



The New York State Office of Court Administration

Attorney for the Child Contracts

and



**In collaboration with
The Appellate Division, Fourth Department
present**

**ATTORNEY FOR THE CHILD
LEGAL UPDATE**

2011

This program is supported by Federal Court Improvement Grant funding from the U.S. Department of Health and Human Services.

AGENDA
THE OFFICE OF COURT ADMINISTRATION
ATTORNEY FOR THE CHILD CONTRACTS
& CHILD WELFARE COURT IMPROVEMENT PROJECT
IN COLLABORATION WITH
THE APPELLATE DIVISION, FOURTH DEPARTMENT
Present
ATTORNEY FOR THE CHILD UPDATE

JUNE 7TH & 8TH, 2011
EMBASSY SUITES
SYRACUSE, NEW YORK

DAY ONE (CHILD WELFARE)

10:00 A.M. – 10:50 A.M.	REGISTRATION AND BREAKFAST
10:50 A.M. – 11:00 A.M.	WELCOME <i>Rachel Hahn, Esq.</i> Coordinator, OCA Attorney for the Child Contracts
11:00 A.M. – 12:00 noon	AGING OUT OF FOSTER CARE <i>Erika Leveillee, MA</i> Youth in Progress Coordinator Adolescent Services Resource Network University of Albany
12:00 noon – 1:00 P.M.	EDUCATION LAW <i>Judith Gerber, Esq.</i> Staff Attorney Legal Aid Bureau of Buffalo, Inc.
1:00 P.M. – 2:00 P.M.	LUNCH
2:00 P.M. – 3:40 P.M.	DISPROPORTIONATE MINORITY REPRESENTATION <i>Khatib Waheed, MEd</i> Senior Fellow, Center for the Study of Social Policy <i>Toni Lang, PhD</i> Deputy Director Permanent Judicial Commission on Justice for Children
3:40 P.M. – 3:50 P.M.	BREAK
3:50 P.M. – 5:05 P.M.	RECENT DEVELOPMENTS IN CHILD WELFARE <i>Margaret Burt, Esq.</i> Attorney in private practice, specializing in child welfare
5:30 P.M. – 7:15 P.M.	RECEPTION
7:15 P.M. – 9:00 P.M.	DINNER

DAY TWO

8:00 A.M. – 9:00 A.M.	BREAKFAST
9:00 A.M. – 10:00 A.M.	THE DISPOSITION PHASE OF DELINQUENCY CASES <i>Stephen Weisbeck, Esq.</i> Director, Juvenile Justice Division Legal Aid Society of Rochester
10:00 A.M. – 11:00 A.M.	TRAFFICKING & PROSTITUTION <i>Elizabeth Fildes</i> Erie County Sheriff, Deputy
11:00 A.M. – 11:15 A.M.	BREAK
11:15 A.M. – 12:45 P.M.	ETHICS AND CONFLICT ISSUES <i>Gary Solomon, Esq.</i> Director of Legal Support The Legal Aid Society (NYC), Juvenile Rights Practice
12:45 P.M.	BOX LUNCH

The Appellate Division, Fourth Department has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from March 2, 2011 to March 1, 2014. This program has been approved for a total of nine (9) credit hours, of which three and one-half (3.5) hours can be applied toward the skills requirement, three (3) hours can be applied to the professionalism and ethics requirement, and two and a one-half (2.5) hours can be applied toward professional practice (family law) requirement. This program is suitable for experienced and newly admitted attorneys.

Destination:

Embassy Suites Hotel
6646 Old Collamer Road
East Syracuse, New York 13057
Tel: 1-315-446-3200

Driving Directions: (From the Embassy Suites Hotel Website)

From 81 North or South take I-90 East. From NYS Thruway (I-90), take Exit 35 to Carrier Circle, follow traffic circle to RT 298 East. Take first left off of 298 East onto Old Collamer Road South and continue through stop sign. Hotel is on the right at the end of the street. From Airport take 81 South and follow above directions.

Education Law

Judith Gerber, Esq.

Tuesday, June 7, 2011

Judith M. Gerber

Judith M. Gerber has been a long-time advocate for children and families both in the education and child welfare arena. She currently serves as an attorney for the child at the Legal Aid Bureau of Buffalo and leads the efforts of the Bureau's Education Advocacy Team. Ms. Gerber is a member of the New York State Permanent Judicial Commission on Justice for Children. Formerly, as a consultant to the Judicial Commission, Ms. Gerber spearheaded its statewide policy and training initiative to address the educational needs of children in foster care. She has also served as a consultant and trainer for a broad variety of public agencies in New York. Ms. Gerber has served on the faculty at the University of Buffalo Law School and Buffalo State College. She is a *magna cum laude* graduate of the University of Buffalo Law School and an honors graduate of Princeton University. Ms. Gerber is the author of various publications regarding the educational needs and rights of court-involved youth in New York State.

