



OFFICE OF CHILDREN, YOUTH AND FAMILIES BULLETIN

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SUBJECT:

Educational Stability and Continuity for Children in Substitute Care

BY:

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SCOPE:

County Children and Youth Social Service Administrators
County Children and Youth Advisory Committees
County Children and Youth Fiscal Officers
Private Children and Youth Social Service Agencies
County Chief Juvenile Probation Officers

PURPOSE:

The purpose of this bulletin is to clarify the responsibilities of county children and youth agencies regarding educational stability and continuity for children in county custody.

BACKGROUND:

County children and youth agencies must ensure that children in substitute care are enrolled in or have access to public education. See 55 Pa. Code § 3130.87 (relating to education). For many children placed outside of their own homes, moves from one home to another often involve school changes, destabilizing the educational pursuits of these children. Not only do children in substitute care sometimes face delay in school enrollment and class disruption for various appointments, they also lose credits between transfers, causing difficulties in attaining graduation diplomas.

Education is one of the well-being factors considered by the United States Department of Health and Human Services (HHS) during the Child and Family Service Review (CSFR) process. Moreover, research and practice clearly demonstrate that a successful, uninterrupted educational placement promotes more successful child welfare placements and better life outcomes.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Regional Directors

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DISCUSSION:

It is incumbent on county agencies to make every effort to ensure not only that children in county custody are attending school, but also that they are receiving any special educational services that they need. One way to do that is through accurate and consistent documentation of those needs. Agencies are required to maintain the child's "educational reports and records" in the family case record. See 55 Pa. Code § 3140.43(c) (10) (relating to family case records). Family case records must contain current and updated information required for school enrollment, which includes proof of the child's age, residence, school immunizations and a sworn statement of the child's disciplinary record. See 22 Pa. Code § 11.11 (relating to entitlement of resident children to attend public schools). This bulletin outlines additional information the case record should contain to enable the county children and youth agency to secure the most appropriate education placement.

It is common practice for children in substitute care to be removed from school for visits, meetings and court proceedings, thereby necessitating the loss of valuable class time. While it is true that schools cannot consider a child to be 'truant' as a result of a court-related absence, for children who already face adjustment challenges, these school removals can exacerbate feelings of isolation and discomfort.

School-aged children are entitled to attend the public schools in their school district of residence. See 22 Pa. Code § 11.11 (relating to entitlement of resident children to attend public schools). However, children in substitute care are often moved to different school districts when their placement residence changes. Although some such changes are unavoidable, Title IV-E of the federal Social Security Act requires that a child's educational placement be considered when making placement decisions regarding the child. See 42 U.S.C. § 675(1) (C)(iv) (relating to definitions). In addition, the federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431-11435, affords children who are considered "homeless," including those "awaiting foster care placement," a number of educational protections. This bulletin explains which children in substitute care are included in this category and eligible for these "school stability" protections.

Finally, the Individuals with Disabilities Education Act (IDEA) requires that children with a disability, or who might have a disability, have active parents or other authorized persons, usually called "surrogate parents", who can make special education decisions on their behalf. See 20 U.S.C. § 1415(b) (2) (relating to procedural safeguards). This bulletin provides guidance regarding the responsibilities of county children and youth agencies in complying with this federal requirement.

POLICY AND PROCEDURES:

Case Records:

To promote continuity of a child's educational placement, case records must include copies of the child's current Individualized Education Program (IEP), if applicable, Child Permanency Plan (CPP) or Service Agreement (for children with disabilities or medical needs that require modifications at school but who do not qualify for special education), including any evaluations of any identified disabilities and the name and address of the surrogate parent, if one has been appointed. These records must be obtained in a manner consistent with the family's confidentiality rights under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. For example, a school

district can provide the records to the caseworker with written consent of the parent, or a student who is over age 18.

The case record should also include the child's current and anticipated school placement, grade level and recent report cards or alternate measures of progress. Having this information readily collated and available will facilitate timely enrollments, should a child in substitute care move to another school district, either when initially placed or when a placement changes. The information should be reviewed and updated each time a child's placement changes, or at the six month review, if no placement change has occurred.

School Stability for Children in Substitute Care:

To minimize disruption of the school day, and to assist children in substitute care with normalization in their school setting, children and youth agencies should attempt to avoid making appointments or scheduling meetings or court proceedings during school hours. Unless there is a compelling reason, such as the court schedule will not accommodate this consideration, workers should arrange for the child's attendance before or after school hours, on weekends or on in-service days. For information about allowable absences, please see: http://www.pde.state.pa.us/k12/cwp/view.asp?A=11&QUESTION_ID=121159. For children in substitute care, under Title IV-E of the Social Security Act, a child's educational placement must be considered when making decisions about where the child will live. Whenever possible and in the child's best interest, a county children and youth agency should attempt to place the child in his or her home school district.

Additional educational protections are afforded under the McKinney-Vento Act. Children defined as "homeless" because they are "awaiting foster care placement" have the right to remain in their original school when in their best interest and feasible, to have transportation to that school, to be enrolled in school even if they cannot provide the required records, and to have the services of an educational liaison to help them enroll in school and obtain records, as well as to inform them, their schools, and families about rights and procedures available under the Act.

