

Identification of Legal Issues in Education for Child Advocacy Centers



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Serving Our Youngest Crime Victims
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Assumption For Children At A Child Advocacy Center

“Unavoidable TRAUMA”

- Reason for being at the Child Advocacy Center, regardless if they are the immediate victim or it was a sibling or other household member;
- Sudden unexpected change in caregivers and who they live with-i.e. foster care, kinship placement;
- Sudden unexpected change in where and how they live: types of meals; household routines, rules and expectations; pets; clothing; bedding; and
- Sudden unexpected segregation from friends and family.



Additional Trauma Related to Education

Sudden and unexpected change in school, teachers, peers, curriculum, special education services, clubs, classes, bus drivers, lunchroom aides, playground, lockers, rules/routines, extracurricular activities, etc.

**BUT
THIS CAN BE MITIGATED
OR AVOIDED
ALTOGETHER**



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McKinney-Vento Act (42 U.S.C. 11431 et seq.)

Child Qualifies for Act's Protections

If the child and their parent/custodian, have to leave their current housing due to violence, abuse, economic or other reasons.

This can mean they are in a shelter, doubled up with family or friends, motels, or any situation which is inadequate housing.

Next Step Is The Best Interests Analysis



McKinney-Vento Act Best Interest Analysis

Presumption

“ In determining a child’s or youth’s best interest, an LEA must presume that keeping the homeless child or youth in the school of origin is in the child’s or youth’s best interest, except when doing so is contrary to the request of the child’s or youth’s parent or guardian, or in the case of an unaccompanied youth, the youth. (Section 722(g)(3)(B)(i)).”*

*<https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf>



McKinney-Vento Act (42 U.S.C. 11431 et seq.)

If Child qualifies under, school district of origin (current school) or receiving school must:

1. Provide family with referrals to health, dental, mental health, and substance abuse services, housing services, and other appropriate services,
2. Provide transportation from the temporary housing to the school and back if needed,
3. If indicated coordinate a safety plan for the child, if the child is a victim and at risk of harm,
4. Develop an academic plan with the family to address and remediate the negative effects of homelessness,
5. Ensure that the child has the same access to the same educational and other benefits as their peers who are not homeless,
6. Provide uniforms, school activity and lab fees, athletic fees, and lots more.



Receiving Schools Under McKinney- Vento Act (42 U.S.C. 11431 et seq.)

Must also IMMEDIATELY enroll student in new district, regardless if they have the necessary immunization, residency or other district requirements for enrollment.



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Fostering Connections Act

(45 C.F.R. § 1355.20(a))

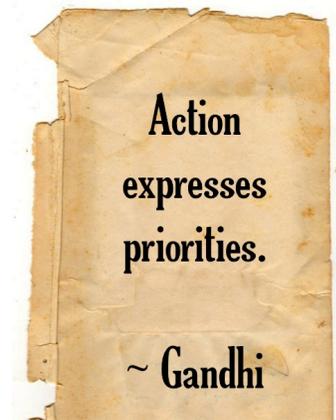
““foster care” means 24-hour substitute care for children placed away from their parents or guardians and for whom the child welfare agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes.

A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made. (45 C.F.R. § 1355.20(a)). “

Foster Children's Educational Rights

- A child in foster care remains in his or her school of origin, unless it is determined that remaining in the school of origin is not in that child's best interest;
- If it is not in the child's best interest to stay in his or her school of origin, the child is immediately enrolled in the new school even if the child is unable to produce records normally required for enrollment; and
- That the new (enrolling) school immediately contacts the school of origin to obtain relevant academic and other records. (ESEA section 1111(g)(1)(E)(i)-(iii)).

URGENT



PRIORITY

Factors Considered In The Best Interests Analysis For The Educational Placement of Children In Foster Care (ESEA section 1111(g)(1)(E)(i))

- Preferences of the child;
- Preferences of the child's parent(s) or education decision maker(s);
- The child's attachment to the school, including meaningful relationships with staff and peers;
- Placement of the child's sibling(s);
- Influence of the school climate on the child, including safety;
- The availability and quality of the services in the school to meet the child's educational and socioemotional needs;
- History of school transfers and how they have impacted the child;
- How the length of the commute would impact the child, based on the child's developmental stage;
- Whether the child is a student with a disability under the IDEA who is receiving special education and related services or a student with a disability under Section 504 who is receiving special education or related aids and services and, if so, the availability of those required services in a school other than the school of origin; and
- whether the child is an EL and is receiving language services, and, if so, the availability of those required services in a school other than the school of origin, consistent with Title VI and the EEOA.
- Transportation costs **should not** be considered when determining a child's best interest.

