The Role of LEAs in Supporting Children with Disabilities in Foster Care

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Understanding Students in Foster Care

• When children and youth are removed from their parents and placed in foster care, the Juvenile Court takes jurisdiction of the child.
  – “Dependent” – due to abuse or neglect; or
    • Under responsibility of county child welfare agency
  – “Delinquent” – due to criminal behavior on the part of the youth.
    • Under responsibility of county probation agency
• 95% are under the supervision of a child welfare agency.
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Understanding Students in Foster Care

• Foster youth generally include:
  – Any child who is the subject of a juvenile dependency court petition, whether or not the child has been removed from his/her home.
  – Any child who is the subject of a juvenile delinquency court petition, regardless of where the youth lives.
  – Any youth age 18-21 who is under the jurisdiction of the juvenile court (i.e., in extended foster care).

Understanding Students in Foster Care

• Children in foster care represent one of the most vulnerable student subgroups in this country.
• Nationally, of the approximately 415,000 children in foster care in 2014, nearly 270,000 were in elementary and secondary schools.

Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2014 data.
Understanding Students in Foster Care

• In California, out of approximately 6 million students in K-12 public schools, **1 out of every 150 students** have spent a period of time in child welfare supervised foster care.


• Significant impact of foster care placement on educational achievement.

High Rates of School Mobility

• **33%** of foster youth attend **2 or more schools** during a single school year compared to **7%** of students statewide.


• **75%** of children in foster care made an unscheduled school change in one school year, compared to **less than 40%** for children not in foster care.

High Rates of School Mobility

• About 1 in 10 students in foster care attended 3 or more schools during a school year.


High Rates of School Mobility

• Unplanned school changes may be associated with delays in children's academic progress, leaving highly mobile students potentially more likely to fall behind their less mobile peers academically.

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Low Test Scores

• **29%** of students in foster care scored proficient or above in English language arts on the California Standards Test (“CST”), compared to **53%** of students statewide in 2012-13.

• **37%** of foster youth scored proficient or higher on the math portion of the CST compared with **60%** of students statewide.


High Dropout Rates and Low Graduation Rates

• Nationally, students in foster care at age 17 are less likely to graduate from high school, with only **65%** graduating by age 21.


• Compared to **86%** among all youth ages 18 to 24.

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February 16, 2018

High Dropout Rates and Low Graduation Rates

- In California, the single year dropout rate for students in foster care is **8%**, compared with **3%** of students.
- **58%** of students in foster care graduate from high school compared with **84%** of students statewide.

Vanessa X. Barrat & Bethann Berliner, The Invisible Achievement Gap, Part I: Education Outcomes of Students in Foster Care in California’s Public Schools, 10-11 (The Center for the Future of Teaching & Learning, WestEd. 2013).

Special Education and Foster Youth

- Nearly **1 in 5 students** in foster care is classified with a disability.
- Foster youth qualify for special education services at least **twice** as often as other student populations.

Vanessa X. Barrat & Bethann Berliner, The Invisible Achievement Gap, Part I: Education Outcomes of Students in Foster Care in California’s Public Schools, 10-11 (The Center for the Future of Teaching & Learning, WestEd. 2013).
Special Education and Foster Youth

- Among all students with a disability, students in foster care had the **highest rate of emotional disturbance**, which is a disability associated with difficulty maintaining relationships, inappropriate behaviors, and depression.
- More than 1 in 5 (22%) students in foster care with a disability were classified with emotional disturbance, a rate more than **5 times higher than the rate for low-SES students and for the statewide student population**.

Vanessa X. Barrat & Bethann Berliner, The Invisible Achievement Gap, Part I: Education Outcomes of Students in Foster Care in California’s Public Schools, 10-11 (The Center for the Future of Teaching & Learning, WestEd. 2013).

- Foster youth are placed in **more restrictive education settings**, and have poorer quality IEPs than their non-foster care peers.

Sarah Geenen & Laurie Powers, Are We Ignoring Foster Youth With Disabilities? (Fostering Futures Project, 2006).

