

## RIGHTS OF STUDENTS IN FOSTER CARE

August 2023

Children involved in the foster care system have the right to a free public education, like all other 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 system need strong advocates. Too often, youth in care are among the most educationally underserved of all student populations. They are more likely to change schools, be placed in inappropriate classes, and lack access to crucial 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>

As a result of multiple school changes and placement in on-grounds schools, students in care 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 toward graduation. As a result, they experience higher dropout rates than their peers.<sup>3</sup> This fact sheet highlights important protections and addresses ways to support students in care to be successful.

### ARE CHILDREN OF COLOR WRONGLY OVERREPRESENTED IN THE CHILD WELFARE SYSTEM?

Yes. Nationally, the overrepresentation of Black children in the child welfare system has been well documented across numerous studies.<sup>4</sup> In Pennsylvania, while 13 percent of the total child population are Black children, they make up 35 percent of the foster care population.<sup>5</sup> Racial inequities must be understood to result from individual racial bias that directly impacts decision-making in the child welfare system as well as from systemic racism, whereby communities of color are intentionally denied and divested of resources that are diverted toward white communities through a plethora of federal, state, and local policies.<sup>6</sup> White families are more likely to receive family and home support, whereas Black families are more likely to have their children removed.<sup>7</sup> As a result, Black children are disproportionately harmed by the child welfare system.

### 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>8</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>9</sup>

## DOES THE RIGHT TO SCHOOL STABILITY APPLY TO STUDENTS IN RESIDENTIAL PLACEMENTS?

Yes. The right applies to all children in foster care, including those in residential settings. In May 2023, the Pennsylvania Department of Education (PDE) issued a [Penn\\*Link](#) message to school entities across the commonwealth, reemphasizing this and the obligation to conduct a “best interest determination” (BID) for students in foster care in residential placements: “While it may not always be feasible for students in foster care residing in residential facilities to remain in their school of origin, changes to an educational placement should only be determined through the BID process. **A facility’s on-site school should never be presumed to be the default educational placement.**”<sup>10</sup> Students in residential settings also have a right to immediate enrollment in the local public school where the residential placement is located.<sup>11</sup>

## SCHOOL STABILITY DECISION-MAKING PROCESS

Every time a child in care is moved to a new living placement, there must be a “best interest determination” or “BID” conference concerning whether the child will stay in the same school. The meeting should include representatives from the child’s prior school district or other local education agency (LEA) contact, the child welfare agency, the biological parent, foster parent, and the youth whenever possible and appropriate. The BID conference **must** include the child’s legal educational decision maker, whether that person is the child’s biological parent, a foster parent, a caregiver, or an educational decision maker (EDM) appointed by a court.<sup>12</sup> 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 LEA and the child welfare agency. The best interest determination form may be [downloaded here](#).

Further, the Fostering Connections Act of 2008, which predates ESSA, imposes additional requirements specific to child welfare caseworkers to support youth in care in school. For example, caseworkers are required to consider **proximity and appropriateness** of the child’s prior school when placing a child in out-of-home placement. Caseworkers must also work collaboratively to ensure school stability when in the child’s best interest. This act further requires caseworkers to ensure immediate enrollment in a new school with records to follow.<sup>13</sup> In addition, under federal law, all child welfare agencies are required to maintain education records and important information regarding a student’s progress in case files.<sup>14</sup>

## POINTS OF CONTACT FOR STUDENTS IN FOSTER CARE

To help ensure school stability and immediate enrollment for children in foster care, 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 that children in foster care are immediately enrolled in and attending school, and ensuring the transfer of student records, including immunizations, medical records, and copies of IEPs and Section 504 plans.

