



Building a Network of Support

THE CASE FOR A DOE OFFICE FOR STUDENTS IN FOSTER CARE

May 2021



Advocates for Children
of New York
Protecting every child's right to learn

**THE
LEGAL AID
SOCIETY**

Justice in Every Borough.

Acknowledgements

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ABOUT ADVOCATES FOR CHILDREN OF NEW YORK

Since 1971, Advocates for Children of New York has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds who are at greatest risk for failure or discrimination in school because of their poverty, disability, race, ethnicity, immigrant or English Language Learner status, sexual orientation, gender identity, homelessness, or involvement in the foster care or juvenile justice systems. AFC uses four integrated strategies: free advice and legal representation for families of students; free trainings and workshops for parents, communities, and educators and other professionals to equip them to advocate on behalf of students; policy advocacy to effect change in the education system and improve education outcomes; and impact litigation to protect the right to quality education and compel needed reform.

ABOUT THE LEGAL AID SOCIETY

The Legal Aid Society (“Legal Aid”) is the nation’s oldest and largest private not-for-profit organization, providing free legal services to low-income individuals and families for over 140 years. The Legal Aid Society consists of three practices, (Criminal Defense Practice, Civil Practice and the Juvenile Rights Practice) which together represent clients throughout New York City in over 300,000 matters annually, including thousands of children each year.

The Juvenile Rights Practice (JRP) is the primary provider of representation for children whose parents are charged with abuse and neglect in New York City and represents approximately 90% of the children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children’s rights and welfare. In addition to representing these children each year in administrative, trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

David is in foster care because his mother struggles with substance abuse and mental health challenges. His uncle recently passed away from an overdose. David lays awake at night worrying about his mother's safety. As a result, he is sometimes late to school and has a hard time staying focused. David feels like he is always in trouble at school for not completing his schoolwork, and his promotion is in doubt.

Angelica has post-traumatic stress disorder (PTSD) from abuse she experienced prior to entering foster care. She has symptoms of anxiety and occasionally gets panic attacks. Although Angelica performs at grade level academically and excels at reading and writing, she has started failing some tests in school. She told her case planner that she gets nervous during tests and her mind goes blank.

When children and youth enter foster care, they often are placed in unfamiliar homes and neighborhoods, separated from their parents and siblings, with foster parents they do not know. In many cases, students change foster homes multiple times while in care, further disrupting their sense of security. School has the potential to be an important stabilizing force in the lives of students in foster care; it can be a safe haven where they receive consistent support from teachers, social workers, friends, and other members of the school community during the traumatizing separation from home and family. When students are in foster care, schools must step up to ensure students get the support they need to stay on track.

The approximately 6,000 New York City students who spend time in foster care during any given school year – who are disproportionately Black and come from the City's poorest communities – face enormous educational challenges. Students in foster care are among the most likely to repeat a grade, need special education services, or leave high school without a diploma. For example:

- » Only 42.2% of City students in foster care graduated on time in 2020, the lowest graduation rate of any student group and 36.6 percentage points lower than the rate for students not in foster care.¹
- » More than one in five New York City students in foster care repeats a grade, compared to only 6% of all DOE students.²

1 See New York State Education Department, NYC Public Schools Graduation Rate Data (4 Year Outcome as of August 2020), available at <https://data.nysed.gov/gradrate.php?year=2020&instid=7889678368>.

2 See NYC Administration for Children's Services, Report of the InterAgency Foster Care Task Force, March 2018, page 26, available at <https://www1.nyc.gov/assets/acs/pdf/testimony/2018/TaskForceReport.pdf>.

- » The average student in foster care misses the equivalent of one-and-a-half months of school each year, and one out of every ten students in care has an attendance rate of less than 50%.³
- » While 17% of all New York students have an Individualized Education Program (IEP) because they have a disability and need special education services, over half of New York's students in foster care have an IEP.⁴

Jeremiah and his siblings were homeless before they came into foster care. They lived in parks and other public spaces and often went hungry. Since coming into care, Jeremiah has been in several different foster homes. He has started hoarding food in his bedroom, backpack and locker. Jeremiah was suspended from school after getting caught multiple times stealing food, candy, and other small items like pencil cases and toys from his classmates.

