

THE EDUCATIONAL RIGHTS OF CHILDREN IN FOSTER CARE AND OTHER OUT-OF-HOME PLACEMENTS

A GUIDE FOR ADVOCATES

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THE EDUCATIONAL RIGHTS OF CHILDREN IN FOSTER CARE AND OTHER OUT-OF-HOME PLACEMENTS: A GUIDE FOR ADVOCATES

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About the Education Law Center

Founded in 1973, Education Law Center (ELC) serves as the leading voice for New Jersey's public school children and has become one of the most effective advocates for equal educational opportunity and education justice in the United States. Widely recognized for groundbreaking court rulings on behalf of at-risk students, ELC also promotes education equity in New Jersey, in other states, and at the federal level through coalition building, litigation support, policy development, communications, and action-focused research.

ELC's legal and policy advocacy, which includes such landmark rulings as *Abbott v. Burke*, has significantly advanced the provision of fair school funding, high quality early education, safe and adequate school facilities, and school reform, especially to schools serving high concentrations of at-risk students and students with disabilities and other special needs. These successes have, in turn, resulted in strong academic gains and progress in closing student achievement gaps in New Jersey.

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INTRODUCTION

This guide is designed to help advocates -- including biological and adoptive parents, resource parents,¹ adult students in foster care and service providers -- understand and advocate for the educational rights of children in New Jersey's foster care system.

The guide explains the requirements of federal and state laws that particularly affect these students, and is designed to be used in conjunction with the Education Law Center's other advocacy guides, most notably:

"The Right to Special Education in New Jersey: A Guide for Advocates," available at http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf (English language version) and <http://www.edlawcenter.org/assets/files/pdfs/publications/Education Law Center Special Education Manual- Spanish 2.pdf> (Spanish language version);

"Understanding Public School Residency Requirements: A Guide for Advocates," available at <http://www.edlawcenter.org/assets/files/pdfs/publications/ResidencyRequirementsGuide.pdf>; and

"Transition Planning," available at <http://www.edlawcenter.org/assets/files/pdfs/publications/Transition Planning updated 1.pdf> (English language version) and <http://www.edlawcenter.org/assets/files/pdfs/publications/Transition Planning in Spanish updated 1.pdf> (Spanish language version).

Recently, the U.S. Department of Education created a website with information on relevant federal laws and other resources at: <http://www2.ed.gov/about/inits/ed/foster-care/index.html>.

The intent of this guide is to provide information and guidance to advocates so that all children in out-of-home placements² in New Jersey can achieve high standards and receive an education that prepares them for full participation in society.

The information contained in this publication is provided by ELC for educational and informational purposes only, and should not be construed as legal advice or as an offer to provide legal services. The information is general in nature, may not reflect current or complete legal developments, and is not intended as a substitute for obtaining legal advice from an appropriately licensed attorney that is based on knowledge of the particular facts and circumstances at issue in an individual case.

¹ Consistent with New Jersey law, this guide uses the terms "resource family," "resource parent" and "resource home," rather than the previously-used but synonymous "foster family," "foster parent" and "foster home."

² This guide uses the terms "out-of-home placement," and "foster care" to describe the living arrangement of children under the legal custody of the New Jersey Division of Child Protection & Permanency (CP&P), formerly the New Jersey Division of Youth and Family Services (DYFS), who are placed in resource homes (with either relative or non-relative resource caregivers) or in group homes. This guide specifies resource-home placements or group-home placements when there is a legally relevant distinction; otherwise, "out-of-home placement" or "foster care" will be used to encompass both resource-home placements and group-home placements.

EDUCATION CONCERNS FOR ALL CHILDREN IN OUT-OF-HOME CARE

Which school does the child attend?

Recent legislation passed by the New Jersey State Legislature creates a presumption that students remain in their current school district even when they enter foster care or change out-of-home placements.³ This means that, for students who entered foster care on or after September 9, 2010, or who moved to a different placement on or after September 9, 2010, it is *presumed* that they stay in their current school.⁴

Within five business days of a change in placement, the New Jersey Division of Child Protection and Permanency ((CP&P) -- formerly the New Jersey Division of Youth and Family Services (DYFS)) -- the child protection and child welfare agency located within the New Jersey Department of Children and Families (DCF) -- must determine whether this presumption is outweighed by the student's best interest to instead attend school in the district where the new placement is located.⁵

