

# CHILD WELFARE LAW AND RELATED LAWS UPDATE

August 12, 2016



# Disclaimer

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- This presentation was prepared by Patrick Pascual in his personal capacity. The views and opinions expressed in this presentation are presenter's own and do not reflect the views and opinions of the State of Hawai'i, Department of the Attorney.
- This presentation is not intended to be a substitute of your diligent review of the statutes, court rules and appellate cases discussed during this presentation.



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# FEDERAL LAWS

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# FYI:

## 42 U.S.C. § 675 (1) (G)

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(1) The term "case plan" means a written document which meets the requirements of section 675a of this title and includes at least the following:

(G) A plan for ensuring the educational stability of the child while in foster care, including- These are children who are first placed in foster care or changed foster care placement, and placed in a shelter while waiting placement into a foster home

(i) assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and

(ii) (I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 7801 of title 20) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or

(II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.



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**EVERY STUDENT SUCCEEDS ACT  
OF 2015 (“ESSA”), P.L. 114-95  
(ENACTED DECEMBER 10, 2015)**

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# Every Student Succeeds Act

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- Reauthorized and Amended the Elementary and Secondary Education Act (“ESEA”), and replaces No Child Left Behind.
- Clearly makes State and Local Education Agencies Jointly Responsible with State and Local Child Welfare Agencies for the Educational Stability of Children in Foster Care.
  - Each State’s ESEA Title I Education Plans Must Address the Educational Stability of Youth in Foster Care, and Its Collaboration with Child Welfare Agencies
- Amended the McKinney-Vento Act.

# ESSA: ESEA Amendments (fyi)

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- DOE is both the state educational agency (“SEA”) and the local educational agency (“LEA”).
- DHS-CWS is both the state (“SCWA”) and the local (“LCWA”) child welfare services agency.

# ESSA: ESEA Amendments

## State Plans

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State ESEA Title I Plans Shall Describe the Steps that the State Education Agency (DOE) will take to Ensure Its Collaboration with the State Child Welfare Agency (DHS-CWS) to Ensure the Educational Stability of Children in Foster Care:



# ESSA: ESEA Amendments

## State Title I Plan (cont.)

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- When a Child is Placed in Foster Care, the Child Shall Remain Enrolled in the Child's School of Origin Unless it is Determined that it is Not in the Child's Best Interests to Remain in the Child's School of Origin.
  - Consider all Factors Concerning the Child's Best Interests Including the Consideration of the Appropriateness of the Current Educational Setting and the Proximity to the School in which the Child is Enrolled at the Time of Placement.

# ESSA: ESEA Amendments

## State Title I Plan (cont.)

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- When it is Determined that it is Not in the Child's Best Interests to Remain in the School of Origin, the Child Shall be Immediately Enrolled in the New School.
  - Even if the Child Does Not Have School Records to Enroll in the New School.
  - The New School Shall Immediately Contact the Previous School to Obtain All Academic and Other Relevant School Records.

# ESSA: ESEA Amendments

## State Title I Plan (cont.)

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- Designate a Point of Contact for the State Child Welfare Agency:
  - Oversee the State Education Agency's Educational Stability Responsibilities under Title I;
  - Cannot be the Same Person Who is the State McKinney-Vento Coordinator.

# ESSA: ESEA Amendments

## State Title I Plan (cont.)

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Cite: ESSA Title I, Part A § 1005 (g) (1) (E);  
ESEA Title I, Part A § 1111 (g) (1) (E); 20  
U.S.C. § 6311 (g) (1) (E).

Implementation Date: December 10, 2016.

# ESSA: ESEA Amendments

## Local Title I Plans

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Local ESEA Title I Plans Shall Provide Assurances That it Will:

- Collaborate with the State/Local Child Welfare Service Agency to:

# ESSA: ESEA Amendments

## Local Title I Plan (cont.)

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- By December 10, 2016, Develop and Implement Clear Written Procedures for the Funding and Arrangements for the Transportation of Foster Youth to Maintain Them in their School of Origin. The Procedures Shall:

# ESSA: ESEA Amendments

## Local Title I Plan (cont.)

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- Ensure that Foster Youth who Need Transportation to the School of Origin Promptly Receive it in a Cost-Effective Manner, and In Accordance With the Child Welfare Agency's Authority to Use (Social Security Act) Title IV-E Funds to Provide Transportation under 42 U.S.C. § 675 (4) (A).

# FYI:

## 42 U.S.C. § 675 (4) (A)

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The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.



# ESSA: ESEA Amendments

## Local Title I Plan (cont.)

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- Ensure that if there are Additional Transportation Costs, the Local Educational Agency will Provide Transportation to the School of Origin if:
  - It is Reimbursed by the Child Welfare Agency,
  - The Local Educational Agency Agrees to Pay the Costs, or
  - The Two Agencies Agree to Share the Costs.

# ESSA: ESEA Amendments

## Local Title I Plan (cont.)

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- Designate a Point of Contact for the Local Child Welfare Agency, If the Local Child Welfare Agency Notifies the Local Educational Agency in Writing that it has Designated a Point of Contact.

