

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>.



Fostering Connections Implementation Toolkit

Improving Education Outcomes for
Children and Youth in Foster Care

AUTHORS

The Legal Center for Foster Care and Education

The Legal Center for Foster Care & Education (Legal Center FCE) was launched on January 1, 2007. It is a collaboration between Casey Family Programs, the Annie E. Casey Foundation, the Stuart Foundation, and the American Bar Association Center on Children and the Law in conjunction with the Education Law Center-PA and the Juvenile Law Center. The Legal Center FCE's mission is to bring attention and important legal resources to bear on the educational needs of children and youth in the nation's foster care system. The Legal Center FCE serves as a national technical assistance resource and information clearinghouse on legal and policy matters affecting the education of children and youth in out-of-home care. The Legal Center FCE provides expertise and relevant information to states and constituents, facilitates networking to advance promising practices and reforms, and provides technical assistance to respond to the ever-growing demands for legal support and guidance.

American Bar Association (ABA) Center on Children and the Law

ABA Center on Children and the Law aims to improve children's lives through advances in law, justice, knowledge, practice and policy. From modest origins in 1978, the Center has grown into a full-service technical assistance, training, and research program addressing a broad spectrum of law and court-related topics affecting children. The Center has run the National Resource Center on Legal and Judicial Issues for several decades, and for the past ten years has provided extensive training and technical assistance on foster care and education issues throughout the country through this federally supported Resource Center.

Education Law Center

Education Law Center (ELC) is a non-profit legal advocacy and educational organization, dedicated to ensuring that all of Pennsylvania's children have access to a quality public education. For thirty years, ELC has worked to make good public education a reality for Pennsylvania's most vulnerable students –poor children, children of color, kids with disabilities, English language learners, children in foster homes and institutions, and others.

Juvenile Law Center

Juvenile Law Center (JLC) , through legal advocacy, research, publications, public education and training, works to ensure that the child welfare, juvenile justice and other public systems provide vulnerable children with the protection and services they need to become happy, healthy and productive adults. Founded in 1975 as a non-profit legal service, JLC is one of the oldest public interest law firms for children in the United States. We work on behalf of children who have come within the purview of public agencies– for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. Although JLC primarily serves the children of Pennsylvania, we are also asked to lend our expertise to national child advocacy efforts.

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INTRODUCTION AND HOW TO USE THIS TOOLKIT

The Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) has brought much needed attention -- at the federal, state and local levels -- to the poor educational outcomes of children in care, and the critical need for collaboration between child welfare and education agencies to improve these outcomes. Since its passage in 2008, states have had varying degrees of success implementing the education provisions of the Act. Most states have incorporated the requirements into state laws or policy. Many have provided training to the courts, state and local education agencies, state and local child welfare agencies, and other relevant stakeholders. Some have created interagency workgroups at the state or local level to evaluate and enhance practice and policy around education stability and/or have developed interagency agreements or protocols. Despite this significant progress, many states face significant challenges around implementation. This publication offers assistance for those who seek to learn from other states and advocates about the tools, resources, and best practices that can improve educational outcomes in their state.

Immediately after the passage of the Act, the Legal Center for Foster Care and Education (Legal Center FCE) began receiving requests at the federal, state, and local level from policymakers, agency staff, advocates, and others about how to implement the education provisions of Fostering Connections most effectively. The Legal Center FCE had been promoting school stability and continuity prior to the passage of Fostering Connections; the 2007 release of the Blueprint for Change, in partnership with Casey Family Programs, laid out a comprehensive framework that included school stability among numerous other critical goals to achieve education success for children in care.¹ In October 2008, the Legal Center FCE began prioritizing

¹ The entire Blueprint for Change, corresponding tools and resources, and a searchable database of examples from across the country are available at: www.ambar.org/LegalCenterBLUEPRINT

implementation of the education provisions of Fostering Connections implementation by providing training, developing tools and resources, and supporting states through technical assistance and guidance.

This Toolkit is a compilation of the most recent tools released by the Legal Center FCE around Fostering Connections. It provides a step-by-step guide on implementation of the education stability provisions of Fostering Connections, and includes examples from across the country. The Toolkit is designed for all stakeholders: state or county child welfare administrators or caseworkers, state or district education agency staff, judges, attorneys or guardians *ad litem* (GALs), and other advocates. It can be used by a state just beginning to implement the education provisions of Fostering Connections, or one that has been working on improving education stability prior to the passage of the law.

Section I provides an **overview of the law**, two checklists to evaluate where a state stands in its implementation process, and a separate checklist designed for judges and courts. **Section II** includes **in-depth issue briefs** on each of the education requirements of the law. The issue briefs provide examples from across the country of best practices and lessons learned. **Section III** includes tools to explain how Fostering Connections overlaps with another relevant education law, the **McKinney-Vento Homeless Assistance Act**. Each law provides different rights and responsibilities. Understanding how they connect, overlap, and can work in tandem is key to effective implementation. Finally, **Section IV** includes an appendix of additional **links and resources**, as well as the relevant federal statutory and policy language.

This Toolkit does not have all the answers, but it provides a framework to begin the conversation within agencies and across systems. Effective implementation involves patience, dedication, and ongoing collaboration, but proper implementation can change lives as school stability supports lifelong stability and success for children in foster care.

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Foster Care & Education Q&A

“FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008” – EDUCATION PROVISIONS

Q: What is the Fostering Connections to Success and Increasing Adoptions Act of 2008?

A: On October 7, 2008, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351, Fostering Connections Act) was signed into law. This law amends parts B and E of Title IV of the Social Security Act. Among its provisions to address the needs of children and youth in foster care, it seeks to promote education stability for foster children. The following Q&A answers key questions about the new education provisions.

Q: How does this law affect education stability for children in out-of-home care?

