiver?

Issue # 5 Special Education Issues

- Does child evaluation, re-evaluation or independent evaluation?
- Does child need a Surrogate Parent?
- Is the IEP effective? Is it followed?
- Is child in the least restrictive environment?
- Does child have an appropriate transition plan? Will child graduate through IEP?
- Does child need to file for Due Process?

Who can be a Special Education Decision Maker?



- A **birth or adoptive parent** must be the decision maker if he or she is “attempting to act” on behalf of the child
- If there is no birth or adoptive parent, the **foster parent** is automatically the parent.
- If the child has no foster parent, the court or school can appoint a **surrogate parent**. If the child has a foster parent, the court can appoint a surrogate parent or special education decision maker. **This cannot be a caseworker or the child’s educator.**
- If the **court appoints** someone to make special education decisions, that person trumps all others.

What Does an Special Education Decision-Maker Do?



- Consent to initial evaluation*
- Participate in IEP meetings
- Agree to or reject IEP plan
- Potentially also address regular education issues (as described above)

*Others can also consent to initial evaluation, including caseworkers.

Issue #6 - School Discipline

- Know the Rules
- Anticipate problems.
- Advocate BEFORE placement of the child
- Cannot discriminate based on disability
- Special Ed: Manifestation Determination
- Alternative Education
- Advocate for appropriate placement

School Discipline: General Rules

- Schools boards & schools can “make reasonable and necessary rules governing the conduct of students in school.”
- Schools can regulate student conduct during school hours, including time spent coming to or leaving from school.
- Case law suggests schools have the authority to regulate out-of-school conduct if it substantially disrupts school programs.
- Cannot punish student for conduct that occurred before the student enrolled in the district



EXPULSIONS

- Exclusion = deprivation of state right
- All expulsions require a **formal hearing**.
 - Prior written notice
 - Right to present witnesses, cross examine and testify
 - Written adjudication containing findings and reasons
 - Appeal to Court

EXPULSIONS: Rights of Student

Advocate for In School or Shorter Suspension

Obligations and Rights of an Expelled Student

- Compulsory school age = student must attend
- Make provision for child's education
- Foster parent/agency obligations
- Time is of the essence
- IDEA STILL applies
- **Impact of expulsion on placement = disruption**



Issue #7

Education Decision-Maker

- *At any proceeding or upon motion, the court shall appoint an education decision maker for the juvenile if it determines that:*
 - *The juvenile has no guardian; or*
 - *The court, after notice to the guardian and an opportunity for the guardian to be heard, has made a determination that it is in the juvenile's best interest to limit the guardian's right to make decisions regarding the juvenile's education*

PA Juvenile Court Rule 1147 and 147



Issue #7: Who Is an EDM?

Presumption always in favor of the parent.

– If not parent, then:

- Family member
- Family friend
- Mentor
- Foster parent
- Former foster parent
- CASA
- Child welfare professional

(ONLY IF CHILD HAS NO SPECIAL EDUCATION NEEDS)



Issues an EDM Addresses

- School stability
- School discipline
- Enrollment
- Appropriate education (including remedial services and special education in least restrictive environment)
- Independent Living and Transition Services to further the youth's secondary and post-secondary education plans.

Your Role in Court





Issues to Raise in Court

- **School Stability & Enrollment**

- Address school stability w/in living placement decision
- Ensure FSP has addressed stability
- Court Order: Include language clarifying that child qualifies as “awaiting foster care placement” or is an “accompanied youth” under M-V Act
- Court Order: Direct C&Y agency to ensure school stability at prior school X; be immediately enrolled in school Y or seek transfer to another school.

- **Access to School Services**

- Address need for remedial services, Title I, voc tech etc.

Issues to Raise in Court



- **Education Decisionmaker**

- Court Order should clarify who is making education decisions and who is the special education decisionmaker.
- If child has no active involved decisionmaker, the court can appoint that decisionmaker.
- Court can appoint Special Education decisionmaker under IDEA (e.g., Surrogate Parent) See CFR § 300.30 and § 300.519.

Issues To Raise in Court



- **Special Education/Need for Accommodations in School**

- Does she need to be evaluated for special education services?
- Who will consent to initial evaluation?
- Does the child need independent eval. or re-evaluation?
- Does the child's IEP need to be updated?
- Are behavioral issues addressed through the IEP?

- Does the child have a condition (e.g. asthma) that needs to be accommodated in school?
- Are behavioral issues addressed through 504 Service Agreement plan?

Issues To Raise in Court



- **Graduation Requirements**
 - What does the child need to do to stay on track to graduate: credits transfer issues, waiver or state requirements.
 - How will diploma be earned and who will issue diploma?
- **Transition Planning**
 - Impact on school stability when child exits care
 - Are transition plans detailed & coordinated with IEP & IL plan?
 - Detailed transition plan must be developed at least 90 days prior to exit from care under F.C. 42 U.S.C. 675(H)
- **Foster Care Extension**

Judicial Checklist



Court Order should consider:

- School Stability (including child's status, prior school and documentation of efforts in FSP)
- Enrollment and access to identified services
- Clarify or appoint Education & Special Ed Decisionmaker
- Address Special Education Needs & Accommodations in School
- Clarify what school will issue diploma and planning to satisfy graduation requirements
- Transition Plan is sufficiently detailed

Infrastructure for Success

- Judiciary
 - Juvenile Court Rules
 - Training and Model Orders
- Child Welfare
 - Education Screen
 - Liaisons
- Education
 - Policies & Practices

Juvenile Court Rules: CA, NY & PA



- Ensure school stability
- Identify decision-maker
- Ensure “appropriate education”
- Support transition to adulthood
- Address disabilities accommodations

Child Welfare Education Screen

- Mandated to be used by caseworkers
- “Education Liaisons” in each County
- Education Screen addresses:
 - Whether updated education records are on file;
 - School stability decision;
 - Appropriate School Placement & Progress:
 - Appropriately enrolled in the least restrictive environment and receiving the appropriate hours of instruction;
 - Making reasonable progress toward grade promotion/graduation;
 - Receiving assistance in preparing/planning

Special Education Issues:

- special education evaluation;
- different special education services;
- special education decisionmaker; or
- accommodations for a disability or health condition.

C.W. Education Screen Checklist

- Review the child's **education records**.
- Does the child need an education **decisionmaker**?
- How has the child **progressed** in school?
- **Where** will the child's educational needs be met?
- Should the child be **evaluated for special education** services? See Education Screen.
- Does the child have a condition that needs to be **accommodated**? Does the accommodation plan need updating? Any behavioral issues to be addressed?
- Is there a **vocational or other program** the child could participate in? Does the child need **remedial** help?
- Has the child **received credits** needed to graduate?
- **Who will issue a diploma**?
- **Transition plan**: Is the Education plan detailed?

Education: Model Laws & Policies

- School Enrollment
- School Stability
- Assignment of Guidance Counselor
- Assignment of Mentor
- Credit Transfer policies
- Graduation Plan
- Access to Services & Extracurriculars
- Post-graduate transition planning

Helplines & Websites

Legal Center for Foster Care and Education
www.abanet.org/child/education

Children's Defense Fund www.childrensdefense.org

Annie E. Casey Foundation www.aecf.org

National Association for Education of Homeless Children and Youth www.naehcy.org/

National Center for Homeless Education www.serve.org/nche

Education Law Center: www.elc-pa.org

Information and Referral Line: 215-238-6970

Disability Rights Network: <http://drn.org/>

Helpline: 1-800-692-7443



Contact Information

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