



AMERICAN BAR ASSOCIATION

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TESTIMONY

of

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On behalf of the

AMERICAN BAR ASSOCIATION

before the

SUBCOMMITTEE ON INCOME SECURITY AND FAMILY SUPPORT

COMMITTEE ON WAYS AND MEANS

UNITED STATES HOUSE OF REPRESENTATIVES

for the hearing
on

**“Implementation of the Fostering Connections to Success and
Increasing Adoptions Act”**

**Washington, DC
September 15, 2009**

Good morning Chairman McDermott, Ranking Member Linder and Members of the Subcommittee:

My name is Kathleen McNaught. I am the Assistant Director for Child Welfare at the American Bar Association Center on Children and the Law as well as the Project Director for the Legal Center for Foster Care and Education, a national technical assistance resource and information clearinghouse on legal and policy matters affecting the education of children in the foster care system.

I am pleased to appear today on at the request of Carolyn B. Lamm, President of the American Bar Association (ABA). The ABA is the world's largest voluntary professional organization, with a membership of hundreds of thousands of lawyers, judges, and law students worldwide, including a broad cross-section of family law practitioners, lawyers practicing in juvenile and dependency courts, and judges. The ABA has long been committed to improving the education outcomes of children in care, and in August 2009, the House of Delegates unanimously passed an education policy urging, among other things, federal and state legislatures to pass laws and for child welfare and education agencies to implement and enforce policies that help advance a child's right to remain in school, complete school and obtain a high quality education. Thank you for the opportunity to share the views of the ABA on foster care and education policy.

Foster children nationally are at high risk educationally.

For the almost 800,000 children and youth involved in the foster care system each year, educational success can be a positive counterweight to their experiences of abuse,

neglect, separation, and impermanence in their family and living situations.

Unfortunately, the educational outcomes of most children in foster care are dismal. One of the major educational challenges youth in foster care encounter is a lack of school stability. On average, youth in foster care move to new foster placements one to two times per year, and have often changed schools with each move. Research indicates that mobile students lose four to six months of educational progress each time they change schools. When youth in foster care move, they face challenges unique to their situation. Many spend a significant amount of time out of school because of poor coordination between child welfare and school personnel, resulting in a failure to promptly enroll students in their new schools. Moreover, they often must repeat courses and even grades because of difficulties transferring all of their records and course credits from prior schools. Additionally, moving schools – challenging for any student – can be emotionally overwhelming for children in the foster care system who are dealing at the same time with separation from their parents and siblings, neighborhoods, and everything that is familiar to them. As a result of all of these challenges, foster youth often fall behind their peers in school, lose hope, and ultimately drop out of school.

The Fostering Connections Act significantly and directly addresses the importance of school stability and continuity.

Thanks in no small part to the strong leadership and dedication of Chairman McDermott, the Fostering Connections Act was signed into law on October 7, 2008. The education provisions of the Act are essential to breaking the cycle of poor education outcomes for children in foster care. The Act requires the child welfare agency to coordinate with local

education agencies to ensure that children remain in their same school even if their living placement changes, unless that would not be in the child's best interest. If it is not in the child's best interest, the agencies must coordinate to ensure immediate and appropriate enrollment in a new school with all of the educational records of the child provided to that new school. Critically, the Act also clarifies that federal IV-E funds can be used by states for reasonable travel costs to allow children in foster care eligible for IV-E reimbursement to stay in the same school..

The Fostering Connections Act has brought much needed attention at both the federal and state levels to the poor education outcomes of children in care, and the critical need for collaboration between child welfare and education agencies to improve these outcomes. Many state and local child welfare agencies are now mobilizing to implement the Act in their states. Some have organized state or local interagency workgroups and developed interagency agreements to address education stability and continuity for children in care. Some states have adopted, or are in the process of adopting, legislation, regulations, or guidance to identify the responsibilities of each agency in implementing this Act. Advocates who represent these children and those who are working at the systems level are becoming better informed about the law's requirements and benefits for students, and have started to advocate for education stability and immediate school access. As a result of these efforts, some students in foster care are already beginning to benefit from the Act. While much more work needs to be done to implement the education provisions of Fostering Connections in all states, the past 10 months have included positive steps forward to change both policy and practice to align with these new mandates.