The law lists several factors that CP&P has to consider in its determination: (1) safety considerations; (2) the proximity of the resource family home to the child's present school; (3) the age and grade-level of the child as it relates to the other best interest factors; (4) the needs of the child, including social adjustment and wellbeing; (5) the child's preference; (6) the child's performance, continuity of education and engagement in the school the child presently attends; (7) the child's special education programming if the child is classified; (8) the point of time in the school year; (9) the child's permanency goal and likelihood of reunification; (10) the anticipated duration of the current placement; and (11) other factors to be determined by the DCF Commissioner.⁶

While CP&P is making its determination, the student stays in his or her current school, and CP&P is responsible for the student's transportation.⁷ CP&P continues to be responsible for transportation for the first five days after its placement determination.⁸

If CP&P determines that the student should change schools, it must give notice to the student's law guardian and parents.⁹ If the law guardian or parents disagree, they can challenge the determination within five days by petitioning the family court, and then a judge will hold a hearing and make a determination.¹⁰ If this happens, until the court makes a decision, the student

³ N.J.S.A. 30:4C-26b(a).

⁴ N.J.S.A. 18A:7B-12(a)(2).

⁵ N.J.S.A. 30:4C-26b(c).

⁶ N.J.S.A. 30:4C-26b(f).

⁷ N.J.S.A. 30:4C-26b(h).

⁸ N.J.S.A. 30:4C-26b(h).

⁹ N.J.S.A. 30:4C-26b(d)(1).

¹⁰ N.J.S.A. 30:4C-26b(d)(2).

stays in his or her current school.¹¹ Anyone can ask the court to revisit the student's school placement if the situation changes later on.¹²

If CP&P believes that there is a threat of immediate harm to the student, or there are other serious safety concerns, it can immediately change the child's school placement.¹³ If this happens, CP&P must give notice to the parents and law guardian within two business days.¹⁴

Who is financially responsible for the child's education and transportation?

Regardless of where a student attends school, his or her school District of Residence is financially responsible for the student's education and transportation to and from school.¹⁵ For children placed in a resource home before September 9, 2010, the District of Residence is the district where his or her resource home is located.¹⁶ For children placed in resource homes on or after September 9, 2010, the District of Residence is the current district of residence of the parent or guardian with whom the child lived prior to placement in foster care.¹⁷ For children initially placed in a resource home prior to September 9, 2010 who are subsequently placed in a new out-of-home placement on or after September 9, 2010, the District of Residence is determined as if the pre-September 9, 2010 placement(s) had not occurred.¹⁸ For children who live in group homes or other residential placements (other than resource homes), regardless of when they entered the foster care system, the District of Residence is the current district of residence of the parent or guardian with whom the child lived prior to placement in foster care.¹⁹ When the District of Residence either cannot be determined or is outside New Jersey, the State assumes financial responsibility.²⁰

Every local and area office of CP&P has an Educational Stability Liaison who serves as a resource for parents, resource parents, advocates and school districts. To find the name and contact information of your CP&P Educational Stability Liaison, call your local or area CP&P office, or visit www.nj.gov/dcf/families/educational/stability/directory.pdf. The statewide educational stability office can be reached at (609) 888-7100.

For more information about Residency, see the Education Law Center's publication: "Understanding Public School Residency Requirements: A Guide for Advocates," available at <http://www.edlawcenter.org/assets/files/pdfs/publications/ResidencyRequirementsGuide.pdf>.

¹¹ N.J.S.A. 30:4C-26b(d)(2).

¹² N.J.S.A. 30:4C-26b(3)(e)(1).

¹³ N.J.S.A. 30:4C-26b(b).

¹⁴ N.J.S.A. 30:4C-26b(b).

¹⁵ N.J.S.A. 30:4C-26(c), (h).

¹⁶ N.J.S.A. 18A:7B-12(a)(1).

¹⁷ N.J.S.A. 18A:7B-12(a)(2).

¹⁸ N.J.S.A. 18A:7B-12(a)(1).

¹⁹ N.J.S.A. 18A:7B-12(b).

²⁰ N.J.S.A. 18A:7B-12(d).

How do I register a child in school?

