Education & Health Rights for Children with Special Needs in the Child Welfare System

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Division of Youth and Family Services (DYFS)

• Child Protective Services Division
• Supervises more than 50,000 children
• Most of the children under supervision (80%) live at home
• 7,861 in foster care, kinship care, or pre-adoptive homes (DCF 2010)
**Mission**

Serve youth with emotional and/or behavioral needs and their families through strength-based, individualized, and efficacious services.

**Key Components**

| **CSA** | Single portal for access to care |
| **CMO** | Intensive care management to youth with complex needs & their families |
| **YCM** | Linkage for youth with moderate needs, assist youth discharged from CCISs, complete 14-day plans |
| **FSO** | Family-led support for CMO-involved families, community education, warm lines, advocacy |
| **MRSS** | Crisis planning for youth with behavioral/emotional needs, available 24/7/365 |
The Role of Assessment within DCBHS

The vision of DCBHS is to create positive outcomes for children with emotional and behavioral needs by:

- Identifying the child and family's needs
- Determining the most appropriate level of care
- Delivering the most appropriate services for the most appropriate length of time
- Using standard assessment tools - the foundation of DCBHS' System of Care.
Other DCF Key Components

• **Office of Licensing**
  - Licenses and regulates child care centers, youth and residential programs, resource family homes and adoption agencies. 877-667-9845

• **Office of Education**
  - Provides specialized educational services to children in DCF residential treatment.
  - Also serves students who are deemed eligible by the Department of Education.
  - Operates several regional schools around the State for at-risk youth.
Educational Rights

• Educational rights of children & youth with special needs in the child welfare system
Organizational Barriers to Education

- DCF & schools have different policies & procedures regarding sharing of information
- DCF & schools develop policies & procedures based on different federal & state laws & regulations
- DCF & school staff don’t know each other’s rules or systems or how to navigate them
- DCF & schools have different priorities

- Children removed from their homes to another location in a different neighborhood, school zone, district, county
  - Enrollment delayed due to lack of school or immunization records
  - Inappropriate placement/services
  - Racial differences between removed children & their foster families & their new schools
  - Emotional issues due to abuse or neglect or removal not addressed or mistaken for ED
Who's a Parent?

- Biological/birth parent, unless their legal rights have been terminated
- Adoptive parent
- Legal Guardian
- Person acting in the place of a parent
- Foster parent, if willing to serve
- Surrogate parent, if no parent can be identified or located
- Not DYFS!
Special Education Rights

Children in the child welfare system who have not yet been identified have the right to:

- “Child-find” - to be identified
- Comprehensive, non-discriminatory, multi-disciplinary evaluation in all areas of suspected disability
- Determination of eligibility
Special Education Rights

- The “parent” must consent to the initial evaluation and all future evaluations.
- If the parent does not consent, the district may request an impartial hearing.
Special Education Rights

- At least two evaluations must be conducted.
- The evaluations may not discriminate against the child based on race, ethnicity, language.
- The evaluations should be conducted in the child’s language.
Special Education Rights

- If the child has challenging behaviors, a functional behavior assessment should be conducted as part of the evaluation.
Functional Behavior Assessment

- **Goals are to:**
  - Determine the causes of a behavior, and
  - Identify likely interventions

- **Functions are the things that sustain behavior** - what the child gets from doing the behavior
Steps of Functional Assessment

• What are the antecedents for the behavior - how does it get started?
• What contextual factors or conditions contribute to it?
• Does the child understand what is expected?
• Does the child have the skills to do what is expected?
• Does the child have the desire to change behaviors?
Special Education Rights

- The parent has a right to an independent evaluation at the district’s expense if the parent disagrees with the evaluation.
- The parent does not need to explain their disagreement.
- The district cannot deny the request for an independent evaluation. It must grant it or request a hearing to prove its evaluation is appropriate.
- The request for an independent evaluation must be in writing!
Eligibility

- The child has an identified, covered disability
- The disability affects his/her ability to learn
- The child requires special education &/or related services to benefit from education
Covered Disabilities

- Specific Learning Disability
- Autism/Autism Spectrum
- Blind/Visual Impairment
- Deaf/Hard of Hearing
- Deaf & blind

- Serious emotional disturbance
- Traumatic brain injury
- Cognitive disability
- Multiple disabilities
- Other health impaired
If not eligible

- If the child is not eligible for special education, the child may be eligible for:
  - Section 504 services
  - Services from the Intervention & Referral Services team
Eligibility for Section 504

Individual who has, has had, or is perceived as having, a physical or mental impairment which substantially limits one or more major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, working; limits ability to attend, participate in, receive benefit from, schooling.
Services Under Section 504

