

The Education of Children in Foster Care or Awaiting Foster Care Placement

Frequently Asked Questions

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DEPARTMENT OF EDUCATION

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Table of Contents

Background	1
Frequently Asked Questions	2

Background

It is well documented that frequent school changes are associated with an increased risk of failing a grade or dropping out of school. This is especially true for children who are displaced from their homes and/or separated from their families. Safety nets were designed for these children in federal law, specifically the *Fostering Connections to Success and Increasing Adoptions Act*¹ (*Fostering Connections*) of 2008 and the *McKinney-Vento Act*.

Under *Fostering Connections*, child welfare agencies are required to work in partnership with local school districts to allow the child to remain in the home school unless it is in the child's best interest to change schools. *Fostering Connections* also requires that, when a school change is needed, child welfare agencies promptly enroll children, who are in their care, into school and promptly provide all school records to the new school. Pursuant to *Fostering Connections* child welfare agencies are authorized to use certain federal funds to pay for reasonable expenses for travel to and from the child's home school.

The Pennsylvania Department of Public Welfare's (DPW), Office of Children, Youth, and Families has undertaken several initiatives focused on improving educational outcomes for children in dependent care. These initiatives are outlined in DPW Bulletins, which are referenced in these FAQs, and available in DPW's website at <http://www.dpw.state.pa.us>.

A Basic Education Circular (BEC) issued by the Pennsylvania Department of Education (PDE), entitled *Enrollment of Students*, addresses issues related to enrollment of children in foster care. The BEC strongly encourages school districts to develop agreements with child welfare agencies when it is in the child's best interest to remain in the home school even if the child is placed outside of the home school's attendance area or school district. School districts are encouraged, to develop formal relationships with children and youth agencies, with the specific goal of maintaining school stability.

Since the adoption of *Fostering Connections*, PDE has received many questions from school districts regarding their responsibility for enrollment of children in foster care, the above-mentioned agreements and the provision of transportation. The following FAQs provide guidance to school districts, parents, children and youth agencies both public and private agencies, and interested parties in the development and implementation of comprehensive plans to meet the social, familial, and educational needs of children in foster care.

¹ <http://www.govtrack.us/congress/bill.xpd?bill=h110-6893>

Frequently Asked Questions

1. Q: What school enrollment requirements apply to children in foster care?

A: School districts and charter schools are to follow the same procedures and rules for the enrollment of children in foster care that are outlined for the enrollment of resident students, as stated in the PDE's *Enrollment of Students BEC*. If the child is living in the district, the district shall enroll a foster care child the next business day, but no later than five (5) business days of application. The parent, guardian, or other person having control or charge of the child (which can be the child's foster parent or caseworker) making the application must provide: proof of the child's age; proof that the child is immunized; proof that the child is living in the school district; and a sworn statement that indicates whether the student has been or is suspended or expelled for offenses involving drugs, alcohol, weapons, infliction of injury or violence on school property (24 PS 13-1317.2(e.1)). Educational records may be provided by the child welfare agency, if available, or requested from the student's former school district or charter school. However, receipt of documents other than those stated above cannot be a condition precedent to enrolling the child in the school district. See *Enrollment of Students BEC*:

http://www.portal.state.pa.us/portal/server.pt/community/purdon's_statutes/7503/enrollment_of_students/507350

2. Q: Who may enroll a child in foster care, in a school district or charter school?

A: A child in foster care may be enrolled by a parent, guardian or other person having control or charge of the student. (See 22 Pa. Code §11.11(b)) Therefore, a foster parent, juvenile probation officer or caseworker may enroll the student. School districts must enroll and treat non-resident children placed with foster families in all respects as if they were residents of the school district. (See 24 P.S. §13-1305(a), *Nancy M. v. Scanlon*, 666 F. Supp. 723 (E.D. Pa. 1987))

3. Q: May enrollment of a child in foster care or a child awaiting foster care placement be delayed or denied due to the lack of education records from a prior school district?