Federal laws provide special protections to students in foster care. For example, the law requires that school districts and foster care agencies keep students in their original schools when they enter care or change foster homes, unless it is in their best interests to transfer to a new school, so that children do not experience the further disruption of entering a brand new school mid-year. However, nearly one in five students in New York City changes schools upon entering foster care and again with each change in foster care placement,⁵ meaning they must adjust to new teachers, peers, curricula, and routines while simultaneously coping with instability and uncertainty at home. These school transfers likely contribute to poor academic outcomes for many students in care, as research shows that students who change schools frequently have lower test scores, earn fewer credits, are more likely to be retained, and are less likely to complete high school than students whose school placements are stable.

Despite the educational barriers faced by students in foster care, the New York City Department of Education (DOE) does not have an office, team, or even a single staff member focused solely on students in foster care. In a system with tens of thousands of employees, there is no one whose job is to make sure City schools are meeting the needs of students in foster care. As a result, the DOE often overlooks one of the student populations that needs support the most.

3 See NYC Administration for Children's Services, School Attendance Rates of Children While in Foster Care, School Year 2019-2020, available at <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/LL142SY20192020.pdf>.

4 See New York State Education Department, Facilitating Educational Stability for Youth in Foster Care in New York State, October 2018, slide 34, available at <http://www.p12.nysed.gov/sss/ppsfostercare/fostercare10-29%20PPT.pdf>.

5 See NYC Administration for Children's Services, Educational Continuity of Children in Foster Care (School Year 2019-2020), available at <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/LL142SY20192020.pdf>.

In March 2018, the City’s Interagency Foster Care Task Force, whose membership included the Commissioner of the Administration for Children’s Services (ACS) and the DOE Chief Operating Officer, recommended that the DOE establish an infrastructure to focus on students in foster care, similar to the DOE’s Office of Students in Temporary Housing. The Task Force recommended that such an office “oversee and advise a team of borough-based foster care content experts responsible for field support and case consultation” to provide schools with support and professional development with respect to the unique needs and legal rights of students in care.⁶

Three years later, the City has yet to act on this recommendation—and without such staff in place, there is no one at the DOE consistently advocating for students in foster care, ensuring that the needs of students in foster care are considered when making policy decisions, or focused on developing and implementing needed policies to assist students in foster care. In addition, schools, foster care agencies, and families do not have a DOE point person to contact with questions or concerns regarding students in foster care.

Given the laws and policies that apply to students in foster care and the barriers they face, the DOE should move forward with the recommendation to launch a small Office for Students in Foster Care that has the capacity to work across agencies and DOE divisions to execute plans that better support these students. As described in more detail below, such an office would:



Serve as a point of contact for schools, families, and child welfare professionals with questions about students in foster care.



Train and support schools on the needs and rights of students in foster care and their families.



Support parent involvement in education while their children are in foster care.



Track and improve educational outcomes, opportunities, and programming for students in foster care.



Develop and implement policies related to students in foster care

⁶ See NYC Administration for Children’s Services, Report of the InterAgency Foster Care Task Force, March 2018, page 29, available at <https://www1.nyc.gov/assets/acs/pdf/testimony/2018/TaskForceReport.pdf>.



SERVE AS A POINT OF CONTACT FOR SCHOOLS, FAMILIES, AND CHILD WELFARE PROFESSIONALS WITH QUESTIONS ABOUT STUDENTS IN FOSTER CARE

Questions about students in foster care often arise, from who can consent to special education evaluations to who can access the student's report card or even pick them up from school; yet there is currently nowhere for parents and foster parents, schools, foster care agencies, or other professionals working with students in care to turn when issues arise. Without a central DOE resource or a way to get needed answers, schools may unintentionally violate the rights of parents and students, and students may languish without needed support. For example, students in foster care frequently go months without special education evaluations because schools lack clarity on who can provide consent for the evaluations, or on what to do if the child's parents cannot be located.