- Non-discriminatory evaluation (does not need parental consent)
- If eligible, a free appropriate public education in the least restrictive environment including accommodations, modifications, and services

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Special Education Rights

- Development of an individualized education program (IEP)
- Provision of a free, appropriate public education in the least restrictive environment
The Parent’s Role

- An equal partner in decision-making, with the right to give or withhold consent for each evaluation and for initial services

- To be at every decision-making meeting

- Concerns for enhancing the child’s education must be included
The IEP Team

- The parent
- The child’s general education teacher
- Someone qualified to provide or supervise special education
- Someone who can interpret evaluation results
- Someone who can make commitments on behalf of the district
The IEP Team

- With the parent's written consent, a member of the team may be excused from the meeting if they provide information to the team in advance of the meeting in writing.
IEP:
Present Levels of Educational Performance

• What are the child’s strengths & needs?
• How does the child’s disability affect involvement & progress in the general curriculum?
• How does the child’s disability affect social-emotional development, behavior, functional life skills, self-awareness, ability to communicate?
- Education performance includes academic & functional performance
- Focuses on how the child's disability affects their ability to be involved and progress in the general curriculum
- Current, objective, measurable
- Includes the child’s strengths as well as needs
- Includes the parent’s concerns
Annual Goals & Objectives

- At least one set of measurable annual goals (NJ still requires short-term objectives) for each identified area of need
- Goals are tied to general curriculum
- Goal should be met within one year
Services

• Special education:
  - Specially designed instruction
  - Supplementary aids & services
  - Related services
  - Transition to adult life services

• Projected date for services to begin and end

• Frequency, duration, location, & group size for services
Transition to Adult Life

• Courses of study and services needed for effective transition to adult life must be in the IEP no later than age 16 (14 in NJ Code)

• At least 3 years before student reaches age of majority, parent & student must be informed of rights that will transfer to student when they reach the age of majority
The IEP

- Participation in assessment
- Participation in non-academic activities
- Responsibility for implementation
- Monitoring of progress
- How the parent will be informed of the child’s progress @ least quarterly
Program Access

- Access to same variety of education & support services as non-disabled peers
- Equal opportunity to participate in non-academic & extracurricular activities
Placement

• The child has the right to be educated in the “least restrictive environment” where their IEP can be implemented and they can make progress toward their annual goals.

• The child has the right to attend the school she would attend if she did not have a disability.

• If that is not possible, she should attend a school as close to home as possible.
Continuum of Placements

• General education class, full-time
• General education class with pull-out for:
  - Related services
  - Resource room
• Self-contained class with opportunities for “mainstreaming” in general education for some academic or non-academic classes

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Continuum of Placements

- Self-contained class with no mainstreaming
- Out-of-district public or private placement
- Home or hospital instruction
- Residential placement
DISCIPLINE

• Under *Goss v. Lopez* (U.S. Supreme Court decision):
  - The right to an informal meeting with the principal before suspension, except in an emergency
  - *For removals of up to 10 days*, the right to notice of charges and evidence, and
  - The right to explain his/her side of the story
IDEA 2004 Protections

- For removal of up to 10 days, no right to manifestations determination, IEP/PBS review, or to educational services during exclusion UNLESS district policy or IEP explicitly requires
IDEA 2004 Protections

• IEP may prohibit suspension as a response to student behavior
• School personnel may consider “any unique circumstances on a case-by-case basis”
Students with Disabilities

- May be suspended for 10 consecutive or cumulative days
- Preschool students may not be suspended or expelled
All Students- **Goss v. Lopez**

- For exclusions longer than 10 days, the right to a more formal hearing to determine “guilt,” including right to:
  - Notice of charges
  - Question & present witnesses
  - Review & present evidence
  - Bring an attorney or advocate
IDEA 2004 > 10 Day Removal

- If student is determined to have committed offense that violates school code of conduct:
  - IEP team conducts manifestation determination within the 1st 10 days of removal
Exception

• No manifestation determination is required if the student:
  - Carried or possessed a gun or dangerous weapon
  - Knowingly possessed or used illegal drugs
  - Sold or solicited a controlled substance
  - Inflicted serious bodily injury on another at school, on school premises, or at school function
Manifestation Determination

- Meeting is held with district, parent, and relevant members of IEP team
- Team reviews all relevant information in student’s file, IEP, teacher observations, any relevant information from parents

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Manifestation Determination

• The behavior is a manifestation if:
  - The conduct was caused by, or had a direct & substantial relationship to the child’s disability, or
  - The behavior was a direct result of the failure to implement the IEP
If Behavior is a manifestation