A: No. Enrollment cannot be delayed because of a failure to obtain education records from a prior school district either in Pennsylvania or an out-of-state school. An enrolling school district should request the child's education records immediately, and the prior Pennsylvania district must transfer the child's records to the new district within 10 business days of the request. When children with Individualized Education Programs (IEP) transfer from another school district or another state, the new school district must provide the child with a Free and Appropriate Public Education (FAPE), which includes comparable services, until a new IEP is developed and agreed to by the person authorized to make special education decisions for the child, pursuant to the Individual with Disabilities Education Act (IDEA) and implementing

regulations. (34 CFR 300.323(e), (f). For a child in foster care, the person is usually the child's biological parent but may be a foster parent or a person appointed by a court or school district. (See *Transfer of Records BEC*)

http://www.portal.state.pa.us/portal/server.pt/community/purdon's_statutes/7503/transfer_of_records/507343

4. **Q: When a child welfare agency has legal custody of a foster child and is seeking enrollment of that child in a school district, must a representative of that agency be physically present to sign the enrollment forms?**

A: The decision to require a representative from the public child welfare agency to be physically present is well within the discretionary authority of local school officials. Regulations provide "The school district or charter school has no obligation to enroll a child until the parent or guardian or other person having control or charge of the student making the application has supplied proof of the child's age, residence and immunizations as required by law. (22 Pa. Code § 11.11(b)) This applies to resident children and nonresident children who are living in facilities, institutions, or foster homes. (22 Pa. Code § 11.11(c))

5. **Q: What additional documentation may the school district require for the enrollment of a child in foster care?**

A: If the child is living in the district where he or she seeks to enroll, the public or private children and youth agency may need to supply proof of that fact to the district. Such documentation would be provided to the district by the public or private agency or the foster parent. The school district may not inquire as to the reasons that a child was placed in foster care, or whether or when the child may return to live with a biological or adoptive parent. And, the school district may not require a statement from the biological or adoptive parent consenting to enrollment. See *Enrollment of Students BEC*:

http://www.portal.state.pa.us/portal/server.pt/community/purdon's_statutes/7503/enrollment_of_students/507350

6. **Q: May a child in foster care remain in the same school even after they move to a new foster placement in another school district?**

A: Yes, children placed in foster care may move from one foster home to another and such moves may involve school changes. Research shows that school changes significantly undermine academic progress. In accordance with the *Fostering Connections Act*, a child in foster care should remain in the same school district unless it is not in their best interest. Children and youth agencies have also been strongly encouraged to make placements that are close to the child's home school, when feasible, in order to promote school stability.

School districts are strongly encouraged to develop policies or agreements to enable a student who is in foster care to remain in the educational program in the same school or school district

even if that student is moved to a residence in another school attendance area within the district or in another school district. However, under current law, the school districts are not required to maintain the child in the same school district.

Under the *Fostering Connections Act*, child welfare agencies and local education agencies must coordinate to maintain a child in the same school when the child's living situation changes unless it is in the child's best interest to change schools or school districts.

7. Q: When an agreement is made to continue the education of a child in foster care in a nonresident school district, which school district is responsible for the cost of school transportation?

A: Unless the child is awaiting foster care placement and considered eligible under the McKinney-Vento Act (see below), there is no requirement that a school district provide school transportation beyond that which is required by its own transportation policy. School districts are encouraged to demonstrate flexibility and assist in providing transportation if it would promote school stability for a child. The child welfare agency may arrange transportation or compensate the foster parent or a school district for such transportation. Any arrangement that enables a child to stay in the same school placement (when the foster placement is in another school district or school attendance area) should be worked out in advance between the two districts and the child welfare agency, including the plan for transportation, if such transportation is required. PDE does not reimburse school districts for such transportation.

8. Q: How are school districts to interpret the term "awaiting foster care placement"? When is a child awaiting foster care considered to be homeless?

Children who are placed temporarily in shelters, emergency foster care, transitional foster care or respite care are considered to be awaiting foster care placement. These placement settings are intended to be short term, and do not typically last longer than 30 days. However, individual circumstances may, at times, require a longer length of stay. If the placement exceeds 30 days, contact should be made with the child welfare worker and the local McKinney-Vento Coordinator to determine if there is any valid reason to conclude that the child is still awaiting foster care placement.

Communication and collaboration among education and child welfare professionals is critical to support school stability and continuity for children in out-of-home care. The law requires child welfare and local education agencies to work together to promote school stability and continuity including trying to ensure children remain in the school in which they were enrolled at the time of placement when it is in their best interest. Best practice would suggest that decisions be made collaboratively between school personnel, child welfare agencies and any other individual involved in the child's case including the child, resource parent, child advocate and attorney. It is imperative that caseworkers and school district administration and staff work together to help ensure the educational progress of all students. Local school officials

should consult their Pennsylvania Education for Children and Youth Experiencing Homelessness Program's regional, site, and state coordinators, whenever necessary to determine, on a case-by-case basis, whether a child is awaiting foster care placement.

According to the *Fostering Connections Act*, in reference to transportation, the definition of foster care maintenance payments under Title IV-E has been broadened to include "reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement."

