

Foster Care & Education Q&A

COURTROOM ADVOCACY FOR THE EDUCATION NEEDS OF CHILDREN IN OUT-OF-HOME CARE

Q: Why should attorneys and judges increase attention and advocacy during court proceedings to the education needs of children in out-of-home care?

A: Children in foster care, perhaps more than other students, need a solid education to help ensure a successful future. For the almost 800,000 children and youth involved in the foster care system each year, education success can be a positive counterweight to their experiences of abuse, neglect, separation, and impermanence in their family and living situations. Unfortunately, the education outcomes of most children in foster care are dismal.

Throughout a child's stay in foster care, education advocacy in the courtroom at each hearing can ensure that the child's education needs are being met and that they remain stable and receive the supports they need. Importantly, addressing education needs can also help achieve *permanency* for children in foster care. Youth who are on track educationally, attending school regularly, and not having behavior problems at school can return home more quickly or find permanent families than youth who are having multiple school problems.

Q: What are some of the education issues that can be addressed in the courtroom?

A: Raising education issues at every hearing is critical to keeping focused on the child's education progress. Some issues that may need to be addressed are as follows:

Education Decisionmaker: The person who has the legal authority to make education decisions on behalf of the child should be identified and documented at every hearing. In most cases, that individual should be the child's parent, but in some cases another individual may be most appropriate. For children in special education, additional considerations apply. (See Special Education Decisionmaking Series at www.abanet.org/child/education/publications/specialeducation.html).

Education Stability and Continuity: At initial hearings, particular attention needs to be paid to where the child has been attending school and how to keep, or put, the child on track. Judges and attorneys should be asking questions about school stability (can the child remain in their original school) and, when changes must occur, how to make those changes with the least amount of disruption to the child as possible. New federal law requires school stability plans and the courts are critical to enforcing those requirements (See Q&A on Fostering Connections Act at www.abanet.org/child/education/publications/fosteringconnections.html).

General Education Issues: Information needs to be gathered on how the child is doing in school (grades, attendance, behavior, etc.) and if there are any needs or gaps that should be addressed, including engagement in both academic and extracurricular activities.

Special Education Issues: If the child is receiving, or needs to be receiving, special education services, additional attention needs to be paid to the child's individualized education program (IEP) and whether there has been appropriate review and identification of the child's needs and services.

Q: How do attorneys, advocates, and judges raise these issues in the courtroom?

A: Judges, attorneys, and advocates can play a critical role in ensuring a child's education needs are being addressed in the courtroom. Some examples include:

Child's Attorney, Guardian ad Litem (GAL) or Court Appointed Special Advocate (CASA)

- Ensure education is prioritized in the child's case at each and every hearing by reporting education information and issues to the court.



- Obtain the child's education records to be an informed reporter.
- Speak with the child about his or her education goals, and advocate for him or her to receive the services and supports necessary to achieve those goals; raise these goals with other parties and the court.
- Ensure the agency is meeting legal obligations related to education, including case plan requirements around stability and continuity; ask the court for assistance in ensuring compliance.

Agency Attorney

- Ensure the caseworker obtains and includes required education information in the case plan, and collaborates with the school to ensure education stability and continuity; report those efforts to the court.
- Provide training to agency staff about the need for prioritization of education, and the legal requirements related to education stability as well as the likely interest by the court in this information.

Parent(s) Attorney

- Include education as part of legal advocacy for the parent(s) and advocate to keep parent(s) informed of education issues.
- Advocate for parent(s) to continue to hold education decisionmaking rights whenever possible.

Judge or Judicial Officer

- Ask education questions at each and every hearing.
- Require education information in court reports.
- Ask youth to appear in court and inquire about their education experience, goals, strengths and challenges.

Q: What are some of the things a judge can include in a court order to help support the education needs of a child?

A: A court order can:

- Clarify who holds education decision making rights for the child (for both general and special education students). For special education students, this may include appointment of a surrogate parent when necessary.
- Clarify who may access a child's education records from the school (e.g., child's attorney, child welfare agency).
- Verify that the child's case plan includes all necessary requirements, including a plan to ensure school stability and continuity.
- Require that a particular party pursue education issue(s) in the school when necessary.
- Require parties to pursue an evaluation or referral for special education, when needed, including referral for young children age birth to three.

Q: Are there any publications or resources where I can learn more about how to advocate in the courtroom?

A: There are a number of materials to help advocates learn more about the education needs of children in out-of-home care. Two publications of critical importance for courtroom education advocacy are:

- ***Blueprint for Change: Education Success for Children in Foster Care***, written by the Legal Center for Foster Care and Education. This publication is designed to serve as a framework for advocates seeking to promote positive education outcomes for children in foster care. There are 8 Goals for youth, with corresponding Benchmarks that indicate progress. Finally, following each Goal, there are National, State, and Local Examples of policies, programs, or laws that promote the Goals and Benchmarks. The *Blueprint* is available for download at

<http://www.abanet.org/child/education/publications/blueprint.html> or you can order a free copy at: www.casey.org

- ***Asking the Right Questions II: Judicial Checklists to Meet the Education Needs of Children and Youth in Foster Care***, written by the National Council of Juvenile and Family Court Judges and Casey Family Programs. This updated version of the checklist is a useful tool for juvenile and family court judges, as well as other legal advocates, who are assessing the effectiveness of current education placements of the children who come before their courts, tracking their performance, and in making a positive future impact on their education outcomes. The publication includes laminated checklists for judges' desk books. It is available to order or download at:

<http://www.casey.org/Resources/Publications/AskingQuestions.htm>.

Q: Are there any trainings available around courtroom education advocacy for children in care?

A: The Legal Center for Foster Care and Education developed and presented a full-day curriculum around courtroom education advocacy for children in care. This curriculum was designed for judges, children's attorneys and GALs, child welfare agency attorneys, parents' attorneys, and anyone else interested in learning more about courtroom education advocacy for children in out-of-home care. It includes an overview of the laws related to the education needs of children in care and issues including special education, young children, adolescents, education stability and continuity, and involving youth in their education planning and cases. Additionally, it includes a mock courtroom activity, designed to improve participants' advocacy skills around education issues. The mock courtroom activity incorporates the lessons of the substantive sessions, and highlights the critical role advocates and judges can play in ensuring a child's education needs are being met. The Legal Center for Foster Care and Education is in the process of making this curriculum available to be modified for various jurisdictions, audiences, and time available. If you are interested in training on courtroom education advocacy or have other technical assistance requests, please contact ccleducation@abanet.org.

