



Supporting School Stability for Children in Foster Care during COVID-19 and Beyond

ABA Center on Children and the Law

National Council of Juvenile and Family Court Judges

Quick Overview

This alert highlights:

- ✓ Why prioritizing education is important for children in foster care
- ✓ Critical education issues for children in foster care
- ✓ Who is involved in advocating for the education of children in foster care
- ✓ Judges' roles in keeping children in care on track in school
- ✓ How courts can collaborate with schools and child welfare agencies to help children in care succeed in school

As a judge overseeing child welfare cases, you play a critical role ensuring children and youth in foster care are staying on track and making progress in school. Federal law prioritizes education stability for these children and mandates coordination by schools and child welfare agencies to avoid learning disruptions and promote school success. The COVID-19 pandemic is elevating judges' oversight role as schools and child welfare agencies face new challenges supporting the needs of these students.

Why is prioritizing education important for children in foster care?

- **Promotes child's healthy development.** From early childhood through middle childhood, adolescence, and young adulthood, education promotes children's healthy growth and development. For abused or neglected children, educational supports can help them overcome adverse outcomes and help them become independent adults.¹
- **Supports placement stability and permanency.** Children and youth who are on track academically in school, attending school regularly, and are not experiencing behavior problems at school return home or find permanent families faster than youth who have school problems.²
- **Promotes academic and social growth.** As children in care progress through academic and enrichment programming at their schools, they gain fundamental knowledge and skills in core educational areas like science, math, reading and language arts, history, social sciences, and the arts. They also develop social-emotional skills as they interact with peers and school staff and join school activities that promote teamwork, leadership, networking, planning, and other skills.
- **Prepares child for postsecondary education or other goals.** Children and youth who master grade-level milestones and progress through the academic curriculum develop knowledge and skills to pursue postsecondary education or other career-related goals after graduating high school.
- **Promotes child's transition to and long-term success in adulthood.** Academic success, particularly high school graduation and

Key Resources

Legal Center for Foster Care and Education (LCFCE)

A joint effort of the ABA Center on Children and the Law, the Education Law Center and the Juvenile Law Center, the Legal Center for Foster Care and Education provides a strong voice at the national level for the education of children in foster care, serves as a central clearinghouse of information on foster care and education, and provides training and technical assistance across the country.

LCFCE written materials:

Special Issue: Education and Children in Foster Care. *ABA Child Law Practice* 36(6), Nov./Dec. 2017.

Articles address ABA-approved frameworks for supporting education for dependent and delinquent children, early childhood education, postsecondary education, state implementation of the Every Student Succeeds Act, courts' roles in supporting education for children in care, special education advocacy, and attorney-school partnerships.

Courtroom Advocacy for the Education Needs of Children in Out-of-Home Care, 2010. Q&A offering guidance to attorneys and judges on how to advocate in the courtroom for the education needs of children in care.

How Can Courtroom Resources Support Judges to Address the Education Needs of Children in Care?, 2013. Guidance for judges on using court rules, policies, tools and other resources to address the education needs of children in care.

COVID-19 Resources. Four resources developed by the Legal Center for Foster Care and Education to assist local jurisdictions with education for youth in foster care during the COVID-19 pandemic.

postsecondary education or other career training, helps children in care transition to careers and reach economic independence.

What education issues are critical for children in foster care?

✓ **Education stability and continuity**

When children are removed from their homes and placed in foster care or other temporary caregiving settings, school disruptions can occur that interrupt learning. Federal law requires child welfare agencies to develop school stability plans for students in care and coordinate with schools to avoid school disruptions during child welfare system involvement.³ Maintaining the child in the school of origin, providing transportation from a new placement to the school of origin, and streamlining new school enrollment procedures and records transfers when a child must change schools are some ways schools and agencies can promote education stability and continuity.⁴

During the pandemic, potential for disruptions is high and the long-term impact on students is especially acute⁵ as students navigate COVID-19 outbreaks, individual health issues, health and safety related practices in schools, distance and hybrid learning challenges, the digital divide, and caregiver support issues. These and other issues can lead to significant learning loss, cause students to disengage, and increase the potential for school dropout for all students, but especially for students in foster care who were already experiencing barriers to a stable education before COVID-19.

✓ **Support for academic and social emotional learning**

Students in care often benefit from added support from tutors, mentors, teachers, school counselors, and social workers. These connections, both inside and outside of school, support the student's learning, monitor academic progress, identify and troubleshoot issues, and keep students engaged and moving forward. They can also support students' social-emotional learning by helping them learn to understand and manage feelings, develop empathy for others, and learn problem-solving skills. These skills are critical during the pandemic as students may struggle with social isolation, anxiety over parents or caregivers losing or leaving jobs, loved ones becoming ill, and reduced academic motivation.