A: Child welfare agencies must include “a plan for ensuring the educational stability of the child while in foster care” as part of every child’s case plan. As part of this plan, the agency must include 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
- the state child welfare agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement.

Additionally, the law requires that if remaining in such school is not in the best interest of the child, the case plan must include assurances by the child welfare agency and the local educational agencies that:

- provide immediate and appropriate enrollment in a new school; and
- provide all of the educational records of the child to the school.

Finally, Fostering Connections supports the well-being of children in out-of-home care by requiring states to provide assurances in their Title IV-E state plans that every school-age child in foster care, and every school-age child receiving an adoption assistance or subsidized guardianship payment, is a full-time elementary or secondary school student or has completed secondary school.

Q: Does this law provide additional federal funding to support education stability for children in out-of-home care?

A: Fostering Connections increases the types of federal funding that may be used to cover education-related transportation costs for children in foster care. It expands the definition of “foster care maintenance payments” to include reasonable transportation to a child’s school of origin.

Q: Are there other provisions of the law that affect education?

A: In addition to school stability, the law also:

- extends Education Training Vouchers (ETVs) and Independent Living services for youth in out-of-home care who, after attaining 16 years of age, have left foster care for kinship guardianship or adoption.
- allows states, at their option, to continue providing payments for youth in foster care to age 19, 20, or 21 as long as the youth is:
 - “completing high school or a program leading to an equivalent credential; enrolled in post-secondary or vocational education;
 - participating in a program or activity designed to promote, or remove barriers to, employment;
 - employed at least 80 hours per month; or
 - is incapable of doing any of the above activities due to a documented medical condition.”

Q: How does this law impact the McKinney-Vento Act and state laws that provide education stability and other rights for children in out-of-home care?

A: The McKinney-Vento Act is a federal law that provides rights and protections to homeless children and youth, including those “awaiting foster care placement.” Currently, many states and school districts provide rights and protections to children in out-of-home care. Many states also provide education stability rights and protections to youth in out-of-home care through state laws. Fostering Connections complements and supports this work, as well as now requires all jurisdictions to address school stability and continuity.

Implementation of Fostering Connections should be tailored to every state, depending on existing education supports and services for children in out-of-home care. However, the law clearly gives the child welfare agency

responsibility to work with the local education agency to ensure the education stability of children in care. How the child welfare agency meets their responsibility is somewhat flexible, as long as youths’ rights are protected. Child welfare agencies will need to collaborate with education agencies to serve youth; this can happen in a number of ways—

- Create an interagency taskforce or workgroup to identify obstacles and develop policies to ensure compliance with Fostering Connections.
- Develop a Memorandum of Understanding (MOU) that child welfare and education agencies work together to develop and implement.
- Create a position, similar to a McKinney-Vento liaison, in the child welfare agency, and support the creation of foster care liaisons within schools.

Whichever structure or process is developed to ensure collaboration, the following issues must be addressed:

- Creating a streamlined process for ensuring that a child remains in their school of origin, including criterion or guidelines for making the best interest determination.
- Determining the most effective way to provide transportation to the child’s school of origin.
- Identifying a process to immediately enroll a child in a new school and transfer records when it is not in the child’s best interest to remain in the original school.

Q: Where can I learn more about the law’s education provisions and how to implement them in my state?

A: Because this law is relatively new, training is needed about the law to ensure its rights and protections are provided to youth. State implementation is critical. The Legal Center for Foster Care and Education will develop tools to assist jurisdictions with implementation, and is available to provide training and technical assistance. Visit www.abanet.org/child/education for updated information, and join our listserv to keep up-to-date. If you would like training or technical assistance, e-mail us at ccleducation@abanet.org.

STATE IMPLEMENTATION CHECKLISTS FOR EDUCATION PROVISIONS OF FOSTERING CONNECTIONS ACT

Updated Version: September 27, 2011

State and local education and child welfare agencies need to work systematically, both separately and together, to ensure that children in foster care benefit from the education provisions of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections).¹ Courts and, in many states, legislators also need to be involved. These checklists are designed to guide conversations in your state, by representatives of these agencies and other stakeholders, to ensure thoughtful implementation of these important education provisions.²

Checklist 1: System Responsibilities lays out the foundational questions for systems implementing Fostering Connections: What do child welfare agencies, education agencies, courts, and legislators need to do to prepare to implement the education provisions of the Fostering Connections Act appropriately and effectively? What laws, policies, and practices need to be changed and what individuals and agencies must be involved to make the needed changes?

Checklist 2: Detailed Obligations and Considerations under the Fostering Connections Act details the requirements under Fostering Connections, and suggests the questions and considerations for each. Some of the obligations apply only to the child welfare agency, but without the support of the education agencies and the court, full implementation of the obligations will not be possible.

As a final note, while not specifically highlighted as part of the requirements of Fostering Connections, addressing the required interagency coordination around the education needs of children in foster care presents a good opportunity for all stakeholders to identify ways to improve data collection and information sharing. When using these checklists, consider how collecting and sharing information can improve coordination.³

¹ Enacted in October 2008, Fostering Connections (P. L. 110-35) includes a large number of changes to child welfare law and practice, ranging from increased support for kinship care and family connections to direct access to federal resources for Indian Tribes. Throughout this document, references to the requirements of Fostering Connections relate only to those related to the education provisions of Fostering Connections.

² The Legal Center for Foster Care and Education has developed a framework to improve the education outcomes of children in out-of-home care which expands beyond the requirements of Fostering Connections. This framework, the *Blueprint for Change: Education Success for Children in Foster Care*, includes 8 Goals for youth, as well as corresponding Benchmarks indicating progress towards each Goal. The *Blueprint for Change* is available for download at www.ambar.org/LegalCenterBLUEPRINT.