School-aged children in the foster care system must be enrolled in school within 72 hours of entering foster care or a change in foster care placement.²¹ For children attending school in the district where their resource parent resides, the resource parent must provide proof of residency and a “Foster Parent Identification Letter (DYFS Form 5-49)” or other agency letter provided by DCF or CP&P which shows that the resource parent is caring for the child. For more information about how the resource parent can demonstrate residency, see the Education Law Center’s publication: “Understanding Public School Residency Requirements: A Guide for Advocates,” available at <http://www.edlawcenter.org/assets/files/pdfs/publications/ResidencyRequirementsGuide.pdf>. School districts cannot allow children to attend school without proof of immunization,²² but districts may not delay or deny enrollment due to the failure to provide the child’s medical information. Actual attendance, however, can be delayed due to a lack of immunization records.²³

School districts likewise cannot deny enrollment due to a missing birth certificate or other proof of a student’s identity, but a certified copy of the child’s birth certificate or other proof of identity must be provided to the school within 30 days of enrollment.²⁴ School districts also may not delay or deny enrollment or attendance if a student’s prior educational record is unavailable.²⁵ See the section below to learn more about how student records are transferred when a student transfers to a new school district.

STUDENT RECORDS

The Family Educational Rights and Education Privacy Act (FERPA) is a federal law that protects a parent’s right to access his or her child’s educational records and protects the privacy of educational records.²⁶ All New Jersey public schools have to comply with FERPA and New Jersey’s implementing laws.²⁷ If a child has been placed in a private school by the school district, all rights concerning the child’s records are the same as if the child attended public school.²⁸ All requests to see, change or destroy records must be made to the superintendent of the child’s school district.²⁹

Who can access school records, and how can the records be accessed?

Unless there is a court order barring access, a parent has the right to see all records kept by the school district concerning his or her child, except notes made by a teacher or another

²¹ CP&P II D Field Operations Casework Policy and Procedures Manual §906 (January 27, 2012).

²² N.J.A.C. 8:57-4.2.

²³ N.J.A.C. 6A:22-4.1(h).

²⁴ N.J.A.C. 6A:22-4.1(g).

²⁵ N.J.A.C. 6A:22-4.1(i).

²⁶ 20 U.S.C. § 1232(g); 34 C.F.R. Part 99.

²⁷ See N.J.S.A. 18A:36-19 and N.J.A.C. 6A:32-7.1 *et. seq.*

²⁸ N.J.A.C. 6A:14-7.9(a).

²⁹ N.J.A.C. 6A:14-7.9(a)(2).

school district employee for the employee's use only.³⁰ A sample letter requesting school records can be found in Appendix S of the Education Law Center's publication, "The Right to Special Education in New Jersey: A Guide for Advocates," available at http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf (English language version) and [http://www.edlawcenter.org/assets/files/pdfs/publications/Education Law Center Special Education Manual- Spanish_2.pdf](http://www.edlawcenter.org/assets/files/pdfs/publications/Education_Law_Center_Special_Education_Manual- Spanish_2.pdf) (Spanish language version).

The school district must let a parent or other person who is authorized to see the records actually see them within ten days from the date of request.³¹ A parent may read the records, take notes on what they contain and request copies.³² The school district may charge a reasonable fee for copies of student records, unless the parent is unable to pay the fee, or the fee would effectively prevent the parent from reviewing the records, in which case the school district must give the parent copies of the records without charge.³³

What if the records are not accurate?

The school district may only keep information on a child that is related to the child's education.³⁴ If a teacher or another school district employee enters comments about a child in the file, those comments must be based on the person's own knowledge or observation, rather than on hearsay or suspicion, and must be signed and dated by the person who made them.³⁵

If a parent finds that there is information in a child's records which does not meet these requirements or is inaccurate or incomplete, he or she may ask the school principal to correct or expunge those records.³⁶

If the principal refuses, a parent may appeal by writing a letter to the school district superintendent explaining the details of the disagreement.³⁷ The superintendent must then make a decision and respond to the parent in writing within ten days about whether the records will be changed.³⁸ If the superintendent does not agree with the parent, the superintendent must meet with the parent.³⁹ If the parent is not satisfied with the superintendent's decision, the parent may appeal either to the school district's board of education or to the New Jersey Commissioner of Education within ten days.⁴⁰ See page 12 of "Understanding Public School Residency Requirements: A Guide for Advocates," available at <http://www.edlawcenter.org/assets/files/pdfs/publications/ResidencyRequirementsGuide.pdf>.

³⁰ N.J.A.C. 6A:32-2.1 (definition of "student record") and 7.1(f).

³¹ N.J.A.C. 6A:32-7.1(g).