✓ **Clear education decision maker to advocate for the child**

Each student in foster care should have an identified education decision maker, a person with legal authority to make education decisions on behalf of the child. In most cases this is the child's parent but may be another individual, like a foster parent, if the parent is unavailable or unable to perform the role. The pandemic creates many new decisions, such as determining mode of academic delivery when a choice is available (i.e.,

Federal Education Laws School Stability

Every Student Succeeds Act (ESSA) (2015), reauthorized federal education law to include protections for children in foster care, including school stability and school enrollment requirements as well as collaboration between state and local education agencies and child welfare agencies.

Fostering Connections for Success and Increasing Adoptions Act (2008), requires child welfare agencies to integrate school stability into their planning process for each student in care at the initial and all subsequent placement decisions. This include collaborating with education agencies to ensure school stability for students in foster care. Also requires the child welfare agency to develop a “transition plan” within 90 days before a youth is discharged from care.

in-person, hybrid, remote), appropriate teaching approaches for students with special education needs, who is responsible for overseeing students’ remote and hybrid learning, and how to ensure a child in care receives supplemental supports to succeed in school.

✓ **Coordination and information sharing between child’s school and child welfare agency**

Child welfare and education agencies must work together and share current information about children in foster care, such as the child’s placement, placement changes, child’s custodian, child’s education decision maker, school records, and special education needs.⁶ Sharing this information prevents the child from being overlooked, alerts the school to education and other challenges that need to be addressed, prevents enrollment delays when schools change, and helps keeps the child on track academically. Education and child welfare agencies must share this needed information while following procedures for ensuring confidentiality and privacy of the information shared. During the pandemic, when the need for clear and timely communication is even greater, education and child welfare agencies may be overwhelmed and overlook or give less priority to information sharing about students in care as they wrestle with other pressing challenges.

✓ **Special education needs/individual education programs**

Many children in foster care have special education needs. Under the Individuals with Disabilities Education Act, children with disabilities that impact their ability to make educational progress have a right to receive special education and services to help them learn and succeed in school.⁷ This includes ensuring children who are believed to be eligible for education services are evaluated and found eligible, developing a tailored plan that addresses their unique learning needs, providing supports needed in school, and making sure they are progressing toward learning goals.⁸ The pandemic creates additional challenges to addressing the needs of special education students as alternative teaching approaches, such as distance learning or hybrid approaches, may not be optimal in meeting the needs of students as required in their individual education programs (IEPs). Judges need information on students’ IEPs to ensure they receive the supports and services they are entitled to and the child’s educational needs are met.

✓ **Support for foster parents, relatives, kin, and other caregivers with day-to-day responsibility for children in care.**

While children are in foster care, their caregivers take on many responsibilities relating to school, including ensuring they attend, overseeing and helping with homework, communicating with them about school progress and challenges, identifying when additional supports may be needed, and interacting with school staff, among others. The pandemic layers on more responsibilities: asking caregivers to oversee home-based learning,

Federal Education Laws School Records & Information Sharing

Family Educational Rights and Privacy Act (FERPA)

outlines the responsibility of schools to protect the privacy of a student's education records, including requiring parental consent to access educational records, except if the access falls under one of numerous exceptions to parental consent (e.g., a court order as well as USA discussed below are both exceptions under FERPA).

Uninterrupted Scholars Act (USA) (2013) amended the Family Educational Rights and Privacy Act (FERPA) to allow child welfare agencies to access education records for students who are under the care and protection of the child welfare agency, upon request without first securing parental consent.

assist with setting up and accessing technology, troubleshooting online learning issues, and helping students adjust to new ways of maintaining social connections and engaging in enrichment activities. Caregivers play a heightened role during the pandemic and require more support to ensure they have the resources and guidance to be effective.

✓ Access to extracurricular and normal activities.

For many children in foster care, school provides access to sports, clubs, and extracurricular activities that help them form friendships, develop teamwork and leadership skills, build confidence and self-esteem, and explore new interests.⁹ These activities provide children a sense of “normalcy” and help them connect with their peers who are not in foster care. The 2014 Preventing Sex Trafficking and Strengthening Families Act's “normalcy provisions” ensure children in foster care experience normal childhoods by allowing them to join extracurricular and enrichment activities.¹⁰ Providing access to these activities is compromised during the pandemic with suspension of or restrictions on sports, clubs, and extracurricular activities. While virtual approaches can be used to offer access to some activities, it also creates new challenges and limitations.

Who is involved in advocating for education stability for children in foster care?