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

## STATE SUPPORT FOR STUDENTS IN FOSTER CARE TO REMAIN IN THE SAME SCHOOL

The PDE and Pennsylvania Department of Human Services (PA-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.<sup>15</sup> 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 time that any dispute is pending. This 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 a memorandum of understanding (MOU) or transportation plan, and addressing and resolving disputes:

1. [Transportation Procedures Agreement Memorandum of Understanding \(MOU\)](#)
2. [Local Transportation Plan Template](#)
3. [PA Transportation Plan Guide](#)
4. [Best Interest Determination \(BID\) School Placement 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 Managing Coordinator  
 Educational Stability for Children and Youth in Foster Care  
 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 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>16</sup> For example, courts may issue court orders directing a child to remain in the same school, be placed in a different school, or evaluated for special education services.

Courts are also required to ensure that every child in foster care has an active, involved education decision maker (EDM).<sup>17</sup> A court is authorized to appoint an EDM for a student who is system-involved and who lacks a parent, guardian, or other person to serve in this role.<sup>18</sup> This EDM will remain responsible for that child until another EDM is appointed or the role is no longer needed. For more about EDMs, see [ELC’s fact sheet on EDMs](#).

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

Unless a court order states otherwise, students in foster care have a legal right to attend the local public school where their residential placement is located.<sup>19</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>20</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 often provide only limited curricula and fewer hours of instruction – causing students to fall further behind in their coursework.<sup>21</sup> Accordingly, the Pennsylvania Dependency Benchbook instructs judges that 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>22</sup>

Joint [guidance](#) issued by PDE and PA-DHS also addresses these issues and other rights of students in non-educational residential placements. This guidance specifically prohibits “bundling,” which means that a residential placement cannot require a child placed in a residential setting to attend its on-grounds school as a condition of their placement. Moreover, a residential team must support the student by facilitating immediate enrollment in the neighborhood school where the residential placement is located unless a court order or IEP team identifies another school placement.

## CAN STUDENTS IN FOSTER CARE RECEIVE EXPEDITED EVALUATIONS OR REEVALUATIONS TO DETERMINE THEIR ELIGIBILITY OR CONTINUED ELIGIBILITY FOR SPECIAL EDUCATION SERVICES?

Yes. Under the Individuals with Disabilities Education Act (IDEA), a key special education law, all students who are suspected of having disabilities that would make them eligible for special education must be evaluated or reevaluated within 60 days after receiving a signed Permission to Evaluate (PTE) or Permission to Reevaluate (PTRE). Students who are considered to be “highly mobile,” which includes students who are involved in the child welfare or juvenile justice systems as well as students experiencing homelessness, can receive expedited evaluations and reevaluations. These assessments are completed within **30 days rather than within 60 days**, in

accordance with [guidance](#) from the U.S. Department of Education’s Office of Special Education and Rehabilitative Services.<sup>23</sup> It is best practice to evaluate all “highly mobile” students on an expedited basis to ensure they can receive needed evaluations and appropriate services, which are often disrupted because of frequent moves.<sup>24</sup> To learn more about students’ rights to timely evaluations, see ELC’s fact sheet on [Special Education Evaluations](#), and to learn more about student’s rights in the special education context, see ELC’s guide for parents and advocates, [The Right to Special Education in Pennsylvania](#).

## HOW SCHOOLS CAN SUPPORT STUDENTS IN FOSTER CARE RETURNING FROM PLACEMENT

Many children in foster care 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 obtaining 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. For children in foster care with disabilities, federal guidance instructs that schools should expedite special education evaluations by completing reports in 30 days, rather than the full 60 days.<sup>25</sup> Schools can aid in this process by considering additional private evaluations or other reports conducted by child welfare agencies.

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>26</sup> Multilingual learners – also referred to as “English learners” – have special protections as well. See ELC’s fact sheets on [alternative education placements of students with disabilities](#) and [multilingual learners](#).

## 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.<sup>27</sup> 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 actively engaged parent or other authorized adult to participate in the special education proceedings and to make special education decisions.<sup>28</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*.