The Pennsylvania Department of Education (PDE) has defined children and youth "awaiting foster care placement" to include "those who live in shelters or are placed in emergency, interim or respite foster care; evaluation or diagnostic centers or placements for the sole purpose of evaluation". See PDE Basic Education Circular (BEC), "Education for Homeless Youth", (February 29, 2008), at http://www.pde.state.pa.us/k12/cwp/view.asp?A=11&QUESTION_ID=54421. School officials and children and youth agencies should use the following definitions to identify children "awaiting foster care placement":

- shelters – physically unrestricted facilities for temporary care (see 42 Pa. C.S. § 6302 (relating to definitions));
- emergency care – residential care and supervision in a non-secure setting, not to exceed 30 days (see 55 Pa. Code § 3130.37 [relating to emergency and planned temporary placement services]);
- interim care – planned temporary placement services including residential care and supervision of a child in a foster family home or twenty-four-hour out-of-home care in a non-secure facility for children not related to the provider (see 55 Pa. Code § 3130.37);

- respite foster care – short-term foster placement designed to provide relief to the primary foster family responsible for the child; and
- evaluative or diagnostic centers, or placements for the sole purpose of evaluation - hospitals and other residential facilities used for evaluation and diagnosis.

County children and youth workers should recognize that this list is illustrative, but not exhaustive. If a child is otherwise “awaiting foster care placement”, because the placement is not likely to become permanent, he or she is eligible for McKinney-Vento Act protections.

PDE has advised that “local school officials should consult with their local county children and youth agencies whenever necessary to determine if a child meets the definition of ‘awaiting foster care placement’, including, on a case-by-case basis, whether a child who does not clearly fall into one of these categories is nevertheless a child ‘awaiting foster care placement’”. Again, refer to BEC, “Education for Homeless Youth”. This requirement is a new procedure with which school districts may not be familiar. Therefore, consistent with legal confidentiality considerations, it is important that children and youth agencies work collaboratively with school districts to assist them in identifying children in this category, and to support their efforts to maintain the education stability of a child in placement. County children and youth agencies should also advise eligible children about their rights under the McKinney-Vento Act, and assist children and their families in contacting school personnel, including McKinney-Vento Act liaisons, to ensure that the child receives appropriate school placement and services.

Ensuring that Children and Youth with Disabilities Have Educational Decision Makers:

The IDEA provides that the birth or adoptive parent is the special education decision maker for a child, but when the parent of a child in substitute care is deceased, inactive, cannot be located, or when the parents’ rights have been terminated, the foster parent automatically steps into this role and is authorized to make special education decisions for the child. However, the court does have the authority to appoint an alternate decision-maker when in the best interest of the child (e.g., the foster parent is unwilling, unable or not best-suited to make these decisions).

As a child in congregate care does not have a foster parent, a “surrogate parent” must be identified whenever the birth or adoptive parent is unavailable or unwilling, and the child is eligible for or needs to be evaluated for special education. A surrogate parent is authorized to make special education decisions, including, for example, whether the child should be evaluated, what services the child needs, what an appropriate placement would be, and whether mediation or a hearing should be requested. The surrogate can be assigned by the juvenile court or, in cases in which the whereabouts of both parents are unknown **only**, by the school district in which the child is living.

While the court may exercise its discretion in who it appoints, the local school district has the duty to ensure that any individual it appoints as surrogate parent is someone with the knowledge and skills needed to adequately represent the child. The local education agency (LEA) responsible for appointing a surrogate under IDEA must appoint a surrogate who has knowledge and skills that ensure adequate representation of the child as required under 34 CFR 300.519(d)(2)(iii). The LEA is responsible for maintaining records regarding available surrogates who have been properly trained to meet this federal requirement and would select a surrogate as appropriate who can fulfill this requirement.

Whenever possible the child welfare agency should assist the educational agency or the court in identifying potential people who can serve as a surrogate to the child, such as a relative, a CASA worker or a prior foster parent. Under the IDEA, a surrogate cannot be someone who is employed by an agency that is involved in the education or care of the child. Moreover, the surrogate decision-maker **may not** be the child's caseworker or a children and youth agency. However, the juvenile court can authorize any individual, including the caseworker, to consent to an **initial evaluation** of a child who is living in a congregate care facility such as a residential treatment facility or group home.

(For more details on the IDEA's requirements on surrogate parents, and the authority of courts and school districts to assign special education decision makers, see the Education Law Center/Juvenile Law Center Fact Sheet at <http://www.elc-pa.org/pubs/downloads/english/dis-Special Education and Children in Out of Home Care 08-07.pdf>.)

Central Point of Contact on Education:

To emphasize the critical importance of county agency responsibilities for the education of children in their custody, each children and youth administrator must identify a staff member to be trained in educational issues of most concern for children in county custody, for example: enrollment, special education services, school discipline, and the rights of children "awaiting foster care placement." This staff person will be the Education Liaison for the agency, and will be responsible for providing guidance and technical assistance to all staff; serving as a resource for parents, caseworkers and administrators on education-related issues; reviewing child placements to ensure that children were maintained in their own school districts whenever possible, or promptly enrolled in new schools, if staying in the same school district was not possible; and confirming that the case record contains all required documentation regarding the child's education, including an explanation for why a child did not remain in the same school district, or was not promptly enrolled in a new school district. While the Education Liaison may have other agency responsibilities as well, he or she must have sufficient time and opportunity to fulfill the responsibilities of the position.

The Office of Children, Youth and Families (OCYF) will offer training opportunities to facilitate the development of this centralization of county agency educational responsibility. In lieu of appointing an Education Liaison, a county children and youth administrator must demonstrate to OCYF how the county agency will otherwise meet the statutory and regulatory requirements clarified in this bulletin.

Foster Education Initiative:

With support from the Annie E. Casey Foundation, the Education Law Center-PA and Juvenile Law Center worked together on a project to develop the Foster Education Initiative, the prime purpose of which is to ensure stability, continuity and appropriateness of education services for children in substitute care. An excellent website to support these efforts is <http://www.fosteredpa.org>. The site features helpful tips for both professionals and resource parents who are working on educational service delivery to children in their care.