

**SOCIAL SERVICES
CHILD PROTECTIVE SERVICES
PERMANENCY PLANNING PROCEDURES (8.10.8 NMAC)
PR 18 – EDUCATION**

- 1** **ISSUING AGENCY:** Children, Youth and Families Department (CYFD)
Protective Services Division (PSD)

- 2** **EFFECTIVE DATE:** August 16, 2019 [09-29-2015; 03-15-2016; 08-10-2017; 01-29-2019; 08-16-2019]

- 3** **CORRESPONDING POLICY:** 8.10.8.18 NMAC

- 4** **OBJECTIVE:**
 1. The purpose of PR 8.10.8.18 is to implement PSD’s policies regarding educational services for children in custody.
 2. Definitions found at 8.10.8.7 NMAC also apply to these Permanency Planning Procedures.
 3. The term Permanency Planning Worker (PPW) may apply to any PSD worker acting in the capacity of a PPW and who meets the qualifications to perform the job duties assigned to a PPW.

- 5** **EDUCATIONAL NEEDS OF THE CHILD:**
 - 5.1** **Enrollment in School:** A school aged child in PSD custody must be enrolled in school. A child who attends private school may continue to attend the private school as long as the parent, guardian or custodian continues to provide the financial resources for attendance. When a child enters PSD custody, the child should continue to attend their school of origin, which is the school in which the child is enrolled prior to entering PSD custody, unless contrary to the child’s best interest (see paragraphs 9 and 9.1 below for determination of best interest). The PSD caseworker is required to make reasonable efforts to maintain the child’s school of origin, and work with the foster care provider, and the school district to maintain the child’s school of origin when in the child’s best interest. The PSD caseworker shall identify barriers that may prevent the child from attending the school of origin. If there are concerns regarding the ability to maintain a child’s school of origin, the PSD caseworker, in consultation with the child’s team and the PSD county office education point of contact, arranges for a best interest determination meeting. *(See paragraph 9 “Maintaining Educational Continuity and Stability” below)* [09-29-2015; 03-15-2016; 08-10-2017; 1-29-2019]

 - 5.2** **Notification Letter to the School and Academic Progress:** When a child comes into custody, or changes schools while in custody, the PSD caseworker provides a copy of the “Notification Letter to Schools” to the school’s designated point of contact. The “Notification Letter” is located on the CYFD Intranet. The purpose of

the letter is to:

1. notify the child's school that the child is in PSD custody;
2. provide the school with the foster care provider's contact information regarding day-to-day contact, signing of permission slips and notification of absences;
3. make a request to the school for the child's educational records; and
4. provide the school with the child's educational decision maker's contact information.

The PSD caseworker is responsible for:

1. inquiring about the child's academic progress and if the child is reading at the appropriate grade level;
2. determining whether or not the child has an Individualized Education Plan (IEP), or if there is a need for an IEP, and attending and documenting IEP meetings;
3. coordinating with the school to obtain progress reports on academic achievement;
4. assisting the child or youth in credit recovery or other interventions to ensure that the child or youth is making academic progress and receiving the necessary support services to successfully graduate from high school;
5. documenting academic achievement in the FACTS record a minimum of two times per year at the beginning of the school year (August/September) and at the end of the school year (May/June) noting the school, start and end dates, grade, and completion status (pass/fail) in the education icon; and
6. supporting child or youth who must change schools in building relationships in their new schools. This can be accomplished by ensuring access to sports and other school activities and making connections with supportive school personnel such as counselors and social workers.

The PPW is responsible for informing the parent, guardian or custodian of the child's educational status and academic progress. [09-29-2015; 03-15-2016; 08-10-2017]

- 5.3 List of Children in PSD Custody:** At the beginning of each semester of the school year, the COM provides a list of children in PSD custody to the school's designated point of contact. This list, which is marked "confidential" and not

subject to re-release, contains the name, date of birth, current school attended, last school attended, foster care provider and name of the PPW for all children remaining in foster care past the ten-day custody day hearing. [09-29-2015; 03-15-2016; 08-10-2017]

5.4 Social Security Act §475(1)(C) and §475 (5)(D): The Social Security Act §475(1)(C) and §475 (5)(D) requires that the child welfare agency (Protective Services Division):

1. to include current copies of the child's educational records in the case file, to the extent that the records are available and accessible;
2. ensure the educational records include the names and addresses of the child's educational providers, the child's grade level performance, and any other relevant education information;
3. ensure that the case plan addresses identified educational needs; and
4. ensure, to the extent that the records are available and accessible, foster care providers receive the child's educational records. [09-29-2015; 03-15-2016; 08-10-2017]

6 FAMILY INFANT TODDLER (FIT) PROGRAM AND EARLY INTERVENTION PROGRAMS (CHILD FIND): Early educational intervention needs and information for pre-school children is documented in FACTS. A referral is made to the FIT program for all children under age three in PSD custody. A child age three to kindergarten in PSD custody is evaluated for early intervention by the local school program. All educational services are documented in the FACTS Education window. [12-15-2004; 09-29-2015; 03-15-2016]