Addressing the Educational Needs of Court-Involved Youth

Judith M. Gerber, J.D.
Legal Aid Bureau of Buffalo, Inc.
June 2011
Handout Materials

TABLE OF CONTENTS

An Education Checklist	1
Client Interview Checklist	2
Sample Records Request Letter	3
Sample Parent Referral to the Committee on Special Education	4
Federal Child Welfare Laws: Provisions Affecting Education of Children in Foster Care.....	5
NYS Standards for Placing Children in Foster Care: School Continuity and Selection	8
Permanency Law Requirements Regarding Education	9
NYS OCFS Regulations: Responsibilities of Child Welfare Agencies In the Education Arena	10
NYS Regulations Regarding Agency Responsibilities in PINS and JD Matters...	13
New York State School Enrollment and Attendance Requirements	15
General Education Services (Diagram)	17
Seven Key Principles of the Individuals with Disabilities Education Act	18
Sequence of Events in the School-Age Special Education Process	19
Mandatory Family Court/DSS Request to CSE for Children at Risk of Residential Placement	20
Legal Definitions of "Parent" and "Persons in Parental Relation"	22
Form for Designation of Person in Parental Relation by Parent for Purposes of Educational Decisions	23

An Education Checklist Regarding Court-Involved Children

- 1. Do you have this child's education records and information on school contacts?**
- 2. Is this child enrolled in and regularly attending school?**
- 3. How is this child faring in school academically? socially? behaviorally?**
- 4. What medical and behavioral needs may affect this child's education?**
- 5. Does this child need general education support services?**
- 6. Does this child require a special education referral, evaluation or services?**
- 7. Who is the child's education advocate and/or decisionmaker?**
- 8. What is the transition plan to develop and address this youth's long term life/education needs and goals?**
- 9. Is this infant or preschool-aged child enrolled in early intervention, an early childhood education program or a preschool special education program?**
- 10. At each stage of the proceeding, how will the court or agency's action(s) affect the child's schooling?**

Client Interview Checklist regarding Education Issues

- School History: from preschool to present
- Family Education History: parents, siblings
- Academic Status and Performance, including grades, classes, credits earned for high schoolers, interests/strengths/deficits
- School Ties and Connections: e.g., valued adult and peer relationships; engagement in school activities and extracurriculars; attendance at school functions; impact of school mobility
- Physical and Medical concerns (e.g, asthma, diabetes, sleep issues)
- Emotional and behavioral/discipline concerns (in school, home and community)
- Attendance (attendance history, morning/evening rituals, parental role, truancy, illness, etc.)
- Transportation Issues
- Language or Communication Issues (student and parents)
- Clothing Needs
- School Supplies
- Homework Supports
- Teenage Pregnancy and Childcare
- Hunt for Triggers: identify events precipitating poor school performance/attendance issues (e.g., trauma, losses, housing, mental health, substance abuse, gender/sexuality, bullying, etc.)
- Student support services received
 - General education supplemental supports (tutoring, academic intervention services, counseling, etc.)
 - Special education supports (approach indirectly – class size, where take tests, etc.)
- Present client with opportunity to show skills (or lack thereof) through reading, writing, drawing, etc.
- Short-term and long term education and life goals, including prospects of high school graduation, vocational education, GED
- Adult involvement in client's school life: role of parent and relatives/resources

SAMPLE RECORDS REQUEST LETTER

Betty Academia
Pupil Personnel Services
Pleasant School District
101 Oak Street
Pleasant, New York

Re: Charles _____, DOB:

Dear Ms. Academia,

I have been appointed by Hon. _____ to represent Charles _____ in a(n) _____ County Family Court proceeding. I am seeking information on Charles's educational history, status and needs. I request that the District provide me with copies of Charles' educational records, including his:

[May include all or some of the items below]

- Cumulative educational record or transcript
- Report cards
- Attendance records
- Health records
- Standardized test results
- Reports of individually administered evaluations, including those sent to the school by other agencies, hospitals, physicians or schools
- Special education records, including Individualized Education Programs (IEPs), evaluations, social histories and progress reports
- Section 504 Accommodation Plans
- Functional behavioral assessments and behavioral intervention plans
- Student discipline records

Enclosed is a court order issued by _____ authorizing the release of Charles' educational records to my office. Under the Federal Educational Rights and Privacy Act, the District may release student records pursuant to a court order without parental consent. 20 USC 1232g(b)(2)(B) and 34 C.F.R. § 99.31(a)(9).

Please feel free to contact me if you have any questions or concerns about this request. Thank you.

Very truly yours,

Enc.

SAMPLE PARENT REFERRAL TO THE COMMITTEE ON SPECIAL EDUCATION

Date: _____

To: (CSE Chair or School Principal)

Re: _____

DOB: _____

School of Attendance: _____

I am referring my child to the Committee on Special Education because I suspect my child has a disability that may require special education services. To speed along the evaluation process, by this letter, I give the school district my consent to conduct an evaluation of my child, including psychological and educational testing, a social history, a physical/medical examination and a classroom observation. I also offer my consent to additional testing that may be needed, such as occupational, physical or speech therapy assessments. I understand that the District is required to complete testing of my child within 60 calendar days from the date it receives my consent to test and that the CSE must convene, determine my child's eligibility for services and implement such services within 60 school days from the date it receives my consent. I look forward to hearing from you soon.

My address and phone number are as follows:

Thank you.

Sincerely yours,

Parent Signature: _____

cc: _____, Attorney for the Child
_____, _____ County Department of Social Services
Others

Federal Child Welfare Laws: Provisions Affecting Education of Children in Foster Care

- **Child welfare laws include provisions addressing education of children in foster care. The applicable federal laws include:**
 - The Adoption Assistance and Child Welfare Act of 1980 *Pub. L. No. 96-272, 94 Stat 500, 42 U.S.C. §§ 620 et seq., and §§ 670 et seq. (1980).*
 - The Adoption and Safe Families Act of 1997 *Pub. Law 105-89, 111 Stat 2115 (codified in scattered sections of 42 U.S.C.) (1997)*
 - The Fostering Connections to Success and Increasing Adoptions Act of 2008, *Pub. L. No. 110-351 (codified in scattered sections of the U.S.C.) (enacted October 7, 2008).*

- **Adoption and Safe Families Act (ASFA) requirements to address child permanency and well-being include education**
 - Focuses on three elements in addressing needs of children in foster care:
 - child safety
 - child permanency
 - family and **child well-being**

 - Establishes a legal framework, including strict timelines, for states to follow in placing children in foster care, developing **permanency plans**, and freeing children for adoption. With exceptions, ASFA generally mandates **concurrent planning** for children, building simultaneous paths toward both family reunification and adoption or other long-term permanency options.

