

DSS Directors' Conference

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School Stability For Children In Care

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Issues for children in care

- Lack of School Stability
- Barriers to Accessing to School Records

Right to Education in North Carolina

There is no federal constitutional right to an education. However, the state of North Carolina gives its children a right to an education through both the state constitution and state laws.

The North Carolina Constitution addresses a right to education in two places.

- *Article I, Section 15* says “The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”
- *Article IX: Education* has ten Sections
 - Section 1 says “... the means of education shall be forever encouraged”
 - Section 2 addresses the duty of the state and local government to provide a uniform system of free public schools “...wherein equal opportunities shall be provided for all students.”
 - Section 3 addresses school attendance
 - Sections 5, 6 and 7 reference “free public schools.”

There are also state laws that make education a right in North Carolina. One of them is N.C.G.S. 115C-1, which says:

A general and uniform system of free public schools shall be provided throughout the State, wherein equal opportunities shall be provided for all students, in accordance with the provisions of Article IX of the Constitution of North Carolina. Tuition shall be free of charge to all children of the State, and to every person of the State less than 21 years old, who has not completed a standard high school course of study....

In 1997, the North Carolina Supreme Court determined that children in NC are entitled to a “sound basic education,” which means there is a qualitative component to the NC system of public schools. The case is Leandro v. State, 346 N.C. 336 (1997).

What is a “sound basic education?”

- Sufficient ability to read, write, speak English and sufficient knowledge of fundamental math and physical science to enable students to function in a complex and rapidly changing society
- Sufficient fundamental knowledge of geography, history, basic economic and political systems to enable students to make informed choices about issues that affect the student (personally, or in the student’s community, state, and nation)
- Sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training and to compete with others in further formal education or gainful employment.

Who Must Attend (See N.C. G.S. 115C-378)

Compulsory Attendance Age

- Children between the ages of 7 and 16 years old; however, if a child is under 7 years old and is enrolled in Kindergarten, first or second grade, the compulsory attendance law applies to that child. Under NC law, children may enroll in school at 5 years old (G.S. § 115C-364)

Unexcused Absences Thresholds

- A school principal, superintendent, or designee may excuse a child's temporary absence from school because of a child's "sickness or other unavoidable cause." These are often referred to as an "excused absence." "Other unavoidable cause" for an excused absence is defined in the NC Administrative Code as:
 - Health officer/State Board of Health orders student isolated
 - Death of immediate family member
 - Medical or dental appointment for student
 - Student is party to or subpoenaed to testify in a court or administrative proceeding
 - Religious observance in compliance with local school board policy
 - Prior approval to take advantage of valid educational opportunity, which may include travel
 - Other reasons established by local school board*See, 16 NCAC 6E.0102*

Absences for other reasons are "unexcused."

- NC law defines excessive absences as more than three unexcused absences in a school year
- More than six unexcused absences in a school year may be a violation of compulsory attendance laws, resulting in notice to the parent, guardian or custodian of the possible violation and initiates the involvement of a school's attendance counselor.
- After 10 unexcused absences in a school year, the principal (or designee) shall discuss the absences with the student and the parent, guardian, custodian. If the principal believes the parent, guardian, or custodian made a good faith effort to have the child attend school, the principal can file a complaint for an undisciplined juvenile with a juvenile court counselor. If the principal does not believe the parent, guardian, or custodian acted in good faith, the principal may notify the district attorney or county DSS. If the principal makes a report to DSS, the director must determine if it warrants an assessment under G.S. 7B-302.
 - NEGLECT CASES:
 - Despite being well fed, clothed and cared for, a 13 and 10 year old were neglected due lack of academic instruction. It is fundamental that a child who receives proper care and supervision in modern times is provided a basic education. A child does not receive 'proper care' and lives in an 'environment injurious to his welfare' when he is deliberately refused this education, and he is 'neglected.' Matter of McMillan, 30 N.C. App. 235, 238, 226 S.E.2d 693, 695 (1976)

- Parent's insistence on attempting to teach a child with an intellectual disability (formerly referred to as mental retardation) constitutes neglect, if it denies that child the right to attend special education classes critical to the child's development and welfare. Matter of Devone, 86 N.C. App. 57, 60, 356 S.E.2d 389, 391 (1987)

Determining Which School District (See N.C. G.S. 115C-366)

General Rule

- A student attends the school district where he or she is domiciled; however, domicile is not defined in the NC education laws, unlike the NC social services law.
- The NC Court of Appeals determined a domicile is someone's permanent, established home, which is distinguishable from a temporary, although actual, place of residence (actual place of abode). Unemancipated minors may not establish a domicile different from their parents or legal guardian, and they cannot on their own select, acquire, or change their domicile. See, Graham v. Mock, 143 N.C. App. 315, 318 (2001).

