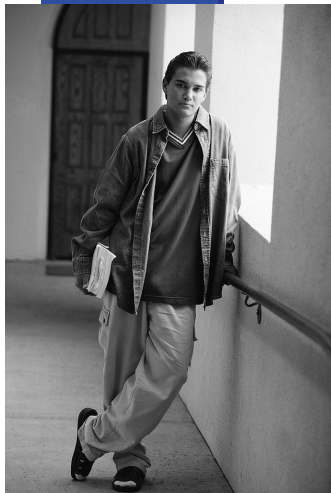


This document pre-dates an amendment to the Family Educational Rights and Privacy Act, which allows for easier access of school records to child welfare agencies. 20 U.S.C. § 1232(g)(L).

For more information, see “Q&A How do Recent Changes to FERPA Help Child Welfare Agencies Get Access to Education Records” available at http://www.fostercareandeducation.org/Database.aspx?EntryId=1833&Command=Core_Download&method=inline.

Learn more about data and information sharing between child welfare and education agencies at <http://www.fostercareandeducation.org/AreasofFocus/DataInformationSharing.aspx>.

**Judicial Guide to Implementing
the Fostering Connections to
Success and Increasing
Adoptions Act of 2008
(PL 110-351)**



**Center on
Children and the Law**



Section 204: Educational Stability

Overview

Federal law has long required that a child be placed within reasonable proximity of the child's home and that proximity to the child's school be considered when making all placement decisions. Fostering Connections took the additional step to **require** that both proximity and appropriateness of the educational setting be considered when making all placement decisions. Fostering Connections also **requires** child welfare agencies to coordinate with local education agencies to *ensure* that children remain in the same school at the time of placement, unless it would *not* be in their best interest to remain in the same school. If it is *not* in the child's best interest to remain in the school at the time of placement, the state must *ensure* immediate enrollment in a new school with all of the educational records of the child provided to that new school.

Fostering Connections also allows for some federal reimbursement for Title IV-E eligible school-age children for the cost of reasonable transportation so the child can remain in the school in which he or she is enrolled at the time of placement under the definition of foster care maintenance payment. States were previously (and continue to be) able to receive some federal reimbursement for school transportation, as well as transportation for parents, foster parents, or children to school meetings or extracurricular events, as an administrative cost.

Finally, states are now **required** under Fostering Connections to ensure all Title IV-E eligible children in foster care, or receiving kinship guardianship or adoption assistance payments, are full-time students or have completed secondary school.

Judicial Considerations

- The Program Instruction clearly emphasizes the courts important role in educational stability.
- Is the court asking about educational stability, as part of each child's individual child welfare case plan, at the initial removal hearing, and at other subsequent permanency review hearings?
 - Is the court specifically asking questions to address:
 - educational stability for the child;
 - how to keep the child in his or her current school;
 - who will provide transportation to help the child remain in that school, if necessary?
 - Is the court making a best interest determination, ensuring the child is immediately enrolling in a new school, if not in his or her best interest to remain in his or her previous school, and monitoring the child's ongoing educational progress?

- Is the court considering the rights afforded children in foster care under the federal McKinney-Vento Act; the overlap between McKinney-Vento and Fostering Connections; and the different obligations of the education and child welfare agencies?
 - Interagency collaboration between McKinney-Vento State Coordinators, local Offices of Education, local school liaisons and the child welfare system is critical to effective implementation of both laws.
 - **See:** Legal Center for Foster Care and Education fact sheet on the overlap of these two laws - [How Fostering Connections and McKinney-Vento Can Support School Success for all Children in Out-of -Home Care](#)
- Is the court monitoring a child's ongoing school attendance and participation, especially in light of the new requirement that state child welfare agencies must include an assurance in their Title IV-E State Plan that all Title IV-E eligible children in foster care (of minimum compulsory school age) are enrolled in and attending school?
 - Courts should require child welfare agencies, and other appropriate parties to a case, to report on the child's ongoing school attendance and participation.
 - Courts should also consider working with the child welfare and education agencies to develop a system to share information to ensure and track school enrollment and attendance, as well as other critical data to evaluate student's stability, continuity and educational progress.
- Is the court taking a leadership role in ensuring collaboration between the state education agency, child welfare agency, local school districts and possibly other systems?
 - Judicial leadership around this issue is critical, and judges play a key role as conveners of multiple systems, in a broader context of system reform.
 - Consider adding education issues to the scope of an existing, or forming a new, interagency workgroup or committee and strategize how child welfare, education and other systems can effectively collaborate to ensure school stability and continuity and increase graduation rates and/or high school completion.
 - Consider having that interagency group develop policies, protocols or agreements outlining the agreed upon process for making best interest determinations (including factors to consider and individuals to involve), expedited enrollment procedures, record transfer processes, and identifying education decisionmakers.
 - School districts are generally willing to help when collaboratives are formed. Grant opportunities often have a better chance with multiple stakeholders.
- The court's specific authority over the education agency may vary by state or jurisdiction, and impact whether the court can order the education agency to comply.
 - Regardless of the court's authority over the schools, in *all* cases judges can grant motions by parties to the case to request that the education agency or local school district representative appear to respond to questions or provide information to the court.

Questions to Ask from the Bench

- Is the child enrolled in and regularly attending school?
 - If not, order a party to the case to immediately enroll the child.
- Is the school the child is attending appropriate to meet the child's education needs?
 - If not, appoint someone to immediately advocate for assessments or appropriate services for the child.
- When a change in living placement is occurring, has the proximity to the child's current school been considered when identifying the new living placement?
 - If not, order the agency to consider and document proximity to school.
- When a change in living placement has occurred, did the child stay in the same school?
 - Was it determined to not be in his or her best interest to stay? If not, why not?
 - Are there efforts being made to either keep him or her in the same school or return him or her to that school?
 - What are the barriers to making that happen, if any?
- Has transportation been arranged and provided? If the child is placed outside of the school district's boundaries, is the child welfare agency taking ultimate responsibility to ensure needed transportation is provided (either alone or in collaboration with the education agency)?
- If it is not in the child's best interest to stay in the same school, why not and who made that determination? Are all parties in agreement? Was the youth's perspective included in the decision?
- Was the child immediately enrolled in new school, if not in his/her best interest to stay?
 - Have his/her records been transferred? How quickly were the records transferred?
 - If not enrolled immediately or records not transferred, order an individual to take immediate action.
 - Who has spoken to the school about the trauma that the child may be experiencing by separation from his/her family?
- Does anything else need to be ordered to ensure school stability for this child?
- Has the parent consented to the release of the child's education records to the child welfare agency and other advocates in the case?
 - Does the court need to issue an order to allow the school to release these records to any necessary individuals including the child's attorney or GAL and the child welfare agency?
 - **See:** [Mythbusting: Breaking Down Confidentiality and Decision-Making Barriers to Meet the Education Needs of Children in Foster Care](#) or [Q & A: Information Sharing to Improve Educational Outcomes for Children in Out-of-Home Care](#)
- Is there a specific individual identified who will take the lead to ensure school stability and all necessary education services and supports (including ensuring credit calculations and graduation requirements are addressed), or does someone need to be identified?
- Who is the child's education decision maker for general and/or special education?
 - If no one is identified, does one need to be identified or appointed?
 - Are all IEPs and 504 plans current?
 - For more information about the role of the judge in making special education decisionmaker appointments, **see:** [Special Education Decision Making: Role of the Judge](#).