

65TH CONFERENCE ON EXCEPTIONAL CHILDREN



GRADUATION:
The Measure of Tomorrow
Accessing Education
Records of Children
and Youth in Care
Karen Haase

PUBLIC SCHOOLS OF NORTH CAROLINA
State Board of Education | Department of Public Instruction

November 18-20, 2015



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The Measure of Tomorrow

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Children in Foster Care



My parents just don't understand me dude: I'm seriously considering running away from home to join the circus...

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Educational Issues with Children in Foster Care

- Only 1/3 receive diploma in 4 years
- More likely to drop out
 - Philadelphia study: 75.2% dropped out in 2005
- Much more likely to repeat a grade
 - California study: 83% of children in care in Los Angeles were held back in school by the 3rd grade
 - Nearly 45% of youths in care in the New York state study reported being retained at least once in school
 - Chicago Public School students in out-of-home care were almost twice as likely to be at least a year too old for their grade




Educational Issues with Children in Foster Care

- Significantly below peers on standardized tests
 - Nationally, 11th-graders in care average 7th-grade reading level
 - In Washington, state score 16 to 20% below non-foster youths in statewide standardized tests
 - Midwest study: Only approximately 44% read at high school level or higher
- While 70% of foster youths want to attend college:
 - 7-13% gain access to any higher education programs
 - Only 2% obtain bachelor's degrees




Student Attendance and NeSA Scale Scores Grade 4

Grade 4 – NeSA	Reading		Math
	2009-10	2010-11	2010-11
Students absent less than 20 days	105	110	103
Students absent more than 20 days	84	89	80
Students absent less than 10 days	106	111	105
Students absent more than 10 days	95	101	93




**Student Attendance and NeSA Scale Scores
Grade 8**

Grade 8 – NeSA	Reading		Math
	2009-10	2010-11	2010-11
Students absent less than 20 days	104	108	100
Students absent more than 20 days	83	82	68
Students absent less than 10 days	107	110	103
Students absent more than 10 days	93	96	85

**Student Attendance and NeSA Scale Scores
Grade 11**

Grade 11 – NeSA	Reading		Math
	2009-10	2010-11	2010-11
Students absent less than 20 days	102	104	98
Students absent more than 20 days	72	72	58
Students absent less than 10 days	107	107	103
Students absent more than 10 days	90	87	75

**School Stability Issues with
Children in Foster Care**

- Nationally, children in care have an average of 1-2 placement changes per year
- Oregon and Washington study
 - 479 alumni of foster care
 - 65% experienced 7 or more school changes from elementary through high school
- In an ongoing 3-state study of youths aging out of care, over 1/3 reported having had 5 or more school changes

McKinney-Vento Homeless Ass. Act

42 U.S.C. § 11431 et. seq.

- Youths “awaiting foster care” defined as homeless
- Rights of homeless students
 - Right to remain in school of origin
 - Transportation (paid for by district of origin)
 - Right to immediate enrollment (w/o records)
 - Liaisons
- Choice of school is family’s right under McKinney-Vento (potential conflict with public policy issues of Fostering Connections)

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Why Does School Stability Matter?

- Nationally, close to 60% of children placed in out-of-home care return to their parents within a year of placement
- Existing school relationships are a positive counterweight to abuse, neglect, separation, and impermanence
- Schools serve their own students better than those staff perceive as just “passing through”

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The Solution: Congressional Action

"YOU'RE A GROWN MAN AND YOU'RE STILL AFRAID OF CLOWNS?"

"JUST THE ONES IN CONGRESS."