## ACT 1 OF 2022 PROVIDES NEW PROTECTIONS FOR YOUTH IN CARE

In January 2022, Pennsylvania adopted Act 1, codified at 24 Pa. Stat. § 13-1331.1, which seeks to remove educational and graduation barriers for students who experience education instability (school disruptions) due to homelessness, foster care, involvement in the juvenile justice system, or court-ordered placements. Act 1 addresses barriers to school participation and timely graduation by ensuring that each eligible student has a school-assigned point of contact, that records transfer in a timely manner, and that students are able to participate in extracurricular activities. For

youth in high school, full and partial credits earned must be recognized, and each student must have a graduation plan that considers different methods of earning missing credits and alternative pathways to graduation. Act 1 applies to students who experienced one or more school disruptions in a year. It applies to those returning to a formerly attended school, starting at a new school, or reengaging in school after an extended absence. The act also applies to students who attended school in the 2021-2022 school year. You can learn more about Act 1 in ELC's fact sheet [here](#).

## COLLEGE TUITION WAIVER FOR STUDENTS IN FOSTER CARE

[Act 16 of 2019](#) amended the school code to create the Fostering Independence Through Education Waiver,<sup>29</sup> which provides a college tuition and fee waiver for certain eligible youth who have been in foster care. The tuition and fee waiver, aimed at reducing financial barriers, applies to undergraduate degrees at numerous colleges and universities in the state. This law also creates points of contact at participating institutions of higher education to help eligible students identify and apply for financial aid and scholarships, gather verification documents, and access campus and community resources and support services. The waiver can be used for up to five years until a young adult reaches age 26. To be eligible, a student must be identified as a youth who is or was in foster care, was discharged from foster care on or after attaining age 16, or exited foster care on or after age 16 to adoption or permanent legal guardianship. In addition, a student must be eligible for and apply to the Chafee Education and Training Grant program. To learn more, go to Pennsylvania Higher Education Assistance Agency's website [here](#).

## THE FAMILY FIRST PREVENTION SERVICES ACT OF 2018<sup>30</sup>

Also known as the Family First Act, this federal legislation includes historical reforms to the way we view child welfare and how to best support youth in care. Family First emphasizes providing services to keep children safely with their families and avoid the traumatic experience of entering foster care and being removed from home. The law also emphasizes the importance of children growing up in families instead of congregate-care settings. The goal is to ensure children are placed in the least restrictive, most family-like setting appropriate to their individual needs. One of the most significant changes is to how child welfare systems are funded to reduce the number of children in foster care and reduce reliance on congregate-care settings. Every state is required to complete and publish a statewide plan to comply with Family First. Pennsylvania's statewide plan and the 5-Year Plan have now been approved. You can read the full submitted plan [here](#). To learn more about Family First and its impact on students in care go to the PA-DHS Family First webpage [here](#).

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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, multilingual 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.

<sup>1</sup> National Working Group on Foster Care and Education, *Fostering Success in Education: National Factsheet on Educational Outcomes of Children in Foster Care* [hereinafter “*Fostering Success in Education Factsheet*”] 2 (Jan. 2014), available at <https://www.fc2success.org/wp-content/uploads/2012/05/National-Fact-Sheet-on-the-Educational-Outcomes-of-Children-in-Foster-Care-Jan-2014.pdf>. (see “Research and Statistics” header, collecting studies); Catherine S. Zorc, Amanda L.R. O’Reilly, Meredith Matone, Jin Long, Caroline L. Watts, David Rubin, *Children and Youth Services Review*, Volume 35, Issue 5, 2013, *The relationship of placement experience to school absenteeism and changing schools in young, school-aged children in foster care*, 826-833, <https://doi.org/10.1016/j.childyouth.2013.02.006>, <https://www.sciencedirect.com/science/article/pii/S0190740913000704>)

<sup>2</sup> Katherine C. Pears, Hyoun K. Kim, Rohanna Buchanan & Philip A. Fisher, *Adverse Consequences of School Mobility for Children in Foster Care: A Prospective Longitudinal Study*, National Library of Medicine (Oct. 23, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4618793/>.