 - **The federal Department of Health and Human Services passed ASFA regulations governing education, 45 CFR § 1355.34**
 - Establish seven “service outcomes” related to safety, permanency and well-being to assess each state’s conformity with ASFA.

 - Identify **education** as a key criterion of child well-being, requiring that: **“children receive appropriate services to meet their educational needs.” 45 CFR § 1355.34(b)(1)(iii)(B).**

- **State plans for foster care and adoption assistance must include an educational attendance requirement ensuring full-time enrollment. 42 USC §671(a)(30). The state plan must include:**
 - assurances that each child who has attained the minimum age for compulsory school attendance under State law is a full-time elementary or secondary school student or has completed secondary school

- school placement can include public or private school or home schooling
- an exception to the requirement of full-time attendance is permitted where the child is incapable of attending school on a full-time basis due to a medical condition; the incapability must be supported by regularly updated information in the child's case plan
- **The child's case plan must ensure assure appropriateness and continuity of school placement, with a change in school based on a best interests analysis. 42 USC § 675(1)(G).** The case plan should include:
 - assurances that the placement of the child in foster care takes into account the appropriateness of the current educational setting *and* the proximity to the school in which the child is enrolled at the time of placement; **and**
 - assurance that the State agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement; **or**
 - if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.
- **Transportation costs to school are included in foster care maintenance payments.**
 - "Foster Care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation **and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.** 42 USC § 675(4)(A).
- **Education records should be included in the child's case plan.** 42 USC § 675(1)(C). Each foster child's case plan should include the child's health and education records, including the most recent information available regarding:
 - the names and addresses of the child's health and educational providers
 - the child's grade level performance;
 - the child's school record;
 - a record of the child's immunizations;
 - the child's known medical problems;
 - the child's medications;
 - any other relevant health and education information concerning the child determined to be appropriate by the State agency."
- **Education records, along with health records, should be reviewed and updated at the time of each placement of the child in foster care.** 42 USC § 675(5)(D).

- **A copy of the education records, along with health records, should be supplied to the foster parent or foster care provider at the time of each placement.** *42 USC § 675(5)(D)*. Education records are subject to confidentiality requirements of the Federal Educational Rights and Privacy Act (FERPA), however, and should be released pursuant to with appropriate consent or court orders.
- **A copy of the education records, along with health records, should be supplied to a child leaving foster care, if the reason for leaving is that the child has reached the age of majority under State law.** *42 USC § 675(5)(D) (effective 10/1/06)*.
- **Transition Services planning requirements**
 - "Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living." *42 USC § 675(1)(D)*.
 - During the 90 day period immediately before the date the child attains age 18 (or older if the state elects), a State agency caseworker and, as appropriate, other representatives of the child must provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, including specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and is as detailed as the child may elect.

New York State Standards for Placing Children in Foster Care: School Continuity and Selection*

- The child's Uniform Case Record must document the appropriateness of a foster care placement in keeping with standards that require **continuity in the child's environment** and the standards for **appropriate level (restrictiveness) of placement** (as described in 8 NYCRR § 430.11(c) and (d)).
- The placement of the child into foster care "must take into account the **appropriateness of the child's existing educational setting** and **the proximity of such setting to the child's placement location.**" *18 NYCRR § 430.11(c)(1)(i).*
- At the time a child is placed in care, a **best interests determination** must be made regarding what school the child should attend. It is **not** clear who makes this determination. 18 NYCRR § 430.11(c)(1)(i) provides:

"When it is in the best interests of the foster child to continue to be enrolled in the same school in which the child was enrolled when placed into foster care, the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities to ensure that the child remains in such school. **When it is not in the best interests of the foster child to continue to be enrolled in the same school in which the child was enrolled when placed into foster care,** the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities where the foster child is placed in order that the foster child is **provided with immediate and appropriate enrollment in a new school;** and the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities where the foster child previously attended in order that all of the applicable school records of the child are provided to the new school."
- The child's uniform case record must show that "efforts were made to keep the child in his or her current school, or where distance was a factor or the educational setting was inappropriate, that efforts were made to seek immediate enrollment in a new school and to arrange for timely transfer of school records." 18 NYCRR § 430.11(c)(4)

* These emergency regulations were adopted by OCFS and, as of August 2010, were still in effect. The regulations were adopted in response to the Fostering Connections To Success and Increasing Adoptions Act of 2008, highlighted on pp. 11-13. Currently, the OCFS regulations do not have a counterpart in the education law governing school districts and do not address transportation or other funding issues that school districts may be concerned about. Watch carefully for possible changes in these regulations over time. The federal law requires that the child remain in the school in which the child is enrolled at the time of placement unless remaining in the school is not in the best interests of the child. The state regulations only address when a child is first placed in foster care and do not expressly lay out what happens when a child, while in care, moves from one foster care placement to another.