Homeless liaisons in school districts should assist with the enrollment and other needs of all homeless children. See Basic Education Circular (BEC), *Education for Homeless Youth*.
http://www.pde.state.pa.us/portal/server.pt/community/us_codes/7505/education_for_homeless_youth/507380.

9. Q: What school enrollment requirements apply to children who are awaiting foster care placement?

A: A child who qualifies as awaiting foster care placement is considered to be homeless, and is entitled to immediate enrollment. Although LEAs may require a parent or guardian of a homeless child to submit contact information, these students are not required to prove residency. See, *Education for Homeless Youth* BEC.

http://www.education.state.pa.us/portal/server.pt/community/basic_education_circulars/7497

10. Q: When enrolling in a new school, may the school district place the child in an alternative assignment or provide alternative education services if the child has a history of misconduct or was previously placed in an Alternative Education for Disruptive Youth Program?

A: No. Unless the child is currently expelled for an offense involving weapons, the child must be admitted to the regular classroom of the new school district. If the child is currently expelled for a weapon's offense the district may provide services in an alternate education program for the duration of the expulsion. 24 P.S. §13-1317.2(e.1). In addition, if a child who is eligible for special education is expelled, the child must continue to: (1) receive services so as to enable the child to continue to participate in the curriculum for all students, although in another setting;(2) to progress toward meeting the goals set out in the child's IEP; and (3) receive, as appropriate, a Functional Behavioral Assessment and behavioral interventions to prevent the recurrence of the behavior. 34 C.F.R. §300.530(d).

11. Q: Is placement of a child in the home of a resident under a “Lifesharing agreement” considered a foster care placement?

A: According to the Pennsylvania Department of Public Welfare, a Lifesharing home is considered a residential program. Lifesharing, also known as Family Living, supports individuals with intellectual disabilities to live with qualified unrelated adults who provide support in the home. Such a home would be considered a residential placement under Section 1306 of the School Code. As such, the school district in which the child is placed (under the Lifesharing agreement) would be responsible for providing educational services for the child. The child would be considered a “non-resident” student of that school district. And, for purposes of tuition for a student under a Lifesharing agreement, the school district that is the location of the parents’ residence would be responsible for the student’s tuition.

12. Q: May a school district release education records to a child welfare agency or caseworker?

A: Yes, the Uninterrupted Scholars Act (P.L. 112-278) made key revisions to the Family Educational Rights and Privacy Act (FERPA) that will make it easier for child welfare agencies to access education records.

This amendment creates a new exception under FERPA that authorizes an agency caseworker or other representative of a State or local child welfare agency, or tribal organization to have access to the student’s educational records without having to obtain parental consent or a court order. This exception applies to children for whom the public child welfare agency has legal responsibility for their care and protection, specifically those children in the legal custody of the Agency who are placed in out-of-home care. This would include children placed under a voluntary placement agreement and shared case responsibility youth who have been adjudicated dependent.

It is the position of both the Department of Public Welfare and the Department of Education that the individuals who can obtain education records under this exception, specifically those who have the right to access the child’s case plan, include the following:

- the child’s caseworker from the public children and youth agency;
- the child’s caseworker from a private children and youth agency with whom the public agency contracts; and
- the supervisors or managers of such agencies.

In order to obtain the student’s records, proof of this relationship with the child must be provided. This proof can be in the form of a court order or written notification on agency letterhead indicating that the agency has legal custody or is otherwise legally responsible for the care and protection of the child.

The records obtained pursuant to this exception may not be re-disclosed to any other person or entity unless those individuals or entities are engaged in addressing the student's educational needs and authorized by the child welfare agency or organization to receive such disclosures.

Child welfare agencies have a continuing obligation to work collaboratively with families and their LEAs to address the educational needs of children in dependent care. The amendment does not usurp the right of a student's parent to make all other decisions regarding the release of the child's education records, nor does it place the child welfare agency in the role of parent or educational decision maker. It merely allows child welfare agencies to obtain a student's education records in a more timely and efficient manner. As a result, the child welfare agency representative working with the family should explain to the parent and to the school entity that provides the records that, while the agency will have access to the education records, the parent still maintains the right to access the records directly from the school and the right to make decisions about the child's education. The child welfare worker should also make all efforts to keep parents informed and involved in the child's education.

In addition, the Uninterrupted Scholars Act also provides that, in cases where a parent is a party to a proceeding involving child abuse or neglect or a dependency matter, and a court order is issued authorizing the disclosure of education records, additional notice need not be provided to the parent by the educational agency before educational records are released.