³² N.J.A.C. 6A:32-2.1 (definition of "access").

³³ N.J.A.C. 6A:32-7.5(c).

³⁴ N.J.A.C. 6A:32-7.1(c) and 7.3(a).

³⁵ N.J.A.C. 6A:32-7.1(c) and (h).

³⁶ N.J.A.C. 6A:32-7.7(a).

³⁷ N.J.A.C. 6A:32-7.7(b).

³⁸ N.J.A.C. 6A:32-7.7(b).

³⁹ N.J.A.C. 6A:32-7.7(b).

⁴⁰ N.J.A.C. 6A:32-7.7(b).

In any case, a parent has the right to have additional data placed in the child's file, as well as "reasonable comments" regarding the meaning of the records or explaining why the parent believes the records are inaccurate.⁴¹

Must educational records be kept confidential?

Each school district is obligated to maintain the confidentiality of all student records.⁴² With a few exceptions,⁴³ only those individuals providing educational services to a child may see the child's educational records without the parent's written permission.⁴⁴ The school must keep a record in the child's file containing the name and title of the individuals who were shown the child's educational records, the time and place the records were shown and the purpose for which the information will be used.⁴⁵ Once a child graduates, the school district is required to keep certain basic information as a permanent record; other information in a child's records, including all child study team evaluations and Individualized Education Programs (IEPs), may be destroyed, but only after written notice has been given to, and written permission has been given by, the adult student or parent, or after reasonable attempts to provide such notification and to secure such permission have been unsuccessful.⁴⁶

There are different confidentiality restrictions relating to records containing reports of child abuse.⁴⁷ These records can be made available only under limited circumstances upon written request to DCF.⁴⁸

How are records transferred when a child changes schools?

When a child transfers schools, the new school is required to request all student records within ten days of enrollment.⁴⁹ The old school is required to provide the records within ten school days of verifying the student's enrollment in the new school.⁵⁰ In most instances, parents and adult students are entitled to notice of the transfer of records, and in some cases parental consent may be required.⁵¹

For more information, see the "The Right to See and Copy School Records" section on pages 44 and 45 of the Education Law Center's publication, "The Right to Special Education in New Jersey: A Guide for Advocates," available at http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf (English language version) and http://www.edlawcenter.org/assets/files/pdfs/publications/Education_Law_Center_Special_Education_Manual- Spanish_2.pdf (Spanish language version).

⁴¹ N.J.A.C. 6A:32-7.7(a)(2).

⁴² N.J.A.C. 6A:32-7.1(g)(10).

⁴³ N.J.A.C. 6A:32-7.5(e).

⁴⁴ N.J.A.C. 6A:32-7.5(a) and (e).

⁴⁵ N.J.A.C. 6A:32-7.6(a)(3).

⁴⁶ N.J.A.C. 6A:32-7.8(c).

⁴⁷ N.J.S.A. 9:6-8.10.

⁴⁸ N.J.S.A. 9:6-8.10 (a) and (b).

⁴⁹ 20 U.S.C. 1414(d)(2)(C); 34 C.F.R. § 300.323(e-g); N.J.A.C. 6A:32-7.5(e)(10)(iii).

⁵⁰ 20 U.S.C. 1414(d)(2)(C); 34 C.F.R. § 300.323(e-g); N.J.A.C. 6A:32-7.5(e)(10)(iv).

⁵¹ N.J.A.C. 6A:32-7.5(e)(10)(i). *See also* N.J.A.C. 6A:32-7.3 for mandated school records.

EDUCATION-RELATED RESPONSIBILITIES OF CP&P, RESOURCE PARENTS AND GROUP HOMES

What are the responsibilities of CP&P?

CP&P must “make every reasonable effort to assure that every child in out-of-home placement receives an education appropriate to his or her abilities” under state law.⁵² New Jersey’s Child Placement Bill of Rights specifically states that a child in out-of-home care has the right to “receive an educational program which will maximize the child’s potential.”⁵³

CP&P must develop an education record for each school-age child when he or she enters foster care, and must maintain and update that education record.⁵⁴ The record must include, at a minimum, the name and address of the education providers, the child’s grade-level performance and the child’s school record,⁵⁵ and the record must be provided to the out-of-home placement provider each time the child is subsequently placed.⁵⁶ In addition, CP&P must ensure that the child is enrolled in school, coordinate activities among school personnel, out-of-home placement provider and the parent, and inform the parent of the child’s school progress and the parent’s “right and responsibility to be involved in the child’s education.”⁵⁷ CP&P also must refer children for a special education evaluation, if needed.⁵⁸

What are the responsibilities of resource parents?