• The IEP shall:
  - Conduct a functional behavior assessment & implement a positive behavior support plan, unless that has already been done
  - If a PBS plan has been developed, review & modify it as necessary
If Behavior is a manifestation

- The student is returned to the current placement no later than the 11th day following removal, unless the parent and team agree otherwise.
If Behavior is NOT a manifestation

- The student may be disciplined, suspended or expelled the same as a student without a disability, except that the student must continue to receive FAPE for any removal of more than 10 days.
If parent appeals decision

- If the parent appeals a decision to remove the student, or the decision that the behavior was NOT a manifestation of the student’s disability, pendency placement is the disciplinary setting.
Removal to IAES

• A student may be removed unilaterally by the school to an Interim Alternative Educational Setting for up to 45 schools days if it is determined that the student:
  - Carried or possessed a gun or dangerous weapon
  - Knowingly possessed or sold illegal drugs
  - Sold or solicited a controlled substance
  - Inflicted serious bodily injury on another at school, on school premises, or at school function
Removal to IAES

- A hearing officer may remove a student to an IAES if s/he determines that maintaining the student in the current placement is substantially likely to result in injury.
Removal to IAES

- The IEP team must conduct a FBA and implement a PBS plan, but only if the district had not already conducted an FBA prior to the behavior that resulted in the change of placement.
Parental Consent to the IEP

• The parent must consent to the initial IEP before it can be implemented.
• If the parent does not consent to the IEP, the district no longer has the obligation to provide FAPE.
Parental Consent to the IEP

- Once the child is receiving special education services, parental consent is not required for the district to change the IEP if they provide the parent with adequate notice and opportunity to participate in decision-making.
Parental Consent to the IEP

• If the parent disagrees with the district’s decision, the parent must request mediation or due process/impartial hearing to stop the district from moving forward with its revised IEP.
Procedural Safeguards

- The parent has the right to notice of rights in their language.
- The district must provide written responses to written requests. The district has 20 days to respond to parents; parents have 15 days to respond to the district.
- Parents have the right to notice of any proposed actions, and to a detailed, written explanation of why the district or school is planning on taking an action or refusing the request, in the parent’s language.
Procedural Safeguards

- The parent has the right to an IEP meeting upon request.
- The parent has the right to advance written notice of any proposed meeting.
- Meetings must be conducted in the parent's language.
- The parent has the right to access the information needed to be an equal participant in the meeting prior to the meeting.
- The parent has the right to bring someone with them at their discretion – a friend, relative, advocate or lawyer.
Right to Access Records

- The parent has the right to review and get copies of the child’s records before any meetings; to keep the child’s records confidential; to request removal of inaccurate or inappropriate information from the child’s records; and to attach an explanatory or disagreeing statement to the child’s records.
Right to Dispute Resolution

- If the parent disagrees with the school/district, they may request:
  - Mediation
  - Due process/impartial hearing
  - Complaint investigation

- If they request an impartial hearing, they must first give the district the chance to resolve the disagreement by participating in a “resolution session” held by the district
Right to Dispute Resolution

- Mediation & a hearing must be completed within 45 calendar days from receipt of the parent’s request
- Complaint investigation must be completed within 60 calendar days from receipt of the parent’s request
Health Care for Children with Special Health Care Needs in NJ’s Child Welfare System

Accessing health coverage & health care for CYSHCN in child welfare

Family-to-Family Health Information & Resource Center
A Project of Family Voices-NJ @ the Statewide Parent Advocacy Network

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Health Help for “Non-Parents” Raising Children

- NJ children are often eligible for state & federal benefits even if their caregivers do not have legal guardianship or custody, including health insurance.
- “Non-parents” may apply for free or low-cost health insurance for the children they are raising through Medicaid & NJ Family Care.
- For more information or to apply, contact 800-701-0710 or www.njfamilycare.org.
Medicaid Coverage

- Each state establishes its own standards for Medicaid eligibility, benefits package, & provider payment rates, within federal guidelines that set certain minimum standards and benefits
- Children under DYFS custody are eligible for Medicaid
- Children covered by Medicaid must have access to the same care & services as children with private insurance
Why is Medicaid important?