- Local education agencies (LEAs) and child welfare agencies are required by federal law to coordinate to ensure educational stability and continuity for students in foster care. In most states, child welfare agencies control the decisions, but courts can be used to review and resolve disputes when they arise.
- Education points of contact (POCs) guide cross-system collaboration on child welfare/education issues. The federal Every Student Succeeds Act (ESSA) requires state education agencies to identify foster care POCs. Most states also have an education POC in their state child welfare agency, a best practice that is not required by federal education or child welfare law. Locally appointed POCs in local education agencies (i.e., school districts) are also required when there are corresponding state or local child welfare POCs in place.¹¹
- **Child's advocate** (lawyer, guardian ad litem, court appointed special advocate) ensures the child's education is prioritized at every hearing by reporting education information and issues to the court. The child's advocate obtains the child's education records, speaks with the child about education goals, advocates for services and supports to achieve education goals, raises goals with other parties and the court, and ensures the agency is meeting legal duties related to education, including case plan requirements for education stability and continuity.¹²
- **Child's caseworker** obtains and includes required education information in the child's case plan, collaborates with the school to ensure

Blueprint for Education

The *Blueprint for Change: Education Success for Children in Foster Care*, written by the ABA Center on Children and the Law, Education Law Center, and Juvenile Law Center, outlines what youth in foster care need to achieve stability and success in school. The *Blueprint's* eight goals are broken down into Benchmarks, providing a framework that ensures access to education, promotes stability and inclusion, and helps youth prepare for higher education and the workforce.

1. Youth are entitled to remain in their same school when feasible.
2. Youth are guaranteed seamless transitions between schools and school districts when school moves occur.
3. Young children enter school ready to learn.
4. Youth have the opportunity and support to fully participate in all aspects of the school experience.
5. Youth have supports to prevent school dropout, truancy, and disciplinary actions.
6. Youth are involved and engaged in all aspects of their education and educational planning and are empowered to be advocates for their education needs and pursuits.
7. Youth have an adult who is invested in his or her education during and after his or her time in out-of-home care.
8. Youth have supports to enter and complete postsecondary education.

Visit www.fostercareandeducation.org for the full foster care Blueprint goals and benchmarks and a database with examples, fact sheets, templates, and checklists from school systems and child welfare agencies across the country.

education stability and continuity, works with the child's caretaker, education decision maker and other education advocates to ensure the child is attending and succeeding in school—providing additional supports when needed, and reports these efforts to the court.

- **Child's parent** usually acts as the child's "education decision maker" (EDM) and maintains legal authority to make education decisions on behalf of the child. As the person who is usually closest to and knows the child best, the parent can offer valuable information and insights about the child's development and education to help the agency, school, and court make appropriate education-related decisions. If the parent is not available or able to serve as the EDM, another designated person not from the child welfare or education agency may be appointed by the court to serve as the EDM for the child. For children with disabilities requiring special education, special rules apply, but the parent is often the designated education decision maker unless certain circumstances exist to require other individuals to serve in this role.¹³
- **Child's caregiver** (foster parent, relative/kin caregiver, or other caregiver) has day-to-day responsibility for ensuring the child's attendance and participation in school and supporting the child's education. The caregiver can provide valuable insights to the agency, school, and court about the child's daily school activities, challenges, and successes. At times, this individual will be identified to be the child's EDM.
- **Child/youth.** Children and youth in foster care are more invested in their education when they have a say in education decisions and are empowered to advocate for their education needs. Engaging them in discussions and decisions and empowering them to be active self-advocates regarding their education is critical.

What is my role? How can I help keep education on track for children in care?

Judges play a key oversight role over education for children in care who are in the custody of a child welfare agency. Some steps to take during court hearings include:

- **Ask about the child's education.** Ask about the child's grades, attendance, special education needs, and progress in school. Request education records to gauge students' progress and any issues needing attention. Ask the child's education decision maker, advocate, case-worker, caregiver and others for current information about the child's education to get a clear picture and identify issues that may need to be addressed.
- **Ensure school stability and smooth school transitions.** If a child has changed schools recently, review the best interest decision



Court, School, and Child Welfare Agency: Working Together

The **Kids in School Rule!** (KISR!) program in Cincinnati, OH is a collaborative effort of the Hamilton County Juvenile Court, education, child welfare, and legal advocacy systems that provides education supports and services to children in the custody of Hamilton County, Ohio's foster care system who attend Cincinnati Public Schools. KISR! works with the school system to identify common challenges children in foster care experience in school that create barriers for educators. Interventions and supports are then developed to build schools' capacity to respond to the needs of children in care.



Education Specialists and Liaisons: Key Points of Contact

KISR! matches students in foster care with educational specialists from the child welfare agency to monitor school progress and serve as points of contact to navigate the system and handle difficulties that arise. Education specialists submit education court reports before review hearings with information about the child's school stability, placement, academic performance, and short and long-term plans. Each school has an education liaison, an employee of the school district who helps coordinate education planning with the education specialists for students in care in their school.