<sup>3</sup> *Fostering Success in Education Factsheet*, *supra* note 1, at 21; Thomas R. Wolanin, Institute for Higher Education Policy, *Higher Education Opportunities for Foster Youth: A Primer for Policymakers* (2005), [http://ihep.org/wp-content/uploads/2014/05/uploads\\_docs\\_pubs\\_opportunitiesfosteryouth.pdf](http://ihep.org/wp-content/uploads/2014/05/uploads_docs_pubs_opportunitiesfosteryouth.pdf); Washington State Institute for Public Policy, *Foster Care to College Partnership: Evaluation of Education Outcomes for Foster Youth*, (Dec. 2009), <http://www.wsipp.wa.gov/rptfiles/09-12-3901.pdf>; Robert Balfanz, Kurt Spiridakis, Ruth Neild, & Nettie Legters, *High-Poverty Secondary Schools and the Juvenile Justice System: How Neither Helps the Other and How That Could Change*, *New Directions for Youth Development*, Autumn 2003, 71-89, [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>4</sup> Cenat, J. M., McIntee, S. E., Mukunzi, J. N., & Noorishad, P. G *Overrepresentation of Black children in Child Welfare*. (2020). *Overrepresentation of Black children in the child welfare system: A systematic review to understand and better act*. *Children and Youth Services Review*, 120, available at <https://doi.org/10.1016/j.childyouth.2020.105714>. <https://ncwwi.org/wp-content/uploads/2022/05/Overrepresentation-of-Black-children-in-Child-Welfare.pdf>

<sup>5</sup> See *Racial Equity Report 2021*, Pennsylvania Department of Human Resources, available at <https://www.dhs.pa.gov/about/Documents/2021%20DHS%20Racial%20Equity%20Report%20final.pdf>.

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

<sup>7</sup> See 2022 State of Child Welfare in PA report, Pennsylvania Partnerships for Children at pages 12-13, available at <https://online.flippingbook.com/view/1067488899/12/>. See also Sarah A. Font, Lawrence M. Berger, and Kristen S. Slack, *Examining Racial Disproportionality in Child Protective Services Case Decisions*, *Child Youth Serv Rev.* 2012 Nov 1; 34(11): 2188-2200, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3439815/>.

<sup>8</sup> *Every Student Succeeds Act of 2015*, 20 U.S.C. § 1703. For more information regarding ESSA, consult the federal guidance, see U.S Department of Education & U.S. Department of Health & Human Services, *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* (2016), <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>, or review a summary of the provisions of the Guidance, see Legal Center for Foster Care & Education, *Highlights of Joint Federal Guidance to Ensure School Success for Students in Foster Care Under the ESSA* (2016), available at <https://docs.fostercareandeducation.org/AreasofFocus/EducationStability.aspx>.

<sup>9</sup> *Id.*

<sup>10</sup> Pa. Dep’t of Educ., *Penn\*Link: Foster Care Students Educational Placement* (May 19, 2023), <https://www.elc-pa.org/wp-content/uploads/2023/05/PA-Dept.-of-Education-Penn-Link-Re-Foster-Care-Students-Educational-Placement.pdf>.

<sup>11</sup> See 24 P.S. § 13-1306.

<sup>12</sup> See Pa. R.J.C.P. 1147 (explaining court’s authority to appoint Educational Decision Maker).

<sup>13</sup> *Fostering Connections to Success and Increasing Adoptions Act*, 42 U.S.C. § 675(1)(G).

<sup>14</sup> Specifically, Title IV-E of the Social Security Act requires states to develop case plans for children in foster care and that the case plans include, among other things, the names of the child’s education providers, the child’s grade level performance, the child’s school records, and any other relevant education information concerning the child as determined by the child welfare agency. 42 U.S.C. §§ 671(a)(16), 675(1)(C).