When it is determined that it is in the best interest of a child in foster care to change school districts, the child welfare agency and the LEA must ensure that the child is immediately enrolled in the new school with all education records provided to the new school. See 42 U.S.C. §675(1) (G) (ii) (II).

13. Q: Who is the special education decision-maker for a child in foster care?

A: In most cases, the biological parent continues to be the child's special education decision-maker. Every child in foster care who is or might be eligible for special education must have a parent under IDEA. The parent under IDEA is the birth or adoptive parent if that person is locatable, the court has not terminated parental rights or limited the parent's right to make education decisions for the child, and the parent is "attempting to act" as the parent under IDEA. See 34 C.F.R. §300.30(b). A school district shall make reasonable efforts to locate and notify birth or adoptive parents of meetings, etc., and make accommodations to facilitate their participation. However, if that parent ***is not located*** or the parent has been located but is not "acting as the parent" in the special education process (for example is not attending meetings or responding to notices), and the child has a foster parent, ***the foster parent may become the child's parent under IDEA.*** A relative with whom the child is living who is acting as the child's parent can also be an IDEA parent (See 34 C.F.R. §300.30(a)). In addition, a court may appoint a surrogate parent/education decision maker. With respect to the initial evaluation of a child in foster care who has no active IDEA Parent, the court can subrogate the biological/adoptive parent's right to make education decisions and can appoint any person to consent to the evaluation. See 34 C.F.R. §300.300(a)(2)(iii), (3).

14. Q: When does a child in foster care, who is eligible for special education services, need a surrogate parent and what can school districts do about it?

A: When no IDEA parent can be located (the parents cannot, after reasonable efforts, be found, there is no foster parent, and there is no person other than a foster parent with whom the child is living who is acting as the parent) the local education agency should appoint a surrogate parent, whenever possible within 30 days. A surrogate parent should also be appointed for a child who qualifies as an unaccompanied homeless youth under the McKinney-Vento Act. In that case the LEA can appoint appropriate staff from the shelter where the child is living to serve as a temporary surrogate parent until a surrogate parent can be appointed. The Juvenile Court can also appoint a surrogate parent, particularly for a child who is living in a residential setting such as a group home or a residential treatment facility. See 20 U.S.C. §1415(b), 34 C.F.R. §§300.30(a) (3), 300.519(a), (c), (h). A Surrogate Parent Guide is available at <http://www.pattan.net/category/Resources/PaTTAN%20Publications/Browse/Single/?id=4dc09560cd69f9ac7fa50000>

15. Q: May a person who is employed by an agency that is involved in the education or care of a child such as a caseworker or current teacher be the child's surrogate parent under IDEA?

A: No. A surrogate parent cannot be a person who is employed by an agency that is involved in the education or care of a child such as a caseworker or current teacher. 34 C.F.R. §519(d) (2) (i). Federal regulations, 34 C.F.R. § 300.519, outline the duties of public agencies in assigning individuals to serve as a surrogate for the parent(s). Public agencies must ensure that a person selected as a surrogate parent is 1) not an employee of the State Educational Agency, the Local Educational Agency, or any other agency that is involved in the education or care of the child, 2) Has no personal or professional interest that conflicts with the interest of the child the surrogate parents represents, and 3) Has knowledge and skills that ensure adequate representation of the child. A person otherwise qualified to be a surrogate parent is not considered an employee of an agency solely because he or she is paid by the agency to serve as a surrogate parent.

16. Q: Does a school district have any responsibilities for educating children in foster care who are living in residential facilities?

A: Yes. The school district in which a residential facility (such as a group home or residential treatment facility) is located is responsible for providing or ensuring the provision of special education or regular education to children in dependent care and other school-aged children who live in those facilities. See 24 P.S. §13-1306. (See *Educational Programs for Students in "Educational Portions of Non-Educational Placements"*)
http://www.portal.state.pa.us/portal/server.pt/community/pa_codes/7501/educational_portions_of_non-educational_placements/507372.

Unless the child's needs or a court order dictates otherwise, a child in a residential facility should be educated in a regular school in the host school district. See 24 P.S. §13-1306, IDEA/Chapter 14 LRE provisions. Dependent children and other children with disabilities living in facilities are entitled to the same rights and protections afforded to other children as set out in 22 Pa. Code Chapters 14 and 15.

