

## **Chapter 12: The Educational Needs of Children in Foster Care**

### **§ 12.1 Washington Courts' Approach to Improving Education for Dependent Children and Youth<sup>[1]</sup>**

In recent years, Washington courts have focused on the need for improvement in the educational success of dependent children and youth. For example, at a macro-organizational level, the Washington Supreme Court Commission on Children in Foster Care cosponsors an annual Foster Youth and Alumni Leadership Summit, which emphasizes education challenges and opportunities. Additionally, sessions on the educational needs of dependent children and youth have been offered at Superior Court Judges' Association Spring Programs and the Children's Justice Conferences. Courts have worked collaboratively with the Department of Social and Health Services (DSHS) Children's Administration, the Attorney General's Office, parents' and youths' counsel, and the school system to improve juvenile court dependency hearings so that courts inquire and are informed about children's educational progress. The judicial branch is also represented as part of the interested stakeholders group for the Building Bridges Program, a collaborative dropout prevention, intervention, and retrieval system housed at the Office of the Superintendent for Public Instruction. For more information on the Building Bridges Program, visit <http://www.k12.wa.us/GATE/BuildingBridges/>.

In a more day-to-day way, Washington State's judicial officers are also working with stakeholders to improve court orders for dependency proceedings to ensure the regular tracking of children's educational progress and to timely address any identified problems. One example in particular of a method to improve this tracking is utilization of unified family courts. Unified family courts are structured so that judicial officers may be informed of all of the issues in cases concerning families, including dependencies, Becca cases (truancy, CHINS, and at-risk-youth petitions), and family law actions. Further, the Washington State Family and Juvenile Court Improvement Plan, developed in 2008, works on a local level to improve dependency case outcomes including addressing the educational needs of children. Washington was selected as a participating state in the Three-Branch Institute in 2011, which focused on reducing the number of adolescents in foster care and improving their outcomes, including education. Finally, Children's Administration released "An Education Success Strategy for Washington State's Youth Care and Alumni" in March 2011. The report highlights the accomplishments of a workgroup created at the request of then-Assistant Secretary, Denise Revels Robinson to draft recommendations for a state education framework. A copy of the report can be found at <http://www1.dshs.wa.gov/pdf/ca/edstrategy.pdf>.

The Washington legislature has also targeted dependent children's education as a matter of great importance. A few of the legislature's efforts are highlighted here.

- H.B. 1058, Chapter 112 Laws of 2003, established a policy that, when practical and in the child's best interest, the child shall remain enrolled in the child's school. A stakeholder committee was established to develop strategies to implement the policy. Included in the strategies was a

mandatory pattern form that addresses education and health care to be used at the initial shelter care hearing.

- H.B. 2002, Chapter 266 Laws of 2006, was the first of several bills enacted to provide extended foster care to allow dependent children to pursue education after they would have normally exited foster care.
- H.B. 2679, Chapter 297 Laws of 2008, directed the superintendent of public instruction to provide an annual aggregate report on the educational experiences and progress of students in Children’s Administration out-of-home care. The new law also required education records to be transmitted to DSHS within two school days of the initial request by DSHS.
- H.B. 1566, Chapter 182 Laws of 2013, required that an education liaison be appointed for qualifying foster care children in grades 6–12. The law also required that DSHS to discuss and document any education transfers at Family Team Decision-Making Meetings, enroll the youth in school, obtain missing academic or medical records required for school enrollment, pay any unpaid fines due by the youth to the school district, and document factors contributing to any school disruptions. A school district representative or employee is required to review and determine the unexpected absences of a foster youth and proactively support the youth to sustain academic progress. Schools cannot deny enrollment of a foster child because of incomplete information needed for enrollment.

Beginning in January 2015, a university-based research group will submit an annual report examining education outcomes for youth in foster care.

With this framework in place, Washington’s Dependent Child’s Education Judicial Checklist was developed and updated through cooperation with and assistance from the National Council of Juvenile and Family Court Judges, Children’s Administration, the Office of the Superintendent of Public Instruction, Casey Family Programs, and TeamChild. The Washington checklist has been on the bench of every juvenile court for the past several years. Hard copies are provided to the courts at no cost upon request to the Administrative Office of the Courts through the Court Improvement Program. The Checklist is available as Appendix A to this chapter.

The Fostering Connections to Success and Increasing Adoptions Act of 2008<sup>[2]</sup> is intended to promote well-being and permanency for children and youth who are in the nation’s foster care system; it includes specific provisions on school enrollment, attendance, and transportation.