• Critical health care safety net for millions of low-income children

• Covers all services that doctor or health professional identifies as “medically necessary” including:
  - Physician & hospital visits
  - Well-child visits & health care
  - Health screenings
  - Vision care & dental services

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Sources of Medicaid in NJ

• Early Periodic Screening, Diagnosis & Treatment (EPSDT)
• State Children’s Health Insurance Program (SCHIP) (In NJ, this is Family Care-Children’s Program)
• Temporary Assistance to Needy Families
• Children with disabilities & special health care needs
EPSDT

• Medicaid’s comprehensive & preventive health program for children under 21
• Provides screening & services at medically-appropriate intervals
• Provides medically necessary health care services even if the service is not available under State’s Medicaid plan
• States must inform all Medicaid-eligible persons under 21 that EPSDT is available
EPSDT screening

- Health & developmental history, including mental health
- Comprehensive physical exam
- Appropriate immunizations
- Laboratory tests
- Health education
EPSDT additional screening (minimum requirements)

- Vision: Diagnosis/treatment for vision defects, including eyeglasses
- Dental: Maintenance of dental health, relief of pain/infections, restoration of teeth
- Hearing: Diagnosis/treatment for defects in hearing, including hearing aids
EPSDT

• **Diagnosis:** If screening indicates need for further evaluation, referral and follow-up

• **Treatment:** Health care must be made available to treat/correct/ameliorate physical, developmental, or mental health conditions discovered during screening
EPSDT - lead poisoning prevention

• Required component of screening
  - All children at age 12 and 24 months
  - Children over 24 months if no record of previous test
  - Medically-necessary diagnostic & treatment services must be provided to children with elevated blood lead levels
NJ Family Care

• What’s covered?
  - Doctor visits
  - Immunizations
  - Eyeglasses
  - X-rays, laboratory & other diagnostic tests
  - Prescriptions
  - Hospitalizations
  - Mental health services
  - Dental care for most children & some adults
NJ Family Care: Who’s eligible

• Children 18 years old and under
• Family size & income eligibility (including working families): up to 350% of poverty for child eligibility
• No exclusion for pre-existing conditions
• Plan A Medicaid
NJ Family Care: Who’s eligible

• Plan B: No premium or co-pay
• Plans C & D: Premiums & co-pays up to 5% of family income
• Immigration status: legal permanent resident or other qualified immigrant status regardless of date of entry
Welfare, Supplemental Security Income & Medicaid

• For more information, consult the Medicaid Hotline at 1-800-356-1561
• Or your local county welfare agency/Board of Social Services in the blue pages of the telephone book
Exemptions to Medicaid Managed Care Enrollment

• Families of children with complex medical or mental health needs may be allowed to continue with fee-for-service providers and not enroll in an HMO. Apply through HBC.
  - Families may request an exemption from enrolling in an HMO and remain in fee-for-service Medicaid
  - No disruption of healthcare services for children/adults with an established network of providers who meet their current medical needs

• Denials of exemption requests may be appealed through Medicaid Fair Hearing Process.
Medicaid Beneficiaries excluded from managed care:

- Those living in institutions
- Those in some home and community-based waiver programs
- Those in out-of-state placements
Managed care

• a comprehensive approach to providing and paying for high-quality medically-necessary health care services -
• from routine to emergency -
• within a coordinated system -
• in a cost-effective manner
Medically Necessary: requirements for children

- The service is appropriate for the age & health status of the child;
- the service will aid overall physical & mental growth & development; and/or
- the service will assist in achieving or maintaining functional capacity.
Health Maintenance Organizations (HMOs)

- The health plans that provide the Benefits Package for the Medicaid managed care system in New Jersey
- HMOs provide coverage for enrollees in a geographical area for a prepaid, fixed premium (capitation)
- HMOs provide a larger menu of services than traditional fee-for-service Medicaid plans (for example, preventive)
What managed care covers

- Plans differ in services provided
- Member handbooks list covered services
- Services are covered only if medically necessary for the specific health needs
- Emergency room care is covered only for a true emergency
- Specialty services usually require a referral from the Primary Care provider
Primary Care Provider

• A physician or other professional chosen from the managed care plan network who is responsible for managing all the child’s health care needs
Managed Care: PCP and Referrals

Primary Care Provider

Specialist

Emergency

Hospital

Medical Equipment

Lab

Therapy

... from the Boggs Center – University Affiliated Program

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Covered Services

HMO benefits package:
• Primary & specialty care
• Preventive health care & counseling
• Health promotion
• EPSDT (Early Periodic Screening, Diagnosis, & Treatment)
• Emergency Medical care
• Inpatient hospital care (acute, rehab, specialty)
• Outpatient hospital
• Laboratory
• Radiology
• Audiology
Covered Services

- HMO benefits package
  - Inpatient rehabilitation
  - Podiatrist
  - Chiropractor
  - Optometrist
  - Optical appliances
  - Hearing aid services
  - Home health (with limits)
  - Hospice
  - Durable Medical equipment & medical supplies
Covered Services

- HMO benefits package
  - Prosthetics & orthotics (including shoes)
  - Dental
  - Organ Transplants
  - Post-acute care
  - Mental health/substance abuse for DDD clients (non-DDD clients continue to receive mental health services on a fee-for-service basis as they did in the past)
Carve out Services

• HMO “carve out” services, which are still paid for by Medicaid fee-for-service:
  • PT, OT, Speech
  • Some transportation
  • Mental health & substance abuse for non-DDD clients
  • Medication for special needs enrollees (in aged, blind and disabled category)

Home health care
Care Management—Very Important Service!