17. Q: What should a school district do to help a child in foster care graduate or stay on track to graduate?

A: Because children in foster care often change schools, they face significant barriers to meeting graduation requirements. School districts are urged to help students in foster care to receive a high school diploma by carefully reviewing all credits and partial credits earned by the student in prior settings and creating a "graduation plan" outlining all credits needed to graduate. All credits (partial or full) granted by a public school in this Commonwealth "shall be accepted by all public schools and institutions in this Commonwealth upon the transfer of a student." See 22 Pa. Code §4.74(c). Also, older youth who are still in care or who have aged out of care may seek to return to school. Students have a right to attend school where they are living until the end of the school term in which they turn 21. See 24 P.S. §§13-1301, 1305, 1306. School districts are urged to assist these students with re-enrollment and to work to enable them to earn a high school diploma by providing remedial help and access to credit recovery programs when needed.

18. Q: Does a school district have any obligation to help plan for a child in foster care who is transitioning out of school?

A: Yes. For students eligible for special education under the IDEA, the IEP in effect during the school year in which a student turns 14, and every year thereafter, must include transition goals and services to help the student make a successful transition to post-secondary education, employment, or community living when the student turns 21 or graduates. Students must be invited to IEP meetings when transition plans are being developed. If they do not attend the meeting, the school district must take steps to ensure that the students' interests and preferences are considered by the IEP team. With the consent of the parent under IDEA or the student if he or she has reached the age of majority, the school district must invite a representative of any participating agency that is likely to provide or pay for transition services, which can in some cases include the child welfare agency. 34 C.F.R §§300.321(b); 22 Pa. Code §14.131(a) (5).

In addition, child welfare agencies are required to ensure that a child in foster care who is sixteen years or older is receiving the necessary educational services to transition to independent living, pursuant to 42 Pa. C.S. § 6351. Local educational agencies are urged to cooperate and assist in this planning process when requested by the local child welfare agencies. In addition, a child who is "aging out" of care within 90 days must have in place a detailed transition plan that specifically addresses the child's educational needs.

(See 42 USC § 675(5)(H)) School districts are urged to work with child welfare professionals to assist in the development of that plan and identify possible educational and vocational training resources for the child. In addition, if the child is also eligible for special education services, such transition planning should be coordinated with the transition planning occurring within the school entity pursuant to the IDEA and state special education law.

19. Q: Are there any special programs or laws that support a child in foster care to have access to higher education opportunities?

A: Yes. There are many scholarship opportunities as well as federal and state funds available to children who have been in foster care. School counselors should consult with child welfare personnel about financial aid opportunities, such as the Education and Training Grants and other resources that are available to foster youth as well as any benefits or education support services that may be provided through the county child welfare agency or Independent Living Program. See 42 U.S.C. 677(b)(3)(F). School counselors should work with Children & Youth Education Liaisons and Independent Living Coordinators from the county's child welfare agency to identify youth in care in their schools who may need assistance to put them on track for college or may need help getting other support services available through the school. This may include ensuring that foster youth have access to college preparation programs such as Upward Bound and SAT preparation instruction that may be available to children in foster care at no charge. See 42 U.S.C. 677(b) (3) (F).

20. Q: Are school districts that provide educational services to children in foster care entitled to tuition reimbursement?

A: Yes. School districts that educate non-resident children in foster care are entitled to "payment on account of tuition" in accordance with 24 P.S. §25-2503.

21. Q: Must all County Children and Youth agencies have a "Central Point of Contact" for education matters?

A: Yes. The Office of Children, Youth, and Families Bulletin 3130-10-04 entitled "Educational Stability and Continuity of Children Receiving Services from the County Children and Youth Agency (CCYA) Including the Use of an Education Screen" issued September 17, 2010 clarifies the responsibilities of county agency personnel for the education of children receiving services by the child welfare agency. Each County Children and Youth Administrator must identify a staff member, called an "Education Liaison" to be trained in educational issues of most concern for children served by the child welfare system, for example: enrollment, special education services, school discipline, and the rights of children awaiting foster care placement.

22. Q: What is the Education Screen and who is responsible for completing the Education Screen for a child in foster care?

A: The Education Screen is a tool to identify the educational needs of a child in foster care. It was developed and issued along with the Office of Children, Youth and Families Bulletin Number 3130-10-04. Staff from county children and youth agencies and/or private providers with whom the agency contracted with were responsible for completing the Education Screen. School district personnel were encouraged to cooperate by providing as much information as allowed by law, but they were not responsible for completing the screen. Efforts are currently being made to streamline the screen to allow for easier use and discussions are occurring regarding future implementation. Although some county children and youth agencies have used the screen at their own discretion, full implementation of the screen has been delayed.