Improving Education Outcomes for Children with Disabilities in Kinship/Foster Care:

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ABOUT DREDF:
We are a leading national civil rights law and policy center directed by individuals with disabilities and parents who have children with disabilities.
Our Mission
To advance the civil and human rights of people with disabilities through legal advocacy, training, education, and public policy and legislative development.
Our Vision
A just world where all people, with and without disabilities, live full and independent lives free of discrimination. We work with the core principles of equality of opportunity, disability accommodation, accessibility, and inclusion through training and education, legal advocacy, public policy and legislative development.
DREDF’s Parent Training and Information Center

What is the DREDF PTI?

• Part of a national network of federally funded parent training and information centers charged with helping parents, youth, caregivers and professionals understand complex laws and regulations protecting students with disabilities and participate in educational decision making effectively.

• We provide training, education and support for families and community stakeholders of children ages 3-26. We emphasize teaching parents critical advocacy skills so that they can advocate for and with their children over time.

• Specialized program focused on educational equity and disrupting the school to prison pipeline by improving parent engagement and education outcomes for the most vulnerable families through our CPRC grant
Goals of the PTI

- Improve education outcomes for children with disabilities (including the most vulnerable),
- Ensure that those who know a child best are part of the decision making process and understand the options available to them if problems arise,
- Increase opportunities for post-secondary education, employment, independence, community engagement and improve the quality of life for all children with disabilities.

Find YOUR PTI:

http://www.parentcenterhub.org/find-your-center/

or call us at (800) 348-4232
Training Overview:

1. What are the Barriers to Educational Success for children in Kinship/Foster Care and key factors for success?
2. The ABC’s of education rights
3. First steps when school/learning issues arise
4. The Legal landscape: what laws can we use to support more vulnerable children/youth, remove barriers, improve outcomes?
   a) Federal Education Rights Privacy Act (FERPA)
   b) Section 504 of the Rehabilitation Act of 1973
   c) The Individuals with Disabilities Education Act of 2004 (IDEA)
5. Law into Practice: Advocacy tips
6. Options when problems arise
7. Wrap up and Resources
Part 1: Barriers to Needed Services:

- Complex laws and regulations make system difficult to understand/navigate
- Lack of access to training or technical assistance can result in failure to address concerns
- Assumptions that “someone else” should or will do it
- Hope that things will resolve “on their own” or “over time” (“wait and see” or “resiliency” model)
- Fear of labeling (“stigma”) or misunderstanding about what special education actually IS (and ISN’T)
- Frequent changes of placement at school and home—no consistent advocate for child
The Triple Whammy: Why vulnerable children are at greater risk of poor educational outcomes

Children who experience trauma, loss and adverse early events are at greater risk of disability/impairment

AND

Children with disabilities are more likely to experience abuse and neglect and early trauma

AND

Children with disabilities are less likely to find permanency through reunification or adoption, stability in kinship care, especially if needs are not identified early and/or no early intervention is provided.
Impact of Trauma on Learning

- Childhood trauma can diminish concentration, memory, and organizational/language abilities children need to function well in school.
- For some children, this can lead to inappropriate behavior and learning problems in the classroom, the home, and the community.
- For other children, the manifestations of trauma include perfectionism, depression, anxiety, and self-destructive, or even suicidal, behavior.
- Children may “hold it together” initially, only to begin showing challenges once they feel safe.
- Frequent placement changes create anxiety, fear and difficulty settling into new schools.
- Frequent loss of existing support systems (teachers, community providers) and having to start over repeatedly.
What Makes a Difference in Outcomes for Children?

