

Federal Laws to Know About

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Objectives

- Know that NC is not
- Identify issues that might come before you
- Know where to look

Significance of Federal Child Welfare Laws

1. Mandatory compliance with federal laws
2. Language of state laws
3. IV-E foster care funds



Child's GAL

<p>Federal</p> <p>42 USC §5106a(b)(2)(B)(xiii)</p> <ul style="list-style-type: none"> In every case involving victims of <u>abuse or neglect</u> which results in a judicial proceeding, a GAL who has received training..., and who may be an attorney or court appointed special advocate 	<p>State</p> <ul style="list-style-type: none"> 7B-601 Abuse, Neglect = shall Dependency = may Qualifications/Who? <ul style="list-style-type: none"> Volunteer Attorney advocate Program staff =Team
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No Reasonable Efforts


<p>42 U.S.C. §671(a)(15)(D)</p> <ul style="list-style-type: none"> Subjected child to aggravated circumstances (as defined in <u>state law</u>, may include abandonment, torture, chronic abuse, sexual abuse) TPR to sibling Committed murder/vol manslaughter of another child of parent, felony assault (serious bodily injury) of child or another child of parent <p>42 USC §5106a(b)(2)(B)(xvi)(V) &(VI)</p> <ul style="list-style-type: none"> Sexual abuse of child or another child of parent Require to register on sex offender registry 	<p><input checked="" type="checkbox"/> GS 7B-901(c)(1)</p> <ul style="list-style-type: none"> Sexual abuse Chronic physical or emotional abuse Torture Abandonment Chronic or toxic exposure to alcohol or other substances causing addiction or impairment Any other act, practice... increase enormity or added to injurious consequence <p><input checked="" type="checkbox"/> GS 7B-901(c)(2) & (3)</p> <ul style="list-style-type: none"> G.S. 7B-906.2(b)
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Timelines

Federal <ul style="list-style-type: none">• 42 USC § 675(5)(B)<ul style="list-style-type: none">• Status of each child reviewed periodically by court no less frequently than once every 6 months• 42 USC 675(5)(C)<ul style="list-style-type: none">• No later than 12 months after entered foster care, permanency hearing• 42 USC 671(15)(E)(i)<ul style="list-style-type: none">• Permanency hearing w/in 30 days of court det. No reasonable efforts	State <ul style="list-style-type: none">• 7B-901(d)• 7B-906.1(a)
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Siblings

Federal <ul style="list-style-type: none">• 42 U.S.C. 671(31) Reasonable efforts to place siblings together unless state documents contrary to safety/well-being; if not, then visitation	State <ul style="list-style-type: none">• G.S. 131D-10.1(a)(2) “Foster Care Bill of Rights” 1st priority: placement with siblings• NC DSS Policy, 1201 IV: “Placement Decision-Making” V: “Out of Home Placement Services” VI: “Permanency Planning”
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25 CFR 23: BINDING FEDERAL REGS

www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm

Key Definitions

- Child Custody Proceeding
- Emergency Proceeding
- Active Efforts
- Domicile

ICWA APPLIES TO

- Child Custody Proceedings 
- Emergency Proceedings
- Continues when child turns 18
 - No EIF when determining if ICWA applies
 - Tribe determines if Indian child (court can't consider blood quantum)

X

**Mandatory Inquiry of all participants
commencement in ALL proceedings
Know or reason to know Indian Child**

Indian Child Welfare Act Compliance Checklist					
	NO	YES	N/A	Date Completed	Person Contacted or other notes
DETERMINATION OF INDIAN ANCESTRY					
1. Inquiry about Indian ancestry					
(a) Have both parents been identified?					
(b) Have attempts to locate absent/missing parent begun?					
(c) Have both parents or guardian and child, if age appropriate, been asked if child is American Indian or have American Indian ancestors?					