- Because foster youth may not have stable advocates at home, schools must be sensitive to their distinct needs in order to provide them with a free and appropriate public education (“FAPE”).

Vanessa X. Barrat & Bethann Berliner, The Invisible Achievement Gap, Part I: Education Outcomes of Students in Foster Care in California’s Public Schools, 10-11 (The Center for the Future of Teaching & Learning, WestEd. 2013).
Who Has Educational Rights?

- Individual with legal authority to make educational decisions and access education records.
- Definition of “parent” includes a foster parent ONLY IF the authority of the biological or adoptive parents to make educational decisions has been limited by court order.
- When a biological/adoptive parent attempts to “act as a parent” for special education purposes, they are presumed to be the parent unless they do not have legal authority to make educational decisions for the child.

Ed. Code § 56028.

Who Has Educational Rights?

- However, if a court order identifies a foster parent (or another individual) to act as the parent or to make educational decisions on behalf of a child, then that person shall be deemed the “parent” for special education purposes.

Ed. Code § 56028.
Who Has Educational Rights?

**Example:** If biological parent refuses consent for an initial evaluation, and the parental rights of the biological parent have not been terminated, or a court has not designated a foster parent to make educational decisions for the child, a foster parent **may not** provide consent for an initial evaluation.

Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations, 111 LRP 63322 (OSERS 09/01/11).

Who Has Educational Rights?

- Yet, if a biological parent’s right to make educational decisions has been limited by the court, a foster parent may have all the rights of a “parent” including:
  - The right to request/consent to an assessment;
  - The right to request an IEE;
  - The right to request an IEP meeting;
  - The right to file due process;
  - The right to request school records.
Who Has Educational Rights?

- **Don't assume** a parent lacks educational rights just because the child lives in foster care and not with the parent.
- A foster placement may be temporary and the parent might be working to regain custody.
  - Courts often look at whether the parent is participating in the child's life, and attending IEP meetings is one way to demonstrate that a parent is participating.

Proof of Education Rights

- Generally, if biological parents continue to hold educational rights, there will be no document to prove this.
- If the court has limited or terminated a parent’s educational rights courts will issue:
  - JV-535 “Order Designating Education Rights Holder”
  - Adoption or Guardianship Order
  - Adoptive Placement Agreement
  - Juvenile Court Minute Order
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February 16, 2018

Do We Need to Appoint a Surrogate Parent?

• If after taking reasonable steps to identify/locate a parent, one cannot be identified or located, an LEA must appoint a “surrogate parent” to represent the student’s interests.

Gov. Code § 7579.5.

• A surrogate parent is afforded all of the procedural safeguards granted to parents under the IDEA, and it is the responsibility of these individuals to assert those rights.

34 CFR § 300.519.

Who May Serve as Surrogate Parent?

• LEAs must ensure that a person selected as a surrogate parent:
  – Is not an employee of the CDE, the LEA, or any other agency that is involved in the education or care of the child;
  – Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
  – Has knowledge and skills that ensure adequate representation of the child.

34 CFR § 300.519.
Who May Not Serve as Surrogate Parent?

• Social services case workers cannot substitute as surrogate parents for foster youth.
• Neither can an NPA or NPS.

Foster Parent as Surrogate Parent?

• Foster parents may also be appointed by an LEA to be a “surrogate parent” to exercise educational rights for a child within their care.
• When selecting a surrogate parent, LEAs must give first preference to the foster parent, a relative caretaker, or court appointed special advocate (CASA).

Gov. Code § 7579.5(c) & (g).
Disinterested Parents?

• An LEA may not appoint a surrogate parent where a child’s parent is available or can be identified and located after reasonable efforts, but refuses, or is unable, to attend a meeting or otherwise represent the child.

46540 Federal Register; Vol. 71; No. 156; Monday, August 14, 2006.

• Follow regular procedures to document attempts to convince parent to attend, to provide consent, etc.