The Permanency-Education Connection: Permanency Hearing Requirements regarding Schooling

- Child welfare agency is required to submit a sworn “permanency hearing report” to the Court and the parties before the hearing, which must include, among other things, information on the **“health, well-being and status of the child”** since the last hearing
- On education, the permanency hearing report must include **an update on the child’s educational and other progress the child has made since the last hearing, including a description of the steps taken by the local DSS or agency “to enable prompt delivery of appropriate educational and vocational services”**
- The steps the agency must take include, but are not limited to:
 - where the child is subject to article 65 of the education law [the compulsory attendance law] or elects to participate in an educational program leading to a high school diploma, **the steps that the local DSS or agency has taken to promptly enable the child to be enrolled or to continue enrollment in an appropriate school or educational program leading to a high school diploma;**
 - where the child is eligible to be enrolled in a pre-K program pursuant to Education Law § 3602-e, **the steps the local DDS or agency has taken to promptly enable the child to be enrolled in an appropriate pre-K program, if available;**
 - where DSS suspects that the child may have a developmental delay or if the child has been found eligible to receive early intervention or special educational services prior to or during the foster care placement... **the steps taken to make any necessary referrals of the child for early intervention, pre-school special educational or special educational evaluations or services, as appropriate, and any available information regarding any evaluations and services which are being provided or are scheduled to be provided...**
 - **where the child is at least 16** and not subject to Article 65 (compulsory education) **and elects not to participate in an educational program leading to a high school diploma, the steps that the local DSS has taken to assist the child to become gainfully employed or enrolled in a vocational program.**
- The Court findings or order of disposition must include a variety of items, including “the steps that must be taken by the local social services official or agency to implement the educational and vocational program components of the permanency plan submitted pursuant to [the Act] and any modifications that should be made to such plan.”
- Requires the NYS State Education Department to implement regulations to require the cooperation of local school districts in facilitating the “educational components of permanency plans” and to develop the regulations in conjunction with OCFS.

New York State OCFS Regulations: Responsibilities of Child Welfare Agencies in the Education Arena

Child Welfare Agencies must:

1. Ensure Access to Appropriate Education and Guidance

- "Take such steps as may be necessary to make certain that all children in care receive education appropriate to their needs and in accordance with the Education Law." *18 NYCRR § 441.13(a).*
- "Make certain that each child receives appropriate educational and vocational guidance." *18 NYCRR § 441.13(c).*
- Agency boarding homes and agency group homes must "make provisions to meet the educational needs of children in care." *18 NYCRR §§ 447.2(d)(7); 18 NYCRR § 448.3(g)(11).*

2. Communicate with Schools

- Maintain an active and direct liaison with any school in which a child in its care is enrolled. *18 NYCRR § 441.13(b).*

3. Provide Notice to Schools

- Notify school districts when a foster child is admitted to a new school district within 10 days of admission for sole purpose of determining financial responsibility for school tuition. Notices go to district child is entering and district child resided in at time child entered into foster care. *18 NYCRR § 445.1.* The notice is confidential. *18 NYCRR § 445.2.*
- DSS form 2999 (included in the appendix to this manual) is used to send notice to the schools.

4. Include Education Records in the Child's Uniform Case Record

- Child's "uniform case record" (UCR) should include the following school records: "educational and/or vocational training reports or evaluations indicating the educational goals and needs of each foster child, including school reports and Committee on Special Education evaluations and/or recommendations." *18 NYCRR 428.3(b)(4)(iii).*

5. Maintain Record of School Placement History

- Maintain "records of school placements" through age 21 in "conveniently indexed and retained" case records for each child in its care for through age 21. *18 NYCRR § 441.7(a)(1).*

6. Inform and Prepare Foster Parents

- Provide information on a child's "school and educational experiences" to the foster parents before the child is placed in care or within 30 days of placement in the event of an emergency placement. *18 NYCRR § 443.2(e)(3)(iv).*
- Prepare the foster parent with "appropriate knowledge and skills to provide for the needs of the child. Such preparation must be continued, as needed, after the placement of the child." *18 NYCRR § 443.2(e)(2).*

7. Address the Child's Need for School Clothing

- Local social service districts must determine the child's clothing needs, authorize allowances to buy necessary clothing, and authorize special allowances to cover the costs of additional clothing for religious ceremonies, educational or summer camp activities, special physical conditions and replacement of clothing that is stolen or destroyed. *18 NYCRR § 427.16(a)(3).*
- Local social service districts must review and evaluate the child's clothing needs with the foster parent and with the child, when appropriate, to ensure that, among other things, the clothing is clean, attractive, and well fitting. *18 NYCRR § 427.16(a)(4).*

8. Authorize Special Payments for Educational Activities

- Local social services districts must review and, where appropriate, approve foster parent requests for "special payments" over and above board rates for expenses connected to school, extracurricular and outside enrichment activities. *18 NYCRR § 427.3(c)(2).*
- Special payments related to school needs, delineated in 18 NYCRR § 427(c), include:
 - costs of public transportation to attend school if costs are not reimbursed by the school district;
 - special attire for school and other events;
 - school expenses such as books, activity fees, costs of field trips, club dues, school jewelry, school pictures, art supplies, and yearbooks;
 - music, art, and dancing lessons, and the purchase or rental of items needed to take part in such activities;
 - special recreational/hobby expenditures including travel expenses such as lodging, tools and the costs of transportation, entry or use fees, uniforms and materials. These expenditures are limited to \$400 per calendar year per foster child;
 - nonmedical needs of a child with a disability, including special equipment or clothing that is not covered by medical assistance, which arise from the child's disability;
 - Approve special payments for children to attend residential summer camps (for a two week maximum) and day camps.

