

## CLC PRACTICE POINT

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### Education Advocacy

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Children in foster care face numerous obstacles upon entry into the child protection system. In addition to adjusting to new living arrangements and being separated from family and friends, children in foster care often face educational instability as well. Child advocates representing these school aged children must help them navigate their way through their various educational milestones. Being a strong advocate for your foster care client can help ensure your client's education success.

#### SPECIAL EDUCATION NEEDS

Pursuant to the Individuals with Disabilities Education Act (IDEA), a student who has or may have a disability should receive an evaluation to determine whether she is eligible to receive special education and related services so that she can access a free, appropriate public education (FAPE) in the least restrictive environment possible.<sup>1</sup> When a student is deemed eligible, her evaluation is used to create an Individualized Education Program (IEP).<sup>2</sup> An IEP team, composed of the student's special education teacher(s), general education teacher(s), education decision maker(s), the school district's representative(s), and the student if age 14 or older, monitors the student's progress and the fit between the IEP and the student's needs.<sup>3</sup>

The participation of a strong child advocate at IEP team meetings can be crucial to ensure that a youth in foster care receives the special education and related services she deserves. For a youth in foster care, the role of education decision maker is usually filled by the youth's foster parent(s), caseworker, or an appointed surrogate parent.<sup>4</sup> Though these individuals may all be well-meaning, they may not have the knowledge of the youth's needs or desires necessary to make education decisions on behalf of the youth, or they may not have the time or resources to pursue redress for the youth. Additionally, their interests may conflict with the youth's wants and needs.

As an attorney for a youth in foster care receiving special education and related services, you can advocate for your client as follows:

<sup>1</sup> See generally 20 U.S.C. §§ 1400, et seq. Minnesota's special education code is found at Minn. Stat. ch. 125A, with rules at Minn. R. ch. 3525.

<sup>2</sup> 20 U.S.C. § 1414(d); Minn. Stat. § 125A.08.

<sup>3</sup> See PACER, *Special Education: What Do I Need to Know?* (2007), <http://www.pacer.org/publications/specedrights.asp> (last visited July 15, 2011).

<sup>4</sup> A school district may appoint a surrogate parent for a state ward or for a child whose parent is unavailable or unable. Minn. R. 3525.2440. The surrogate parent is usually the foster parent or a volunteer chosen by the school district. Carolyn Anderson, *Online Training for Surrogate Parents*, PACER (2006), [http://www.pacer.org/parent/training2/index\\_files/outline/index.html#idea](http://www.pacer.org/parent/training2/index_files/outline/index.html#idea). The surrogate parent cannot have a conflict of interest. 34 C.F.R. § 300.519(d)(2)(ii). A surrogate parent may not be an employee of the state educational agency (SEA), the local educational agency (LEA), or any other agency that is involved in the education or care of the child. 34 C.F.R. § 300.519(d)(2)(i).

1. Request a copy of your client's most recent evaluation or assessment and IEP, and keep your client's file updated. Reevaluation should occur at least every three years.
2. Review the evaluation and IEP to determine whether they are consistent with each other. The IEP should address transition needs beginning when the youth reaches ninth grade or age 14.
3. Explain to your client that you would like to attend her IEP team meetings. Example: "I want to attend the IEP team meetings so that I can make sure your team is considering your wants and needs. Is that okay with you?"
4. Advocate for your client's presence at IEP team meetings, especially for clients who are 14 or older.
5. Before you begin attending IEP team meetings, introduce yourself to the IEP team and explain your role, while being mindful of your ethical obligations to your client.
6. Talk with your client about school, remembering that your client may not enjoy discussing this subject. Think about effective interviewing techniques, such as using open-ended questions. In particular, you should ask about where your client is spending most of his time during the school day to determine whether he is in the least restrictive setting possible.

NOTE: If your client has or may have a disability, but does not have an IEP, you should review your client's educational records, discuss with your client whether her educational needs are being met, and contact CLC.

#### YOUR CLIENT'S EDUCATIONAL STABILITY UNDER FOSTERING CONNECTIONS

Foster care youth disproportionately experience poor educational outcomes. This is largely a result of multiple school moves and delays in enrollment.<sup>5</sup> In response to these concerns, Congress enacted the Fostering Connections to Success and Increasing Adoptions Act to require state child welfare agencies to coordinate with local education agencies to ensure children remain in the school they were enrolled in at the time of placement.<sup>6</sup> If it is not in the child's best interest to remain enrolled in the same school, the child welfare agency must ensure immediate enrollment in a new school with all of the educational records of the child provided immediately.<sup>7</sup> Transportation concerns can be addressed through the child welfare agency, by seeking federal Title IV-E reimbursement for reasonable transportation costs.<sup>8</sup>

TIP: If your client's placement is in a new school district, make sure to advocate for your client to remain enrolled in their current school. Inquire about available funding for their transportation. At each court hearing, report on the child's educational stability and work to ensure the child's educational needs are met.

#### TRACKING YOUR CLIENT'S PROGRESS TOWARD GRADUATION

As youth approach majority, their educational needs become more specific. In order to graduate high school, students must meet certain district standards. Minnesota requires all students to pass basic math, reading, writing and science tests and to complete a set number of credits. For a detailed explanation of Minnesota's current K-12 Academic Standards, Required State Tests and Graduation Requirements see [http://education.state.mn.us/MDE/Academic\\_Excellence/Academic\\_Standards/index.html](http://education.state.mn.us/MDE/Academic_Excellence/Academic_Standards/index.html) at Academic Excellence.