7 SPECIAL EDUCATION/SURROGATE PARENT: If a surrogate parent is required and appointed by the school district, the parent participates in the education planning and assessment concerning the child and attends school planning conferences at which the IEP is developed and reviewed. The PSD caseworker documents the appointment of a Surrogate Parent on the Special Education/Surrogate parent tab in the Education window in FACTS. If school personnel do not act to appoint a surrogate parent, then the COM contacts the school board to make a specific request. [12-31-1997; 09-24-2001; 12-15-2004; 08-20-2007; 09-29-2015; 03-15-2016; 08-10-2017]

8 EDUCATIONAL DECISION MAKER: For children in custody, it is presumed that the child's parent will make educational decisions on behalf of their child, unless the court determines that appointing the parent would be contrary to the best interest of the child. If the parent is unable or unwilling to fulfill this role, PSD requests the court appoint an educational decision maker. Persons that the court may appoint include the child's foster care provider, or other individual, including a person designated by the child. For children in foster care who receive special education services, a surrogate parent may be appointed to make education decisions on behalf of the child. Persons that the court may appoint

include the child's foster care provider or other individual who may fall under the jurisdiction of the court. A CYFD employee may not serve as the educational decision maker. The PSD caseworker shall notify the court of any changes to the educational decision maker, especially when there is a change of placement for the child or youth.

The PSD caseworker engages the child or youth as a partner in decision making about the child or youth's education. In many situations, there is an educational decision maker that has been appointed to make many decisions regarding the child or youth's education. The PPW supports the child or youth in connecting with the educational decision maker to ensure the child or youth is a partner in the decision making process. [09-29-2015; 03-15-2016]

9 **MAINTAINING EDUCATIONAL CONTINUITY AND STABILITY:** When a child enters into foster care, the PSD caseworker is required to make reasonable efforts to maintain the child's school of origin. If there are concerns regarding the ability to maintain a child's school of origin, then the PSD caseworker, in consultation with the child's team and the PSD county office education point of contact or designee, shall arrange for a best interest determination meeting. The child's team must include, but is not limited to:

1. PSD caseworker;
2. PSD county office education point of contact or designee;
3. child or youth;
4. child's attorney; or
5. foster care provider;
6. child's parent or guardian, when applicable;
7. child's educational decision maker; and
8. local education agency point of contact (LEA POC) or other educational representative.

Maintaining the child in their school of origin is a priority. Children in foster care should not be moved to a new school unless it has been determined it is not in the child's best interest to remain in their school of origin (see paragraph 9.1 for best interest determination). Placement with a relative is a priority placement and school of origin should not prevent placement of a child with an appropriate relative. (*See paragraph 9.1 "Best Interest Determination Meeting" below*)

When a child's placement changes, the PSD caseworker, in consultation with the child's team, must make reasonable efforts to continue to maintain the child in their same school to avoid multiple school changes. If a child has entered into foster care, and the child remains in their school of origin, the PPW needs to provide the LEA POC with the "Notification Letter to Schools for Children Coming into PSD Custody." This letter is located on the CYFD intranet under "PS Documents," then "Forms." (*See paragraph 5 "Educational Needs of the Child" above*)

If a child is placed in a home outside of the attendance area of their school of origin, and there is a question whether it is in the child's best interest to remain in their school of

origin, then the PSD caseworker and the child's team work collaboratively to make school placement decisions through a best interest determination meeting. All participants must be invited to the meeting. Those present shall make a best interest determination regarding school of origin. (*See paragraph 9.1 "Best Interest Determination Meeting" below*)

The PSD caseworker works with the PSD county office education point of contact to arrange for a best interest determination meeting. The point of contact invites the child's team, which must include the LEA POC, to the best interest determination meeting to jointly review and discuss the appropriateness of the child's current educational setting, and factors that may impact the child's best interest and well-being. [09-29-2015; 03-15-2016; 08-10-2017; 01-29-2019; 08-16-2019]

9.1 Best Interest Determination Meeting: The PSD caseworker or the county office education point of contact invites the child's team, including the LEA POC, to a best interest determination meeting when a child's school of origin cannot be maintained. Placement with a relative, either out of county or who lives at a distance greater than 25 miles, will not require a Best Interest Determination Meeting. The meeting is a collaborative effort to review the appropriateness of the current school and to discuss factors that affect the child's best interests, while seeking to prevent multiple changes in schools. The Best Interest Determination Meeting shall occur within two business days of child's placement change. Such factors may vary depending on context, but in order to make a well-informed determination, factors may include but are not limited to:

1. placement of the child, specifically, placement with a relative when that relative resides in another school district or distance that is too great and causes distress for the child, including relatives who live out of county or who lives at a distance greater than 25 miles;
2. placement of the child's siblings;
3. the child's preference in school;
4. how many changes in schools the child has experienced, including history of school transfers and how those transfers impacted the child;
5. preferences of the child's parent or educational decision maker;
6. influence of the school climate on the child, including current and potential safety considerations;
7. activities, clubs or sports the child may be involved in;
8. the availability and quality of the services in the school to meet the child's educational and socioemotional needs;

9. how the length of the commute would impact the child, based on the child's developmental stage; and
10. whether the child is a student with a disability under the IDEA who is receiving special educations 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
11. whether the child is an English Learner (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.