Practice Tips

• Did you make reasonable efforts to identify/locate parent?
• Do you have documents to confirm whether parent’s educational decision-making rights have been limited/terminated?
• Did you identify and get contact information important individuals in foster youth’s life upon enrollment?
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February 16, 2018

Educational Liaison for Foster Youth

• Each LEA shall designate a staff person to:
  – Ensure and facilitate proper educational placement, enrollment in school, and checkout from school.
  – Assist foster youth when transferring from one school to another (or one LEA to another) ensuring proper transfer of credits, records, and grades.

• This applies to charter schools too!

  Ed. Code § 48853.5

Which LEA Is Responsible for FAPE?

• In California, residency determines which LEA is responsible for providing a student with a disability FAPE.

• Pupils between 6-18 must attend school in the district where his/her parent or legal guardian reside.

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February 16, 2018

Which LEA Is Responsible for FAPE?

• Residency is also established if a pupil is placed in a licensed children’s institution or a foster home by a county placing agency.

• SELPA local plans/policies establish whether a SELPA, COE, or local district is responsible for a student’s special education services while residing in an LCI or a foster home.

Ed. Code §§ 48204, 56156.4

Which LEA Is Responsible for FAPE?

• When a court or county placing agency decides to place a student in an LCI or foster home, the court or county placing agency is responsible for residential and non-education costs.

• Ed. Code 56159
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February 16, 2018

Residential Placements

• LEAs “must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services” which may include placement in a residential program. 34 CFR § 300.115(a).

• To determine whether a residential placement under IDEA is necessary to provide a student a FAPE, the analysis focuses on whether the residential placement is necessary for educational purposes, or merely a response to medical, social, or emotional problems separate from the learning process. Ashland Sch. Dist. v. Parents of Student E.H. (9th Cir. 2009) 587 F.3d 1175, 1184.

Residential Placements: Case Law

• FACTS: Student is a seventeen-year-old girl who has been a ward of the Court and the Department of Children and Family Services (“DCFS”) since the age of eleven, making DCFS responsible for providing Student suitable housing and meeting her mental health needs.

• Student qualifies for special education services under the category of “emotional disturbance.”
Residential Placements: Case Law

• The Juvenile Court ordered DCFS to provide Student with “permanent placement services,” and DCFS placed Student in a series of residential facilities. During this time, several IEP meetings were convened.

• None of Student’s IEPs called for a residential treatment component to DCFS’s placements, and the Student’s district of residence did not consider whether a residential placement was necessary or what residential placement would provide Student with a FAPE.

Residential Placements: Case Law

• **HELD**: The District improperly failed to consider whether a residential placement should be part of Student’s IEP even though DCFS had already placed Student at a locked residential facility.

Residential Placements

• IEP teams should still consider whether a student requires residential placement for educational reasons even when the Juvenile Court has ordered residential placement to be funded by another public agency.

• Notably, the Court in this case expressly took no position regarding which public entity may ultimately be responsible for payment of residential treatment services in the event that multiple entities, like DCFS and a local school district, independently decide a particular residential placement is appropriate for a given child under the agencies’ respective statutory frameworks and obligations.

Immediate Enrollment

• Foster youth who are placed in a licensed children’s institution or a foster family home shall attend programs operated by the LEA unless:
  – The student is entitled to remain in “school of origin” if it is in their best interest as determined by their educational rights holder; OR
  – Student has an IEP requirement a NPS/A placement.

  Ed. Code § 48853.
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ACSA EVERY CHILD COUNTS SYMPOSIUM
February 16, 2018

Immediate Enrollment

• “School of origin” may be:
  – School attended when they entered the foster care system;
  – School most recently attended; or
  – School attended in previous 15 months with which they have a connection (sports team, relationships with peers/teachers).

Transportation

• Many foster parents, including relatives, are eligible for funding from their local child protective services agency if they transport a youth to their school of origin after a placement change.