- EARLY, appropriate educational support and intervention, including development of an effective IEP or 504 plan where necessary (it’s never too late, but early is better)
- Quality, research based mental health interventions integrated across all settings (home, school, community)
- Support and training for education rights holders, foster parents, relative caregivers, support professionals.
- Collaboration between caregivers, educators, child welfare, health care provider, CASAs and community support organizations
- Intensive support and behavioral interventions for youth with who cannot have their needs met in a lower level of care
- Meaningful relationships with peers, teachers and other caring adults.
Critical to invite to school meetings or ask for documentation from, with adequate notice, other agencies and persons who ARE or MAY need to be involved:

- Child Welfare Caseworker (participate by phone!)
- Court Appointed Special Advocate (CASA)
- Biological Parent as appropriate or if Family Reunification is in process—Encourage Foster/Kin Caregivers to partner with Bio-parents whenever possible.
- Family partners, agencies, clinicians with key information
- Department of Development Services (DDS)/Regional Center case managers if applicable

Consider, where appropriate: Free training on Education Advocacy for Children with Disabilities can be part of a case plan—see Resources for CA contacts!
Part 2: The ABC’s of Education Rights

A child’s biological parents always hold education rights unless:
• The court has formally removed those rights and given them to someone else (specific rules apply)
• The parents are not willing or available to use them

• If you are NOT the Ed rights holder but have a significant caregiving role, you can STILL be involved if Ed rights holder agrees.

Note: Special education and educational privacy laws specify that a person acting in all ways as a parent (including a foster parent) can act as the parent and/or be appointed by the courts or school district if the biological parents are not available or willing to act. Generally, for children who are dependents, the court should appoint someone but if they do not, the school should appoint a surrogate parent as the “IDEA” parent. Under FERPA, the term "parent" is defined as including natural parents, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.
Ed Rights continued

• If there is no one qualified to fill this role, a school district must appoint a surrogate parent on behalf of the child. In CA, a person who knows child must get precedence.

• Always ASK the Child Welfare Worker or child’s attorney about this issue, and consider asking to have ed rights assigned to you formally and/or consider collaborating with biological parents when appropriate.

• Sometimes, it is a CASA or GAL who holds these rights, especially if placement is changing or a group home is involved.
Who is the Education Decision Maker for Children in Foster Care?

**EDUCATION RIGHTS**

Who has the legal right to make decisions for early intervention and special education services?

**Education Rights (ERs)** give the holder the legal right to make education-related decisions for a child, including: requesting records, early intervention, and special education evaluations and assessments, and consenting to early intervention and special education services and placements in the Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP). The IFSP/IEP is the contract between the ERH and the regional center or school district for early intervention or special education services.

### Who Is the Education Rights Holder (ERH)?

1. **Biological Parents**
2. **Adoptive Parent:** Adoption automatically transfers ERs.
3. **Legal Guardian:** Guardianship automatically transfers ERs.
4. **Judge’s Order:** Judges can limit education rights of biological parents and appoint a new ER (via a JV-535 or minute order) such as:
   - Foster Parent
   - Prospective Adoptive Parent
   - Person acting as parent (i.e., relative caregiver)
   - Court Appointed Special Advocate (CASA)

* If you don’t know who the ERH is, ask the child’s court-appointed attorney or social worker.

### How and why the ERH might change?

---> Education rights may be transferred if:

1. Biological parents who previously held education rights have these rights limited or terminated by the court.
2. Child is reunified with their biological parent(s) after living with someone else.
3. Child is removed from their caregiver who previously served as ERH.
4. ERH is not cooperating with advocacy efforts.

---> Contact the child’s court-appointed attorney to see if there is a responsible adult in the child’s life who is willing to be an ERH for the child.

### What if there is no ERH?

- The school district must appoint a Surrogate Parent within 30 days of determining that one is needed.
- Surrogate Parents cannot have a conflict of interest with the child, such as working for the district or being a social worker or probation officer.