³ For information and tools around data and information sharing, please see the Legal Center for Foster Care and Education's publication, *Solving the Data Puzzle: A How-To Guide on Collecting and Sharing Information to Improve the Educational Outcomes of Children in Out-of-Home Care* available at

Checklist 1: System Responsibilities

ROLE OF CHILD WELFARE AGENCIES

- ✓ Has the state child welfare agency provided clear direction to local child welfare agencies that the education of children in their care is part of their responsibility?
- ✓ Has the state child welfare agency provided local child welfare agencies with clear guidance on the specific education requirements of Fostering Connections?
- ✓ Has the state child welfare agency provided local child welfare agencies with guidance on implementing these federal provisions?
- ✓ Do state or local child welfare agencies need to change case planning procedures and case plan forms to incorporate all of the case plan requirements from the education provisions of Fostering Connections?
- ✓ Do the state child welfare agency and state education agency need to meet with education agency, court, and other key stakeholders to discuss implementation of Fostering Connections? Will a memorandum of understanding, interagency agreement, or joint directive be helpful in outlining responsibilities or procedures?
- ✓ Is there a system or process at the state and/or local level to collect and track education data on children when they enter into foster care and periodically throughout their time in care?

ROLE OF EDUCATION AGENCIES

- ✓ Does the state education agency have all the information they need to fully understand Fostering Connections? Does the agency need any additional information from the state child welfare agency or the courts to be fully informed?
- ✓ Has the state education agency provided local education agencies with clear guidance on the education requirements of Fostering Connections?
- ✓ Has the state education agency provided guidance to local education agencies on implementing these requirements on their own and through collaboration with local child welfare agencies?

<http://www.americanbar.org/content/dam/aba/migrated/child/education/publications/solvingthedata puzzle. uthcheckdam.pdf>



- ✓ Do the state child welfare agency and state education agency need to meet, along with the courts and other key stakeholders, to discuss implementation of Fostering Connections? Will a memorandum of understanding, interagency agreement, or joint directive be helpful in outlining responsibilities or procedures?
- ✓ Is there a system at the state and/or local level that collects and tracks education data on each child that could assist with providing information or records about children in foster care upon entry into foster care and periodically throughout their time in care?

ROLE OF JUVENILE COURTS

- ✓ Have judges and judicial officers been provided clear information on the education requirements of Fostering Connections?
- ✓ Do judges need additional training or information to assess the best interest and appropriateness determinations under Fostering Connections?
- ✓ Does the juvenile court need to convene a meeting with the state or local child welfare and education agencies to discuss effective implementation of Fostering Connections and identify obligations and responsibilities?
- ✓ Do juvenile court rules or procedures need to be developed so that judges consider the requirements of Fostering Connections when a child is placed in foster care, when placement changes are considered, and periodically thereafter?
- ✓ Does the juvenile court have model orders or protocols that would facilitate each of these educational considerations?
- ✓ Is there a process to ensure that the child welfare agency shares educational information with the judge as part of court proceedings?

ROLE OF STATE LEGISLATORS

- ✓ Is state legislation needed to appropriately implement the education provisions of Fostering Connections?

Checklist 2: Detailed Obligations and Considerations under the Fostering Connections Act

The child’s case plan must contain: “assurances that the 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.”⁴

1. Appropriateness of Current Education Setting

- ✓ Has the state or local child welfare agency established criteria so that the appropriateness of an education placement can be assessed (i.e., whether the student needs special education or remedial supports, or whether advanced placement classes are available)?
- ✓ Has the state or local child welfare agency developed a policy or protocol on how to make these determinations, or incorporated them into an already-existing protocol? Are the state and local child welfare agencies offering training to caseworkers on how to assess appropriateness or developing assessment tools?
- ✓ Whose input does the child welfare agency need to assess the appropriateness of the education setting (i.e., youth, parent or guardian, caretaker, teacher or school representative)? How will these individuals be notified and involved?
- ✓ How is the child welfare agency obtaining necessary information from local education agencies?
- ✓ Have child welfare and educational agencies created guidelines for the efforts that need to be made to keep students in appropriate educational settings?

2. Proximity of Living Placement to School⁵

- ✓ Does the child welfare agency know whether there is a shortage of resource families and/or foster care placements within the school districts or attendance areas from which children are removed from home?
- ✓ Does the local child welfare agency need to recruit and retain more resource families and/or other foster care placements within those school districts or attendance areas? How can local education agencies help recruit families?
- ✓ Have the state or local child welfare agencies developed criteria to provide guidance on taking proximity “into account”? Have child welfare agencies created guidelines

⁴ 42 U.S.C.A. 675(1)(G)(i). Please note that “at the time of placement” has subsequently been clarified in statute to mean both *initial* and *all subsequent* placement changes while in care. Child and Family Services Improvement and Innovation Act, P.L. 112-34.

⁵ The Legal Center for Foster Care and Education has developed an issue brief on supporting school proximity; it is available with the entire State Implementation Toolkit at www.ambar.org/LegalCenterTOOLKIT.

regarding the efforts that should be made to keep children’s living placements close to their original schools?

The child’s case plan must contain:
 “(I) an assurance that the State [or local child welfare agency] has **coordinated** with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the child remains in the school in which the child is enrolled at the time of 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.”⁶

3. Required Coordination between Local Education and Child Welfare Agencies

- ✓ Do child welfare and education agencies, the courts, and any other stakeholders need to meet regularly to evaluate interagency coordination around foster care and education?⁷
- ✓ Are new laws or regulations, or collaborative agreements (i.e., memoranda of understanding, interagency agreements or joint directives) needed to ensure local education agencies will be responsible for coordinating with child welfare and for ensuring school stability and prompt enrollment?
- ✓ Are new laws or regulation, or collaborative agreements (i.e., memoranda of understanding, interagency agreements or joint directives) needed to ensure child welfare agencies will be responsible for and capable of coordinating with the educational system to ensure school stability and prompt enrollment?
- ✓ Does a system need to be in place to periodically reevaluate (e.g. monthly, quarterly, or each school year) the collaborative process and make any necessary changes or adjustments?
- ✓ Are key staff with expertise about Fostering Connections identified at the state and local education and child welfare agency to help facilitate necessary coordination?
- ✓ Are court rules or policies needed to clarify the role of the court in overseeing the child welfare agency’s coordination with the education agency to ensure school stability?