• Generally, the school district in which the foster home is located would only be required to provide transportation to the school of origin if a student requires transportation as a related service on his/her IEP.
Immediate Enrollment

• Foster youth have the right to immediate enrollment in a public school, **even if**
  – They do not have the required documents (e.g., transcripts, immunization records, proof of residency).
  – They have outstanding fees, fines, textbooks, or other items or money due to last school attended.
  – They do not have required school uniforms.
• This applies to charter schools too!
  Ed. Code §§ 48853.5, 48859(c).

Immediate Enrollment

• Students with disabilities must be placed in an appropriate program with services comparable to those in their IEP.
  Ed. Code § 56325.
• “**Comparable services**” means services that are similar or equivalent to those services that were described in the child's IEP from the previous LEA as determined by the child's newly designated IEP team in the new LEA.
“Child Find” Obligation

• Schools have an affirmative obligation to identify students who may be eligible for special education services.
• Because foster youth experience instability at home, caregivers or educational rights holders may miss signs that a child is struggling with a disability.

“Child Find” Obligation

• Don’t take a passive approach and wait for others to refer a student for special education services.
• Train personnel who handle initial registration and enrollment.
  – Often they are the frontline for a student who is highly mobile.
• Seek records from previous schools in a timely fashion.
  – Keep written record of dates and times you make such requests, and keep copies of written request.
“Child Find” Obligation

- Train teachers, counselors, and other personnel to look for warning signs that a foster youth has a suspected disability and could benefit from special education services.
- Warning signs include: (1) poor grades; (2) withdrawal or depression; (3) acting out or disciplinary problems; (4) poor attendance; (5) inattention or failure to complete work; or (6) social skills deficits or failure to make friends.

Timely Transfer of School Records

- Efficient transfer procedures and transfer of pupil records is a critical factor in the swift placement of foster youth in educational settings.
- As soon as a county placing agency becomes aware of the need to transfer a foster youth out of his/her current school, they must contact the appropriate person at the LEA.
  - Date that student will be leaving school; and
  - Request that student be transferred out.

Ed. Code § 49069.5.
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ACSA EVERY CHILD COUNTS SYMPOSIUM
February 16, 2018

Timely Transfer of School Records

• If the student has an IEP, notice must be provided to both old and new LEA at least 10 days prior to the child’s move.

Cal. Rule of Court 5.651

Timely Transfer of School Records

• Upon receiving a transfer request from county placing agency OR notification of enrollment from a new LEA, the LEA has 2 business days:
  – To transfer the student out of school; and
  – To deliver the educational information and records to the next educational placement.

• Applies to charter schools participating as a member of a SELPA.

Ed. Code § 49069.5.
Timely Transfer of School Records

• Within those **2 business days**, LEA must compile the school records including:
  – Determination of seat time
  – Full or partial credits earned
  – Current classes and grades
  – Immunization and other records
  – IEP
  – 504 Plan

Ed. Code § 49069.5.

Timely Transfer of School Records

• Grades and credits shall not be effected when the foster youth is absent from school because of:
  – A decision to change the child’s placement made by a court or county placing agency;
  – A verified court appearance or related court ordered activity.

Ed. Code § 49069.5.
Timely Transfer of School Records

- Within 2 business days of a foster child’s request for enrollment, contact the last school attended to obtain all school records.

Access to Records

- Foster family agencies with jurisdiction over currently enrolled or former pupils may access records of grades and transcripts, and an IEP that may have been developed maintained by school districts or private schools of foster youth.

Educ. Code § 49069.3.
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ACSA EVERY CHILD COUNTS SYMPOSIUM
February 16, 2018

IEP Meeting Participation

• At the discretion of the parent or the LEA, may include other individuals who have knowledge or special expertise regarding the child.

  34 CFR 300.321 (a)(6).

• Consider whether foster parent (even when biological parent still has educational rights) and/or social worker should be invited to an IEP meeting.

Timely and Expedited Evaluations and Eligibility Determinations

• The U.S. Dept. of Education maintains that highly mobile children should have timely and expedited evaluations and eligibility determinations.