<sup>15</sup> Pa. Dep’t of Educ. & Pa. Dep’t of Human Services, *Dear Colleague ESSA Supporting Students in Foster Care* (Nov. 29, 2016), <http://www.pafostercare.org/wp-content/uploads/sites/16/2017/01/ESSA-Supporting-Students-In-Foster-Care.pdf>.

<sup>16</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>17</sup> Pa. R.J.C.P. 1147.

<sup>18</sup> *Id.*

<sup>19</sup> See 24 Pa. Stat. § 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>20</sup> Children’s Rights, Inc. & Education Law Center, *Unsafe and Uneducated: Indifference to Dangers in Pennsylvania’s Residential Child Welfare Facilities* 22 (2018), [https://www.elc-pa.org/wp-content/uploads/2018/12/2018\\_Pennsylvania-Residential-Facilities\\_Childrens-Rights\\_Education-Law-Center.pdf](https://www.elc-pa.org/wp-content/uploads/2018/12/2018_Pennsylvania-Residential-Facilities_Childrens-Rights_Education-Law-Center.pdf).

<sup>21</sup> See, e.g., Educational Success and Truancy Prevention Workgroup, *2013 Report to the Pennsylvania Roundtable*, 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>22</sup> Pa.R.J.C.P. 1148 (C). See Office of Children and Families in the Courts Administrative Office of Pennsylvania Courts, *Pennsylvania Dependency Benchbook* § 13.6.13 (2019), <http://ocfcpacourts.us/wp-content/uploads/2020/05/2019-Pennsylvania-Dependency-Benchbook-3rd-Edition-Interactive-002427.pdf> (“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 § 20.7.1, Factors to Consider Prior to Placement (“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?”).

<sup>23</sup> Letter from Office of Special Education and Rehabilitative Services to State Director of Special Education (Nov. 10, 2022), <https://sites.ed.gov/idea/files/Letter-to-State-Directors-of-Special-Education-on-Ensuring-a-High-Quality-Education-for-Highly-Mobile-Children-11-10-2022.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> See U.S. Dep’t of Educ. Office of Special Educ. & Rehabilitative Services, *OSEP DEAR COLLEAGUE LETTER on Education for Highly Mobile Children* (July 19, 2013), <https://sites.ed.gov/idea/idea-files/osep-dear-colleague-letter-on-education-for-highly-mobile-children/>.

<sup>26</sup> See 20 U.S.C. §1415(k)(1)(E)(ii).

<sup>27</sup> Pa. Dep’t of Educ., *Basic Education Circular: Surrogate Parents*, <https://www.education.pa.gov/Policy-Funding/BECS/uscode/Pages/SurrogateParents.aspx> (last reviewed Feb. 2019).

<sup>28</sup> See 20 U.S.C. §1415.

<sup>29</sup> 24 Pa. Stat. 26-2601-K et. seq.

<sup>30</sup> Family First Prevention Services Act, Pub. L. No.115–123, amending in part 42 U.S.C. § 671 (authorizing new Title IV-E funding).

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

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

### ADDRESSING RACIAL BIAS IN REFERRAL AND TREATMENT OF CHILDREN AND YOUTH

For decades, racial disparities in the referral of children and youth to the child welfare system have been studied and well documented – particularly in Pennsylvania, where Black children represent just 13% of the total population but make up 35% of the children and youth in foster care.<sup>1</sup> Similar disparities continue to persist in referrals to the juvenile justice system.<sup>2</sup> These disparities reflect inherent biases and deeply rooted anti-Black racism within both systems. One report found that even when risk factors are identical for both Black families and white families, a Black family is more likely to have their child removed and less likely to receive meaningful supports in the home.<sup>3</sup> In short, personal and implicit biases directly impact decision-making, which results in disparate treatment and outcomes for Black children and reflects deeply entrenched systemic racism and discrimination.<sup>4</sup> These disparities are particularly acute for Black children due to systemic anti-Black racism,<sup>5</sup> which is defined by the Center for the Study of Social Policy as “any attitude, behavior, practice or policy that explicitly or implicitly reflects that Black people are inferior to another racial group.”<sup>6</sup>

