Quality & Fairness in Pennsylvania's Public Schools
EDUCATION LAW CENTER

COMMON MYTHS ABOUT THE EDUCATION RIGHTS OF CHILDREN IN FOSTER CARE

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

MYTH: Children in foster care or group homes whose parents live in another district can't go to school where they live.

FACT: Children in foster care or group homes can attend school where they live, even if their birth parents live elsewhere. The district in which the children live must educate them, and must treat them as if they were residents of that district. Since the district cannot treat children in foster care or group homes differently than children who live with their parents, it cannot, for example, require a foster agency to disclose the reason for a child's placement as a condition of enrollment or school assignment, and it cannot require that all foster children attend an alternative school program.

MYTH: Confidentiality laws prohibit the transfer of school records without parental consent, so a foster care agency must get the birth parent's signed consent to release the old school records before the child's records can be sent to the new school district.

FACT: Parental consent is not necessary for school records to be transferred to a new school, school district, or intermediate unit where a student seeks to enroll. The new district can obtain the student's records directly from the school(s) previously attended without the written consent of the birth parent, and the old district must send those records within 10 business days of receiving the request from the new district.

MYTH: The new school district does not have to enroll a child until it receives the old school records.

FACT: A school district CANNOT refuse to enroll a child until the student's old school records have arrived. In fact, school districts, Intermediate Units (IUs), and charter schools can only require, as a condition of enrollment, proof of the child's age, immunization, residency (placement in a home in the district), and a sworn statement of the child's disciplinary record. All other documents in the child's school record (like an IEP) can and should be obtained from the old school but, in the meantime, the child must be allowed to enroll in and attend the new school.

MYTH: New proof of age and immunization records must be provided every time a student enters a new school or district.

FACT: Both proof of age and proof of immunizations are required for enrollment and should be included in school records that can be obtained by one school entity from another without the consent of the birth parents. To speed things up, the new district can contact the old district or medical provider to "ascertain" that the child has been immunized. Then the student can be enrolled immediately, and the written record can be sent afterwards.

MYTH: Only the birth parent can sign the Sworn Statement that asks whether the child has been suspended or expelled for a weapons, alcohol or drug offense, or for violence committed on school property. The Sworn Statement must be submitted before a student can be admitted to a district.

FACT: The Sworn Statement must be signed and returned before a student can be admitted to a new district. The Statement can be signed by a **parent, guardian, or other person registering a student for admission to any public school entity**. Thus, a foster parent or caseworker who is seeking to enroll a student can sign the Statement. If you are asked to sign but do not know whether the child has been suspended or expelled for one of these reasons, you can say "to the best of my knowledge" on the form.

MYTH: A new district can refuse to enroll a student who has been expelled from another district.

FACT: A district may not refuse to educate a student because she was expelled by the previous district. The exception is when the student has been expelled for possession of a weapon. In that case, the new school district may refuse to place that student in its regular education program for the remainder of the expulsion. However, if the student is under 17, the new district **must** provide some form of alternative education for the student. Moreover, if the student has an identified disability, the student must receive an appropriate special education program from the district that allows progress on IEP goals

(although not necessarily in the school setting).

MYTH: A student's IEP is no longer valid after that student has transferred into a new district, and we have to start from scratch to develop a new one.

FACT: If a special education student transfers to a new district, charter school, or preschool Early Intervention Agency, the new school **must** provide the student with comparable services to those laid out in the Individualized Education Program (IEP) from the old school. (This rule applies even if that IEP was written by a school in another state.) The fact that implementing the old IEP would impose some additional expense on the new district is not an excuse for refusing to follow it. If the district believes that the services in the old IEP are inappropriate or unnecessary, it may only change the program of services if the parent or surrogate parent agrees to a new plan or a hearing officer orders the change.

MYTH(s): Foster children with disabilities never require "surrogate parents" because their caseworker can give the necessary consents; only schools can appoint surrogate parents; and schools can take as long as they want to appoint a surrogate parent for a child.

FACT(s): School districts, charter schools, and preschool early intervention agencies must appoint qualified "surrogate parents" for children with disabilities when: the birth/adoptive parents are dead or parental rights have been terminated or the birth/adoptive parent cannot be located. If a surrogate parent is needed, the district (or charter school or IU) should appoint a surrogate parent within 30 days. The juvenile judge overseeing the child's case also has the power to appoint a surrogate parent in some situations. The judge's surrogate will "trump" the school district's surrogate (that is, the school has to follow the judge-appointed surrogate's decisions). Neither the education nor the foster care agency (both public and private) staff can serve as surrogate parents or make special education decisions for children in their care.

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