Immediately after the passage of the Act, the Legal Center for Foster Care and Education began receiving requests at the federal and state level from policymakers, advocates, and others about how to implement the education provisions of Fostering Connections most effectively. Because education stability and continuity were already a focus of our Legal Center work, we were able to provide both state and federal examples of best practices for states wishing to change law, policy and practice. Our work on these issues continues, and as states work through the various legal, policy, and practical challenges to implementation, in particular the need for interagency and cross-systems collaboration, we look forward to sharing our knowledge and experience.

Despite these significant efforts in the states, there are still several barriers to full and effective implementation of the education provisions of Fostering Connections.

What we have learned from the first 10 months of Fostering Connections implementation is that the full vision of the education stability and continuity provisions cannot be realized without addressing four key areas:

- 1) **Make explicit the need for the education agencies to coordinate with child welfare agencies to ensure education stability and continuity for children in foster care.** Fostering Connections places a clear mandate on child welfare agencies to act to ensure school stability and continuity and to coordinate with local education agencies. However, without a reciprocal mandate on the education side, in some jurisdictions, school stability and prompt enrollment – and ultimately better education outcomes for these students – cannot become a reality. For example, without

reciprocal mandates, many education agencies feel that residency requirements bar them from accepting foster youth from out of district, and documentation or record requirements bar them from immediately enrolling students changing schools.

Furthermore, they may be otherwise unwilling or unable to collaborate successfully with child welfare agencies, thereby denying vulnerable foster youth an opportunity for school stability and success.

- 2) **Clarify the mandate to transport children to their original schools.** Fostering Connections requires that child welfare agencies ensure that children remain in their schools unless not in their best interest. Importantly, it authorizes states to use federal IV-E funds for transportation for IV-E eligible children. Further clarification is vital to ensure that child welfare and education agencies recognize that the mandate to ensure school stability includes funding transportation when necessary, and to ensure that they can and do have access to sufficient federal dollars available for this purpose.
- 3) **Promote interagency collaborations and identify clear responsibilities of each agency.** Fostering Connections requires close collaboration between the child welfare and education agencies, but does not provide guidance as to how the collaboration should work. Interagency collaboration is always challenging, and states need support and guidance on how to best work together. They also need help and support creating clear lines of responsibilities for each agency. Formal collaboration at the federal level between the U.S. Department of Education and U.S. Department of Health and Human Services could serve as a powerful model for states and provide further guidance on how to clarify the responsibilities of each state

agency, and the structure of that collaboration. Some of the issues that states are struggling with include:

- a. Which agency/entity will make the best interest determination for the child to remain in the same school (child welfare or education agency, or the juvenile court) and what factors should be considered and individuals involved in that determination?
- b. How to create and fund clearly identified points of contact in each agency, at the state and local level? These identified individuals are desperately needed to ensure education stability and continuity and appropriate services and to resolve disputes that may arise. Several states, both before and after the Fostering Connections Act, have created such positions (either through legislative or practice change) that have had a significant impact on coordination.
- c. How to ensure a child's right to transportation to school, and how to coordinate to provide and pay for the transportation efficiently and effectively?
- d. What is the role of the juvenile courts overseeing the child's case related to the implementation of the Act and providing educational stability and continuity?

Child welfare and education agencies must be supported in their collaborative efforts and the development of interagency agreements and plans related to their required coordination and specific responsibilities. Without more direction and guidance on these issues, education and child welfare agencies will struggle to reach appropriate

agreements, or, in many cases, will fail to reach *any* agreement about how to coordinate with each other to implement Fostering Connections.

- 4) **Collect data to improve education outcomes for children in care.** Even in the states that have already made great strides to improve education stability and continuity for children in care, there is minimal data to document these advances. States must collect this critical data, and receive support and guidance to track improvements for children in care. Tracking data such as attendance, the number of school changes and enrollment delays, is necessary to document the implementation of the education stability provisions of the new law and show improvements in education outcomes for children in care. Without effective information and data-sharing across child welfare and education agencies it is impossible to capture this critical information.

In closing, I would like again to thank the Subcommittee for the opportunity to present the views of the American Bar Association. This is an exciting moment and a real opportunity to improve the education, and the lives, of many children in our nation's foster care system. I appreciate the chance to share our views and ideas. I would be happy to answer any questions you may have.