A DOE Office for Students in Foster Care would fill this void, creating a point of contact within the DOE's massive bureaucracy to provide accurate, authoritative information about the educational rights of students in foster care. The Office could establish a DOE hotline and email account specifically dedicated to answering questions and resolving problems related to the education of students in foster care, so that school staff, foster care agencies, and families would know where to go for assistance.

*Ms. Rosario's daughter, **Gabrielle**, had recently come into foster care. When Ms. Rosario asked the school for Gabrielle's school records, the school told her that they could not release the records without a court order stating that Ms. Rosario had the right to access them — a request that was impossible to fulfill, as courts do not issue such orders. Although Gabrielle's attorney informed the school that it could release the records to Ms. Rosario, the school was uncertain as to whether it could trust this information and had no one to go to within the DOE for assistance.*



TRAIN AND SUPPORT SCHOOLS ON THE NEEDS AND RIGHTS OF STUDENTS IN FOSTER CARE AND THEIR FAMILIES

Foster care is a complex system with many stakeholders, an extensive bureaucracy, and a tangle of laws and regulations. School and DOE staff need training to better understand the foster care system and how to support students and families, but there is no one currently at the DOE tasked with developing and conducting such training. Instead, designated school liaisons, who have many other duties, receive a few minutes' worth of information about foster care during their annual training about mandatory reporting for suspected abuse or neglect.

A DOE Office for Students in Foster Care could develop and provide training to explain the differences between child protection, preventive services, and foster care; describe what happens after a call to the state central registry from the perspective of families and students; help staff understand the roles of the various child welfare professionals they come into contact with; outline the educational rights of students in foster care and their parents; and provide tips for improving communication between schools and staff within the foster care system.

*In our years of experience working with schools on behalf of students in foster care, we have seen that school personnel want and need training to better serve students in care. One **school counselor** recently told us that she would love to do more to support students in foster care in her school, but she has no idea who those students are; the teachers at her school don't know either. Another counselor shared that she learned a student at her middle school was in care when the Assistant Principal made an announcement over the walkie talkies for the student to report to the main office because his foster mother was there to pick him up, effectively "outing" the student to everyone in earshot. When the counselor approached her A.P. about what had happened, he didn't understand why it was a problem.*



SUPPORT PARENT INVOLVEMENT IN EDUCATION WHILE THEIR CHILDREN ARE IN FOSTER CARE

In the vast majority of cases when a child enters foster care, ACS's goal is to reunify the child with their parents. Therefore, it is important that parents are encouraged to be involved in their children's education throughout their time in foster care. To help students in foster care succeed in school, schools need to engage their current and future caregivers in their education.⁷

School and DOE staff are often confused about whether parents may access education records or information about their child, participate in parent-teacher conferences, attend IEP meetings, and go to school events. Schools often believe — incorrectly — that parents should be excluded from school meetings and events when their children are in foster care.

⁷ In September 2017 Advocates for Children partnered with SCO Family of Services, a foster care agency, to launch a [Parent Toolkit](#) with recommendations and resources to help foster care agencies enhance parent involvement in their child's education while in foster care. A DOE Office for Students in Foster Care could develop a similar resource to help schools engage and involve parents whose children are in care.

By excluding parents, schools may be violating parents' rights, undermining efforts to engage the parent in the child's education and care, missing out on key information about the child that only the parent knows, and wasting an opportunity to collaborate with the parent for the child's benefit.