With this in mind, it is imperative that any model policy or strategy confronts racial bias head-on – recognizing that the impact of being removed from home has negative collateral consequences, including removal from schools, segregation away from family and friends, and time in systems that have been well-documented to be harmful and particularly harsh in their treatment of Black children.<sup>7</sup>

### SCHOOL STABILITY

State and federal law requires that school districts ensure they have policies and protocols in place to support school stability for children in foster care and in the juvenile justice system. Districts should 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. Most importantly, schools need to be mindful that school stability is sometimes the only stability in a young person’s life and must be prioritized and maintained whenever possible.

## 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](#).

## ENGAGING IN EXTRACURRICULARS

Connecting students who are highly mobile to an activity or club that interests them increases their engagement in and attachment to school. Under Act 1, school entities must allow all students who experience education instability and are in foster care, experiencing homelessness, or impacted by the juvenile justice system to participate in any school-sponsored or extracurricular activity for which the student meets placement and qualification requirements, even if the deadline for participating in the activity has passed.<sup>8</sup>

## ATTENDANCE

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

## ACT 1: EDUCATION RECORDS, CREDIT ASSESSMENTS, AND GRADUATION PLANNING

Many children in foster care and in the juvenile justice system have been in several different schools, and some have attended an “on-grounds” school while in a residential placement. Due to school changes, these students often struggle to locate prior records or know how many credits they have earned towards graduation and what courses they need to graduate. Under Act 1, schools are obligated to support these students to graduate.<sup>9</sup>

**First, request and 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 placement. Notably, many courses at on-grounds schools 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>10</sup> Districts should accept credits from all licensed private academic schools, residential schools, cyber schools, and day treatment programs. School entities are also obligated to adopt policies to assess and award partial credits for student work, which must be counted towards graduation.<sup>11</sup>

**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 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 a failure to complete a senior project.<sup>12</sup>

To learn more about Act 1, see ELC’s fact sheet on [Act 1: Supporting Graduation & Equal Access for Students Experiencing Homelessness, in Foster Care, or in the Juvenile Justice System](#). 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 involved in the juvenile justice or child welfare systems have been failed academically, causing youth to struggle academically. This is due in part to the disparate treatment of children of color, disruptions in their education, limited access to quality education and necessary supports while system-involved, 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>13</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, 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](#).

## SCHOOL DISCIPLINE

The impact of a child’s past experience and trauma must be considered when determining whether 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 reentry 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.

Further, students with disabilities are 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. For students involved in the juvenile justice system, particularly for school-based offenses, the manifestation determination outcome can have an impact on whether charges move forward, so it is a recommended practice to keep a child’s attorney informed of school-based decisions.

## ELIMINATE FINES AND FEES

Too often, schools subject students who are system-involved to fines and fees that are not just unaffordable but can result in deeper and harsher system (court) involvement if unpaid. Under Act 1, a school entity must waive fees, fines, and costs which would otherwise present barriers to participation. To reduce these barriers, schools must take actions such as refraining from imposing fines or other penalties for students who are unable to obtain a uniform and “waiving all fees that would otherwise be assessed against the student.”<sup>14</sup>

## TRANSITION AND POSTSECONDARY

Students in foster care and in the juvenile justice system should receive individual college counseling, including assistance with applying to postsecondary 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, 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> Pa. Dep’t of Human Services, *Racial Equity Report 2021: Leading the Fight for Justice, Equity, and Opportunity for All People 2* (2021) [hereinafter Racial Justice Report], <https://www.dhs.pa.gov/about/Documents/2021%20DHS%20Racial%20Equity%20Report%20final.pdf> (“Black children represent 35 percent of Pennsylvania’s foster care population, despite accounting for just 13 percent of children in Pennsylvania. Two-thirds of youth referred to DHS’ secure youth treatment centers are Black. This disproportionality is the result of centuries of systemic racism.”).