9. Develop a Transition Plan for Youth Remaining in Care on or after Their 18th birthday

- The agency with case management, case planning or casework responsibility must begin develop the transition plan with the child 180 days prior to the child's 18th birthday or 180 days prior to the child's scheduled discharge beyond age 18. 18 NYCRR § 430.12(j)
- The transition plan must be:
 - completed 90 days prior to the scheduled discharge.
 - personalized at the direction of the child
 - include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services and work force supports and employment services
 - as detailed as the foster child may elect

10. Responsibilities of Foster Parents identified in regulations

New York's foster parents must sign an agreement to take on certain responsibilities regarding the children in their care. As to education, they agree to:

- Arrange for regular school attendance of foster children. *18 NYCRR § 443.3(b)(2).*

"Provide a suitable well-lighted place for children of school age for home study." *18 NYCRR § 443.3(b)(8).*

New York State Regulations Regarding Agency Responsibilities in PINS and JD Matters

- 1. The Probation Department must require schools to document school-based efforts to address school concerns in school-initiated PINS matters**
 - Schools must report steps taken to improve the youth's attendance and/or conduct in school
 - Before accepting referral, Probation Department must determine that acceptable efforts have been made to taking into account the available community and school resources and the needs of the youth. Disciplinary action alone will not suffice as acceptable effort. *9 NYCRR § 357.5(e)*
- 2. The Probation Department investigation on PINS and JD matters includes details regarding the youth's education**
 - Must include inquiry regarding educational status and vocational skills, school adjustment, academic performance and conduct/special needs and school history (including achievements and problems). *See 9 NYCRR 350.6.*
- 3. The Probation Department must gather specific information from the Committee on Special Education regarding youths who receive special education**
 - In PINS matters involving youths in special education where allegations concern truancy and or incorrigibility/ungovernability behavior in school, the Probation Department is required to gather information from the CSE regarding the youth's behavior and any relationship to the youth's disability. *9 NYCRR 357.5(d)*
 - The Probation Department may require a "Manifestation Determination" before accepting a school-filed complaint. *9 NYCRR § 357.5(d)*
- 4. The lead Diversion agency must inquire into school district efforts and further diversion options in school-initiated PINS matters**
 - Designated lead agency in diversion services "shall review the steps taken by the school district ... to improve the youth's attendance and/or conduct in school and attempt engage the school district ... in further diversion attempts, if it appears from review that such attempts will be beneficial to the youth." *NY Family Court Act § 735(d)(3)*
- 5. In PINS and JD matters, Courts (or the Probation Department), DSS or OMH (in pre-certification process for RTF admissions) are required to request CSE evaluation of youth when considering residential placement for student with a suspected disability in PIN.** For details regarding this mandate, see page 70 in manual.
- 6. In PINS and JD matters, Courts and agencies are required to transfer education (and other) records to residential placement facilities.**
 - Upon placement of a youth in a suitable institution, the Family Court and other agencies must transmit a copy of the order, probation report and all other relevant evaluative data in court's possession, including, but not limited to "any diagnostic, **education**, medical, psychological and psychiatric records" with respect to the youth. *NY Family Court Act § 381.1 and 782-a.*

7. Youth released from certain DSS and OCFS placements are entitled to “permanency planning”, including an education plan or plan to address employment and/or vocational training

- At end of the placement period, agencies must develop a plan for release or conditional release to custody of parent or other person legally responsible or independent living or other permanency alternative under NY Family Court Act § 355.5.
- For students of compulsory attendance age or who elect to participate in program leading to a diploma, the plan should include, but not be limited to “steps that the agency with which the [youth] is placed has taken and will be taking to facilitate the enrollment of the [youth] in a school or educational program leading to a high school diploma following release, or, if such release occurs during the summer recess, upon the commencement of the next school term.” *NY Family Court Act § 353.3(7)(c); see also NY Executive Law § 510-a.*
- If student is not working toward diploma, the plan should include, but not be limited to the steps the agency has taken and will be taking to assist the youth “to become gainfully employed or enrolled in a vocational program following release.” *NY Family Court Act § 353.3(7)(c).*
- Applies to youths placed in foster care, or non-secure facilities operated pursuant to NY social services law or facilities operated by OCFS with less than 25 beds

8. School Districts must appoint a “designated educational official” to receive notice of a youth’s adjudication as a juvenile delinquent or youthful offender. NY Family Court Act § 301.2(17) and 380.1(3) (regarding juvenile delinquents); NY Criminal Procedure Law § 720.35 (regarding youthful offenders)

- The notification must be used *exclusively* for purposes relating to execution of the student’s educational plan (where applicable), successful school adjustment and re-entry into the community.
- Notice may not be part of student’s permanent school record and shall not be appended to or included in any school documentation regarding the student and shall be destroyed when the student is no longer enrolled in the district.

9. Residential facilities (“child care institutions”) must communicate information and send records to schools and agencies

- Facilities must designate one professional educator on its staff to maintain contact with the school district where the child resided prior to the entry into residential care. *8 NYCRR § 116.6(b).*
- Facilities must establish procedures to ensure that all appropriate educational information is forwarded (in keeping with the laws governing disclosure of education records) to the receiving school or agency when the child leaves its education program. *8 NYCRR 116.2(h).*
- Annual written reports and written reports should be provided to various players, including parents or guardians, DSS or OCFS and the CSEs of the child’s school of origin and residence. *NY Education Law § 4005(2)(a).*

New York State School Enrollment and Attendance Requirements

- **School Attendance**

- **Entitlement to attend school:** persons over 5 (on or before December 1st) and under 21 who have not received a high school diploma are entitled to attend public schools maintained in the school district in which they reside. *NY Education Law § 3202(1)*.
- **Compulsory attendance:** minors from the ages of 6 (on or before December 1st) to 16 must attend full time day instruction in school; a 16 year old must remain in school for the school year in which the youth turns 16. The school year begins on July 1st. *NY Education Law § 3205(1)*.
- A board of education may adopt a policy to require minors from age 16 to 17 who are not employed to attend school for the full school year in which the youth turns 17. *NY Education Law § 3205(3)*.
- Minors with full-time employment certificates may be exempt from full-time attendance. *NY Education Law § 3205(2)(b)*.