Furthermore, schools often lack systems for communicating with the parents of students in foster care. For example, many notices are "backpacked" home, without considering parents who do not currently live with their children. Any notices that are mailed automatically go to the address where the child lives. Additionally, some student records and school updates are increasingly only available online through the DOE's New York City Schools Account (NYCSA). However, at present, the DOE does not allow non-custodial parents access to a student's NYCSA account; a child's birth parent can only access NYCSA if the foster parent gives their permission or is willing to share their password and login credentials.

A DOE Office for Students in Foster Care could help ensure that parents' rights are better understood and respected when their children are in foster care and help schools empower parents to be full participants in their child's education. The Office could also develop a system for communicating with and engaging parents of students in foster care, provide guidance to schools, and help troubleshoot concerns when they arise.

Tanya's foster care agency requested special education evaluations for her because she was struggling academically and her promotion was in doubt. The agency gave the school Tanya's parent's contact information and indicated that she could participate in school meetings or evaluations by phone since she was living in Pennsylvania. Instead of allowing Tanya's parent to provide consent and attend meetings by phone, the school insisted that she attend all meetings in person, then closed Tanya's case when her parent couldn't make the meetings. Tanya's agency again explained that her parent was available and willing to participate in meetings by phone, but the school refused to proceed. As a result, Tanya's evaluations were delayed for over a year.



TRACK & IMPROVE EDUCATIONAL OUTCOMES, OPPORTUNITIES, AND PROGRAMMING FOR STUDENTS IN FOSTER CARE

Given the significant educational challenges many students in foster care face, it is critical to have staff at the DOE who are specifically looking out for students in foster care, reviewing data and identifying trends related to the educational needs of students in care, and working with ACS, foster care agencies, and other DOE divisions to develop and implement practices and programming to address those needs. Although the DOE and ACS currently have a data sharing agreement, the DOE has not published or acted on the aggregate data it compiles.

A DOE Office for Students in Foster Care would fill this role. For example, data analysis could help the DOE, ACS, and foster care agencies identify students in need of transportation, guidance support, tutoring, and other services. Based on the data, the DOE could work proactively with ACS and foster care agencies to direct students to existing services and develop programming to address unmet need. A DOE Office could also work with other city agencies and foster care agencies to examine and address issues such as chronic absenteeism and low credit accumulation in high school, the need for alternative programming for significantly overage middle school students, and other educational challenges that disproportionately affect students in foster care.



DEVELOP & IMPLEMENT POLICIES RELATED TO STUDENTS IN FOSTER CARE

There is currently no one at the DOE focused on developing policies related to students in foster care. As a result, the DOE has gone without needed policies and has taken years to develop others. For example, three years ago, the Interagency Foster Care Task Force recommended that the DOE develop a new Chancellor’s Regulation on students in foster care, outlining school stability requirements, including school placement decisions and transportation; informing schools of the rights of students in foster care; and providing a detailed parent engagement protocol. As the Task Force pointed out, the DOE has regulations addressing the needs of other student populations, such as students in temporary housing and LGBTQ youth, and a Chancellor’s Regulation would “help ensure consistent messaging to all schools regarding the legal complexities of record access for purposes of educational planning.” However, without a designated staff member charged with drafting such a regulation, it still does not exist. While the DOE developed guidance for schools on students in foster care, the development of the policy took years. Similarly, the DOE agreed three years ago to update its outdated policy manual on special education decision-making for students in foster care and the assignment of surrogate parents, but without sufficient capacity, the development of the policy manual has stalled.

Moreover, without a DOE Office for Students in Foster Care, the needs of students in care are often overlooked in the creation of general DOE policies. During the pandemic, the DOE prioritized students in foster care for iPad delivery—but then delayed shipping the devices to many students because their foster parents had not signed an electronic “Student Device Loan Agreement,” even though this requirement did not make sense in the foster care context. As another example, in March 2021, the DOE updated its Chancellor’s Regulation on school health services, including a paragraph about the right of students in temporary housing to enroll in school immediately without the health documentation normally required for enrollment, but there was no mention of the fact that students in foster care have the same right under federal law.