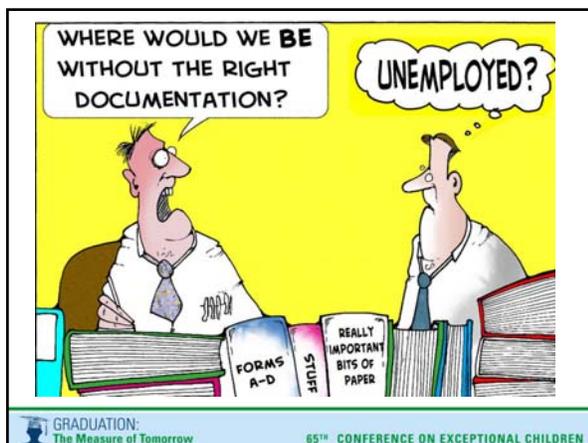
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Fostering Connections Act: Written Case Plan

- Child welfare agency workers must develop a written case plan for each child in foster care
- Among other things, the case plan includes the education records of the child, including the most recent information regarding:
 - The names and addresses of the child's education providers
 - The child's grade level performance
 - The child's school record
 - Any other relevant education information the child welfare agency determines to be appropriate

Fostering Connections Act: Written Case Plan

- Case plan must address educational stability
 - When placing a child in foster care or when a child is changing foster care placements, the agency must:
 - Consider the appropriateness of the child's current school and the proximity of that school to the foster care placement
- AND
- Coordinate with the local educational agency to ensure the child can stay enrolled in his school of origin despite the foster care placement



Coordination with Education Agencies

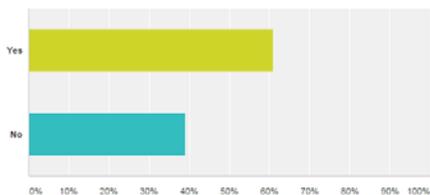
The child's case plan must include:

"an assurance that the state has coordinated with appropriate local education agencies ... to ensure that the child remains enrolled in the school in which the child was enrolled at the time of placement"

42 U.S.C.A. § 675(1)(G)(ii)

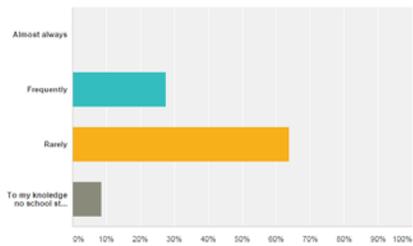
Is your school notified by a representative of the justice sytem (e.g. case worker, probation officer, guardian-ad-litem, etc.) when one of your students is placed in foster care?

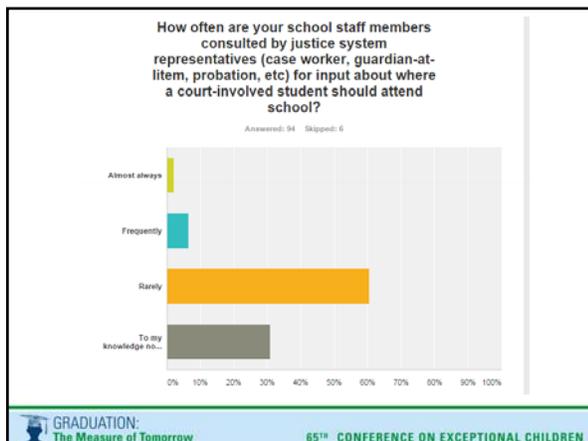
Answered: 92 Skipped: 8

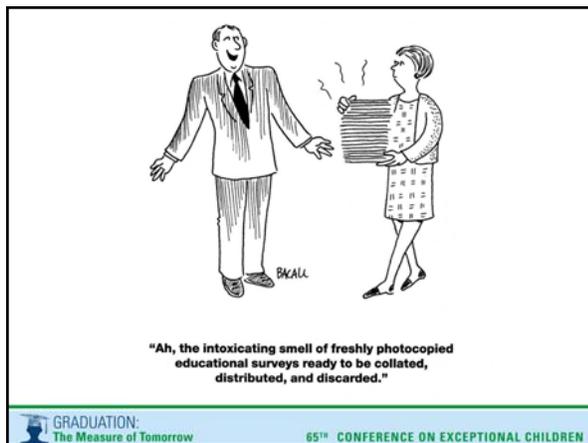


How often is your school staff consulted by justice system representatives (case worker, guardian-at-litem, probation, etc) for information about a court-involved student's educational needs or educational progress?