Resource parents must “cooperate with” DCF to “ensure that each school-age child in placement receives an educational program” under state law.⁵⁹ This includes the resource parents’ obligation to register the child in school and ensure that the child attends school regularly.⁶⁰ Resource parents may not home-school their resource children.⁶¹ Resource parents must “encourage good study habits [and] be involved with the academic progress of each child in placement,” which includes attending school conferences, meeting with school personnel and reviewing and signing report cards.⁶² Resource parents also must inform CP&P about the child’s academic progress,⁶³ and ensure that preschool-age children attend an appropriate early childhood program.⁶⁴

⁵² N.J.A.C. 10:122D-2.6(a).

⁵³ N.J.S.A. 9:6B-4(m).

⁵⁴ N.J.A.C. 10:122D-2.6(b) and (d).

⁵⁵ N.J.A.C. 10:122D-2.6(b)(1)-(3).

⁵⁶ N.J.A.C. 10:122D-2.6(c) and (d).

⁵⁷ N.J.A.C. 10:122D-2.6(f)(1), (3) and (4).

⁵⁸ N.J.A.C. 10:122D-2.6(f)(5).

⁵⁹ N.J.A.C. 10:122C-6.3(a)(1) and (2).

⁶⁰ N.J.A.C. 10:122C-6.3(a)(1) and (2).

⁶¹ N.J.A.C. 10:122C-6.3(a)(3).

⁶² N.J.A.C. 10:122C-6.3(b).

⁶³ N.J.A.C. 10:122C-6.3(b)(2).

⁶⁴ N.J.A.C. 10:122C-6.3(d).

What are the responsibilities of group homes?

Group homes must similarly ensure that school-age children receive an educational program in conformity with state law,⁶⁵ and “make efforts to ensure” that the child is enrolled in a local school, if appropriate.⁶⁶ Group homes must also document efforts to locate a school setting, and once the child is enrolled, “document contacts with school personnel to discuss the child’s progress at each treatment planning meeting.”⁶⁷ Group homes must document and provide space for home instruction, if applicable.⁶⁸ Group homes also have responsibilities to school-age children not attending school, such as documenting why the child is not in school and what the child is doing during school hours, as well as maintaining contact with the school district to ensure that the district is “actively pursuing alternative educational programming.”⁶⁹

TRANSITION PLANNING AND SERVICES

DCF and CP&P are required to provide transition planning and services for adolescents living in out-of-home placements.⁷⁰ The CP&P transition plan is created by a CP&P representative, along with the out-of-home placement provider, parent, any other important adults and the youth.⁷¹ The goal of transition planning is to prepare the youth to be self-sufficient when he or she leaves school and foster care.⁷² The transition plan should be created when a youth in an out-of-home placement turns 14 or, for any youth entering out-of-home placement after age 14, within six months of his or her initial placement. Transition plans must be reviewed every six months and updated annually.⁷³

The transition plan must identify necessary skills the youth will need to master in order to become self-sufficient, be based on an individual assessment of the youth, and outline the specific assistance that CP&P and any other agency will provide to enable the youth to achieve these goals.⁷⁴ The CP&P representative must designate at least one adult in the youth’s life, which may include his or her resource parent, to serve as an advisor who will assist with the plan’s development and implementation.⁷⁵ In addition to transition planning, the CP&P representative should refer youth, upon request, to any post-secondary education opportunities for which they may be eligible, such as the Statewide Tuition Waiver Program, which assists youth formerly under CP&P’s care in paying for post-secondary vocational education and college.⁷⁶

⁶⁵ N.J.A.C. 10:128-6.7(a).

⁶⁶ N.J.A.C. 10:128-6.7(b).

⁶⁷ N.J.A.C. 10:128-6.7(b).

⁶⁸ N.J.A.C. 10:128-6.7(c).

⁶⁹ N.J.A.C. 10:128-6.7(d).

⁷⁰ N.J.S.A. 30:4C-2.3; N.J.A.C 10:122D-2.7.

⁷¹ N.J.A.C 10:122D-2.7(a).

⁷² N.J.A.C 10:122D-2.7(a).

⁷³ N.J.A.C 10:122D-2.7(b); N.J.A.C 10:133H-3.5(a) and (b).