School Stability and Continuity: Keeping Students on Track in School

The child welfare agency has taken steps to stabilize children's placements and avoid disrupting their school placements, such as arranging performance-based contracts with foster care providers that give incentives for creating stable homes and school environments, arranging afterhours supervised visitation and therapeutic appointments to avoid school disruptions, and grouping foster care providers by school boundaries to help identify providers in the same school district when placements change. It has revised its policies and procedures for making best interest decisions about a child's school placement when the foster care placement changes to ensure thorough, consistent practice throughout the agency.



Multifaceted Education Supports: Transforming School Outcomes

Cross-system data sharing, supporting high-school graduation and postsecondary success, engaging youth in education planning, setting clear education expectations and ensuring accountability, addressing special education, school discipline and enrollment needs, and celebrating student achievement are also hallmarks of KISR!'s approach. Through these efforts, KISR! is transforming school outcomes for children in foster care in Cincinnati Public Schools.

regarding the school placement and whether it was made appropriately or whether the child should have remained in their school of origin. Require the child welfare agency to provide clear information about the best interest determination that has been made related to school stability. When school changes are appropriate, determine if efforts are being made to ensure a smooth transition, such as promptly transferring the child's school records to the new school, identifying any special education needs and developing an IEP, arranging additional education supports the child may need, and arranging transportation to the new school.

- **Identify and address education barriers.** Spot issues that may indicate the child's education is compromised, such as signs that the child is disengaged, falling grades, lost interest, attendance or disciplinary issues, and mental or emotional health issues. Require parties to the case to report back to the court on any outstanding issues that need further attention.
- **Identify and engage the child's education decision maker.** Ensure an appropriate individual is designated to make education decisions on behalf of the child and is taking an active role. If the parent maintains EDM rights, make that clear to all parties in the order. If the parent is unable or not acting in the child's educational best interest, consider providing support to the parent to help the parent develop skills to become an educational advocate for their child, including the appointment of an education advocate to work with the parent. If the parent is unavailable or unwilling, limiting a parent's authority to make education decisions may be necessary. In these instances, consider appointing the child's caregiver (foster parent, kin caregiver) or another appropriate individual to serve as the EDM.
- **Ensure special education needs are identified and addressed.** Ensure the child's special education needs have been assessed and an individualized education program (IEP) has been developed to help the child succeed in school. Monitor the child's progress and pay attention to learning approaches and whether they are appropriate to meet the child's needs. Ensure there is an EDM identified who is also permitted to make special education decisions in accordance with IDEA. Appoint someone to make special education decisions if needed or order a party to the case to work with the school to have someone appointed.
- **Ensure the child has access to supplemental education supports.** Ask if the child has access to enrichment programs and supplemental supports such as tutoring and mentoring. Ensure students in care have access to educational materials, technology, social-emotional learning, and other supports needed to succeed in school. Require a party to the case to follow up to ensure the child has what they need to learn and succeed.
- **Promote collaboration and information sharing.** Ask if the child welfare agency and school are sharing information that has a bearing

on the child’s education, such as placement disruptions, changes in academic performance, and disciplinary actions. While this information must be shared in a way that is student-centered and complies with confidentiality and privacy restrictions, it is essential that the court, agency and school keep one another informed of significant developments that can impact the student’s learning and school success. Courts can issue orders when needed to ensure access to necessary education records and appropriate information sharing.

- **Engage children in their education planning.** Ask children about their school experiences, challenges, successes and goals. Ask about their grades, attendance, favorite subjects, extracurricular activities, and what they need to succeed. Encourage them to advocate for themselves and play active roles in their education.
- **Recognize students’ education success.** Celebrate good or improved grades, successful school projects, grade promotions, test scores, and other proud moments to keep children engaged in and excited about school. A judge who takes a personal interest in a student’s school success can have a lasting impact. Also celebrate the individuals who contributed to the student’s success.
- **Determine if children’s caregivers have the support they need.** Ensure the child’s caregiver has the resources and supports needed to effectively carry out education-related responsibilities for the child. Is additional help needed? Are there responsibilities that are difficult to perform well? What supports exist for the caregiver to ease the burden, if needed? Particularly during COVID-19 and remote and hybrid learning, caregivers will need additional support from child welfare agencies and advocates to ensure students thrive.
- **Promote access to normal activities.** Ask the child about engagement in “normalcy activities,” such as sports, clubs, and extracurricular activities. Does the child have a favorite activity that the child cares about and attends regularly? Are there other activities that the child would like to participate in but can’t and why? What barriers exist to accessing normalcy activities and how can they be addressed?¹⁴

School can be the one constant for children in foster care during times when everything else in their lives is changing and uncertain. Minimizing disruptions and promoting school stability so children can continue to learn and develop knowledge and skills to succeed in life is the goal of current child welfare system reforms. Judges can help ensure these goals are met by making education a focus at child welfare review hearings, monitoring students’ school progress, and working collaboratively with schools and child welfare agencies to address barriers that arise.

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Endnotes

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