



GOAL 1 School Stability Attorneys' Roles

Blueprint Tools

Youth Are Entitled to Remain in Their Same School When Feasible

Youth in foster care move between living placements an average of once to twice a year. These moves often require children to change schools, resulting in academic problems, grade retention, and increased dropout rates.¹ Read the following tips to find out how you can help. Check the resource boxes for programs, publications, and information on finding your state's law.

What you can do:

- ✓ **Advocate to keep living placements stable whenever possible.** The easiest and most effective way to keep a child's education stable is to minimize living placement changes.
- ✓ **When a youth must move, advocate for a living placement in the same school district.** If possible and in the child's best interests, advocate for a living placement in the same school district. Federal law, Title IV-E, requires child welfare agencies to consider school proximity and appropriateness when making living placement decisions. Don't wait for a court hearing to ensure the agency has considered your client's proximity to school when placing him or her; engage with the caseworker as soon as the possibility of a living placement change is raised.
- ✓ **Help youth remain in their original school even when they move to a home in a different school district.** Title IV-E now requires child welfare agencies to coordinate with schools to ensure that a child remain in the school of origin when it is in the child's best interest to do so. The McKinney-Vento Act also provides that youth "awaiting foster care placement" have the right to remain in their school of origin after they move when "feasible." Some states interpret McKinney-Vento broadly to include nearly all youth in the foster care system; other states may have different or additional protections. Check to see what protections your state provides.
- ✓ **Advocate for youth to get transportation to their original school.** Title IV-E now clearly permits states to use maintenance dollars to support school of origin transportation. Under the McKinney-Vento Act, when a child is eligible to remain in his or her school of origin, the school district must provide transportation. Some state laws also provide a right to transportation. If your state or locality should be

Promote policies that support education stability.

The Blueprint for Change: Educational Success for Children in Out-of-Home Care provides a more detailed guide on the benchmarks for meeting the educational needs of youth in care, as well as national state and local examples of how various jurisdictions are meeting these needs. Use the Blueprint as a guide to assessing your jurisdiction's policies. Contact the Legal Center for support promoting educational success for youth in your jurisdiction.
E-mail: ccleducation@abanet.org

Resources:

- ✓ **Learn about new provisions of Title IV-E of the Social Security Act that focus on school stability.** Additional resources are available at the Legal Center Web site.
- ✓ **Learn about state legal entitlements** by reviewing *Lessons Learned* and the *State School Stability Legislation Chart*. Available at www.abanet.org/child/education/home/shtml.
- ✓ **Identify how “awaiting foster care placement” is defined in your state/locality** by reviewing *The McKinney-Vento Act and Children and Youth Awaiting Foster Care Placement: Improving Educational Outcomes through School Stability*. Available at www.abanet.org/child/education/home.shtml.
- ✓ **Determine which school is in a child’s best interests** by reviewing the National Center for Homeless Education’s checklist, available at www.serve.org/nche/downloads/briefs/sch_sel_checklist.pdf. It is created for homeless youth, but can guide decisions for youth in care as well.
- ✓ **Review the legal analysis, including information on appointing education decision makers,** in *Mythbusting: Breaking Down Confidentiality and Decision-Making Barriers to Meet the Education Needs of Children in Foster Care*. Available at www.abanet.org/child/education/mythbusting2.pdf.

providing transportation, advocate to be sure it happens. Even if there is no legal right to transportation, be proactive. Work with the agency and school district to consider other avenues: Could the foster parents be reimbursed for providing transportation? Is the school willing to add a new stop to the bus route, use special education or magnet school transportation? Can the agency pay for taxis to transport your client?

- ✓ **Consult with your client’s teachers, guidance counselors, and resource providers before each hearing and secure their testimony if needed.** Your client’s teachers, guidance counselors, and resource providers (such as speech therapists, occupational therapists, and liaisons) can provide valuable insights into your client’s educational progress. These professionals can provide evidence to support your client staying in the school of origin. If a youth cannot remain in his or her original school, these professionals can help select the best alternate placement and ensure a smooth transition to the new school.
- ✓ **Ensure that education stability is considered at all court hearings.** At all hearings reviewing or considering a change in living placement, advocate for your client’s educational stability when in the child’s best interest. Remind the agency of its responsibility to consider education stability as a factor if it has not done so.
- ✓ **Know who the education decision maker is for your client and, if there is no such individual, ask to have one appointed.** The default decision maker should always be the biological or adoptive parents, who have a constitutional right to make education-related decisions for their children.² When parents fail to act on behalf of their children, however, youth need alternate decision makers. If your client does not have an education decision maker, advocate for one to be appointed. For regular education decisions including school stability, use state laws to identify a potential decision maker. See *Special Education Decisionmaking: Role of the Child Attorney* fact sheet at www.abanet.org/child/education/publications for an overview of the law on special education decision makers for youth in the special education system. Regardless of whether your client is in regular or special education, the education decision maker should be someone who knows and spends time with the child, understands the child’s educational needs, and will advocate for the child.

Endnotes

¹ National Working Group on Foster Care and Education. *Educational Outcomes for Youth in Foster and Out-of-Home Care*. September 2007. Find this resource online at www.abanet.org/child/education/home.shtml

² *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925).

This information is adapted from the **Blueprint for Change: Educational Success for Youth in the Child Welfare System**, published by the **Legal Center for Foster Care and Education**. To see the full publication, use a searchable database on foster care education laws, and access secondary sources and training materials, visit www.abanet.org/child/education/home.shtml.