⁶ 42 U.S.C.A. 675(1)(G)(ii).

⁷ The Legal Center for Foster Care and Education has developed an issue brief on strategies for interagency collaboration; it is available with the entire State Implementation Toolkit at www.ambar.org/LegalCenterTOOLKIT.

The child’s case plan must contain:

“(I) an assurance that the State [or local child welfare agency] has coordinated with appropriated local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the child remains in the school in which the child is enrolled at the time of placement; (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.”⁸

4. Presumption: Child Remains in Same School

- ✓ **Making Best Interest Determinations:**⁹ How does the local child welfare agency determine when it is not in the child’s best interest to remain in the same school? Does a process or protocol need to be developed?
 - What criteria should be used in making best interest determinations? Should a form or checklist be developed?¹⁰
 - Who needs to provide input in the best interest determination?
 - Where and when will the best interest decision occur (i.e., family team meeting; shelter or emergency hearing; before placement change occurs) Is there a process to repeat best interest decision making at each change of placement?
 - Who will hold education decisionmaking rights for the child (i.e., does the parent retain these rights or is someone else designated)?
 - Is there a clear procedure for resolving disputes regarding whether a school change is needed? What is the role of the court in overseeing these decisions? Does the procedure address the following: written decisions, notice to parents, and what happens to the child pending resolution of the dispute (i.e. child can remain in the same school until the dispute is resolved)?
 - How does this determination overlap with the best interest determinations made by the school for those children eligible for the rights and protections of the

⁸ 42 U.S.C.A. 675(1)(G)(ii).

⁹ The Legal Center for Foster Care and Education has developed an issue brief on the topic of making best interest determinations, as well as a sample checklist; both are available as part of the State Implementation Toolkit at www.ambar.org/LegalCenterTOOLKIT.

¹⁰ See the Sample Best Interest Checklist developed by the Legal Center for Foster Care and Education and National Center for Homeless Education at www.ambar.org/LegalCenterTOOLKIT.

McKinney-Vento Act?¹¹ Is there a state or local “awaiting foster care placement” policy that clarifies which children in foster care are eligible for school stability and transportation under the McKinney-Vento Act and that clarifies how that law intersects with Fostering Connections?

- ✓ **Implementing Best Interest Determinations:** Once a determination has been made about whether a child shall remain in the same school, how will that determination be implemented?
 - Do the child welfare and education agencies have a protocol for how transportation will be provided to ensure children remain in the same school? Who will arrange, provide, and fund transportation?¹² (See #7 for more information).
 - Do school policies or protocols need to be revised to ensure that children can remain in the same school if in their best interest, regardless of residence? Is state legislation, and interagency agreement or policy guidance required?
 - Should state and local education and child welfare agencies create points of contact in each agency to facilitate coordination?

¹¹ For more information about the overlap between the McKinney-Vento and Fostering Connections Acts, please see the brief developed by the Legal Center for Foster Care and Education at www.ambar.org/LegalCenterTOOLKIT.

¹² For more information on transportation to ensure school stability, please see the issue brief on this topic developed by the Legal Center for Foster Care and Education available at www.ambar.org/LegalCenterTOOLKIT.

(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.¹³

5. Immediate and Appropriate Enrollment in New School

- ✓ Are state laws or policies needed to ensure that children in foster care are immediately enrolled in a new school? What is the definition of “immediate,” and does this need to be quantified in state law or policy? (e.g., by the next school day)
- ✓ Is there a process that clarifies the respective roles of the education and child welfare systems to ensure immediate school enrollment?
- ✓ How do the state child welfare and education agencies ensure that state and local enrollment rules (e.g., proof of immunization or residency) are not barriers to immediate and appropriate enrollment? Is state law or policy needed to remove barriers (e.g., waiver of normal enrollment requirements; expediting records transfers; clarity on who can enroll a student in foster care).
- ✓ Do the child welfare and education agencies have clear procedures for resolving enrollment disputes, both at the local and state level, that preserve the right to immediate enrollment pending dispute resolution?
- ✓ Is there a state or local “awaiting foster care placement” policy that clarifies which children in foster care are eligible for immediate enrollment under the McKinney-Vento Act, and that clarifies how that law intersects with Fostering Connections?
- ✓ Are laws or policies needed to ensure youth are appropriately enrolled in a new school? Is clarification needed on what constitutes “appropriate enrollment” (i.e. proper placement in general, special, advanced, or remedial education classes; right to participate in all academic or extracurricular programs offered by the school; exceptions allowed for normal timelines or programs capacity; accurate transfer of credits and, if necessary, partial credits)?

6. Transfer of Education Records to New School

- ✓ Do state and local education agencies have clear record transfer policies that specify the respective responsibilities of the school and the child welfare agency and set a clear timeline for record transfer?
- ✓ Does each child welfare agency and school district have designated staff contacts (or liaisons) to ensure records transfer smoothly?
- ✓ Is ongoing training provided on the record transfer policies and responsibilities so that confusion and delay are eliminated?
- ✓ Is it necessary to develop a child-specific juvenile court order that grants access to a child’s education records to a child welfare agency or other necessary stakeholders?¹⁴

¹³ 42 U.S.C.A. 675(1)(G)(ii).