- **Parental Duties Regarding Attendance**

A "person in parental relation" to a child must, under *NY Education Law § 3212(2)(a)*:

- cause the child to attend upon instruction
- submit proof of a child's age upon attendance in school
- place the child in proper physical condition to attend if his physical condition is remediable by the taking of reasonable measures;
- furnish proof that the child who is not attending a public or parochial school in the city or district where the person in parental relation resides is receiving required instruction elsewhere

- **Foster Parent Responsibilities**

- Arrange for the regular school attendance of foster children. *18 NYCRR § 443.3(b)(2)*.

- **General Enrollment Practices**

- School districts establish registration and enrollment procedures and practices within the parameters of law. Some district policies expressly address enrollment of foster children while others do not.
- In practice, caseworkers, the child's parents, or the foster parents enroll children in school.

- **Enrollment of Children Transitioning from Residential Facilities to Public School Settings**

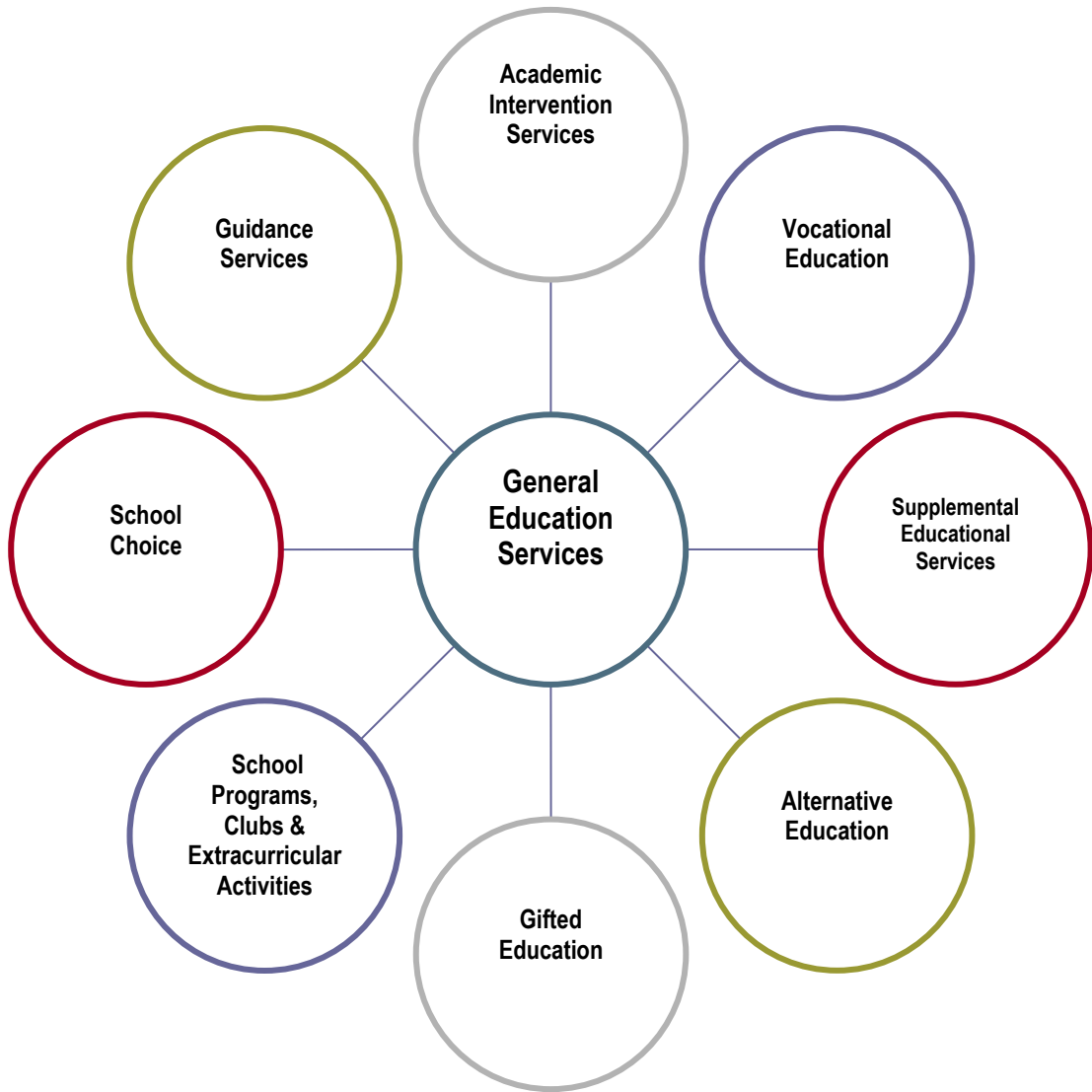
School districts must *promptly enroll and admit* youths released or conditionally released from residential facilities operated by OCFS, OMRDD, OMH or social service departments. 8 NYCRR § 100.2(ff). They must also:

- cooperate with the facilities and agencies in facilitating prompt enrollment;
- request the youth's educational records from the school the youth attended while at the residential facility;
- where the child has been adjudicated as a juvenile delinquent, implement the educational plan developed for the student's release as submitted to the Family Court Act under § 353.3(7)(c);
- designate an employee or representative to facilitate the student's prompt enrollment and to take on the duties to receive student records and serve as a district contact person with residential facilities and State and local agencies.