**CASA - Court Appointed Special Advocate**

A Volunteer can be appointed as an independent advocate for the best interests of the child. They provide information, access records and help advocate for the child. They have regular contact with the child and with the court. They do not automatically hold education rights.
Part 3: Getting Help: Types of Supports/Interventions

For Any Child Struggling in School, Interventions can include:

- Informal emails/calls with teacher
- Parent/Education Rights Holder Teacher Conference
- Student Study/Success Team Meetings
- 504 evaluation/assessment/Plan
- IDEA Assessment/Special Education/IEP

**Tip:** Make sure whatever agreements you make with school are in WRITING with proof of delivery and are TIME LIMITED. Not working = try something else. Never accept verbal refusal to evaluate for 504 or IEP. Get it in writing!
Can SST Process Hold Up School Evaluation for 504 or IEP?

• If the SST team believes that the child may have a disability, they need to recommend a formal special education evaluation or for evaluation under Section 504. Schools have an affirmative obligation to identify children who may need special education and related services in their area (Child Find)

• But Parent/Education Rights can ALWAYS initiate this referral too! Always in WRITING with proof of delivery

Tip: You are NOT required to Agree to let SST steps DELAY Evaluation for an IEP! Your written permission is needed to delay/wait.
Part 4: Let’s talk about the LAW

• There are many laws that protect and support children in school settings.
• We do not have to “know” them all—we need to know where to go for help!
• Information can be overwhelming, but knowing how to navigate system is essential.
Overview: FEDERAL LAWS

FERPA: Family Education Rights Privacy Act (all schools getting public funds)
Protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. Also gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level.

Section 504 of the Rehabilitation Act
Protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance. Those programs include public school districts, institutions of higher education, and other state and local education agencies. Student must have a disability and that disability must limit a major life function. The Americans with Disabilities Act Amendments of 2008 (ADA) broadened definition of disability in the ADA as well as in Section 504.

IDEA: The Individuals with Disabilities Education Act (0-22 or until diploma or voluntary exit)
Requires schools to serve the educational needs of eligible students with disabilities. Schools must evaluate students suspected of having disabilities, including learning disabilities. Provides for Specialized Education and related services as needed for children with disabilities who require individualization of program, and early intervention for eligible children under 3. Parent participation is a critical component- important rights under the law.
FERPA: Family Education Rights Privacy Act

Applies to: Any school receiving federal funds, including colleges, universities, public and charter schools

Key elements:
- Education rights holder can request records in writing and receive within specific time period (5 BUSINESS days in CA)
- allows correction of records, additions to records
- Defines how inaccurate records can be challenged, removed and disagreements documented
- Ensures that confidential information contained in student records is available only to school staff with need to know, and not shared outside of school except under defined exceptions
- If your child receives disciplinary notices or incident reports you disagree with, start here! Get records, challenge documentation in writing. If school asks you to “pickup” child, insist on documentation.
Section 504 of the Rehabilitation Act of 1973

- Federal Anti-Discrimination Civil Rights Law.
- Protects ALL PEOPLE with a disability that impairs one or more major life activities (learning is one).
- Prohibits discrimination in ANY program that receives federal dollars.
- Provides Accommodations to remove discriminatory barriers.
- In education, “504 Plan” removes barriers to learning and opportunities.
- Breaks, Extra Time, Assistive Technology, Behavior Support, etc. all provide “ramps” or equal access to learning that students without disabilities have available.
**Section 504: A Civil Rights/Equal Access Law**

- Student is entitled to a Free and Appropriate Public Education (FAPE) from elementary through secondary school. Section 504 plans can “level the playing field”.
- A 504 Plan is designed to accommodate the student’s disability so that his/her needs are met as adequately as the needs of students without disabilities.
- Strengthened rights in re-authorization of Americans with Disabilities Amendment Act (ADAA).

**Tip:** If School asks for medical diagnosis, and student does not have one, request in writing that District evaluate student directly—A Diagnosis is NOT required to begin evaluation.
Examples of 504 Accommodations

INDIVIDUALIZED to create equal access, equal opportunity, and remove discriminatory barriers.