Answered: 94 Skipped: 6







If Child Changes Schools

- If remaining in the same school is not in the best interest of the child, the child's case plan must include:
 - "assurances by the State agency and the local education agencies to provide immediate and appropriate enrollment in a new school, with all of the education records of the child provided to the school"

42 U.S.C.A. § 675(1)(G)(ii)

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Conflict Between Fostering Connections and FERPA

Family Educational Rights and Privacy Act
– Prohibits schools from disclosing personally identifiable information from students' education records without the written consent of a parent or eligible student unless an exception to general consent rule applies. 20 U.S.C. § 1233g; 34 CFR Part 99



"This is the right place at the right time, but I'm afraid you brought the wrong paperwork."

FERPA Exceptions (15 Total)

- School officials with legitimate ed. interests
- Schools in which a student seeks to enroll
- To comply with a judicial order or subpoena
- Audits, evaluations, and studies
- Directory information
- Health and safety emergencies
- To creator of a record to verify the validity of that record (e.g. in cases of suspected fraud)
- To organizations conducting research studies

After Fostering Connections Act Enacted

- Some schools sharing education records with child welfare agencies
- Used current FERPA exceptions, such as court order and “parent”
- But there was a lot of confusion about what FERPA permitted

The Solution: Uninterrupted Scholars Act

- Amends FERPA
 - Confidentiality provisions in 20 USC § 1417(c)
 - Also effectively amends Parts B and C of the IDEA
- Effective Jan. 14, 2013
 - US DOE has not yet amended FERPA or IDEA regs
 - “Guidance on the Amendments to the Family Educational Rights and Privacy Act by the Uninterrupted Scholars Act” (FPCO/OSERS 05/21/14)
- Includes 2 important changes
 - Creates a new “child welfare exception”
 - Eliminates duplicative notice for the “court order exception”

Disclosure Permitted to:

- “Agency caseworker or other representative” of a state or local CWA who has the right to access a student’s case plan
- When the CWA is “legally responsible ... for the care and protection of the student”
- NOTE: Only children in foster care
 - “The USA exception would not apply to those children who are not in foster care placement.” (Guidance p. 15)
 - Emphasize “foster care” vs. “court-involved” with your schools

**Note: PERMITTED not REQUIRED
FPCO/OSERS Guidance (05/21/14)**

- “The USA permits but does not require educational agencies and institutions to disclose PII from the education records of students in foster care placement without getting prior consent of the parent or eligible student.” (Guidance p. 6)
- “The Department strongly encourages schools and LEAs to work cooperatively with CWAs and tribal organizations to ensure that the education needs of students in foster care are adequately addressed.” (Guidance p. 14)

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**Disclosures Pursuant to
Subpoena or Court Order**

- Uninterrupted Scholars Act amends the requirement to notify a parent before complying with a subpoena or court order
- No longer have to notify if the parent has been a party to a court order proceeding involving child abuse, neglect, or dependency
- Theory behind this change: The parent has already been informed by being involved in the child abuse, neglect, or dependency proceeding

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**Record of Access:
These Requirements are
Unchanged**

- FERPA, 34 C.F.R. § 99.32
 - Agency must maintain a record of each request for access and each disclosure of personally identifiable information
 - Record of disclosure must be maintained as long as record is maintained
 - Include who requested or received information
 - Include legitimate interest in receiving information

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Record of Access: These Requirements are Unchanged

IDEA, 34 C.F.R. § 300.614

- Record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees)
- Include name of party, day access given, and purpose for which the party is authorized to use the records



What Can the Child Welfare Agency Do with These Records?

- The CWA can disclose (or re-disclose) the records to "an individual or entity engaged in addressing the student's education needs"
- This individual or entity must be authorized to receive the records, and the disclosure (or re-disclosure) must be consistent with state confidentiality law

What Can the Child Welfare Agency Do with These Records?

