

## RIGHTS OF STUDENTS IN FOSTER CARE AND THE JUVENILE JUSTICE SYSTEM

August 2021

Children involved in the foster care or juvenile justice systems have the right to a free public education, like all public school students. These rights are not lost because of system involvement, and additional protections are in place to ensure access to a quality public education.

Children and youth in the foster care and the juvenile justice system may need strong advocates because they are among the most educationally underserved of all student populations. They are more likely to change schools, be placed in inappropriate classes, and fail to receive the special education and remedial services they need. Children in foster care change living placements on average two to three times while in care, and a third of older youth experience five or more school changes,<sup>1</sup> typically losing four to six months of academic progress with each school change.<sup>2</sup> Youth in the juvenile justice system are more likely to have unmet special education needs and a history of truancy.<sup>3</sup>

As a result of multiple school changes and placement in on-grounds schools, students who are system-involved often fall through the cracks. They are more likely to struggle academically, be excluded from school, and earn credits that do not transfer back to their community schools or count towards graduation. As a result, they experience higher dropout rates than their peers.<sup>4</sup> This fact sheet highlights important protections and addresses ways to support students to be successful.

### RIGHT TO SCHOOL STABILITY AND IMMEDIATE ENROLLMENT FOR CHILDREN IN FOSTER CARE

Under federal law, the Every Student Succeeds Act (ESSA), students in foster care have the right to remain in the same school even when they change living placements.<sup>5</sup> If a determination is made that staying in the same school is not in a child's best interest, the child has a right to immediate enrollment in a new school, even if the child is unable to produce records normally required for enrollment.<sup>6</sup>

### SCHOOL STABILITY DECISION-MAKING PROCESS

The decision concerning whether a child will stay in the same school is made through a collaborative Best Interest Determination or "BID" conference, which includes representatives from the child's prior school, the child welfare agency, the biological parent, foster parent, and others who know the child. The decision should be based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting, the needs of the child, and the proximity to the school in which the child is enrolled at the time of placement. Transportation to support school stability is determined by agreement between the local education agency and the child welfare agency. The Best Interest Determination form may be [accessed here](#).

## POINTS OF CONTACT FOR STUDENTS IN FOSTER CARE

To help ensure school stability and immediate enrollment for children in foster care, local education agencies (LEAs) and county children and youth agencies must designate Points of Contact for children in foster care. In the child welfare system, they are known as “Education Liaisons.” In a school setting, they are called “Foster Care Points of Contact.” LEA Foster Care Points of Contact are responsible for facilitating the best-interest determination, ensuring the transfer of student records including immunizations, medical records, copies of IEPs and Section 504 plans, and ensuring that children in foster care are immediately enrolled in and attending school.

To identify your school district or charter school’s point of contact, see the [LEA Foster Care Point of Contact Directory](#). To contact an Education Liaison at a county children and youth agency, see the [Pennsylvania Children and Youth Services Education Liaisons](#). In addition, PDE has designated Foster Care Regional Coordinators, who can also help students, families, and others to resolve education issues facing children in foster care. A listing of these coordinators can be found at [Foster Care Regional Coordinator Contact Information](#).

## STATE SUPPORT FOR STUDENTS IN FOSTER CARE

The Pennsylvania Department of Education (PDE) and Department of Human Services (DHS) have issued [joint guidance on the roles and responsibilities of LEAs and County Children & Youth agencies to ensure school stability for children in foster care](#). This guidance outlines how schools and agencies must collaborate at the local level to make student-centered best-interest determinations and to develop memoranda of understanding and transportation plans to govern how transportation will be arranged and any additional costs shared to support students.

This guidance makes clear that there is a presumption in favor of school stability and that children should remain in the same school during the pendency of any dispute. The guidance also clarifies that court orders regarding educational placements must be followed.

PDE has developed a series of tools available on the [www.pafostercare.org](http://www.pafostercare.org) website for LEAs and child welfare agencies to use in determining best interests, developing or revising MOUs or transportation plans, and addressing and resolving disputes:

1. [Transportation Agreement Memorandum of Understanding \(MOU\)](#)
2. [Local Transportation Plan Template](#)
3. [PA Transportation Plan Guide](#)
4. [Best Interest Determination \(BID\) Form](#)

## HOW TO RESOLVE DISPUTES

If a dispute arises regarding whether or not a child in foster care is entitled to school stability or immediate enrollment in a new school, you should talk to the school district or charter school’s Point of Contact (see above for links). If the dispute is not resolved, you may ask to speak to the [Foster Care Regional Coordinator](#).