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.¹⁵

7. Permissible Use of IV-E Maintenance Dollars for School Transportation¹⁶

- ✓ Does the state or county child welfare agency use Title IV-E administrative dollars to support school or extracurricular transportation?¹⁷
- ✓ Does the state or county child welfare agency use Title IV-E foster care maintenance dollars to support school or extracurricular transportation?
- ✓ What type of reimbursement plan is being considered (e.g., direct payment to care providers, payment to separate transportation providers, reimbursement of school-provided transportation)?
- ✓ Does the state or the county child welfare agency need to develop policies and protocols for the use of Title IV-E dollars – administrative or maintenance?
- ✓ Is there a state or local “awaiting foster care placement” policy that clarifies which children in foster care are eligible for school stability and transportation under the *McKinney-Vento* Act, and that clarifies how that law intersects with *Fostering Connections*?
- ✓ Has the child welfare agency considered how to fund school transportation for those children in care not eligible for IV-E?

¹⁴ This is an exception to the requirement for parental consent under the Family Education Rights and Privacy Act. 20 U.S.C. § 1232(g)(b)(1)(J).

¹⁵ 42 U.S.C.A. 675(4)(A).

¹⁶ The Legal Center for Foster Care and Education developed an issue brief on providing school transportation to support school stability; available at www.ambar.org/LegalCenterTOOLKIT.

¹⁷ U.S. Dep’t of Health and Human Servs. Admin. for Children and Families, Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, ACYF-CB-PI-10-11, 19 (July 9, 2010) (hereinafter “ACF Guidance”), available at http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm.



The “**Educational Attendance Requirement**”¹⁸ requires:

“(a) Requisite features of State plan

In order for a State to be eligible for payments under this part [Title IV-E], it shall have a plan approved by the Secretary which—...

(30) provides assurances that **each child who has attained the minimum age for compulsory school attendance under State law** and with respect to whom there is eligibility for a payment under the State plan is a **full-time elementary or secondary school student or has completed secondary school**, and for purposes of this paragraph, the term ‘elementary or secondary school student’ means, with respect to a child, that the child is—

(A) enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located;

(B) instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located;

(C) in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or

(D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child.”¹⁹

8. State Plan Assurances of School Enrollment and Attendance

- ✓ How will ongoing assurances of school enrollment be provided?
- ✓ Has the state considered using the process for tracking enrollment and attendance of Title IV-E eligible children in care for children who are not Title IV-E eligible?
- ✓ Does the state child welfare agency or state education agency already track school enrollment and attendance through a data system?
- ✓ Does the state need to make changes to its child welfare or education data collection system to be able to track enrollment and attendance?
- ✓ Is there additional educational information that could or should be tracked, at the state and/or local level, alongside enrollment and attendance (i.e., other provisions of *Fostering Connections* such as school changes, data on whether children in care are getting the services they need, whether children are meeting academic expectations, and whether youth are receiving high school diplomas)?

¹⁸ Fostering Connections, P.L. 110-351.

¹⁹ 42 U.S.C.A. § 671.

Fostering Connections includes a number of education provisions directed to older youth. First, it extends eligibility for Independent Living Services and Education Training Vouchers under the John H. Chafee Foster Care Independence Program to youth who enter kinship guardianship at the age of 16 or beyond.²⁰ Fostering Connections also includes a new requirement for a “transition plan” to be developed 90 days prior to a youth’s exit from care.²¹ One of the included elements of this transition plan is a plan for education. Finally, Fostering Connections gives states the option to extend foster care until the age of 19, 20, or 21 as long as a youth is involved in an educational program, is employed, or meets other requirements.²²

9. Older Youth Provisions

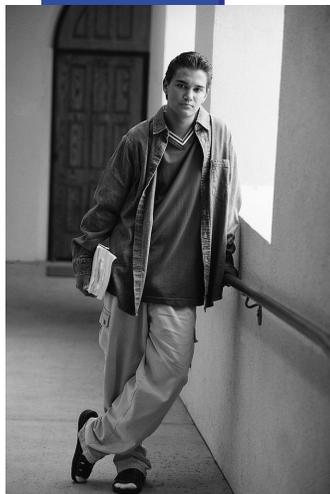
- ✓ Is the state working on implementation of the Fostering Connections provisions that affect older youth, including:
 - a new requirement for 90 day transition plan, which includes education;
 - expanded eligibility for Chafee Independent Living services;
 - expanded eligibility for Education Training Vouchers (ETVs);
 - a state option to extend foster care and adoption and guardianship assistance until age 21?
- ✓ Is the state making the link between these provisions for older youth and the impact on youth’s education success.

²⁰ 42 U.S.C.A. § 677; 42 U.S.C.A. § 677(i)(2).

²¹ 42 U.S.C. § 675(H).

²² 42 U.S.C.A. §675(8)(A).

**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.](#)

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Foster Care & Education

Issue Brief

MAKING THE CASE: ENGAGING EDUCATION PARTNERS IN ADDRESSING THE EDUCATION NEEDS OF CHILDREN IN FOSTER CARE

Introduction

A quality education is critical to any child's well-being and future success. For youth in foster care, a quality education depends on the involvement and support of both child welfare *and* education agencies. Indeed, both child welfare and education law compels each system to support the education needs of children in foster care. In practice, the amount of attention paid to education outcomes of children in care varies widely by state, locality, and individual agency. Although recent changes to federal child welfare law have placed clear obligations on child welfare agencies to ensure education stability, these agencies cannot fully achieve education stability for children in care without the support of their education partners.

This issue brief focuses on **how to persuade education partners to prioritize the important needs of children in care**. For more information on how both agencies can work together (with courts and other community partners) to take the steps necessary to jointly improve the education outcomes for children in care, please see [*Making It Work: How Child Welfare and Education Agencies Can Collaborate to Ensure School Stability for Children in Foster Care*](#).

Enacted in October 2008, the "Fostering Connections to Success and Increasing Adoptions Act of 2008," (Fostering Connections) is a comprehensive law designed to promote permanent family connections and improve the lives of youth in the child welfare system. Among other important provisions, the Act requires child welfare agencies to create "a plan for ensuring the education stability of the child while in foster care." The Act emphasizes the importance of school stability as well as the need for collaboration between child welfare and education agencies.