# ESSA: ESEA Amendments

## Local Title I Plan (cont.)

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Cite: ESSA Title I, Part A § 1006 (c) (5); ESEA Title I, Part A § 1112 (c) (5) ; 20 U.S.C. § 6312 (c) (5)

# ESSA: McKinney-Vento Amendments

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- Deleted Children “Awaiting Foster Care Placement” from the Definition of “Homelessness,” effective December 10, 2016.
- Now covered by the Educational Stability Provisions of the ESSA.
- ESSA § 9105 (a) (1), McKinney-Vento Act § 725 (2) (B) (i); 42 U.S.C. § 11434a (2) (B) (i).



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# INDIAN CHILD WELFARE ACT

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# Bureau of Indian Affairs

## 2015 Guidelines for State Courts

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- Replaced the 1979 Guidelines.
- Effective February 2015.
- <http://www.bia.gov/cs/groups/public/documents/text/idc1-029637.pdf>

# Bureau of Indian Affairs

## ICWA Rules and Regulations (2016)

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- Legally Binding Federal Guidance to Implement ICWA
- Provides Uniform Practices and Interpretation
- Effective December 12, 2016
- Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38, 778 (June 14, 2016) (to be codified at 25 C.F.R. Part 23).
- <https://www.gpo.gov/fdsys/pkg/FR-2016-06-14/pdf/2016-13686.pdf>



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# HAWAII LAWS

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# HAWAI'I COURT RULES

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# Hawai'i Rules of Appellate Procedure ("HRAP")

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## Reminder:

**RECPA Rule 1 Scope.** These rules shall govern in all appeals from child protective proceedings. "Child protective proceeding" means any court proceeding conducted pursuant to HRS Chapter 587A.

To the extent these Rules to Expedite Child Protective Appeals conflict with the Hawai'i Rules of Appellate Procedure, these Rules to Expedite Child Protective Appeals shall prevail. In all other respects, the Hawai'i Rules of Appellate Procedure, the Hawai'i Electronic Filing and Service Rules, and the Hawai'i Court Records Rules apply.

# HRAP Amendments (cont.)

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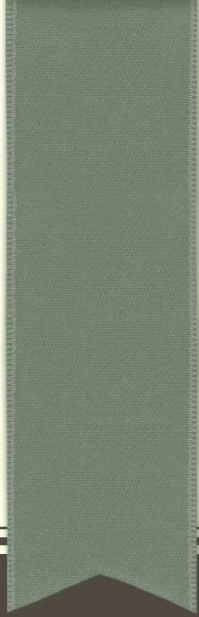
- HRAP Rule 12.1 Jurisdictional Statement.
  - (e) Sanctions. Appellant's failure to file the jurisdictional statement may result in sanctions, including dismissal of the appeal, following notice and a meaningful opportunity to be heard.  
[RECPA Rule 10 refers to HRAP Rule 12.1].
  
- HRAP Rule 29 (b): Requests for Order to Extend Time to File an Appellate Brief.
  - The request (motion) must be made (filed) at least **five days** before the brief is due.

# HRAP Amendments (cont.)

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- HRAP Rule 28 (b) (3): Citations/References to the Record on Appeal
  - Record:
    - Description of the Document
    - Docket Number
    - Electronic (pdf) Page Number
  - Transcripts:
    - Docket Number
    - Date of the Transcript
    - Electronic (pdf) Page Number



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# HAWAI'I APPELLATE CASES

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# *Waldecker v. O'Scanlon*

137 Hawai'i 460, \_\_\_ P.3d \_\_\_, 2016 WL 3364697 (2016)

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- Overruled the *Nadeau* and *Hollaway* ICA decisions on the two-step test to determine whether to modify/change a child custody order.
  - The ICA test required a determination of a “material” change of circumstance before determining whether it is in the child’s best interests to modify/change the custody order. Analysis stopped if there was no “material” change of circumstance, without considering the child’s best interests.
  - The two-step test was inconsistent with the HRS § 571-46 (1) & (6) which required an analysis of the best interests of the child.
- Test: Whether there has been such a change of circumstances that a modification/change of the custody order would be in the child’s best interests.

*State v. Kony,*  
\_\_\_ Hawai'i \_\_\_, \_\_\_ P.3d \_\_\_, No. SCWC-12-0001114,  
2016 WL 929060 (May 14, 2016)

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- Confirmed ruling in *State v. Batangan*, 71 Haw. 552, 799 P.2d 48 (1990):
  - Expert testimony was necessary to explain the patterns of behaviors of child sexual abuse victims.
  - Such testimony is helpful to explain the “bizarre” behavior of child sexual abuse victims.
- Expert testimony on “delayed reporting” by child sexual abuse victims was necessary to explain this behavior.
- Statistical evidence may have the prejudicial effect of misleading the jury and may be inadmissible under HRE Rule 403.
- In this case, the expert witness’ testimony on statistical evidence may have been misleading and inadmissible under HRE Rule 403. However, the defendant did not preserve this issue for appeal by objecting under HRE Rule 403. The defendant’s objection was based on relevancy.
- Lesson Learned: Objections must be on specific grounds.

# Summary Disposition Orders & Memorandum Opinions

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*THE END*

*That's All Folks!!!*