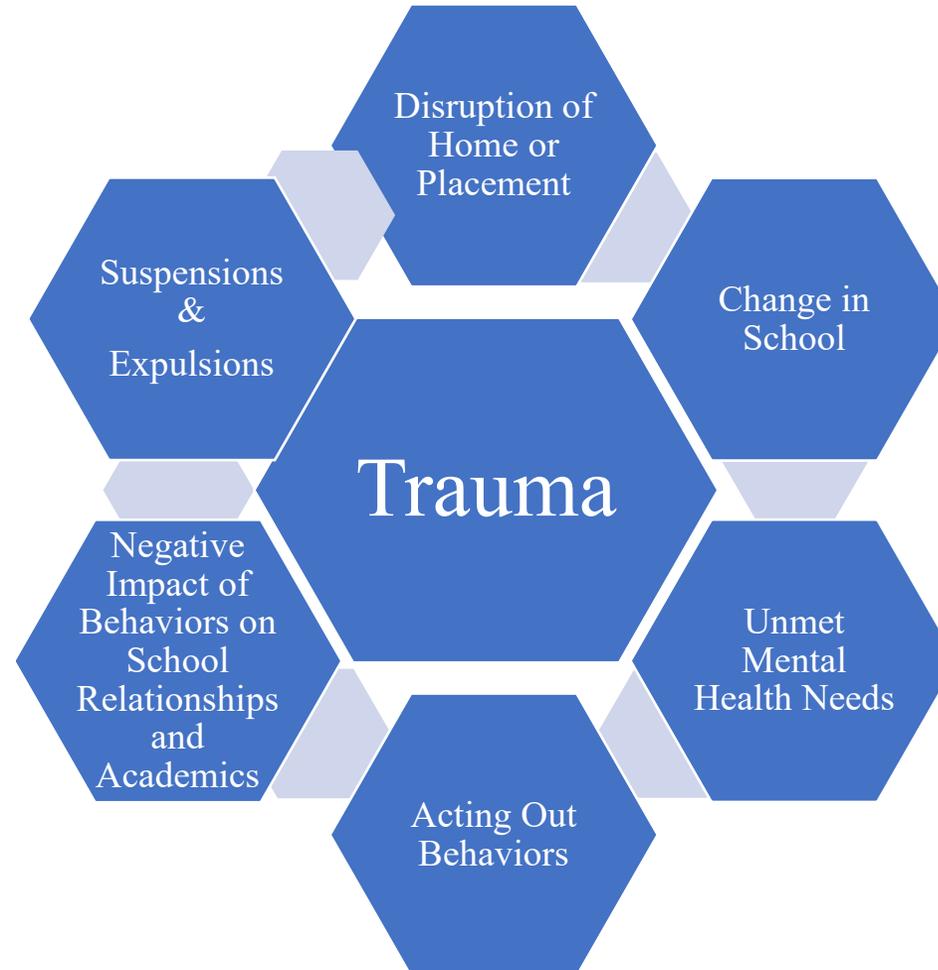




Children With IEPs, 504s, and ELL/LEP Needs

- Regardless of which category they qualify under, McKinney Vento, or Fostering Connections Act, children are entitled to:
- Receive the services, supports, and accommodations listed on their IEPs and 504s. If a service/support provided for on their IEPs is not available at the new school, comparable services must be provided until the IEP team meets again,
- Receive services necessary for ELL/LEP needs, and
- Any and all other benefits that children who are not in foster care or who are not homeless receive.

Unmet Mental Health Needs and Discipline Cycle Increases Trauma By Disrupting Placements



School Behaviors & Discipline

- **Under either law, treat as an unmet need which the school must address rather than just suspending or expelling student,**
- **Request team meeting with caregiver, school staff, children's services worker, others who are important to the child, to develop plan to address,**
- **May request evaluation under IDEA, or ADA for suspected disability such as PTSD, for category of OHI,**
- **If already on IEP/504 request new Evaluation Team Report, ETR; or Independent Educational Evaluation, IEE.**



Here to help

If School Discipline Issues Include Criminal Charges

**AKA Robyn's Major Pet Peeve For Children in
Foster Care**

- * Stay with Child while they are with the police, whether in official custody or not-be pushy;
- * Tell Child to stay quiet when questioned;
- * Tell the Child not to tell you what happened as you can be made to testify against them; and
- * Invoke Child's right to counsel.





Dayton Medical Legal Partnership
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Serving Our Youngest Crime Victims”**

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In Conjunction With:

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