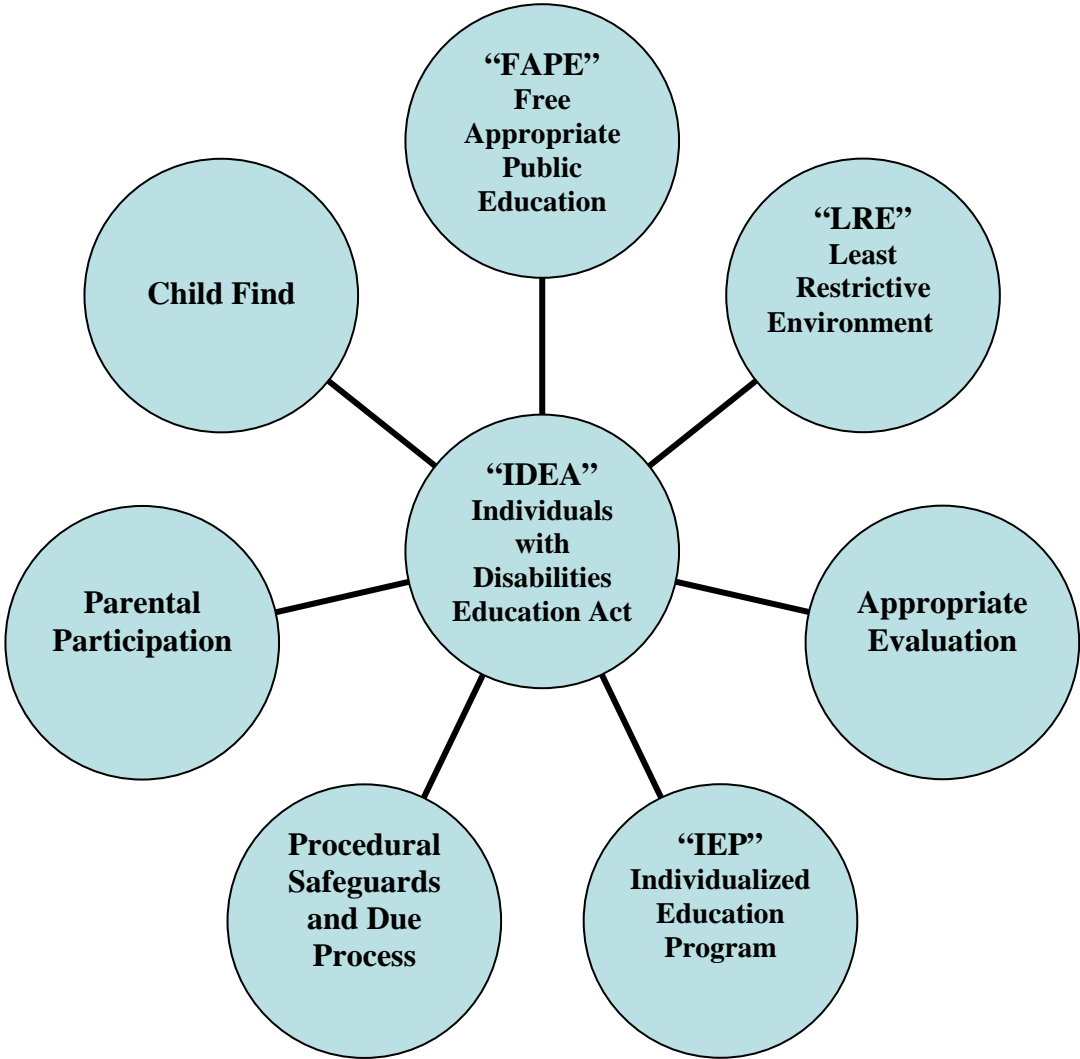
- **Transfer of records for children exiting residential facilities to a new school**

Residential facilities must send all appropriate educational information (in keeping with the laws governing disclosure of education records) to the receiving school or agency when the child leaves its education program. 8 NYCRR 116.2(h).

General Education Services



Seven Key Principles of the IDEA



Sequence of Events in the School-Age Special Education Process

8 NYCRR § 200.4

Referral¹

8 NYCRR § 200.4(a)



Parental Consent to Evaluate



Evaluation²

8 NYCRR § 200.4(b)



CSE Meeting and Recommendation³

- **Conduct Eligibility Determination**
8 NYCRR § 200.4(c)
- **Develop IEP for Eligible Students**
8 NYCRR § 200.4(d)
- **For Newly Classified Students or Students Initially Recommended for Extended School Year (12 Month) Services, Obtain Parental Consent.**



Implementation⁴

8 NYCRR § 200.4(e)



Annual Review

8 NYCRR § 200.4(f)

Re-evaluation Every 3 Years or Upon Request

8 NYCRR § 200.4(b)(4)

¹ Upon receipt of a referral, the school district must send a notice of the referral to the parent and a written request for consent to evaluate. It must also supply the parent with a “due process” notice describing the special education process and the parent/student entitlements.

² The evaluation must be completed within 60 calendar days from the receipt of parental consent.

³ The CSE must send the parent notice of the CSE meeting at least 5 calendar days before the scheduled date and must make efforts to ensure the parent is able to attend, including accommodation of the parent’s scheduling needs.

⁴ For newly classified students, the school district must implement the IEP within 60 school days from the date it receives the parental consent to evaluate the student. For already classified students, it must implement the IEP within 60 school days of referral for the CSE review. If the recommended placement is for an in- or out-of state approved private school, the timeframe is longer, as noted on page 51.