DSS 5291 (2008)

All responses on record

Reason to Know

- Informed by participant, tribe, or agency
 - Indian child
 - Discovered information indicating Indian child
 - Child gives court reason to know
 - Domicile/residence on reservation/Alaskan village
 - Child is or was ward of Tribal court
 - Parent or child has identification card (membership)
- Party seeking placement
 - Make diligent efforts to verify child's status
- Court
 - Treat as Indian child and apply ICWA
 - Until determination on record ICWA does not apply

Notice

- Registered/Certified Mail, Return Receipt
- Parents
- Indian custodians
- Tribe
- Copy to Regional Director
- Specific Contents

Transfer to Tribal Court

- Upon request (orally or in writing)
- At any stage

Placement Preferences

1. Extended family
2. Foster home approved/specified by Tribe
3. Indian foster home (non-Indian licensing authority)
Unless established order of preference by Tribe

*Least restrictive setting
approximates family,
proximity to home,
extended family, siblings

GS 7B-505(d), -506(h)(2)

- Good cause to deviate, on the record
 - Burden on person seeking deviation
 - Clear and convincing

Take Away

Know or Reason to Know!

Race, Color, National Origin

- Receipt of federal assistance

MEPA-IEP Multiethnic Placement Act/Interethnic Adoption

1. Cannot deny/delay child's placement
 - BIC of specific needs of individual child
2. Cannot deny prospective foster/adoptive parent
3. Diligent efforts to recruit foster/adoptive parents

- NOT APPLY TO ICWA!
- G.S. 7B-505(d)
- G.S. 7B-506(h)(2)
- MEPA –IEP violation = Title VI violation

Title VI Civil Rights Act

- Race
- Color
- National Origin
 - Language Access

Take Away: Applies to Services

Welcome to North Carolina Division of Social Services

Search DSSWS (0)

Title VI - Limited English Proficiency
(Adobe Acrobat reader is needed to access documents at this site)

The Division of Social Services and County Departments of Social Services must take reasonable steps to ensure that Limited English Proficiency (LEP) persons have meaningful access to the programs, services, and information agencies provide. One of the provisions of the Visitor Compliance Agreement signed with USDOHS OCR was that each DSS agency develops a Title VI LEP compliance plan to address the needs of this ever-growing population of individuals whose primary language is not English. To learn more about Title VI and LEP visit the [LEP website](#).

A Limited English Proficiency Video (Captioned) is also available.

Know Your Rights Brochures

Arabic	Cambodian	Chinese	Croat	English
Hmong	Korean	Russian	Spanish	Vietnamese

Title VI Complaint Procedure

A customer/client has a right to file a complaint if they think that they were treated unfairly because they do not speak English well. They can file a complaint for self or for someone else. If they want to file a complaint, please fill out the form and give one copy to the Title VI Compliance Officer. To protect your rights, you must file this Complaint within 180 days of the date you believe you or someone else was treated unfairly. If you do not file your Complaint within 180 days, you may lose your rights to file a Complaint.

NAPCA's National Multilingual Toll-Free Helpline

The National Asian Pacific Center on Aging (NAPCA) [www.napca.org](#) has received AAK funding to provide a [National Multilingual Toll-Free Helpline](#) for persons with Medicare & their families that speak Cambodian, Hmong, Korean, & Vietnamese. The NAPCA Helpline will provide enrollment assistance as well as general Part D information. Since NAPCA has been funded via an AAK contract, they are very familiar with the SSI/8 in the Aging Network and are prepared to make the appropriate referrals if necessary.