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<sup>5</sup> Jennifer Pokempner, *Fostering Connections to Success and Increasing Adoptions Act: What Judges and Lawyers Should Know*, CHILD. RTS. COMMITTEE (Penn. Bar Ass'n, Harrisburg, P.A.), Fall 2010, at 4, 5.

<sup>6</sup> 42 U.S.C. § 675 (1)(G).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at § 675(4)(A).

TIP: As an attorney representing an older youth, it is critical to monitor your client's progress toward graduation. In order to effectively monitor your client's progress, you must check in with your client, his foster parents and his county worker regarding your client's status on his standardized tests. Minnesota public schools should provide students with their current credits. Please request this "credit check sheet" from your client's county worker or the school to ensure your client is on track to graduate.

Research indicates that children can lose four to six months of academic progress with each move to a new school.<sup>9</sup> Unfortunately, children in foster care often move from placement to placement. It is also common for children in care to move in the middle of a school semester. A child in care can lose several credits when transferring schools in the middle of a semester. As a child advocate, you can ensure that your client's credits are being tracked by requesting verification of your client's credits from his county worker. In this process, you will want your client's placement history to verify the transfer of those completed credits between different schools and/or any Residential Treatment Centers.

TIP: Request your client's educational records. When you first took the case, release forms were sent to you. If you need additional releases, contact CLC. Relevant education records for your client include the following: attendance records, report cards, behavior incidents, special education records and evaluations, language needs, Standardized Tests results and a credit checklist. It is important to continually request updated school information for your client. You can receive this information from your client's social worker, foster parent and school.

#### COUNSELING YOUR CLIENT ABOUT HIGHER EDUCATION

It is never too early to talk to your client about higher education. Supporting your client's postsecondary goals can help motivate her to continue to explore her options.

##### Overcoming financial concerns

You must inform your client that financial concerns should not prevent him or her from pursuing higher education. There are several funding sources that you should explore with your client:

- Free Application for Federal Student Aid (FAFSA) By filling out a FAFSA, youth may access federal grants and loans.
- Education and Training Voucher (ETV) Federal funding is available through the ETV program for foster youth to attend higher education.<sup>10</sup>
- Tuition Waiver Youth who are state wards may receive a tuition waiver if they choose to attend a Minnesota state college or university.<sup>11</sup>

##### Preparing and applying for college

You can also be of great help to your clients by ensuring that they are completing necessary prerequisites and standardized tests, and by monitoring their progress on the application process. In addition to completing the application for admissions itself, your client may also need to submit letters of recommendation, personal essays, and transcripts. You should ask your client if she has a workable timeline for finishing these tasks, or if

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<sup>9</sup> U.S. DEP'T OF EDUC., EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM, TITLE VII-B OF THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT AS AMENDED BY THE NO CHILD LEFT BEHIND ACT OF 2001, NON-REGULATORY GUIDANCE 14 (2004).

<sup>10</sup> See *Education and Training Voucher (ETV) Program*, MINN. DEP'T OF HUMAN SERV.

[http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id\\_000553](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_000553) (last visited July 15, 2011).

<sup>11</sup> *Id.* For a list of state colleges and universities and information about their programming, see <http://www.mnscu.edu/index.html> (last visited July 15, 2011).

she would like help with creating one. Also, ensure that your client is aware of pending application or registration deadlines. If your client has concerns about the costs associated with submitting applications, you could inquire with admissions departments about whether they offer application fee waivers.

### BEST PRACTICES CHECKLIST

As a child advocate, you are in a fortunate position to be able to ensure your client's educational needs and goals are being met. It is never too early to talk with your clients about their educational goals to determine an appropriate roadmap to help your client meet his goals. As an attorney for a child in foster care you can advocate for your client as follows:<sup>12</sup>

1. Request and maintain your client's education records during the course of your representation;
2. Continually request verification that the social service agency has your client's relevant school records and credits;
3. Ensure your client's school records are transferred if your client changes school; if the records are not properly transferred, raise the issue at your review hearing and request the court order the agency to ensure the transfer of records occurs;
4. If your client is to change placement, advocate to keep your client in her same school; or, if your client is unable to remain at her same school, seek your client's input what her next school should be and what services it should provide;
5. Ensure that you client is immediately enrolled in school when she change placements;
6. Remember Fostering Connections requires the agency to use its best efforts to keep children in their same schools when they are initially placed in foster care and to consider proximity and appropriateness of the child's school setting when making placement decisions;
7. As your client prepares to transition to adulthood, advocate for the inclusion of your client's education records and education plans in his independent living plan and case plan;
8. Ensure your client is taking post secondary entrance exams and request tutoring assistance if needed; and
9. Ensure your client has a clear understanding of what steps must be completed to attend post secondary schooling.

### CONCLUSION

For youth in foster care, a concerted effort must be made by the professionals involved in their lives to ensure that their educational needs are met and that their wishes are considered. As an attorney for youth in foster care, you must educate yourself about issues in educational advocacy so that you may help your clients monitor their progress toward graduation, determine whether they are receiving the services necessary for them to succeed in school, ensure that they are experiencing educational stability, and explore their options for higher education.

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<sup>12</sup> This list was adopted from National Resource Center for Permanency and Family Connections, Organizational Self-Study on Educational Stability, U.S. DEPT OF HEALTH & HUMAN SERV., <http://nrcpfc.org/cpt/assessment.htm> (last visited July 15, 2011).