The "Education Best Interest Determination Form," located on the PSD intranet under *Protective Services > PS Documents > Forms*, is completed during the meeting. Once a determination has been made, copies are provided to all parties.

The child must remain in their school of origin until a decision is made regarding school of origin through a BID meeting or relative placement out of county. When school changes are made by PSD before the best interest determination team meeting, the decisions of PSD are subject to review and discussion, and all participants on the child's team should strive to reach agreement. [8-10-2017; 1-29-2019; 08-16-2019]

9.2 Transportation: If a child is placed in a home outside of the attendance area of their school of origin, then the PSD caseworker or the county office education point of contact shall collaborate with the LEA POC by discussing options in providing transportation for the child in order to maintain their school of origin. Possible options include:

1. Mileage Reimbursed to Foster Care Providers: The child's team, including the LEA POC, shall address the payment of mileage reimbursement for transportation of foster children to school. Pursuant to the McKinney-Vento Act, the LEA shall assist with reimbursement. PSD may also assist to reimburse foster care providers for mileage when transporting foster children. (See *PSD Permanency Planning Procedures PR 27 – Maintenance Payments and Incidentals, paragraph 7.1 – Incidental Expenses and Limits*)
2. Foster Care Provider Unable to Provide Transportation: Foster Parents are encouraged to provide transportation for the children placed in their homes. If a foster care provider cannot transport the child to school, then other options are examined. Some examples include:
 - a. use of prudent parenting to assess the appropriateness of arranging use of public transportation, rides or carpools to and from school

with relatives, neighbors or friends; or

- b. the provision of transportation by the LEA utilizing Title I funds, or other funds available for this purpose, or as part of a child's transportation needs as outlined in the child's IEP.

If a child is placed outside of the county of their school of origin, then the point of contact invites the child's team, which must include the LEA POC, to a best interest determination meeting to jointly review and discuss how the length of the commute would impact the child, based on the child's developmental stage, except in instances where the child is placed with a relative. In this situation the child should be immediately enrolled in their local school. The LEA and CYFD work collaboratively to ensure the child is appropriately placed in all classes and all activities are maintained.

If there is a dispute regarding transportation and the best interest determination, then the PSD caseworker or county office point of contact arranges for further discussion with the child's team until an agreement has been made that will serve the child's best interest and well-being. When feasible, the child must remain in their school of origin until the dispute has been resolved and an agreement has been made, subject to PSD's ability to make final decisions when there is a dispute, as set out in section 9.4 below. [08-10-2017; 08-16-2019]

9.3 Immediate Enrollment: When it has been determined, as a result of the best interest determination meeting or placement with a relative outside of the county, it is not in the child's best interest to remain in their school of origin, then the child is immediately enrolled in their new school without delay. Per the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA), the PPW only needs documentation of custody to enroll the child in a new school. Birth certificates, transfer of education records, immunizations, and other requests for records must not hold up enrollment into new school. [08-10-17; 08-16-2019]

9.4 Dispute Resolution: The child's best interest determination team should make every effort to reach agreement regarding the appropriate school placement, including those situations where PSD has made a decision to act in emergency circumstances to change a child's enrollment, prior to any agreement made by the best interest determination team meeting. If during the best interest determination meeting, there is a dispute regarding whether or not it is in the child's best interest to remain in their school of origin, then the final best interest determination decision should be made by PSD, specifically, by the Regional Office Manager (ROM), who shall staff the decision with the PSD caseworker and COM. PSD, as the legal custodian of the child has the final say in the matter of placement and school enrollment because PSD is uniquely positioned to assess vital non-educational factors such as safety, sibling placements, the child's permanency goal, and the other components of the case plan. PSD also has the authority,

capacity, and responsibility to collaborate with and gain information from multiple parties, including parents, children, schools, and the court in making these decisions. The best interest determination decision by the ROM should be made within 48 hours of the best interest determination meeting and a written explanation should be provided to all involved parties. If the LEA or a child welfare agency disagree with the decision from the best interest determination, they may request a review from the Secretary of the Children, Youth and Families Department or designee and the Secretary of the Public Education Department or designee. This decision shall occur within three days of the formal request. If the foster parent, youth attorney, Guardian ad Litem or Educational Decision Maker disagrees with the best interest determination decision they may request an appeal through the Public Education Department. The decision made by the Secretaries cannot be overturned by the PED appeal process. A party may request Court intervention, at any time if they do not agree with the decision of the best interest determination decision, PED decision or decision by the Secretaries of the Department. [08-10-2017; 01-29-2019; 08-16-2019]

10 COURT HEARINGS: The PPW informs the court of the following at dispositional hearings, judicial reviews, and permanency hearings:

1. that steps to ensure that the child's educational needs are met and being documented;
2. that the case plan for any youth 14 years of age or older contains the youth's educational and post-secondary goals; and
3. that PSD provides a description of the child's foster care placement and whether it is appropriate in terms of the educational setting and proximity to the school in which the child was enrolled at the time of placement. [09-29-2015; 03-15-2016]