The Fostering Connections Act requires a state to provide the following assurances:

- The child’s foster care placement takes into account the appropriateness of the child’s educational setting and the proximity to the school in which the child is enrolled at the time.
- The child welfare agency has coordinated with appropriate local educational agencies to ensure the child remains in the school in which he or she is enrolled at the time of placement; or if this is not in the child’s best interest, assure that the child will be immediately and appropriately enrolled in a new school with all of the child’s education records provided to the school.
- Each school-age child who receives federal (Title IV-E) assistance is enrolled in school full-time or has already completed high school.

## **§ 12.2 Why Focus on Foster Care and Education?**

According to a recent report by Casey Family Programs,[\[3\]](#) some of the best predictors of success for alumni of foster care are education-related. These include whether the youth has acquired basic reading skills, taken courses needed for college admission, and graduated from high school. Studies from Chapin Hall Center for Children reveal that, in general, children in foster care enter school academically behind their peers and often fall even further behind when changes in their foster care placements result in school changes.[\[4\]](#)

The statistics are troubling:

- Over a third of young adults, in a three-state study, who aged out of foster care, reported having had five or more school changes.[\[5\]](#)
- In a Washington State study, students in foster care scored 16–20 percentile points below others in state-wide standardized tests.[\[6\]](#)
- A three-state study of youth in foster care, interviewed primarily after completing 10th or 11th grade, on average read at only a seventh grade level.[\[7\]](#)
- Thirty-six percent of the alumni of foster care interviewed in one national study had repeated a grade.[\[8\]](#)
- A national study found that youth in foster care are more than twice as likely to have dropped out of high school as youth not in foster care.[\[9\]](#)
- Only about three percent of youth obtain a bachelor's degree within a few years of emancipation.[\[10\]](#)

And the outcomes do not get better later in life. . . .

According to the Casey Family Programs' Northwest Alumni Study, alumni of the foster care system experience difficult employment and financial situations once they become 18 and age out of the system.[\[11\]](#)

- One-third (33 percent) lived at or below poverty (about three times the national rate).
- One-third (33 percent) had no health insurance (almost twice the national rate of 18 percent).
- Their employment rate was 80 percent (compared with 95 percent of same-aged members of the general population).
- Seventeen percent were currently receiving cash public assistance (compared to 3 percent of the general population).

Clearly, concrete, practical interventions are needed to ensure that children and youth who are placed in foster care, or who are living with their parents under the supervision of child protective services will be as successful in school and prepared for the future as their peers. Collaborations among child welfare, educational systems, and juvenile and family courts are essential to ensure the educational needs of children and youth in foster care are met and that their educational outcomes are improved.

Decisions made by juvenile and family court judges set standards within the community and in the systems connected to the court, the families, and the children.[\[12\]](#) The juvenile court judge, who inquires about the educational needs and outcomes of children and youth in foster care from the bench, is setting expectations and standards for practice which may have a significant impact

on how social workers, educators, and other service providers respond to young people in the future.

## **§ 12.3 A Brief History of the Checklist Project**

In December 2002, TeamChild, with support from Casey Family Programs, developed an education checklist for use by judges within the state of Washington. In 2005, The National Council of Juvenile and Family Court Judges (NCJFCJ) and Casey Family Programs published “Asking the Right Questions: A Judicial Checklist to Ensure That the Educational Needs of Children and Youth in Foster Care Are Being Addressed.”<sup>[13]</sup> This publication contained an Education Checklist (Checklist) based heavily on the original TeamChild/Casey checklist, outlining the array of questions that may be asked in a courtroom with respect to the educational needs of children and youth in foster care.

The Checklist is a tool judges can use to make inquiries about the educational needs of children and youth under their jurisdiction, with the goal of positively impacting their educational outcomes and preparing them for successful adulthood. The Checklist was extensively field-tested by judges from around the country who evaluated its practical utility, content, and comprehensiveness by using the Checklist in their dependency court hearings.

### **§ 12.3a What We Have Discovered Since the First Checklist’s Publication**

The original Checklist was designed to be a tool not only for judges but also for different system stakeholders to (1) collaborate to improve educational outcomes for children and youth in foster care and (2) ensure that educational issues within the courtroom and beyond are prioritized. The NCJFCJ alone has distributed more than 10,000 copies of the original Checklist publication for use on the bench as well as for multi-disciplinary trainings with social workers, attorneys, child advocates, education specialists, and judges.<sup>[14]</sup>

The Checklist has been used to help spearhead system-wide educational reform efforts. The leadership exercised by one jurisdiction to bring education issues to the forefront and engage all system stakeholders was chronicled in *Court-based Education Efforts for Children in Foster Care: The Experience of the Pima County Juvenile Court (Arizona)*.<sup>[15]</sup> Stakeholders in Pima County<sup>[16]</sup> began to understand the issue, recognized the leadership role the Juvenile Court could have in advancing change, agreed to field-test the original Checklist, and formed a collaborative team to take further action. In a relatively short time, the county went from simply having an interest in improving educational outcomes for children and youth in foster care to making real improvements in courtroom policy and practice.