Some Exceptions Related to Children at Risk of or Adjudicated A/N/D

1. A student may attend school where student resides if the student is living with an adult who is a domiciliary of that school unit because the student's parent or legal guardian:
 - Is incarcerated, seriously ill, or deceased
 - Abandoned the student (failed to provide substantial financial support and guidance)
 - Was adjudicated to have abused or neglected the student
 - Is unable to adequately care for and supervise the student due to the parent's or legal guardian's physical or mental condition, or
 - Relinquished physical custody and control of the student in response to a DSS or Division of Mental Health recommendation
 - Lost their home due to natural disaster (this includes uninhabitability)
 - Is on active military duty deployment (more than 30 days)

And, the student is not under suspension or expulsion

And, the caregiver adult and parent/legal guardian have signed separate affidavits

 - Confirming the criteria listed above
 - Attesting residency of child is not primarily to attend a particular school
 - Attesting that the caregiver adult has been given and accepts responsibility for the educational decisions for the child
 - If the parent or legal guardian does not provide the affidavit, the caregiver adult shall attest to that fact

2. A child who lives in and is cared for and supported by an institution that is established and operated for the purpose of rearing and caring for children who do not live with their parents is resident of the school district where the institution is located

3. A student placed in licensed facility is eligible to attend school district where licensed facility is located
 - A “licensed facility” includes foster home. See: G.S. §115C-366(h)(7); N.C.G.S. 131D-10.3
4. A student is domiciled in local school unit if he/she resides in:
 - a preadoptive home through DSS or licensed child placing agency, or
 - the home of legal custodian who resides in local school district
5. Local school boards can agree to allow a student domiciled in one school district to attend in the non-domicile school district; effective for current school year; may be renewed annually

Educational Stability

Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections)

Specifically addresses educational stability via the child’s case plan

A case plan must be developed jointly with the parent or guardian of a child coming into care and written within 60 days of a child coming into care [45 C.F.R. § 1356.21(g)]

Definition of case plan [42 U.S.C.A. § 675(1)]

Written document that contains at least...

(C) the health and *education records* of the child, including the most recent information available regarding:

- (i)** the *names and addresses* of the child's health and *educational providers*;
- (ii)** the *child's grade level performance*;
- (iii)** the *child's school record*;...
- (vii)** *any other relevant health and education information concerning the child determined to be appropriate* by the State agency

...and

(G) A plan for ensuring the *educational stability* of the child while in foster care, including--

- (i)** assurances that each 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
- (ii)(I)** an 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 each placement; or

(II) 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.

Costs: Foster Care Maintenance Payments

Include *school supplies* and *reasonable travel* for the child to remain in the school he or she was enrolled in at the time of placement [42 U.S.C.A. § 675(4)(A)]

School Attendance [42 U.S.C.A. § 671(a)(30)]

Every child of compulsory school age receiving IV-E funds (foster care, adoption assistance or subsidized guardianship payments) must be a full-time elementary or secondary student, unless the child has completed secondary school.

Records: Updating and Releasing [42 U.S.C.A. § 675(5)(D)]

The case review system includes a procedure for reviewing and updating the education records for children in care and providing a copy to the foster parent or foster care provider with whom the children are placed, at the time of placement.

If the child reaches the State's age of majority (18 in N.C.) and ages out of the A/N/D system as a result, he or she is entitled to receive, at no cost, a copy of his/her education records at the time of leaving foster care.

Access to School Records

Uninterrupted Scholars Act (USA), became effective January 14, 2013 and amended the Family Educational Rights and Privacy Act (FERPA)

- Amendments sought to give *timely access* to educational records

General Rule Regarding Release of Education Records [20 U.S.C. §1232g(b)]

Written consent of parent or adult student prior to access to, disclosure of and/or release of records containing personally identifying information is required.

- Consent requires specification of records to be released, reasons for release, who released to, and upon request by parent a copy of the records being released
 - Exception: Prior written consent is not required if the records are provided to an *agency caseworker or other representative of a child welfare agency*, who has the right to access a student's case plan, when such agency or organization *is legally responsible*, in accordance with State or tribal law,

for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records [20 U.S.C. §1232g(b)(1)(L)]

- **OR**, if the information being released is a result of a *court order or pursuant to any lawfully issued subpoena*, with advance notice to parent of all such orders or subpoenas
 - Exception: when a parent is a party to a court proceeding involving child abuse and neglect or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required [20 U.S.C. § 1232g(b)(2)(B)]

Important Note: These exceptions are *permissive* and not mandatory

Letter from Kevin Kelley, Section Chief, Child Welfare Services, DHHS Division of Social Services dated June 1, 2013 regarding FERPA Health or Safety Emergency Exception to Disclosure 34 C.F.R. § 99.36

- (a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- (c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination

North Carolina Laws

- 7B-3100: agencies may *share information, upon request and to extent permitted by federal law*, information that is relevant to an assessment of a report of child abuse, neglect or dependency or to the provision or arrangement of protective

services in an abuse, neglect or dependency case. Designated agencies include local DSS and local school administrative units. Shared information must remain confidential and shall be used to protect the juvenile or others or to improve the educational opportunities of the juvenile. FERPA is specifically referenced.

- 7B-302(e): As part of an assessment of report of abuse, neglect or dependency or the provision or arrangement of protective services, DSS may consult with and make a *written demand* for information that the director believes is relevant. Access and copies shall be provided to DSS to the extent permitted by federal law.
- 7B-601(c): The *GAL may obtain any information* or reports, whether or not confidential, that GAL believes is relevant. GAL must not redisclose the information or reports unless by court ordered to do so or otherwise provided by law.
- 7B-808: Predisposition report shall be prepared by DSS and should include sufficient social, medical, psychiatric, psychological and *educational information*.