• HMO assigns a care manager
• All children with special healthcare needs in NJ Medicaid Managed Care are entitled to a care manager!
  - Usually a nurse or social worker
  - Care manager helps coordinate care & is the 1st person to contact with a question or concern
  - Request a care manager if the child is not automatically assigned one!
Dealing with Emergencies

- If the parent/foster parent, as a “prudent layperson,” decides that the child has an emergency medical condition, the HMO pays for treatment of emergencies without need for a referral or pre-approval process.
- Call 911 or go to nearest emergency room.
- DON’T use emergency room for routine care!
Dealing with Urgent Care

• Call HMO 24-hour toll-free number if the child needs urgent attention (attention within 24 hours but not an emergency)
• The Primary Care Provider will provide or arrange for urgent care
For a problem with...

• *A provider*, talk to the care manager or PCP
• *The care manager or PCP*, call the HMO’s member services
• *With the HMO not meeting the child’s needs*, call
  - Medicaid Managed Care Hotline 800-356-1561
  - or Managed Care Consumer Assistance Program (MHCCAP) 888-838-3180
Dispute Resolution...

• Call HMO/plan member services and make a specific complaint
• If member services can’t solve the problem in 24 hours, register a grievance with the HMO or plan by phone or letter
• If not satisfied with the HMO’s solution, call the state Medicaid hotline or the MHCCAP helpline.
• Keep records of all contacts!
Appeals

• HMO must provide notice in writing 10 days before it denies or limits covered services.
• File an appeal of the denial with the HMO. Contact SPAN’s F2F 800–654-SPAN.
• Sometimes appeals are resolved easily, but the process can become complicated. Turn to the care manager or to the Community Health Law Project or Legal Services of New Jersey for advice.
Appeals – stages

- **Internal (within HMO or insurance plan): two stages**
  - 1. With HMO/plan’s medical director or MD who denied services
  - 2. With physicians not involved in 1st internal appeal who might care for children with similar needs

- **External (if internal gives unsatisfactory results)**
  - 3. To NJ Dept. of Health and Senior Services to refer appeal to an Independent Utilization Review Organization ($2). IURO reviews case & (if it accepts it) issues a decision to complainant &/or the PCP, & the HMO.
Appeals …

• At each stage, if the HMO/plan continues to deny services, it must provide notice in writing within a specified time, giving the
  - reasons for denial and
  - how to proceed to the next stage

• At any time during the appeals process, a Medicaid Fair Hearing may be requested.

• Ask for an immediate review in any urgent situation!

• Keep good records of all interactions.
Medicaid Fair Hearing

• Within 90 days of service denial, file for a fair hearing
• Call the Medicaid Hotline at the NJ Department of Human Services 800-356-1561
• At a fair hearing, an impartial judge listens to all positions including witnesses.
• It’s a good idea to take legal representation to the fair hearing. Call Community Health Law Project or Legal Services of New Jersey.

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Top Resources for Questions about Medicaid Managed Care

- HMO Care manager
- Medicaid managed care hotline: 1-800-356-1561
- Managed Health Care consumer Helpline: 1-888-838-3180
- Health Benefits Coordinator (HBC): 1-800-701-0720
Case Management Services

• In each NJ county, case management units work with families to:
  - Promote family-centered, community based care
  - Coordinate service delivery (Service Coordination for infants and toddlers with developmental delays & disabilities, birth to 3, and Case Managers for children and youth 3 to 21)
How does Case Management work?

• A nurse or social worker coordinates with the family and the child’s physician to:
  - Compile the child’s medical records into one file
  - Develop a unified plan of care to address the child/family’s needs
  - Identify resources you need so the child receives appropriate care.
How to find out more?

• For information about county-based Special Child Health Services Case Management Units, contact the NJ Special Child Health Services Program, NJ Department of Health & Senior Services, at 609-777-7778

• SCHS is funded by US DHHS - Maternal & Child Health Block Grant
Helpful Hints

- Get it in writing!
- Always ask in writing.
- Keep logs & copies of everything.
- Bring someone.
- Don’t be afraid to ask, or speak up.
- Stay on top of the child’s progress.