### **§ 12.3b Impacts Jurisdictions Have Seen Upon Implementing the Original Education Checklist**

From several years of implementing the Checklist, judges identified the following impacts:

- A changed court culture that now includes a focus on education (e.g., social workers that highlight education in their reports, attorneys and child advocates who anticipate the judge’s educational questions and obtain the answers before being asked);
- Education issues are addressed as part of routine court practice regardless of whether there is an identified educational issue in the case;
- Children and parents know that someone is going to ask about educational progress and that education is a high priority;
- Stakeholders know that the bench has clear expectations with respect to educational achievement and advocacy and the information needed to ensure educational progress and success;
- There is a new focus on educational achievements and aspirational goal-setting;
- Sharing the Checklist with all stakeholders has provided a forum for dialogue between the court and agency about what information is lacking in reports to the court;[\[17\]](#)
- Use of the Checklist in multi-disciplinary trainings has helped to identify education champions in each stakeholder group who can carry the message forward;
- Better articulation of the roles and responsibilities of what each stakeholder can do to ensure educational needs are met;
- Better identification of areas of need and community barriers that are due to a lack of attention, resources, and educational advocacy;
- Identification of additional necessary reforms and where buy-in and motivation is needed;
- Identification and resolution of educational issues prior to the permanency hearing;[\[18\]](#)

## **§ 12.4 Questions to Ensure that the Educational Needs of Children and Youth in Foster Care are Being Addressed**

Each of the tools presented in this publication are should be used collaboratively so that judges, child welfare professionals, attorneys, and education advocates can (1) critically examine educational issues in the foster care system and engage in better decision-making, case planning, and service provision and (2) make positive changes in educational outcomes for children and youth. The goal is to ensure children and youth have a successful educational experience while in foster care so that they are able to ultimately complete high school at the same rate as their non-foster care peers. Whether utilized as bench tools in the courtroom, as a training component to promote educational advocacy, or a collaborative mechanism to improve court and child welfare practice, the Checklist included in this publication provides judges and stakeholders with the necessary tools to ensure education is prioritized and addressed as a key component of a child or youth’s overall well-being. Using the Checklist in case planning and decision-making also provides a valuable opportunity to actively involve foster children and youth in the dependency court process by giving them a voice to express their educational goals, challenges, and interests. By working collaboratively to support the academic achievement of children in care, judges and child welfare practitioners play a vital role in improving educational outcomes for foster children and youth, as well as ensuring their successful transitions to adulthood.

### **§ 12.4a Enrollment and Attendance**

The educational outcomes of children in foster care are significantly lower than their non-fostered peers. Washington State students who are considered mobile and lack the stability their

non-fostered peers enjoy are less likely to meet the educational outcomes of those peers. We have been aware of this for at least the last 25 years, and although some progress has been made improving these outcomes, much more effort is needed to change the situation. Maintaining school continuity is a cornerstone for improving the educational outcomes for children in the foster care system. Reducing unwanted transitions for students in care is a crucial step towards improving education outcomes and graduation rates. While maintaining school continuity is important, it is imperative that every decision is made with the individual child's "best interest" in mind, which could mean a change in the education setting. Building protocol and process to defuse the negative aspects of transition and mobility for students in care, while supporting these children so they can learn to work through and overcome those unavoidable negative aspects, will help them to achieve resiliency.

School stability should be a central consideration anytime a placement change is being made. A change in schools can have a dramatic impact on a child or youth. Young people spend a majority of their day in a school setting, establishing friendships, bonding with teacher/mentors, and participating in any extracurricular activities that they may enjoy. It is crucial that all stakeholders involved in a case are sensitive to the fact that a disruption in schools may be just as damaging to a child or youth as a change in home-setting.

If a child or youth has a change in placement which also requires a change in schools, it is critical to expedite the enrollment process. A child or youth cannot begin school until they are successfully enrolled. In order to do this, it is important to determine that children and youth have all of the necessary information or records to enroll in school (e.g., proof of immunization to enroll). A birth certificate might also be required for first-time enrollment in a public school. Children and youth in foster care experience delays in school enrollment when they move from placement to placement. Judges in the field-test study of the Checklist reported that delays were often the result of transferring records. Children and youth in foster care should have documents that detail health and educational history. Asking schools to expedite transfer of records for children in youth in care can reduce delays in enrollment.