⁷⁴ N.J.A.C 10:122D-2.7(c) and (d).

⁷⁵ N.J.A.C 10:122D-2.7(e).

⁷⁶ N.J.A.C 10:122D-2.7(f); N.J.S.A. 30:4C-101 *et. seq.*

A helpful resource is Transitions for Youth, which assists with education, job-readiness, and other services to help youth transitioning to adulthood. You can get more information about this program by calling (732) 932-8758 or visiting <http://www.transitionsforyouth.org>.

Students bound for college or vocational school should look into special programs that may be available to them, including the New Jersey Foster Care Scholars Program, which provides full tuition to public New Jersey colleges, universities and vocational schools for eligible youth in foster care. Tuition assistance may also be available to students attending private or out-of-state schools through the Federal Education and Training Voucher Program. You may wish to contact Foster and Adoptive Family Services (FAFS) for information about scholarship programs at (800) 222-0047, or go to its website about scholarship programs: <http://www.fafsonline.org/njfc-scholars-program.html>.

Students with disabilities who are living in out-of-home placements may qualify for transition planning services both from the New Jersey Department of Education (NJDOE) and from DCF, as well as other state agencies.

Youth with disabilities in foster care, like all youth with disabilities, can get transition assistance from the following agencies, depending on their disabilities and on available resources:

Commission for the Blind and Visually Impaired (CBVI): You may call the Supervisor of Transitional Services at CBVI, Debbie Kassoﬀ-Saimnz, at (973) 693-6489. To find your local CBVI office, you can call (877) 685-8878 or (973) 648-3333 or visit <http://www.state.nj.us/humanservices/cbvi/facilities>.

Division of Developmental Disabilities (DDD): You may call the central office at (800) 832-9173, or your local office, which can be found at: <http://www.state.nj.us/humanservices/ddd/staff/cso>.

Division of Vocational Rehabilitation Services (DVRS): You may call the DVRS central office at (609) 292-5987 (voice) or (609) 292-2919 (TTY), or your local DVRS office, which you can find at: <http://jobs4jersey.com/jobs4jersey/documents/DVRS/DVRSFIELDOFFIC%20CONTACTLISTwithbackups.pdf>.

For more information regarding NJDOE’s transition-related responsibilities for students with disabilities, see the “Transition Services and Planning” section on pages 43 and 44 of the Education Law Center’s publication, “The Right to Special Education in New Jersey: A Guide for Advocates,” available at http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf (English language version) and http://www.edlawcenter.org/assets/files/pdfs/publications/Education_Law_Center_Special_Education_Manual-Spanish_2.pdf (Spanish language version).

For more detailed transition-planning information, also see the Education Law Center’s guide entitled “Transition Planning,” available at

http://www.edlawcenter.org/assets/files/pdfs/publications/Transition_Planning_updated_1.pdf (English language version) and http://www.edlawcenter.org/assets/files/pdfs/publications/Transition_Planning_in_Spanish_updated_1.pdf (Spanish language version).

SPECIAL EDUCATION CONSIDERATIONS FOR STUDENTS WITH DISABILITIES

The following information should be used together with the Education Law Center's publication, "The Right to Special Education in New Jersey: A Guide for Advocates."

Should I share outside evaluations with the IEP Team?

Agencies such as CP&P frequently conduct psychological evaluations and other assessments of children in foster care, any of which could be submitted to the IEP Team for consideration. The IEP Team must consider any outside evaluations submitted to the district in determining whether a child is eligible for special education and related services.⁷⁷ However, because these evaluations and assessments may contain sensitive information about the child and his or her family situation, such as abuse or neglect history, such evaluations should be shared with caution. More detailed information on the special education evaluation process is available in the "Evaluations and Reevaluations" section on pages 12-18 of the Education Law Center's publication, "The Right to Special Education in New Jersey: A Guide for Advocates," available at http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf (English language version) and http://www.edlawcenter.org/assets/files/pdfs/publications/Education_Law_Center_Special_Education_Manual- Spanish_2.pdf (Spanish language version).

Does the school district to which the child moves have to implement the child's IEP?