Take Away: Applies to Court

THE NORTH CAROLINA COURT SYSTEM

Careers | Judicial Directory | Forms | FAQs | Contact Us

CITIZENS | **COURTS** | **EMPLOYEES**


LANGUAGE ACCESS

Home / Language Access Services

Language Access Services

Language Access Expanded Services and Standards announced April 2015

Background
 In response to the growing numbers of non-English speakers in North Carolina, the NC Administrative Office of the Courts (NC AOC) secured grant funds in 2000 through 2005 to enhance access to justice in the courts for all non-English speakers, with an emphasis on the Spanish speaking population. Grant sources included the Z. Smith Reynolds Foundation (\$100,000), the North Carolina State Bar (\$50,000), and the Governor's Crime Commission (GCC). Guidance for the Foreign Language Services Project began with creating the Foreign Language Access in the Courts, being a coordinator, and joining the Consortium for Language Access in the Courts, forming the National Center for State Courts Consortium for State Court Interpreter Certification. The Interpreting Services Program is now under the Court Programs Division of the North Carolina Administrative Office of the Courts and provides support and guidance to the NC court system statewide, as well as to the court interpreters who are providing their specialized services to the courts.



Disability

- ADA
- Section 504

ADA - 504

- Applies to
 - Parents
 - Children
 - Foster Parents
 - Pre-adoptive Parents

Take Away

- Is a reasonable accommodation/modification needed?
- Does it need to be specified in reasonable efforts?

EDUCATIONAL STABILITY, Dec. 10

Best Interests Determination
By Child Welfare Agency
Included in Case Plan
DSS 5245

North Carolina Division of Social Services

CHILD EDUCATION STATUS COMPONENT

Copy given to child's caregiver _____ on _____

Completed by: _____ Today's Date: _____

1. Child's Name _____ 2. Grade _____
3. School Placement Prior to Foster Care _____
Current School: _____
4. Is it in the best interest of the child to remain in the same school in which he/she was enrolled prior to placement? YES NO If not, why not? _____

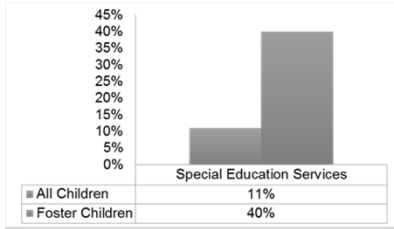
DPI and DHHS Collaborate

- BIC Factors
 - NOT Transportation Costs
- Transportation
- If not BIC, immediate enrollment
- State Coordinator at DPI
- Local contacts

Take Away

School age child!
 What school attending at removal?
 Is it the same, if not why is it BIC?
 Do you agree?

Between a third and a half of school-age children in the foster care system receive special education services, compared to only 11% of all school-age children.



Sources: Theiss, 2010, National Foster Care Review Coalition, 2010, Parrish, et al., 2001, Courtney, et al., 2004, Pecora, et al., 2006, Shinn, 2003, Choice, et al., 2001, Castrechini, 2009, Burley & Halpern, 2001, Smithgall, et al., 2004

IDEA: Individuals w/Disabilities Education Act

- Educational Decision-Making: IEP TEAM
 - Referral
 - Eligibility
 - Consent for Evaluations and Services
 - Manifestation Determinations
 - Due Process



<http://ec.ncpublicschools.gov/policies/nc-policies-governing-services-for-children-with-disabilities/policies-children-disabilities.pdf>

Parent Defined

- A biological, adoptive, or foster parent;
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative), and with whom the child lives;
- An individual legally responsible for the child's welfare; or
- A surrogate if one is appointed under NCGS 115C-109.2

34 CFR 300.30; N.C.G.S. 115C-106.3(14); NC 1500-2.24

“Parent”

Parent

Without court order addressing who makes educational decisions, bio parent when acting as parent has priority

DO YOU NEED TO ENTER ORDER?

34 CFR 300.30(b)(1); GS 115C-109.2(c), (d); NC 1500-2.24(b)(1)

Surrogate Parent

- If No Parent Priority, Foster parent, kinship placement, or appointment by school or COURT
- Never DSS worker
 - 7B-903.1(a) exception

DO YOU NEED TO ENTER ORDER?

34 CFR 300.519(a)(1); GS 115C-109.2(c), (d); NC 1504-1.20(a)(1)

Take Away

- Ask if surrogate parent is needed?
- Who is recommended?

Final Take Away

More than just N.C.G.S.