Homelessness should not be a barrier to enrollment. Schools can do the following:

- Waive requirements for parental signature;
- Arrange for vaccinations at community clinics;
- Enroll a homeless child or youth without proof of legal residence; and
- Allow a homeless child or youth to stay in his or her prior school or assist with transportation to a new school.

Attendance records and reports on academic performance can provide beneficial information to the court. Also, schools might not be aware that a child or youth is missing school because of juvenile or family court matters. Children or youth experiencing multiple moves during a school year may also be struggling academically and lose incentive to attend. Lack of attendance may be symptomatic of other problems and indicate to the court that more information about underlying issues may be important to obtain. Through collaboration, courts and schools have been able to successfully tailor and implement interventions to prevent a school from filing a truancy petition on a child or youth in foster care.

## **§ 12.4b Education Decision-Making Responsibility**

New policy, legislation, and practice create changes in responsibilities for those surrounding our children in care. Without a strong focus on communicating a common understanding of these changes among all stakeholders and the students, young people can fall through the cracks.

- Recent legislation has added the possibility of an “education liaison” for some children/students in foster care. A clear understanding of responsibilities and responsible entities is needed.
- Changes in and varied understanding of the McKinney Vento Act, specifically the qualification and application regarding students who are “awaiting foster care,” make shared understanding regarding the design and cost of student transportation paramount to transition and ultimately the student's success.
- Revised interpretations of the Family Educational Rights and Privacy Act (FERPA) at both the state and federal level have significantly changed how schools are sharing information.

Initially, judges field-testing the original Checklist not only experienced hesitancy and disbelief from stakeholders when they asked for educational information, but they also found that stakeholders did not know who should provide the court with such information about a child. It is important to identify one key individual to be responsible for collecting, tracking, and reporting information to the court. Most educational rights flow through the natural parents or guardians of a child or youth. If a child or youth is involved in a dependency or in a parenting or domestic relations matter, the court may need to designate a person responsible for educational decision-making, at least on a temporary basis. This responsible adult can help follow through on basic tasks necessary for enrollment, transportation and monitoring the progress of a child or youth. Ensuring that the designated person has authority to act can improve stability and success in school.

Judges should clarify in orders who holds the educational decision rights for the child. This is especially important for children who have or may have disabilities that affect their learning. Judges should also identify which party or parties will be advocating for the child on issues such as the provision of appropriate services, ensuring the child stays on track for graduation, and ensuring the child is fully participating and engaged in the school experience.

## **§ 12.4c Transportation**

A child's or youth's success in school may be dependent on the resources provided to that young person. Provision of the appropriate school supplies (e.g., books, music instruments, uniforms) and transportation to and from school can greatly impact the child's educational success. Lack of reliable transportation is often a barrier to a child attending school regularly. If the child or youth is homeless (which includes awaiting foster care placement) or needs specialized transportation because of a disability, the school district may be responsible for providing door-to-door transportation.[\[19\]](#)

## **§ 12.4d Child's Progress**

The measurement of student progress, program placement if necessary, and attention to indicators that represent concern (e.g., attendance, engagement, discipline, social/emotional well-being) are all fluid aspects of our students in care. All stakeholders must share a common and current understanding of these aspects of the child's life. When appropriate, make inquiries about educational progress, achievements, goals, and aspirations directly to the child.

#### **§ 12.4e Extracurricular Activities and Talents**

A conscious effort needs to be made to ensure that the focus of questioning about education is not always negative. Educational questioning can involve praise and encouragement and should focus as much as possible on the strengths of a young person. Youth focus group participants have expressed concern that negative stereotypes are associated with youth in foster care with respect to education, and as a consequence, expectations for achievement may be set far too low. Former foster youth have reported that inquiry into their education typically arose when they were having problems at school (e.g., behavioral issues, slipping grades). Focus group participants stressed that they "want to make sure that the youth who are doing good in school are not forgotten." Judges should ask about what youth are involved in because sometimes their success is reflected in their extracurricular activities or community work. For example, what are some of the child's gifts? What extracurricular activities are the young person involved in that encourages the development of these gifts or special talents?

When asking questions about the education of dependent children, it is necessary to consider the age of the child or youth. For example, when asking whether or not the young person has the appropriate supplies for school, consider that some activities (e.g., sports, clubs) may cost more for those individuals in junior high and high school. Also, when asking about absences from school, consider that absences of youth in high school can directly impact credits toward high school graduation.

#### **§ 12.4f Physical Health, Mental Health, and Emotional Issues**

Children and youth eligible for special education services under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 (Section 504) should have a written plan that describes the individualized instruction relating to the child's or youth's needs. Educational plans should be reviewed at least annually. At any time, schools may convene meetings to review the child's or youth's progress, repair or adjust a deficient plan, or re-examine the workings of a poorly implemented plan. Individualized plans should be developed by a team that includes a school administrator, special education and regular education teachers, someone who can interpret evaluation data, a parent, a person meeting the definition of parent under IDEA or a surrogate parent, and the child or youth if appropriate. A child's or youth's needs must be re-evaluated at least once every three years. Re-evaluations could occur more frequently if necessary to adjust a child's or youth's educational program.