If the Regional Coordinator does not resolve the dispute, you may contact Pennsylvania’s designated State Foster Care Coordinator:

Matthew Butensky  
Youth Development Coordinator  
Educational Stability for Foster Care Youth  
Center for Schools and Communities  
275 Grandview Avenue  
Camp Hill, PA 17011  
717-763-1661 x171  
570-238-0258 (cell)  
717-763-2083 fax  
[www.center-school.org](http://www.center-school.org)  
<http://www.pafostercare.org/>

## HOW COURTS CAN SUPPORT STUDENTS IN FOSTER CARE

The Pennsylvania Rules of Juvenile Court Procedure require judges to ask about a child’s education status, school placement, and appropriateness of the child’s education – including school stability and access to special education and remedial education services – at all stages of the adjudicatory process.<sup>7</sup> Courts are also required to ensure that every child in foster care has an active Educational Decision Maker.<sup>8</sup> If a child has no one to serve in this role, the court will appoint an Educational Decision Maker for that child. For more about Educational Decision Makers, see [ELC’s fact sheet on EDMs](#).

## HOW COURTS CAN SUPPORT YOUTH IN THE JUVENILE JUSTICE SYSTEM

Courts are also required to ensure that every youth in the juvenile justice system has an active, involved [Educational Decision Maker](#). A court is authorized to appoint an EDM for a student who is system-involved who lacks a parent, guardian, or other person to serve in this role.<sup>9</sup>

In addition, [Juvenile Court Rule 148](#) requires judges to address “school stability and access to public schools” for all children and youth who are removed from home. This rule emphasizes that a student should attend the local public school while in residential placement, unless certain exceptions apply.<sup>10</sup> As a result, courts may issue orders directing county children and youth agencies to collaborate with schools to ensure school stability and immediate enrollment for youth in the juvenile justice system. Rule 148 applies whenever a child or youth is removed from their home, and at any point in a delinquency proceeding, including pre-dispositional detention placement, post-dispositional modification, and all stages in between.<sup>11</sup>

## RIGHT OF STUDENTS IN RESIDENTIAL PLACEMENTS TO ATTEND THE LOCAL PUBLIC SCHOOL

Unless a court order states otherwise, students in foster care or the juvenile justice system have a legal right to attend the local public school where their residential placement is located.<sup>12</sup> This important right is often overlooked, and too often children and youth in residential settings are directed to attend on-grounds schools by default. While their peers attend public schools that must meet specific state standards, children attending separate on-grounds schools typically receive a subpar education, which undermines their ability to graduate from high school.<sup>13</sup> Placing students with a history of truancy in such settings often increases their risk of dropping out of school because residential placements with on-grounds schools generally provide only limited curricula and fewer hours of instruction – causing students to fall further behind in their coursework.<sup>14</sup> Accordingly, the

Pennsylvania Dependency Benchbook instructs judges that a youth in congregate care should attend a public school unless the court finds a public school not to be in the youth's best interest.<sup>15</sup>

## HOW SCHOOLS CAN SUPPORT STUDENTS IN FOSTER CARE AND IN THE JUVENILE JUSTICE SYSTEM RETURNING FROM PLACEMENT

Many children in foster care and in the juvenile justice system have been in several different schools and may have attended an on-grounds school while they were in a residential placement. These students often struggle when transitioning back to a neighborhood school due to difficulties locating prior records, confusion about how many credits they earned towards graduation, and what courses they need to graduate. Schools can support returning students to be successful by promptly receiving records and talking to the prior school placement, carefully reviewing and revising a student's IEP if applicable, developing a graduation plan, and assisting youth with transition planning.

In addition, school districts must ensure that students returning from juvenile justice placements and/or students who have been adjudicated delinquent are not automatically restricted from returning to the regular classroom environment.<sup>16</sup> A student who is returning from placement and referred to an alternative school setting has the right to request a meeting or hearing to challenge the proposed placement. Students with disabilities returning from placement have additional protections such as a manifestation hearing.<sup>17</sup> Multilingual learners – also referred to as “English learners” – have special protections as well. See our fact sheets regarding [alternative education placements of students with disabilities](#) and [multilingual learners](#).