When a child with an IEP moves from one New Jersey school district to another, or to New Jersey from an out-of-state school district, the new school district is obligated to educate the child in a comparable program until the new IEP Team either adopts the old IEP or creates a new one.⁷⁸ For more information on the requirements and deadlines relating to IEPs for transferring students, see the "IEPs of Children who Transfer from One School District to Another" section on page 26 of the Education Law Center's publication, "The Right to Special Education in New Jersey: A Guide for Advocates," available at http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf (English language version) and http://www.edlawcenter.org/assets/files/pdfs/publications/Education_Law_Center_Special_Education_Manual- Spanish_2.pdf (Spanish language version).

For issues related to accessing the records of students who move, see the "Records" section on pages 4-6 of this guide.

⁷⁷ 20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); N.J.A.C. 6A:14-2.5(a)(1) and 2.5(c)(5).

⁷⁸ 20 U.S.C. § 1414(d)(2)(C)(i); 34 C.F.R. § 300.323(e) and (f); 71 F.R. 156 p. 46681, August 14, 2006 (analysis of comments and changes); N.J.A.C. 6A:14-4.1(g).

Who is the “parent” for special education decisions?

Under federal and state special education laws, it is the “parent” who is able to enforce special education laws on behalf of the child, and make educational decisions for him or her. Both federal and state laws list several people who could be the “parent” for a particular child, including biological or adoptive parents, resource parents, guardians, “an individual acting in the place of a biological or adoptive parent” (such as a grandparent or stepparent with whom the child lives), a “surrogate” parent and the student, if he or she has reached the age of majority.⁷⁹ DCF, CP&P, NJDOE and school district employees cannot serve as the “parent” for a child in foster care;⁸⁰ however, they can still be helpful advocates for the child.

When there is more than one person who is eligible to serve as the “parent,” as described above, the biological or adoptive parent, “when attempting to act as the parent under this part,” is presumed to be the parent unless he or she lacks “legal authority to make educational decisions for the child,” such as if there is a court order appointing someone else to make educational decisions for the child.⁸¹ In most cases, as long as parental rights have not been terminated and there is no court order stating otherwise, biological and adoptive parents retain their rights to make special education decisions for their children, even if those children are living in out-of-home placements, and even if the parents are not complying with CP&P treatment or case plans. If the parents retain the right to make special education decisions and their whereabouts are known, the school district must “obtain all required consent from and provide written notices to the parent.”⁸²

When a student is living in a resource home and the student’s resource parent is not the “parent” under special education law, the school district must contact the student’s CP&P case manager to determine whether the child’s biological or adoptive parent retains the right to make educational decisions, and must determine the whereabouts of the parent.⁸³

If the parent no longer has the right to make educational decisions, or his or her whereabouts are unknown, and there is nobody else to serve as the parent, within 30 days, the school district must appoint and train an adult to serve as the child’s “parent” throughout the special education process.⁸⁴ This adult, called the “surrogate parent,” may exercise all the rights of a parent related to the identification, evaluation and educational program and placement of the child.⁸⁵ A person appointed as a surrogate parent must be at least 18 years old, may not work for the school district or any other agency responsible for the care and well-being of the child and must not have any conflicts of interest that would interfere with his or her ability to be a strong advocate for the child.⁸⁶ The person appointed by the school district must have the knowledge and skills necessary to represent the child, and may not be replaced without cause.⁸⁷ If a school

⁷⁹ 20 U.S.C. § 1401(23); 34 C.F.R. § 300.30(a); N.J.A.C. 6A:14-1.3.

⁸⁰ N.J.A.C. 6A:14-2.2(f).

⁸¹ 34 C.F.R. § 300.30(b).

⁸² N.J.A.C. 6A:14-2.2(h).

⁸³ N.J.A.C. 6A:14-2.2(g).

⁸⁴ 20 U.S.C. §§ 1415(b)(2)(A) and (B); 34 C.F.R. §§ 300.519(a), (b) and (h); N.J.A.C. 6A:14-2.2(a) and (b).

⁸⁵ 34 C.F.R. § 300.519(g); N.J.A.C. 6A:14-2.2(a).

⁸⁶ 20 U.S.C. § 1415(b)(2)(A); 34 C.F.R. §300.519(d)(2)(i) and (ii); N.J.A.C. 6A:14-2.2(e)(1) and (4).