Children and youth should receive evaluations in all areas of suspected disability. Providing relevant information about a child or youth helps define the scope and focus of the special education evaluation. If unique needs exist, schools may need to pay for an outside evaluator with special training and expertise (such as experts in learning disabilities, mental retardation,



emotional disabilities or attention deficit disorder). Before undertaking an evaluation, schools require consent from a parent, guardian or someone with legal authority to make decisions about education. If a birth parent is unknown or cannot be located, or if the child or youth is a dependent of the state, the court may need to designate and give authority to someone to give consent and follow-up on the evaluation and planning processes. Pursuant to amendments enacted in 2004, IDEA now explicitly permits judges, in addition to the Local Education Agency (LEA), to appoint surrogate parents. Further, these 2004 amendments to the IDEA (effective July 1, 2005) contain specific provisions that allow the judge to appoint an individual to consent to the initial evaluation when a child is a “ward of the state” and other criteria are met.[\[20\]](#)

### **§12.4g Post-Secondary Preparation**

There are several general and specific supports in place for our students in care towards acquiring the skills needed and the successful transition to post-secondary learning opportunities. It is important to have an understanding surrounding every possible avenue available for our students in care and help them in taking advantage of their situation, turning barriers in to opportunities where and when they can.

#### High School

To facilitate the on-time grade level progression and graduation of students who are dependent, RCW 28A.320.192 requires school districts to make specific accommodations regarding credit acquisition and credit requirements towards high school graduation. School districts must incorporate the following procedures:

- (1) School districts must waive specific courses required for graduation if similar coursework has been satisfactorily completed in another school district, or they must provide reasonable justification for denial of the waiver. Should a waiver not be granted to a student who would qualify for graduation from the sending school district, the receiving school district must use best efforts to provide an alternative means of acquiring required coursework so that graduation may occur on time.
- (2) School districts are encouraged to consolidate unresolved or incomplete coursework and provide opportunities for credit accrual through local classroom hours, correspondence courses, or the portable assisted study sequence units designed for migrant high school students.
- (3) Should a student who is transferring at the beginning of or during the student's junior or senior year be ineligible to graduate from the receiving school district after all alternatives have been considered, the sending and receiving districts must ensure the receipt of a diploma from the sending district if the student meets the graduation requirements of the sending district.

Jobs for American Graduates (JAG) is an alternative curriculum delivery model proven to be extremely successful across the country in helping at-risk youth achieve higher education outcomes and increased graduation rates. The 2014 Washington State education budget requires high schools that have a JAG program in their school to give priority access to students who are in foster care and/or homeless.

## Post-Secondary Education

Students in foster care have opportunities to receive post-secondary education financial assistance through the following agencies:

- Washington Student Achievement Council's College Bound program. For more information, go to this website: [wsac.wa.gov/college-bound](http://wsac.wa.gov/college-bound).
- Washington State College Success Foundation's (CSF) Passport to College Promise Scholarship. High school to post-secondary transitions for students in care are also available through CSF. For more information, go to this website: <http://www.collegesuccessfoundation.org/wa/supports-and-scholarships/passport>.

### § 12.4h Transitioning

Pursuant to the federal Chafee Foster Care Independence Program, young people likely to remain in foster care until age 18 should have a personalized independent living plan. The law requires young people themselves to participate in designing and carrying out their own plan. In addition, all youth on an Individualized Education Plan (IEP) who are over age 16 are required by IDEA to have a transition plan for post-secondary education, employment and independent living. The plan should incorporate the student's goals and objectives and address vocational and independent living needs involving the youth. Also, the juvenile court may appoint or designate an adult to thoroughly review and explain the independent living plan and or special education plan to the youth.