A DOE Office for Students in Foster Care could develop and implement policies on the specific rights of students in foster care as well as ensure that the unique needs of students in foster care are accounted for in broader policy decisions. Below are a few examples where policies related to students in foster care are sorely needed:



Consent for Special Education Evaluations and Services

Over half the students in foster care in New York City have IEPs, but policies pertaining to special education consent for students in foster care are complicated and poorly understood. Schools and Committees on Special Education (CSEs) frequently provide inaccurate information to families. The DOE also struggles to identify “surrogate parents” for children who do not have a relative or foster parent who can serve in that role. Consequently, students in foster care often experience significant delays and barriers in getting the special education evaluations and services they need. A DOE Office for Students in Foster Care could help ensure schools understand how to move forward with the special education process when students are in care.



Transportation

The federal Every Student Succeeds Act (ESSA) requires the DOE and ACS to create a plan to provide, arrange, and fund transportation so students can remain in their school when they enter foster care or change foster homes, unless it is in their best interests to transfer to a new school. However, the DOE currently does not guarantee bus service or comparable transportation to students in foster care. The DOE only provides bus service to students in foster care who require special education transportation and those who can easily be added to existing routes.

As a result, students who cannot travel on their own

Isaiah’s foster care agency requested preschool special education evaluations because of his suspected developmental delays, noting that his parents were homeless and their whereabouts unknown. Under the law, this information should have triggered a diligent search for Isaiah’s parents by the DOE and appointment of the foster parent as the “surrogate parent” if they could not be located. Instead, the DOE wrongly informed the foster care agency that they could not evaluate Isaiah unless the Family Court appointed a surrogate parent for him.

*Ms. Jackson signed a form designating her son **Jason’s** foster parent as a “person in parental relation” so the foster parent could make special education decisions for Jason while Ms. Jackson was incarcerated. Although state law allows for this designation, the DOE refused to accept it. Special education staff wrongly informed the foster parent that she would need a court order to proceed with the evaluations. Only after an advocate intervened was the foster parent permitted to sign consent for Jason to be evaluated.*

may be forced to transfer schools, and other students are often left waiting for a month or more to get a determination on bus service. In the meantime, to protect the right that students in care have to remain in their schools, agency staff may be forced to spend hours each day escorting children to school instead of working to safely reunify families. Similarly, foster parents, who often have competing childcare or work responsibilities, are left getting the child to school on their own, which can result in children needing to switch foster homes or make it difficult to place children in homes in the first place. A DOE Office for Students in Foster Care could examine policies that delay transportation for students in foster care and develop creative solutions to ensure that no student in foster care is forced to transfer schools due to lack of transportation.

***Derrick** and **Isabella** were rising sixth and eighth graders when they came into foster care. The siblings had been in care twice before and had lived in at least six different foster homes. Luckily, all their prior foster placements were close enough that they could stay in the same school, a small K-8 school that both children had attended since kindergarten. Staff at the school were devoted to the children and understood their academic and behavioral challenges.*

Given their placement history, ACS had a hard time finding a foster home for the siblings, and they were eventually placed in a foster home on Staten Island. Derrick, who has an IEP that includes specialized transportation, qualified for busing back to their school in Brooklyn. Because she was in 8th grade and did not have an IEP, Isabella did not qualify for busing under the DOE's eligibility rules. Although there was a free seat on Derrick's bus, the DOE would not allow Isabella to take the bus to school with Derrick. Isabella was facing a nearly two-hour commute on public transportation to and from school each day.

The children's school and foster care agency advocated for the DOE's Office of Pupil Transportation to make an exception and allow Isabella to share Derrick's bus. Eventually, OPT agreed, and both children were routed on the same bus. A few months later, there was an incident in the foster home and Isabella was moved to another home. Once again, she had no feasible way of getting to school, which she was due to graduate from in just a few months.