If a youth has been convicted or adjudicated delinquent of sexual assault the school may opt to place the student in an AEDY program. See our [fact sheet on Act 110](#) concerning this law enacted in 2020 that restricts the school placement of students who have been convicted or adjudicated delinquent of sexual assault of another student in the same school.<sup>18</sup>

## RIGHT TO A SURROGATE PARENT

School districts are also required to appoint Surrogate Parents for students with disabilities who do not have either a birth parent, adoptive parent, or other individual authorized by the IDEA to act on a child's behalf in special education or early intervention matters. The IDEA requires school districts to ensure that children who have been identified as needing special education or early intervention services, or who should be evaluated to determine eligibility, have an active engaged parent or other authorized adult to participate in the special education proceedings and to make special education decisions.<sup>19</sup>

For more information on what schools can do to support students who are system-involved, see the attached *Model School Policies and Practices to Support Students in Foster Care and in the Juvenile Justice System*.

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The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice - visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) - or contact another attorney of your choice.

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<sup>1</sup> *Fostering Success in Education*, National Factsheet on Educational Outcomes of Children in Foster Care, National Working Group on Foster Care and Education (April 2018), available at [http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=2100&Command=Core\\_Download&method=inline&PortalId=0&TabId=124](http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=2100&Command=Core_Download&method=inline&PortalId=0&TabId=124)

<sup>2</sup> Katherine C. Pears, Hyoun K. Kim, Rohanna Buchanan, and Philip A. Fisher, *Adverse Consequences of School Mobility for Children in Foster Care: A Prospective Longitudinal Study*, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4618793/>.

<sup>3</sup> Southern Education Foundation, *Just Learning: The Imperative to Transform Juvenile Justice Systems into Effective Educational Systems—A Study of Juvenile Justice Schools in the South and the Nation 14* (2014), available at <https://www.southerneducation.org/wp-content/uploads/2019/02/Just-Learning-Final.pdf> (2/3 of juveniles entering state institutions were below grade level in math and reading and 44% entering local juvenile justice facilities were below grade level in math and reading). Peter E. Leone, Sheri M. Meisel and Will Drakeford, *Special Education Programs for Youth with Disabilities in Juvenile Corrections*, *Journal of Correctional Education* (1974-) Vol. 53, No. 2 (June 2002), pp. 46-50, Correctional Education Association, available at <https://www.jstor.org/stable/41971066>

<sup>4</sup> *Fostering Success in Education* Factsheet; Wolanin, T. R. (2005). *Higher education opportunities for foster youth: A primer for policymakers*. Washington, DC: The Institute for Higher Education Policy; Burley, M. (2009), *Foster Care to College Partnership: Evaluation of education outcomes for foster youth*. Washington State Institute for Public Policy, available at <http://www.wsipp.wa.gov/rptfiles/09-12-3901.pdf>.; Balfanz, R., Spiridakis, K., Neild, R. C., & Legters, N. (2003). *High-poverty secondary schools and the juvenile justice system: How neither helps the other and how that could change*. *New Directions for Youth Development*, 99(1), 71-89 available at [https://www.researchgate.net/publication/8993870\\_High-poverty\\_secondary\\_schools\\_and\\_the\\_juvenile\\_justice\\_system\\_How\\_neither\\_helps\\_the\\_other\\_and\\_how\\_that\\_could\\_change](https://www.researchgate.net/publication/8993870_High-poverty_secondary_schools_and_the_juvenile_justice_system_How_neither_helps_the_other_and_how_that_could_change).

<sup>5</sup> *Every Student Succeeds Act*, 20 U.S.C. § 1703. For more information regarding ESSA, consult the federal guidance issued by the U.S. Departments of Education (U.S. DOE) and Health and Human Services as [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Guidance\)](#) or review a [summary of the provisions of the Guidance](#) published by the Legal Center for Foster Care and Education, a collaboration of the Education Law Center, Juvenile Law Center and American Bar Association Center on Children and the Law.

<sup>6</sup> *Id.*

<sup>7</sup> See e.g., Pa.R.J.C.P. 1142 (e)(4) (requiring court to make findings and issue orders addressing educational needs of child at shelter care hearing).

<sup>8</sup> Pa.R.J.C.P. 1147

<sup>9</sup> Pa.R.J.C.P. 147.