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<sup>2</sup> Pa. Juvenile Justice Task Force, *Report & Recommendations 26-28* (June 2021) [hereinafter Juvenile Justice Task Force Report], [https://www.senatorbaker.com/wp-content/uploads/sites/28/2021/06/PA-Juvenile-Justice-Task-Force-Report-and-Recommendations\\_FINAL.pdf](https://www.senatorbaker.com/wp-content/uploads/sites/28/2021/06/PA-Juvenile-Justice-Task-Force-Report-and-Recommendations_FINAL.pdf) (“Black Non-Hispanic youth make up 14 percent of the statewide youth population and 38 percent of written allegations coming into the system. Yet they represent 62 percent of youth held in detention prior to adjudication, 47 percent of youth sent to residential placement, 62 percent of youth charged as adults through statutory exclusion (i.e., directly filed in adult court), and 55 percent of youth charged in adult court at the discretion of a juvenile court judge. . . . [and those disparities persist] even when youth are charged with the same offense. For misdemeanor drug possession—the second-most common offense leading to the removal of youth from their homes—Black Non-Hispanic males make up 16 percent of written allegations but 33 percent of residential placements for that charge.”).

<sup>3</sup> 2020 State of Child Welfare report by Pennsylvania Partnerships for Children <https://online.flippingbook.com/view/324778/>.

<sup>4</sup> Children of color, particularly Black children, are in these systems the longest due to systemic racism and individual anti-Black racial bias. See Racial Justice Report, *supra* note 1, at 13 (“Once Black children become known to the child welfare system, they are more likely to enter foster care and stay in foster care longer than White children. Currently, 35 percent of children in foster care are Black, and Black children represent 42 percent of children who have been in foster care for two years or more.”); *id.* at 15 (“[Y]outh of color, especially boys, are more likely to be removed from home even for identical offenses, than other youth. Youth of color are also more likely to be kept under court supervision longer and prosecuted more often as adults than other youth.”); see also Juvenile Justice Task Force Report, *supra* note 2.

<sup>5</sup> Racial Justice Report, *supra* note 1 (using data to show how systemic racism, especially towards Black individuals “has prevented equitable access to quality education, housing, nutritious food, employment, medical care, social service programs, and the delivery of justice”).

<sup>6</sup> Center for the Study of Social Policy, *Using an Anti-Racist Intersectional Frame at CSSP*, (Nov. 20, 2019), <https://cssp.org/wp-content/uploads/2019/09/Antiracist-Frame-11.20.19.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> Act 1 of 2022, 24 P.S. § 13-1331.1(a)(5); *Assisting Students Experiencing Education Instability*, Basic Education Circular, PA. DEP’T OF EDUC. (Aug. 1, 2022), available at <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/Act1of2022AssistingStudentsExperiencingEducationInstability--.aspx>; PA. DEP’T OF EDUC., “Dear Colleague” letter: Act 1 of 2022: Supporting Graduation For Students Experiencing Education Instability, <https://www.education.pa.gov/K-12/Pages/Act1of2022.aspx> (last visited August 24, 2022).

<sup>9</sup> 24 P.S. § 13-1331.1.

<sup>10</sup> 22 Pa. Code § 4.74.

<sup>11</sup> 24 § 13-1331.1(a)(2).

<sup>12</sup> 22 Pa. Code § 4.51-d.

<sup>13</sup> Olivia Erickson, *Foster Care and Education: Exploring the Success of Interventions Aimed to Improve Academic Achievement of Foster Children*, St. Catherine University, 2018, 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).

<sup>14</sup> 24 § 13-1331.1(a)(3) and (4).