Mandatory Family Court/DSS Request to CSE for Children at Risk of Residential Placement

Article 81 of the New York Education Law
8 NYCRR § 200.4(g)

- Family Court and DSS may refer a child suspected of having a disability to the CSE at any time. *8 NYCRR § 200.4(1)*.
- Children who live in child care institutions who have an educational disability are entitled to a “free appropriate public education” *N.Y. Education Law § 4002(a)*.
- Family Court, DSS and OMH must “request” CSE evaluative information and program recommendations for children thought to have a disability if such children are being considered for placement in a “child care institution.”
 - Child care institutions are residential facilities that service 13 or more children and operate under the auspices of either DSS or the New York State Office of Mental Health (OMH). *NY Education Law § 4001(2) and NY Social Services Law § 371(18)*. The OMH child care institutions are known as “residential treatment facilities” (RTFs). *NY Education law § 4001(7)*.
 - The request goes to CSE of child’s “school district of residence” – that is, the public school district in which the child was or is living at the time a public agency is considering placing the child in a child care institution (as distinct from “school of origin, in which child resided at time of placement in care and custody of DSS).
- The CSE must provide a written evaluation and recommendation to the Court, DSS or OMH within 42 days of receipt of the request. *NY Education Law § 4005*.
- The CSE needs parental consent to evaluate. *8 NYCRR § 200.4(h)*.
 - Without consent, school district may schedule expedited due process hearing to obtain permission to evaluate from a hearing officer.
 - CSE may already have consent on file for child who has been evaluated or classified.
- The Family Court or other agency must use the information provided by the CSE in determining “the most appropriate placement for the child.” *NY Education Law § 4005(1)*.
- The Family Court judge may use Family Court Act § 255 to order the school district to fulfill its duties under the special education law to review, evaluate, recommend and determine appropriate special services and programs, but not to require provision of a specific special service or program. The court may make an order only where “it appears ... that adequate administrative procedure to require the performance of such duties is not available.”

Legal Definitions of “Parent” and “Persons in Parental Relation”

<u>NY Education Law Generally</u>	<u>FERPA</u>	<u>NY Special Education Law</u>
<p>NY Educ. Law § 2, general definitions: “Persons in Parental Relation” to a child includes: “parents, guardians or other persons, whether one or more, lawfully having the care, custody or control of such child.”</p> <p>NY Educ. Law § 3212: “Person in Parental Relation”: “a person in parental relation to another individual shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, or have been committed to an institution, or because, they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown.”</p>	<p>34 CFR § 99.3: “Parent” means</p> <ul style="list-style-type: none"> • a natural parent, • a guardian, or • an individual acting as a parent in the absence of a parent or a guardian.” <p>34 CFR § 99.4: the term parent includes the non-custodial parent, unless a court order or legally binding instrument provides otherwise.</p>	<p>NY Commissioner’s Regulations 8 NYCRR § 200.1(ii): Parent” means</p> <ul style="list-style-type: none"> • a birth or adoptive parent • a legally appointed guardian authorized to act as the child’s parent or authorized to make educational decisions for the child (but not the State if the student is a ward of the State) • a person in parental relation under NY Educ. Law § 3212 • an individual designated as a person in parental relation under Title 15-A of the General Obligations Law including an individual so designated who is acting in the place of a birth or adoptive parent (including a grandparent, stepparent, or other relative with whom the child resides) • a surrogate parent who has been appointed in accordance with § 200.5(n) • a foster parent, unless State laws, regulations or contractual obligations prohibit it • specific person(s) identified in a judicial decree or order to act as the parent or make educational decisions on behalf of the student (except that an agency providing education or care for the student shall not act as parent). <p>When one or more party is qualified to act as the parent, however, the birth or adoptive parent must be presumed to be the parent unless that parent does not have legal authority to make educational decisions</p>

Surrogate Parent Appointments

8 NYCRR § 200.1(ccc) and § 200.5(m)

- **School and Court authority to appoint:** The school district and the Court overseeing the care of a child have the authority to appoint a surrogate parent.
- **Standard for determining whether to appoint a surrogate parent:**
 - the district, after reasonable efforts, cannot find the parents;
 - the child's parents or guardian are not known;
 - the child is a **ward of the state**.
- The school board must select the surrogate parent off a list it maintains.
- "Ward of the state" includes children in the custody and care of the state, including children in foster care.
- **Children in foster care who have a foster parent do not need a surrogate appointed for them.**
- Lack of parental participation or refusal to consent to evaluation or services is not grounds for appointing a surrogate parent.
- **Requisite Qualifications and Authority: The surrogate parent**
 - represents the child in all matters about the identification, evaluation, placement and provision of a FAPE to the child.
 - must have the knowledge and skills to ensure adequate representation of the child.
 - cannot have any interests which conflict with the interests of the child.
 - cannot be an officer, agent or employee of the school district, the State Education Department or the agency which is involved in the education or care of the child.
 - may be an employee of a nonpublic agency that only provides non-educational care for the child if the person otherwise meets the criteria for appointment.

DESIGNATION OF PERSON IN PARENTAL RELATION BY PARENT FOR PURPOSES OF EDUCATIONAL DECISIONS

Child's Name: _____ Child's DOB ___/___/___

I, _____, am the parent of the above-named child. I understand I may voluntarily designate another person to act for me as a person in parental relation to make decisions regarding my child's education. I understand that I may revoke this designation at any time by notifying, either orally or in writing, the designee or an educational provider at my child's school, or by executing a subsequent designation. To my knowledge, there is no prior order of any court in any jurisdiction currently in effect that would prohibit me from making this designation.

In accordance with Section 5-1551 of the General Obligations Law, I am designating _____ as a person in parental relation to my minor child.
Designee's Full Name

Designee's Address: _____
_____ Zip Code _____

Designee's Telephone Number: Home (____) _____
Work (____) _____
Cell (____) _____

Parent's Address: _____
_____ Zip Code _____

Parent's Telephone Number: Home (____) _____
Work (____) _____
Cell (____) _____

Date designation begins: _____
If not specific date, contingent event which will start designation: _____

Length of designation (no more than six months): _____

Parent Signature Date

Notary Public