<sup>10</sup> Pa.R.J.C.P. 148

<sup>11</sup> Pa.R.J.C.P. 148, see comment

<sup>12</sup> See 24 P.S. § 13-1306(a) (“The board of school directors of any school district in which there is located any orphan asylum, home for the friendless, children’s home, or other institution for the care or training of orphans or other children, shall permit any children who are inmates of such homes, but not legal residents in such district, to attend the public schools in said district....”).

<sup>13</sup> Children’s Rights, Inc. & Education Law Center, [Unsafe and Uneducated: Indifference to Dangers in Pennsylvania Child Welfare Facilities](#) 9 (2018).

<sup>14</sup> See, e.g., 2013 Report to the Pennsylvania Roundtable, Educational Success and Truancy Prevention Workgroup 5-6 (2013) (reporting that only 2.4% of respondents indicated that children attending on-grounds schools “always” received educational services and opportunities equal to that provided in the local public schools).

<sup>15</sup> Pa.R.J.C.P. 1148 (C). See Pennsylvania Dependency Benchbook, Office of Children and Families in the Courts Administrative Office of Pennsylvania Courts (2019) available at <http://ocfcpacourts.us/wp-content/uploads/2020/05/2019-Pennsylvania-Dependency-Benchbook-3rd-Edition-Interactive-002427.pdf>. (“These reasons should be placed on the record. If public school is not in the youth’s best interest and will attend an on-grounds school, will the youth receive academic credits that transfer to the youth’s home school upon discharge, and will the youth be able to advance to the next grade level? Will the youth’s instruction come from teachers or a

computer? If attending a residential facility’s on-grounds school, the court should ascertain whether the credits a child earns at a residential placement are transferable toward graduation at a public school.”) *Id.* at Chapter 20: General Issues, Section 20.7.1: Factors to Consider Prior to Placement.

<sup>16</sup> *In D.C. v. Sch. Dist. Of Philadelphia* 879 A.2d 408 (2005), the Commonwealth Court held that students in the School District of Philadelphia were entitled to a due process hearing on the ground that a “statutory inflexible prohibition against a return to the regular classroom for students adjudicated delinquent or convicted of specified underlying offenses represented an unconstitutional irrebuttable presumption and violated procedural due process.”

<sup>17</sup> See §(k)(1)(E)(ii)

<sup>18</sup> 24 P.S. § 13-1318.1.

<sup>19</sup> See 20 U.S.C. §1415

## MODEL SCHOOL POLICIES AND PRACTICES TO SUPPORT STUDENTS IN FOSTER CARE AND IN THE JUVENILE JUSTICE SYSTEM

*School boards and administrators can improve educational outcomes for children in foster care and youth in the juvenile justice system by making changes to their policies and practices to support student success. Here are some strategies to consider.*

### SCHOOL STABILITY

School districts should ensure that they have policies and protocols in place to support school stability for children in foster care and in the juvenile justice system. Consider tracking the number of students who remained in their school when they experienced a change in living placement and report on what percentage of children the district supported to stay in the same school. School districts should also track the reasons that students changed schools.

### ENROLLMENT AND WELCOMING YOUTH IN TRANSITION

In addition to ensuring immediate enrollment in a new school, children in foster care and in the juvenile justice system benefit from the opportunity to have a smooth transition into a new school, including touring the campus prior to starting school.

Several school districts also have developed mentoring programs where children in foster care are assigned to a student or teacher mentor. Mentorship programs have been shown to support students to be successful and increase graduation rates. Talk to children about their interests and goals and programs the new school offers. Children and youth who are system-involved should also be supported to participate in sports teams and extracurricular activities, even if the deadline for enrolling in these programs has passed.

Students returning from a juvenile justice placement cannot be automatically enrolled into alternative schools or arbitrarily prevented from accessing their community classrooms based on their status as a student returning from placement. Like other students referred to “alternative education for disruptive youth” programs, students and their families have a right to challenge such referrals prior to placement. In addition, special protections are afforded to students with disabilities and multilingual learners (referred to as “English learners”). See ELC’s fact sheets on [Alternative Education for Students with Disabilities](#) and [Alternative Education for Multilingual Learners](#).

### ATTENDANCE

Schools must ensure that their policies accurately reflect the fact that students in foster care and in the juvenile justice system will be excused for any conferences, appointments, meetings, visitations, or hearing dates relating to child welfare cases, including court appearances, meetings, and sibling visitation.