Court Orders

Students in foster care are sometimes the subjects of court orders that the DOE must follow, including orders of protection. Schools often need guidance in interpreting and applying those orders. In addition, schools sometimes ask for orders in circumstances that are not appropriate, require copies of court orders when letters from the child's foster care agency or attorney should suffice, or refuse to accept orders where highly confidential information has been redacted. For example, schools often ask for court

orders stating that a parent still has their parental rights. Such orders do not exist; parents retain their rights unless and until there is an order terminating or limiting those rights. A DOE Office for Students in Foster Care could help ensure that schools understand and comply with any court orders that pertain to students in their school, while also ensuring that schools do not request court orders that are unnecessary or inappropriate.



School Admissions and Enrollment

While school application processes are complicated for all students in New York City, they are especially fraught for students in foster care, who are often overage for their grade, are more likely to have special education needs, and frequently do not know where they will be living the following week, let alone the following school year. A DOE Office for Students in Foster Care could work to develop policies that would allow for greater, more equitable school choice to students who move foster care placements or return from residential settings after the application period has closed.



Credit Transfers for Students who Change Schools

When any student changes schools, the receiving school has some discretion as to whether credit should be granted for work done elsewhere. Students in foster care, who are much more likely than other students to transfer schools, especially in the middle of the year, often report that their school did not give them full credit for coursework they completed elsewhere, particularly when they are coming from a district outside of NYC. DOE schools sometimes fail to recognize that credits are calculated differently in the rest of the state. In addition, students who experience school changes mid-semester are rarely

*An order of protection stated that Mr. Murphy could not have unsupervised contact with his daughter **Gracie**, who was in foster care. Based on this order, the school inappropriately refused to allow Mr. Murphy to participate in a school meeting by phone, even though he was Gracie's educational decision-maker and would not have had any contact with her during the meeting.*

***Kevin's** foster parent requested updated special education evaluations for him because he was experiencing significant behavioral challenges in school and needed more support. Although the foster care agency notified Kevin's school, in writing, that his parents' rights were terminated, the school and supervising psychologist insisted they would not process the re-evaluation request without a copy of the court order. The student's evaluations were delayed for nearly two months while the agency attorney obtained a short order from the Family Court for the school.*

able to earn credit for that semester's work. When calculating a final grade for a class, the receiving school often does not consider any quizzes, tests, classwork or homework that the student completed at the sending school, and the student is therefore unlikely to receive a passing grade for a class they entered mid-semester.

Lelani was 19 when she returned to a foster home in the community after a two-year stay in a residential program upstate. She left the program thinking she had 36 credits and was 8 credits away from graduating high school. When Lelani initially tried to enroll in a NYC transfer high school, the guidance counselor put her back in 9th grade because her DOE transcript showed just 3 credits. After her foster care agency intervened, the school counselor reassessed Lelani's transcript so that it reflected 23 credits – still far from what she needed to graduate and far from what she believed she had earned. Lelani became extremely frustrated and considered dropping out of high school.

For students in foster care returning to city schools from residential settings, credit transfers can be particularly problematic. Schools in residential settings often operate on different calendars or cycles than traditional schools, may group students differently, often have nontraditional names for their courses, and may respond in a less timely manner to requests for records than traditional school districts. As a result, receiving schools are frequently confused about how many credits to award the student at a critical juncture in their life. Middle school students returning from short-term residential placements are often forced to repeat the grade, and high school students may be awarded no credits at all. These students often have significant mental health needs, which can exacerbate their academic challenges. An Office for Students in Foster Care could help develop and implement policies regarding credit transfers for students who change schools, particularly those who change mid-year or are coming from school districts outside of the City or State, and help ensure students get full credit for coursework they complete at other schools.

As we work to recover from the pandemic, students in foster care deserve to benefit from the City's vision of equity and excellence in education for all students. **A DOE Office for Students in Foster Care would help ensure that policies and day-to-day practices within City schools appropriately consider and address the needs of students in foster care, acknowledging the existence of this unique subset of students and working to better serve them.**