For example:

- **Time:** More time to complete assignments; Frequent breaks, Reduced Homework
- **Environment:** Quiet setting; Preferred seating; Elevator key
- **Health:** Help with glucose testing; Nut-free lunch table
- **Assistive Technology (AT):** Computer access; noise cancelling headphones, FM system, Pencil grip
Students eligible for Special Education under IDEA are protected by 504 and IDEA.

A Student receiving special education may also need accommodations to prevent discrimination.
IDEA Purpose

• Disability is a natural part of the human experience.
• Disability in no way diminishes the right of individuals to participate in or contribute to society.
• Improving educational results for children with disabilities is an essential element of our national policy.
• IEP must meet student’s unique needs AND prepare student for further education, employment, and independent living.

Notice: It’s not just about having a “place for the student to go”. It’s about individualized education in least restrictive setting.
• About “disproportionality”—labels bring services, but quality evaluation, truly understanding educational needs is critical. Keeping students in inclusive settings, or returning them to them is KEY!
Individuals with Disabilities Education Act (IDEA)

- A Federal Education Law / 1975
- Schools have legal obligation to identify children (Child Find)
- For students who fit at least 1 of 13 categories of disability AND
- Who also need specialized support and instruction to benefit from education.
  Evaluations demonstrate – student cannot benefit from public schooling without specialized instruction and support.
- Provides an “IEP”: Individualized Education Program
  - specialized instruction
  - supportive related services
  - Individualized to meet unique needs
- Educational “case management”
IDEA 6 Core Principles

1. Appropriate Evaluation/Assessment
2. Free & Appropriate Public Education (FAPE)
3. Individualized Education Plan (IEP)
4. Least Restrictive Environment (LRE)
5. Education Rights Holder (and student as appropriate) participation in the decision-making process
6. Procedural Safeguards (Parent/Ed Rights holder Rights)
Cycle of Special Education

Team meets to review IEP annually (Can write to request more often)

Reason for Concern / Dx

Request Assessment in writing!!!

District provides “Assessment Plan” within 15 calendar days

Assessment + IEP Meeting: within 60 days of parent signing Assessment Plan

“PLOP”, Goals, Individualized Instruction and Services determined

Appropriate Placement determined

“Informed consent” Parent may take at least 15 days for questions (if needed) before signing

Implement IEP
IEP “Placement”

**LAST** discussion in IEP Meeting

- Placement is a “set of services” provided to the student. **NOT** a PLACE for the student to go!

- Protect Least Restrictive Environment (LRE).

- **Appropriate** placement:
  set of services and setting in which student has a reasonable expectation of meeting IEP goals and making meaningful educational progress.

- Advocacy is critical here—question removals, ask how student will return, insist on data/monitoring of educational progress.
Protecting Students from Segregation

LRE: Least Restrictive Environment

The IEP must state the extent (%) to which student will or will not learn with and participate in school with students without disabilities AND WHY.

- **Strong** presumption in law that students with disabilities learn with non-Disabled peers.
- Local/neighborhood school. General Ed. Typical classes to greatest extent possible.
Providing Consent

** Remember: IEPs and 504 plans are LEGALLY-BINDING!

You can “sign in” that you are an IEP participant at the meeting, but…

Before CONSENTING (authorizing) the IEP/504, ASK YOURSELF:

“Would I sign any other legally-binding document without adequate time for a thorough review?”

You can:

• Ask for copies of the IEP/504 & other documents and **TAKE HOME FOR VERY CAREFUL REVIEW!**
• Agree to “parts” of an IEP so they can be implemented.
• Attach “Parent/Education Rights Holder Exceptions to the IEP” outlining disagreements.

**Advocacy Tip:** NEVER CONSENT until you fully understand document and AGREE—

YOUR SIGNATURE IS A LEGAL AUTHORIZATION!

But remember—until you sign/authorize, services don’t begin and previous IEP (if any) is in effect.