## EDUCATION RECORDS, CREDIT ASSESSMENTS & GRADUATION PLANNING

Many children in foster care and in the juvenile justice system have been in several different schools and may also have attended an “on-grounds” school while in a residential placement. These students often struggle to locate prior records and to know how many credits they have earned towards graduation and what courses they need to graduate. There are many things that schools can do support these students to be successful.

First, obtain all education records from prior school placements. Your careful review of these records will identify all credits earned, including partial credit for work completed while the child was in a short-term situation. Notably, many courses at on-grounds schools may have names that sound like electives when in fact they are core subjects. All credits granted by a public school must be accepted upon the transfer of the student.<sup>1</sup> Districts should accept credits from all licensed private academic schools, residential schools, cyber schools, and day treatment programs.

Second, develop a graduation plan right away for the student so that they are clear about what credits, courses, and projects they need to graduate. Consider whether the student qualifies for a waiver of high school graduation requirements such as local course-specific mandates or other exemptions based on state law. The Pennsylvania School Code recognizes the authority of chief school administrators (e.g., superintendents) to “waive” state high school graduation requirements on a case-by-case basis “for good cause.” Such waivers may be granted to accommodate students who experience “extenuating circumstances,” expressly including “frequent transfers in schools” or based on a failure to complete a senior project.<sup>2</sup> To learn more about how other jurisdictions have awarded full or partial credits go to: [https://kids-alliance.org/wp-content/uploads/2013/12/PCM\\_WEB\\_April2014.pdf](https://kids-alliance.org/wp-content/uploads/2013/12/PCM_WEB_April2014.pdf).

## REMEDIAL HELP

Many children and youth in foster care struggle academically due in part to disruptions in their education, a higher likelihood of developmental delays, and the trauma caused by abuse and neglect. It is well documented that remedial programs can make a dramatic difference, particularly one-to-one tutoring, to improve academic success.<sup>3</sup> Many school districts and organizations across the country have developed remedial support programs to better meet the needs of students in foster care. For example, [Treehouse](#) provides children in Washington state with academic and other essential supports they need to graduate from high school. [Kids in School Rule](#) in Cincinnati, Ohio, also provides targeted remedial help to students in foster care. To learn more about what schools can do to support students in foster care, go to the [Legal Center for Foster Care and Education](#) – a collaboration of the Education Law Center, [Juvenile Law Center](#), and the [American Bar Association Center on Children and the Law](#).

## SCHOOL DISCIPLINE

The impact of a child’s experience and trauma should be taken into account when determining whether or not to impose any exclusionary disciplinary measure or change in school placement. It is important to recognize that in most cases an expulsion will result in the termination of a child’s foster care living placement and prolonged time in foster care or re-entry into the juvenile justice system. Talk to the child’s caseworker, foster parent, etc., about the consequences of any proposed disciplinary action. A child should not be subject to an exclusion or change in school placement if the child’s foster care living placement will be impacted. Students with disabilities are also entitled to a manifestation



determination review to determine whether the student's behavior was caused by or related to the student's disability or the school's failure to follow the student's IEP. In some cases, the outcome of a manifestation determination review could be that the student is not excluded from school, or they may become eligible for additional supports and services, including a revised functional behavioral assessment and positive behavior support plan.

## TRANSITION AND POST-SECONDARY

Students in foster care and in the juvenile justice system should receive individual college counseling, including assistance with applying to post-secondary opportunities. Older youth, including those who age out of the system at age 18, often have no one to help them navigate the complicated college application and financial aid process.

In Pennsylvania, the Fostering Independence Tuition Waiver Program (<https://www.education.pa.gov/Postsecondary-Adult/CollegeCareer/FosteringIndependence/Pages/default.aspx>) provides a waiver for tuition and mandatory fees charged by most postsecondary institutions for eligible youth who are or were in foster care. To learn more or determine if a student is eligible you can visit the PA Higher Education Assistance Agency website here: <http://www.pheaa.org/funding-opportunities/other-educational-aid/foster-education.shtml>.

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<sup>1</sup> 22 Pa. Code § 4.74

<sup>2</sup> 22 Pa. Code § 4.51-d

<sup>3</sup> Olivia Erickson, *Foster Care and Education: Exploring the Success of Interventions Aimed to Improve Academic Achievement of Foster Children*, available at [https://sophia.stkate.edu/cgi/viewcontent.cgi?article=1842&context=msw\\_papers](https://sophia.stkate.edu/cgi/viewcontent.cgi?article=1842&context=msw_papers)