Some of the judges that field-tested the Checklist reported that they used the Checklist in combination with information about the Chafee Foster Care Independence Program.<sup>[21]</sup>

"I talk a lot in court about it [Chafee] and I think that everyone finally knows about it," one judge explained. Judges also stressed the importance of passing along information about this Act directly to youth in care. "If a child has an interest in going on with any other post-secondary education, be it community college, university, or the school of beauty— they need to know what is out there to help them. Judges need to know about the local pots of money to ensure that children in foster care can get to it," a judge commented. A new source of financial help for youth aging out of foster care was created in February 2003, when Congress appropriated over \$41 million for Education and Training Vouchers ("ETVs") as part of the Chafee Foster Care Independence Program. States were first able to access these funds in 2004 to provide up to \$5,000 per year to youth who have aged-out of foster care and are enrolled in a post-secondary education program.<sup>[22]</sup>

In 2011, Washington passed legislation<sup>[23]</sup> implementing the federal Fostering Connections to Success and Increasing Adoptions Act of 2008.<sup>[24]</sup> In brief, the new laws provide that foster youth may elect to stay in foster care to continue their education efforts provided that the youth is enrolled and participating in a secondary education program or working toward a GED, a post-secondary or vocational educational program, a program or activity designed to promote or remove barriers to employment, or who are either employed for 80 or more hours per month or

incapable of engaging in any of the aforementioned activities because of a medical condition that is supported by regularly updated information.

## **§ 12.5 Other Issues to Consider**

Although efforts were aimed at creating an all-inclusive education checklist, below are a few additional education issues that judges and former foster youth suggested would be important to address.

### **§ 12.5a Other Steps to Help Address Educational Needs**

Judges participating in our surveys, focus groups, and field-tests of the Checklist recommend taking the following steps to help address the educational needs of children and youth in care. These steps include but are not limited to the following:

- Inquire as to a young person's progress in school during each hearing
- Encourage the child welfare agency to maintain the young person's school placement—despite moves in care
- Work with each system to develop formal protocols regarding confidentiality and the sharing of information about educational needs
- Hold regular meetings with decision-makers on the Board of Education
- Involve educational representatives in court improvement efforts and include them in court improvement committee membership
- Give children and youth a voice in the process
- Elevate the importance of education for youth in care with policymakers and other community stakeholders to inform key decisions
- Facilitate the development of collaborative structures and strategies to improve educational outcomes such as the following:
  - Create a memorandum of agreement and understanding among school, social service agencies, and the courts to share information
  - Train judicial officers and other key stakeholders on educational issues
  - Provide educational advocates or liaisons to ensure that the educational needs of children and youth are met
  - Participate in reciprocal training with child welfare agencies and school districts
  - Convene joint committees
  - Provide more information about the state and federal laws on the educational rights of children
  - Develop enforcement tools for judges to ensure that school districts are meeting the educational needs of children and youth in foster care
  - Offer cross-training for all court participants on educational issues for children and youth in foster care
  - Address confidentiality barriers (fact or fiction) among agencies, schools, and courts that can create and perpetuate a lack of understanding
  - Include foster parents in collaborative efforts<sup>21</sup>

### **§ 12.5b Length of Education Time per Day**

Due to homebound educational practices put in place as a result of behavioral issues at school, as well as the increasing popularity of home-schooling, judges should be mindful of the amount of time that a young person is receiving educational services per day and who is providing these services. Judges also reported that, under certain circumstances, inadequate time allocated to a child's education may ultimately require an out-of-home placement in the best interests of the child.

### **§ 12.5c Preparing Infants and Toddlers for School**

Judges need to take the lead in making sure that infants and toddlers in the child welfare system are also prepared to enter the educational system. One judge shared, "We [judges] need to take the lead by supporting efforts to create more opportunities for Head Start and Early Head Start<sup>[25]</sup> programs in order for these children to get the educational start that they need—otherwise, they will arrive at kindergarten with one hand already tied behind their backs." Infants and toddlers (birth to three years) with suspected speech, cognitive, or motor delays or attention or behavioral difficulties, may also be eligible for special education and related services.<sup>[26]</sup>

### **§ 12.5d Directly Addressing and Involving Youth during Educational Questioning**

When former foster youth were asked if they felt that they were given enough opportunity to bring their educational needs to the attention of the court, most replied that they did not.

Reasons given for why they felt this way included the following:

- "The courts were not asking."
- "I didn't know that the court had anything to do with my education."
- "They didn't give me a lot of opportunities to talk about my education—my court dates were during school."
- "I never went to court. I didn't know that they could help."
- "I didn't know that the court's purpose was anything other than to listen to the caseworker and take their side as the truth—so, why speak up or come to court?"

Former foster youth also reported that they were unclear about the role their caseworker played in their education. Half of the youth focus group participants shared that they did not feel that they were given enough opportunity to bring their educational needs to the attention of their caseworker. One youth explained, "My caseworker lacked the knowledge and training to help me [with my education]. I was telling her what to do on my case." Another youth added, "My caseworker was only trying to hear about my placement and if I was doing badly in school."

*Methods recommended by former foster care youth with respect to how judges could have helped address their educational needs included the following:*

- "He/she could have talked to me in chambers."
- "The judge could have requested that I come to court in order to hear about it from me."
- "He/she could have addressed me like I am a human being and not a docket number. A simple 'how are your grades?' would have done it."