Partial consent may be better than NO consent.
5. Advocacy Tips

- DOCUMENT IN WRITING. FOLLOW UP CALLS/DISCUSSIONS VIA EMAIL TO CREATE A RECORD
- WHEN PLAN IS NOT WORKING—GET MORE INFORMATION (eg, IEE).
- GATHER DATA—report cards, progress reports, work samples, time homework and log, SBAC (state) testing, outside evaluations
- Bring backup—friend, caseworker, therapist, to meetings
- RECORD your meetings (give 24 hour notice)
- Don’t wait for basic skills (reading, writing, math—ask for evaluation.
- Be hard on the ISSUES but soft on the PEOPLE. Burning bridges only hurts relationships long term
- Understand and use your rights as an Education Rights Holder/Parent!
- Call your PTI for help. Link to find your PTI is here:  
  http://www.parentcenterhub.org/find-your-center/
6. Options for Resolving Disagreements

If it was never written, it was never said and will never be done.”

- Start with right people (ask for Director, or lead administrator for 504 or Special Education
- Focus on collaboration if possible
- Work out problems through LETTER WRITING.
  See www.wrightslaw.com Search: “Letter to a Stranger”
- Make requests IN WRITING.
- Expect and request district responses IN WRITING : (PWN)
- Expect Timelines to be met.
  TIP: Send with proof of delivery
- Document conversations and calls:
  Date. Time. Who/title. Contact info.
  What was discussed. What is understood.
  What is expected result. Follow up in writing.
- If Behavioral/Discipline concerns:
  Document every removal from class or school—not just formal suspension. Time out of class is time out of placement in most cases.
Put it in writing and expect decisions in writing too!

• When district proposes or refuses to do something that involves the child's identification, assessments, placement, or FAPE. Parent/Education Rights Holder is required to receive PWN. **ASK FOR IT!**

• PWN must include:

  (1) Description of action proposed or refused.
  (2) Explanation of why school proposes or refuses to take that action.
  (3) Each evaluation, procedure, test, report, etc. the school used as a BASIS.
  (4) Copy of the parent’s rights to challenge the action or inaction.
  (5) Sources of advocacy assistance for Parent/Education Rights Holders.
  (6) Other options the school considered and why they were rejected.

[20 U.S.C. Sec. 1415(b)(3); 34 C.F.R. Sec. 300.503(b); Cal. Education Code Sec. 56500.4.]
IEE: a “2nd opinion” free to you

“Independent Educational Evaluation at public expense”

- Right to disagree with district assessment(s). No required to say why.
- Parent/Education Rights Holder sends WRITTEN notice, or request, for “IEE at public expense”.
- “Without unnecessary delay,” district must:
  1. Say YES and pay for the IEE [or]
  2. Say NO by filing for a Due Process hearing to prove district assessment was appropriate. Judge decides.
- Independent Educational Evaluations MUST be considered, no matter who paid.
- Qualified evaluator is necessary.
- NO requirement to pick from district list.
Formal Complaints

Types:
1. Discrimination – Office of Civil Rights—student disability is being used to discriminate against student. 504 or IEP
2. Compliance – State Department of Education—law not followed or IEP not delivered as promised
3. Disagreement – you or district are not in agreement and cannot resolve collaboratively re: eligibility, placement offer, services, etc. End result is Due Process Hearing (many steps for resolution before hearing)
As the Parent Training & Information (PTI) center, DREDF provides information and training to parents/education rights holders of children with disabilities (Ages 3 to 26), and professionals who serve these students and their families. Our website has many useful materials, including sample letters and education/training materials.

Call to ask for an “Education Advocate” if you live in Alameda, Contra Costa or San Joaquin County OR to be directed to the PTI in your area if you don’t have computer access.

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To find a Parent Center in Your Area: http://www.parentcenterhub.org/find-your-center/
For links to additional resources, see Appendix A or visit the DREDF website at

http://www.dredf.org/special_education/trainings.shtml