This brief is part of a series of materials designed to be used together to support all stakeholders in implementing the education provisions of the Fostering Connections Act. To access the full series, please visit [The Legal Center for Foster Care and Education's Fostering Connections Toolkit](#).

Current Emphasis on Education in Child Welfare

For well over a decade, federal child welfare law (Titles IV-B and IV-E of the Social Security Act) has included education as an important “well-being” factor.¹ As part of this, all states are evaluated through the Child and Family Service Reviews (CFSR) on the extent to which children in foster care have received an appropriate education.²

The passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections),³ has even more clearly delineated child welfare agencies’ responsibility for the education of children in their care. Fostering Connections requires child welfare agencies to develop a school stability plan as part of each child’s case plan. Fostering Connections also requires that, when making a placement decision, a state or local child welfare agency take into account the appropriateness of the child’s present educational setting and the proximity of the placement option to the school in which the child is enrolled at the time of placement.⁴ In addition, Fostering Connections specifically mandates that a child’s case plan include assurances that the child welfare agency has “coordinated” with local educational agencies to ensure that a child remains in his school at the time of placement, or, if this is not in the child’s best interest, that the child is immediately and appropriately enrolled in a new school with all school records.⁵ Under Fostering Connections, to receive federal Title IV-E funding, states must also ensure, with some exceptions, that all Title IV-E eligible⁶ students of minimum compulsory school age are attending a school program.⁷

Child welfare agencies have much work to do to change policies, practice and culture to align with these new requirements. Child welfare professionals need to: 1) notify the school when a child is moving; 2) determine whether the child should remain or be enrolled in a new school; 3) identify who has the authority to make education decisions for the student; and 4) provide any other information that is necessary for the school to educate the child appropriately. However, they cannot fully comply with new legal mandates without help from state and local education agencies. Child welfare agencies depend on cooperation from education agencies, for example, to: 1) allow a child to remain in a school even if the child is moved outside that school’s

¹ 42 U.S.C. 622 (2010) (originally enacted in 1996); 42 U.S.C. 671 (2010) (originally enacted in 1996).

² Child and Family Service Reviews (CFSRs) are conducted by the Children's Bureau of the U.S. Department of Health and Human Services Administration for Children and Families and specifically and look at systemic factors as well as seven case outcomes, one of which is whether each State has met the educational needs of children in care (Well Being Outcome No. 2). To learn more about CFSRs, see <http://www.acf.hhs.gov/programs/cb/cwmonitoring/index.htm#cfsr>.

³ P.L. 110-351, 122 Stat. 3949 (hereinafter “Fostering Connections”).

⁴ 42 U.S.C. §675(1)(G)(i) (2010).

⁵ 42 U.S.C. § 675(1)(G)(ii)(II).

⁶ Throughout this document, the term “IV-E eligible” signifies that a child or young adult qualifies for IV-E reimbursement. To be eligible for IV-E reimbursement, a child must meet all eligibility requirements under Title IV-E of the Social Security Act for foster care, including removal from an income-eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.

⁷ 42 U.S.C. § 671 (2010).



boundaries; 2) remove obstacles to the immediate enrollment of a child in a new school; and 3) promptly transfer the child's school records.

Current Emphasis on Children in Foster Care within Education

Education agencies also have an essential stake in improving the educational outcomes of children in care – not only because they are charged with the duty of educating all school-aged students, but because laws like the Elementary and Secondary Education Act (ESEA- as amended by the No Child Left Behind Act (NCLB)) specifically obligate them to focus attention on closing the achievement gap between high and low performing students.⁸ Schools cannot meet these requirements without addressing the educational needs of one of the most educationally at-risk of all student populations – students in foster care.

Federal education law has increasingly required education agencies to focus on numbers. Schools must report on the number of children who pass state standardized tests to determine whether the school, school district, and state have made “adequate yearly progress” (AYP).⁹ Key to this determination is whether they have reduced the achievement gap between groups of students. School districts and schools that fail to make AYP toward state goals can, over time, be subject to improvement efforts, corrective action, and restructuring. Conversely, schools that meet or exceed AYP objectives or close achievement gaps may be eligible for additional funding.¹⁰

While Congress is currently discussing the reauthorization of the ESEA, it is clear that the law will continue to focus on the need to improve education outcomes for at risk students and to close the achievement gap.¹¹

Education partners are focused on narrowing the achievement gap, however, many have not yet recognized the key role of supporting children in care to achieving those goals. While some state and local education agency staff are highly attuned to the needs of youth in foster care and collaborate effectively with child welfare agencies, others have not yet focused on this educationally at-risk population. In many districts, the number of youth in foster care is quite low. Thus, many educators have not yet thought about the unique education challenges that students in foster care experience, and may not be aware of the

⁸ NCLB's "Statement of Purpose" describes the intent of the law in part as “closing the achievement gap between high- and low-performing children, especially the achievement gaps between minority and nonminority students, and between disadvantaged children and their more advantaged peers . . . holding schools, local educational agencies, and States accountable for improving the academic achievement of all students . . .” 20 U.S.C. § 6301 (2002).

⁹ 20 U.S.C. § 6311 (2006).

¹⁰ 20 U.S.C § 6317(b)(2) (2004).

¹¹ For one example of current proposals, see the Obama Administration's March 2010 “Blueprint for Reform” available at <http://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf>.

Fostering Connections Act. Some school staff may even be concerned that children in foster care have such complex problems and traumatic personal histories that efforts to address their education needs simply will not work. The goal of this issue brief is to outline some of the messages and strategies that will engage education agencies in collaborating with child welfare to improve the educational outcomes for these educationally vulnerable youth.