- “Judges could try to listen to us and hear our side of the issues – even if we have already been stereotyped for being in foster care and think that we will not do well in school or will drop out.”

*Youth focus group participants recommended the following questions that judges should ask youth directly:*

- How has being moved from your parents’ home affected your education?
- Is your current living environment encouraging and helpful to your educational needs?
- Is there anything that the courts can do to help you in school?
- Do you plan to go to college? If so, do you feel prepared?
- How do you feel when your caseworker attends your school? Do you like it?
- Are you getting all of the help you need for school?
- Do you understand why you are in Special Education? Do you feel that you belong in Special Education?

## Appendix A

### DEPENDENT CHILD’S EDUCATION JUDICIAL CHECKLIST

August 2014 Edition

**A more comprehensive checklist and accompanying technical brief are available at [www.ncjfcj.org](http://www.ncjfcj.org)**

1. *Enrollment and Attendance*
  - Is this student enrolled and attending school?
    - What efforts have been made to place this student in a school based on their “best interest?”
    - New School? Why is that in her/his best interest?
    - School of origin? Why is that in her/his best interest?
2. Education Decision Making Responsibility
  - Does this student qualify for an educational liaison?
    - If so,
      - Who is being recommended?
      - Does the report from the educational liaison discuss educational progress, experience in school and recommendations regarding needed services in school or the community?
    - If not,
      - Who will collect and communicate this student’s educational history and needs?

- Who will be responsible for regular, day-to-day decision-making?
- Who will be responsible for special education needs decision-making?
  - Who will monitor this student's educational progress on a regular and on-going basis?
- If this student is/or will be placed in a school outside the school of origin, who is designing and who is paying for transportation to and from school? (social worker, foster parent, or school district)

### 3. *Child's Progress*

- Is this student making academic progress comparable to her/his peers?
  - What evidence supports this determination?
- Is this student on track for on-time graduation?
- List this student's extra-curricular activities.
- Does this student have an IEP or a Section 504 Plan?
  - If yes, is it current?
  - If no, should there be an assessment to determine need?
- Does this student have special education needs?
- Does this student need a tutor or mentor?
  - Is this student in their most supportive (least restrictive) education environment possible?
- Has this student been truant, suspended or expelled from school?
- Does this student have physical, emotional, or mental health issues that adversely affect their progress at school?
  - Are any assessments needed to better determine this?
  - Is the child making social/emotional progress?
  - Does this student have any substance abuse or addiction issues?

### 4. *Post-Secondary Preparation (Grade 7 and above)*

- For age 14+: is there an independent living skills/transition plan (ILS)?
- For grades 9 -12: what preparation for post-secondary education has occurred?
  - Has this student been given priority access to vocational or college-bound programs?
  - Is this student aware they are enrolled in the college-bound program?
  - Has this student filled out a FAFSA application?
  - What college placement exams has this student taken?
- For older youth, has the 17.5 hearing been scheduled?

5. *When did the social worker last see the child?*

6. *What can the court do to ensure the child's educational stability and success?*

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*The Administrative Office of the Courts gratefully acknowledges the work done by the National Council of Juvenile and Family Court Judges, Casey Family Programs and TeamChild. This checklist was developed from NCJFCJ's Technical Assistance Brief "Asking the Right Questions: A Judicial Checklist to Ensure That the Educational Needs of Children and Youth in Foster Care Are Being Addressed" (April 2005), in collaboration with Children's Administration, OSPI, Casey Family Programs, and TeamChild.*

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## **EndNotes**

[1] Updated Summer 2014. This chapter is excerpted from the Technical Assistance Brief entitled "Asking the Right Questions II: Judicial Checklists to Meet the Educational Needs of Children and Youth in Foster Care." Sophia I. Gatowski, Tracy Medina, & Megan Warren, Nat'l Council of Juvenile and Family Court Judges, *Asking the Right Questions: Judicial Checklists to Meet the Educational Needs of Children and Youth In Foster* (2008) [hereinafter *Asking the Right Questions II*]. The Technical Assistance Brief on which the current brief was based was first released in 2005. A full copy is available at <http://www.ncjfcj.org/sites/default/files/education%20checklist%202009.pdf>.

[2] See *Fostering Connections to Success and Increasing Adoptions Act of 2008*, Pub. L. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 42 U.S.C.) [hereinafter *Fostering Connections*]. The act is intended to promote permanent placements for children and youth in foster care through relative guardianship and adoption, as well as improve education and healthcare for children in care. For more information about the educational components of this legislation, please see the American Bar Association's Center on Children and the Law, Legal Center for Foster Care and Education, <http://www.abanet.org/child/education/home.shtml>.