• When a child transfers LEAs in the same school year, after the previous LEA has begun but has not completed a special education evaluation, both LEAs must coordinate to ensure the completion of the evaluation.

• This must occur as expeditiously possible.

  Letter to State Directors of Special Educ., 61 IDELR 202 (OSERS/OSEP 2013).
The Role of LEAs in Supporting Children with Disabilities in Foster Care
ACSA EVERY CHILD COUNTS SYMPOSIUM
February 16, 2018

Timely and Expedited Evaluations and Eligibility Determinations

• The relevant time frame does not apply when:
  – The new LEA is making sufficient progress to ensure prompt completion of the evaluation; and
  – The parent and new LEA agreed to a specific time when the evaluation will be completed.

• Don’t delay completing an evaluation or extend the evaluation timeframe in order to implement an RTI process.


Behavior and Discipline

• Schools may need to take formal disciplinary action to protect the safety of everyone on campus.
• Foster youth are subject to disproportionate levels of school discipline due to unmet mental health needs caused by the trauma, neglect and abuse.
• Law and best practice require schools to attempt to modify behavior through other interventions before more formal disciplinary actions or involuntary school transfers are made.
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ACSA EVERY CHILD COUNTS SYMPOSIUM
February 16, 2018

Behavior and Discipline

- Foster youth may act out in frustration or to hide their academic deficits.
- Foster youth are **twice as likely as war veterans** to suffer from post-traumatic stress disorder or other mental health conditions that cause anxiety, irrationality, irritability, and aggression.


- Foster youth often struggle to establish appropriate social boundaries and may be negatively influenced by peers due to abuse/neglect and a lack of long-term healthy relationships.

Consider New Approaches

- May be hard to be in the front of the classroom because foster youth may prefer to sit where they can keep track of their surroundings.
- Talk to student about working with a “trusted adult” on a project rather than a “parent.”
- Create warm “counseling” environments – low pressure
- Preserve student privacy when implementing interventions involving peers (may not want classmates to know about being a foster youth)
- Offer quiet place or time to work on school work before/after school.
Special Notices for Discipline

- LEAs are required to notify a foster child’s attorney and the appropriate representative of the county child welfare agency of pending:
  - Expulsion hearing for a discretionary act (i.e., non-mandatory expellable offense); and
  - Proceedings to extend a suspension pending an expulsion; and
  - If the student has an IEP, manifestation determination meetings if change of placement is being proposed.

Ed. Code §§ 48853.5, 48911(g), 48918.1(a), 48915.5(d).

High School Graduation Options for Foster Youth

- Foster youth who transfer high schools after their 2nd year may, but are not required to, graduate by completing minimum state graduation requirements if, at the time of transfer, they cannot reasonably complete additional local school district requirements within four years of high school.
- Or they may remain in high school for a 5th year.

Collaboration Among Agencies

• Among the many challenges foster youth face, communication and collaboration between systems is a huge barrier.

Collaboration Among Agencies

• California’s Continuum of Care Reform (CCR)
• Comprehensive approach to improving the experience and outcomes of children in foster care
  – AB 403, Chapter 77, Statutes of 2015
  – AB 1997, Chapter 612, Statutes of 2016
  http://www.cdss.ca.gov/inforesources/Continuum-of-Care-Reform
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ACSA EVERY CHILD COUNTS SYMPOSIUM
February 16, 2018

Collaboration Among Agencies

- New foster care provisions in the Every Student Succeeds Act emphasize collaboration between State Departments of Education, LEAs, and child welfare agencies.
- On June 23, 2016, U.S. Education and Health and Human Services departments released Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care

Other Resources

- Foster Youth Education Toolkit
- The Invisible Achievement Gap
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February 16, 2018

Other Resources

• California Foster Youth Education Task Force
  http://cfyetf.org/

• The National Child Traumatic Stress Network, Resources for School Personnel
  http://www.nctsn.org/resources/audiences/school-personnel

THANK YOU!

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