Messages That Get the Attention of Education Agencies

We all care about the education success of children in foster care. Education will not be alone in supporting students involved in the child welfare system. Children in care should have double the supports because two agencies (and sometimes more) are concerned about their well-being and success.

The same issues important to all students are important to children in foster care. When approaching education as a partner it is important to remember that schools, districts and education agencies are focused on the needs of *all* students. A key tactic is to acknowledge that this includes children in care. Indeed, focusing on the education needs of students of foster care does not always mean focusing on unique issues. Often the same issues that concern schools and districts related to school success for all students are also impacting children in care—albeit at higher rates. For example, drop-out, truancy and disciplinary issues are important issues for schools to address and issues that affect a large percentage of children in care.

Key Points to Include when Engaging Education Agencies

Efforts to meet the educational needs of children in foster care can help education agencies achieve their own goals and objectives by:

- (1) Improving student test scores and enabling schools to make adequate yearly progress and thus satisfy federal ESEA and state mandates;
- (2) Increasing graduation rates;
- (3) Lowering truancy rates; and
- (4) Improving school climate and lowering suspensions and expulsions.



Children in care are already represented in the numerous subgroups that require specialized attention under education law. ESEA requires that achievement data be disaggregated by children’s poverty, race, ethnicity, disability, and limited English proficiency to ensure that these subgroups are making adequate progress and that achievement gaps are closing.¹² Children in care are disproportionately represented among these educationally at-risk student groups. From ensuring school stability to providing remedial support or mentoring, efforts to meet the educational needs of students in foster care can make a profound difference in individual student achievement and a school’s or subgroup’s overall performance.¹³ The education agency’s goals and compliance with NCLB will be easier to achieve if children in foster care make progress.

Children in care are a subset of a larger group of “highly mobile students.” Sometimes it is difficult to gain the attention of education agencies on behalf of children in care because these children are such a small percentage of the students they serve. Increase the impact by joining forces with advocates for other “highly mobile” students (*i.e.*, children experiencing homelessness, children of military families, migrant youth) or vulnerable students. Sometimes using broader terms like “highly mobile students,” “at risk youth,” or “youth in transition” can give you more leverage with the education community.¹⁴

Strategies to Engage Education Agencies

In many jurisdictions, child welfare agencies and other advocates are struggling to identify the best strategies for engaging their education partners to join their efforts to support the education needs of children in foster care, including meeting the obligations of the Fostering Connections Act. The following list provides some strategies around engaging education to collaborate – not only to ensure school stability and prompt enrollment, but to promote greater educational success (*i.e.*, greater learning, better grades, high school graduation, and access to higher education).

¹² P.L. 107-110(h)(1)(c) (2002).

¹³ For example, the Educational Pilot Program in Los Angeles, a collaboration of school administrators and social workers, academic tutors, and student advocates from five school districts supports high school students in foster care by developing individual learning plans and coordinating interagency supports. In the 2008-09 school year, 83% of participating graduates enrolled in two-or-four year colleges compared with less than 20% of youth in foster care nationally. In every year since its inception over 90% of high school seniors who attended the program three or more days per week received their high school diploma. Moreover, the program’s track record resulted in significant grants to the five participating school districts as the program earned the highest available rating in the federal Department of Education’s “Investing in Innovation” or i3 competition in 2010 – enabling the program to secure more than \$3.6 million in grant money over the next four years.

¹⁴ For an example of linking the needs of children in foster care with the similar education needs of other vulnerable youth, see the Senate Committee on Health, Education, Labor, and Pensions (HELP Committee) hearing “ESEA Reauthorization: Meeting the Needs of Special Populations” available at <http://help.senate.gov/hearings/hearing/?id=f3ee8bae-5056-9502-5da1-d8029371ddaf>.

Demonstrate the commitment of child welfare as an enticement to join in the efforts and educate them about the Fostering Connections Act. Members of the education community are more likely to view a request for collaboration positively if the child welfare agency can demonstrate that it has already begun to change its own policies, practices or thinking about school stability. In many states, the child welfare agency's efforts to implement Fostering Connections, including engaging and informing their education partners about the requirements of the law, has been the catalyst for collaboration.

Examples:

In **Illinois**, the child welfare agency uses technology known as SchoolMinder to help identify foster homes in the child's current school district or catchment area, or, if none are available, to find the home closest to the child's school or natural parents' home. To make the program work, a child welfare staff person regularly enters the geographic locations of the available foster homes into SchoolMinder. Within one hour of removing a child from the home, child welfare placement workers then perform a spatial search in SchoolMinder to find which available homes, and the contracted provider agencies supervising those homes, fall within the geographic area surrounding the child's school or home. Since deploying the SchoolMinder application in 2007, the average distances for initial foster care placement in Cook County dropped from 9.9 to 2.5 miles. Outside Cook County, the average dropped from 22.5 to 11.4 miles. Children placed using SchoolMinder are 50% more likely to stay in the same school. For more information, please visit <http://www.esri.com/news/arcnews/summer07/articles/theres-no-place.html>.

In **Pennsylvania**, the Department of Public Welfare issued guidance that created education liaisons in each county child welfare office and has released a screening tool for caseworkers to use to spot education issues and guide them to take appropriate actions to meet the child's education needs. The screen, which addresses school stability, academic placement, progress and remediation, special education, and post-secondary preparation, will be mandatory for case workers to use for all youth in care in 2012. Liaisons in each county have been trained in its use, and are beginning the process of training child welfare case workers.

Highlight examples where other education agencies and partners have been successful. It is helpful for the education world to hear about strategies and approaches that have worked...particularly within state or local education agencies and schools and school districts. These examples exhibit how action by education can support strong outcomes for children in care.

Examples:

Several schools around the country have used their school communities to recruit more foster homes within the school boundaries. Some have partnered with the school Parent Teacher Associations to initiate recruitment campaigns, using signs, flyers and presentations at meetings to make known the

need for homes within the school community. This allows youth to remain in the same school even when they are placed in care outside of their own home.