- Can disclose to “an individual or entity engaged in addressing the student’s education needs.” 20 U.S.C. § 1232g(b)(1)(L)
 - Social worker, e.g. (Guidance p.14)
 - This individual or entity must be authorized to receive the records
 - The disclosure (or re-disclosure) must be consistent with state confidentiality law
- Child welfare agency does not have to record re-disclosure*
- CWAs subject to “five-year rule” (Guidance p. 9)

Written Agreement Between School and the Child Welfare Agency

Not required

- “The written agreement requirements in the FERPA regulations do not apply to a disclosure of PII from education records made under the USA exception by a school or LEA because Congress amended FERPA to include under this new exception to FERPA’s existing general consent rule.” (Guidance p. 9)
- “However, schools and LEAs may want to consider a written agreement ... with a CWA ... to ensure [it] is aware of its responsibility under FERPA to protect PII from education records from unauthorized disclosure.” (Guidance p. 9)

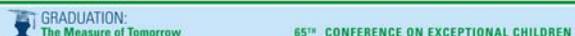
Intersection Between IDEA and Fostering Connections



In Re: Residency of Student C. M. Doe,

113 LRP 50701 (RI Commnr of Ed 09/27/13)

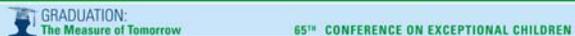
- Student is “a complicated young lady and we infer from the evidence that her psychological needs have made maintenance of a stable living situation quite challenging”
 - Providence School District placed child out of district
 - 5 different placements in 55 days
 - Eventually placed student in Newport Public Schools
 - Newport IEP team determined placement in district
- Guardian ad litem moved for emergency review
- Family court ordered her placement in the behavior high school to continue



In Re: Residency of Student C. M. Doe,

113 LRP 50701 (RI Commnr of Ed 09/27/13)

- School filed petition for a determination of residency
- “We infer that the judge’s decision in this matter was a ‘school stability’ decision required by the Fostering Connections Act. In complying with the ... act, the court could not defer the educational stability decision to the IEP team and was required to consider a broad range of factors, including Student Doe’s progress in her current educational placement, before ordering that Student Doe’s educational placement at the High Road School be maintained”



In Re: Residency of Student C. M. Doe,

113 LRP 50701 (RI Commnr of Ed 09/27/13)

- Directed school to, “Raise any concerns that it may have as to Student Doe’s placement at the High Road School, the need for the development of a current IEP, transition planning and services, etc. before the Family Court, if it has not already done so”
- “If Newport continues to take the position that Student Doe’s placement does not provide her with FAPE, a report describing the factual and legal basis for such position must be submitted to RIDE”





Foster-Glocester Reg'l Sch. Dist.,
 114 LRP 44973 (RI Commnr of Ed 07/07/14)

- Middle school student placed in a residential treatment facility in Vermont by family court
- State child welfare agency filed a motion with commissioner of education seeking an order compelling local school to pay for placement
- Local school refused, claiming that placement was not IEP team-approved and not LRE
- RIDE originally directed school to file due process if it believed placement was inappropriate

Foster-Glocester Reg'l Sch. Dist.,
 114 LRP 44973 (RI Commnr of Ed 7/07/14)

- Commissioner of education
 - Family court made best interest determination under Fostering Connections Act
 - IDEA rights have to be accommodated in harmony with Fostering Connections
 - Her right to IEP team meetings, FAPE, and LRE apply to her new home – the Bennington School in Vermont
 - “The school district of residence ... must tend to Doe’s educational needs after her personal needs have been addressed by the family court”
 - Held that local district was “financially and educationally responsible”

Questions?

ANY STYLE COFFINS AVAILABLE



Karen Haase
(402) 804-8000
karen@ksbschoollaw.com

KSB School Law
@KarenHaase

"For instance, we just customized one for a lawyer. He was buried in paperwork."



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