[3] Casey Family Programs, *Higher Education Reform: Incorporating the Needs of Foster Care Youth* (2007).

[4] Mark E. Courtney et al., *Educational Experiences of Children in Out of Home Care* (2004).

[5] Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Conditions of Youth Preparing to Leave State Care* 7 (2004).

[6] Mason Burley & Mina Halpern, Wash. State Inst. Pub. Pol'y, *Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care* 13 (2001).

[7] Courtney, *Midwest Evaluation*, *supra* note 5, at 7.

[8] Peter J. Pecora, *Assessing the Effects of Foster Care: Early Results from the Casey National Alumni Study* 26 (2003).

[9] Wendy Whiting Blome, *What Happens to Foster Kids: Educational Experiences of a Random Sample of Foster Care Youth and a Matched Group of Non-Foster Care Youth*, 14 *Child & Adolescent Soc. Work J.* 41, 45–47 (1997).

[10] Peter J. Pecora et al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* (2005).

[11] *Id.* at 27.

[12] Leonard P. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 *Juvenile & Fam. Ct. J.* 25 (2009).

[13] Melissa Litchfield & Sophia I. Gatowski, Nat'l Council of Juvenile & Fam. Ct. Judges, *Asking the Right Questions: A Judicial Checklist to Ensure that the Educational Needs of Children and Youth in Foster Care are Being Addressed* (2009).

[14] This estimate is based on a recent review of NCJFCJ sponsored trainings, inquiries of jurisdictions participating in the NCJFCJ Model Courts Project, and inquiries of Court Improvement Program specialists.

[15] Kim Taitano, *Court-based Education Efforts for Children in Foster Care: the Experience of the Pima County Juvenile Court (Arizona)* (2007).

[16] The Pima County Juvenile Court, Tucson, Arizona, participates in the NCJFCJ Model Courts Project funded by the Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. In September 2008, the Pima County Juvenile Court was designated as a Senior Model Court in that Project.

[17] Courtney, *Midwest Evaluation*, *supra* note 5.

[18] In a study of Pima County's Checklist implementation, researchers found, when compared to a pre-Checklist sample of similar cases, that school records were obtained pre-adjudication in significantly more cases for which they were previously unavailable, children were enrolled in school pre-adjudication in significantly more cases than previously, and educational assessments or evaluations were obtained pre-adjudication in significantly more cases than in the pre-Checklist sample. Taitano, *supra* note 15.

[19] The federal McKinney-Vento Homeless Assistance Act is designed to help youth and their families who are experiencing homelessness, and to protect the right of homeless youth to attend school. The Education for Homeless Children and Youth Program of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431(1) (Supp. 2005). It is intended to enable homeless youth (including those awaiting foster care placement) to remain in their school of origin if they wish, and requires school districts to provide transportation to that school if needed. For general information, see the National Law Center on Homelessness and Poverty ([www.nlchp.org](http://www.nlchp.org)).



[20] Pub. L. 108-446, Section 614(a)(1)(D)(3) is effective July 1, 2005. For more information on IDEA amendments and regulatory changes, see [www.abanet.org/child/education/home.shtml](http://www.abanet.org/child/education/home.shtml).

[21] For more information about the Foster Care Independence Act of 1999 and the Chafee Foster Care Independence Program, please see Karen Carroll, *The Foster Care Independence Act of 1999 and the John H. Chafee Foster Care Independence Program*, (2002); Susan H. Badeau, *Frequently Asked Questions II: About the Foster Care Independence Act of 1999 and the John H. Chafee Foster Care Independence Program* (2000). *See also* National Foster Care Coalition, [www.nationalfostercare.org](http://www.nationalfostercare.org) (last visited Sept. 6, 2014).

[22] Information on ETVs can be found at [www.nrcys.ou.edu/nrcyd/publications/monographs/etv.pdf](http://www.nrcys.ou.edu/nrcyd/publications/monographs/etv.pdf). The website mentioned in endnote 22 will also contain future publications on ETVs.

[23] S.S.H.B. 1128, 62nd Legis., Reg. Sess. (Wash. 2011); Laws of 2011, ch. 330.

[24] *Fostering Connections*.

[25] For more information about the Head Start and Early Head Start programs, please see the National Head Start Association website at [www.nhsa.org](http://www.nhsa.org); the Administration for Children and Families web page with respect to Head Start at [www.acf.hhs.gov/programs/ohs/](http://www.acf.hhs.gov/programs/ohs/); and the National Association for the Education of Young Children website at [www.naeyc.org](http://www.naeyc.org).

[26] For more information about the needs of infants and toddlers in the child welfare system, see Joy Osofsky, *Questions Every Judge Should Ask About Infants and Toddlers in the Child Welfare System* (2002).