⁸⁷ 34 C.F.R. § 300.519(d)(2)(iii); N.J.A.C. 6A:14-2.2(e)(2) and (3).

district fails to appoint a surrogate parent for a child with a disability who is in foster care, a judge may appoint a surrogate parent if the judge determines that a surrogate parent is necessary.⁸⁸ For more information, see the “The Rights of Children whose Parents are Unknown or Unavailable” section on pages 45 and 46 of the Education Law Center’s publication, “The Right to Special Education in New Jersey: A Guide for Advocates,” available at http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf (English language version) and http://www.edlawcenter.org/assets/files/pdfs/publications/Education_Law_Center_Special_Education_Manual- Spanish_2.pdf (Spanish language version).

⁸⁸ 34 C.F.R. § 300.519(c); N.J.A.C. 6A:14-2.2(c).

TERMS AND ACRONYMS USED IN THIS GUIDE

Commission for the Blind and Visually Impaired (CBVI): New Jersey's agency, located within the Department of Human Services, which provides funding and services to people who have visual impairments, including blindness

Department of Children and Families (DCF): New Jersey's child protection and child welfare agency, which has several divisions and offices, including the Division of Child Protection and Permanency ((CP&P) -- formerly the Division of Youth and Family Services (DYFS))

Division of Child Protection and Permanency ((CP&P) -- formerly the Division of Youth and Family Services (DYFS)): New Jersey's child protection and child welfare agency within the Department of Children and Families (DCF)

Department of Education (NJDOE): New Jersey's education agency

District of Residence: the school district that is financially responsible for the student's education, which depends on when the student entered foster care and where his or her parent resides

Division of Developmental Disabilities (DDD): New Jersey's agency, located within the Department of Human Services, which provides funding and services to people with developmental disabilities

Division of Vocational Rehabilitation Services (DVRS): New Jersey's agency, located within the Department of Labor and Workforce Development, which provides employment assistance to people with disabilities

Family Educational Rights and Education Privacy Act (FERPA): a federal law that protects a parent's right to access his or her child's educational records and protects the privacy and accuracy of educational records

Group home: a foster care residential placement, often with specialized and/or structured programs for children with particular needs, such as adolescents or children with special emotional or behavioral needs

Individualized Education Program (IEP): a written plan that sets forth the nature of the child's disability and the special education programs and related services and supplementary aids and services the child is to receive

Law Guardian: a lawyer appointed by the State to represent a child in a child welfare case

Parent (for special education purposes): the person who is able to enforce special education laws on behalf of the child, and make educational decisions for him or her, under federal and state special education law. Depending on the situation, this could be a biological or adoptive parent, a resource parent, another adult, or an educational surrogate

Resource (parent, family, home): In 2004, the New Jersey Legislature amended the relevant state laws and regulations to change the terminology to resource parent, resource family and resource home, from the previously-used foster parent, foster family and foster home

Special education: instruction that is individually designed to meet the unique needs of an individual child with disabilities

Surrogate parent (or educational surrogate): a person appointed and trained by a school district to serve as the special education decision-maker if there is nobody else who can serve as the “parent” under special education law

Transition planning and services: planning and services designed to prepare a child for postsecondary education, employment and/or independent living when he or she leaves school and foster care

EDUCATIONAL ADVOCACY RESOURCES

Advocates for Children of New Jersey

35 Halsey Street # 2

Newark, NJ 07102

(973) 643-3876

<http://www.acnj.org>

The Arc of New Jersey

985 Livingston Avenue

North Brunswick, NJ 08902

(732) 246-2525 (voice)

(609) 292-7114 (TDD)

<http://www.arcnj.org>

Developmental disabilities only

Disability Rights New Jersey

210 South Broad Street, 3rd Fl.

Trenton, NJ 08608

(800) 922-7233 (voice)

(609) 633-7106 (TDD)

<http://drnj.org>

Disabilities only

Education Law Center

60 Park Place, Suite 300

Newark, NJ 07102

(973) 624-1815 (voice)

(973) 624-4618 (TDD)

<http://www.edlawcenter.org>

Legal Services of New Jersey

100 Metroplex Drive, Suite 400

Edison, NJ 08817

(888) 576-5529 (voice)

(877) 659-4672 (TDD)

<http://www.lsnj.org>

Rutgers School of Law – Newark

Child Advocacy Clinic: (973) 353-3196

Education and Health

Law Clinic: (973) 353-5576

123 Washington Street

Newark, NJ 07102

<http://www.law.newark.rutgers.edu/clinics.html>

Statewide Parent Advocacy Network

35 Halsey Street, 4th Fl.

Newark, NJ 07102

(800) 654-7726 (voice)

(800) 852-7897 (TDD)

<http://www.spannj.org>