In **Baltimore, Maryland** the Baltimore City Public Schools entered into a protocol with Baltimore City Department of Social Services (DSS) to allow DSS access to a student's school emergency contact card when the child enters care. The emergency contact is often a relative, neighbor, or close family friend who may be a placement option for the child in close proximity to the school, helping the child to remain in the same school despite removal from home. For more information about the protocol, please see http://www.huffingtonpost.com/daniel-heimpel/a-simple-answer-to-a-comp_b_766742.html

In **Sacramento County, California**, the Sacramento County Foster Youth Services Agency (a department within the Sacramento County Office of Education) created a database called School Connect that matches children in need of new child welfare living placements with available housing within their school districts. Various Foster Family Agency (FFA) employees update the School Connect database daily with information about newly-available foster placements. Child Protective Services (CPS) employees can then search the database for the available placements closest to a child's school. Available placements are displayed on a map to illustrate the distance between the placements and the school; also indicated is the availability of busing and the willingness of the caretaker to transport the child to and from school. After considering the various other relevant factors, the CPS employee then matches the child with an appropriate placement. All CPS and FFA workers in Sacramento County are required to use the program.

Engage the judiciary to initiate and lead conversations. Talk to the chief justice or a juvenile court judge about initiating a conversation, a one-time meeting, or a conference or workgroup that brings together leaders and staff from child welfare and education agencies. Several juvenile court judges across the country have initiated meetings or workgroups to address common concerns such as truancy, school stability, and transportation. Every state has a Court Improvement Program (CIP) that might be available to support these efforts.¹⁵

Example:

In **Texas**, the Permanent Judicial Commission for Children, Youth and Families was established by the Texas Supreme Court in 2007. It focuses on bringing stakeholders together to coordinate and implement comprehensive efforts to improve dependency courts. In 2010, the Chief Justice issued an order that established an education committee of the Permanent Commission with specific top court, child welfare and education leaders (including the commissioner of the Texas Education Agency, and the Executive Directors of the Texas Association of School Boards and Texas Association of School Administrators) as members. The committee is charged with making recommendations on: improving judicial practices;

¹⁵ The CIP grant program was established in 1994 as a response to the dramatic increase in child abuse and neglect cases and the expanded role of courts in achieving stable, permanent homes for children in foster care. For a list of all state CIP contacts, please see <http://www.abanet.org/abanet/child/contacts.cfm>.

collaboration and communication; data exchange; training; and developing a sustainable model to continue systemic improvements.¹⁶

Identify other “champions” to bring the agencies together. Identify state or local legislators, nonprofit advocacy groups, or other leaders to serve as allies in your state or local level advocacy. Having a champion who is not affiliated with either the child welfare or education agency may encourage agency collaboration. A high profile champion will also raise public awareness of the issue and build momentum for change. Some states have found legislative hearings or public briefings especially helpful in gaining champions. In particular, engaging youth currently or formerly in care is an excellent way to build support. For example, a youth formerly in care testified with great effect on Capitol Hill in the summer of 2010 on the importance of education stability while she was in foster care.¹⁷

Data can be the starting point. Data is often a starting point to identify where there are barriers to progress and what changes are needed. Demonstrating the poor education outcomes of children in care is often a successful strategy in highlighting and raising awareness of the importance of action on this issue. Critical to this as an engagement strategy is not to use the data to point blame, but to identify a baseline, and rally agencies together to improve the student outcomes.¹⁸

Example:

In 2004, the **West Virginia** Department of Education created the West Virginia Out-of-Home Care Education Task Force to investigate barriers to the education of children in care and to make recommendations for and implement reforms. The primary activity of the Task Force was a data match between child welfare and education records to gather objective data on the education outcomes of children in care. The information gained from this data match, including very low educational achievement for children in care, provided the framework and momentum for future Task Force activities and policy and practice changes.¹⁹

¹⁶ See http://new.abanet.org/BlueprintForChange/Documents/texas_supreme_court.pdf for the court order creating the committee.

¹⁷ To read her testimony visit <http://advocacy.fosterclub.com/article/fosterclub-young-leader-kayla-vandyke-testifies-senate-help-committee>.

¹⁸ For detailed information about data sharing, including worksheets to start the conversation about this topic for child welfare and education agencies, see *Solving the Data Puzzle: Improving Information Sharing and Data Collection for Children in Foster Care* available for download at <http://www.abanet.org/child/education/publications/dataexchange.html>.

¹⁹ To access the full report visit: http://www.wvdhhr.org/oos_comm/reports/reaching%20every%20child%20report%2011-23-05.pdf.

Create a welcoming and supportive environment to engage education to participate in ongoing collaboration. In many states and jurisdictions, child welfare and education agencies remain siloed and fail to work together even on common concerns. When leaders from state agencies do collaborate, they can better address the needs of youth in care, who are served by multiple systems. An existing task force, advisory board, or standing committee at the state, county, or local level can be an excellent setting to engage education partners. Alternatively, child welfare and education agencies, along with other partners, can form new groups to address the education issues of youth in care. Critical to engaging education partners is ensuring that their concerns will be heard and that the goal of the collaboration will be not to pass blame but to move forward together to make improvements.

Example:

After the passage of Fostering Connections, the **Virginia** Department of Education and the Virginia Department of Social Services established a task force to discuss a plan for implementation. Following more than a year of interagency meetings and subcommittee work, the task force released, in the form of joint agency guidance, a protocol to support education stability for children in foster care. The task force developed forms to support the agreed upon protocol addressing issues of immediate enrollment and best interest determinations. This task force was also able to secure a commitment from the state child welfare agency to fund transportation for all children to remain in their same schools. The agencies are working collaboratively to conduct statewide trainings on the new protocol.²⁰

Education Is Ready To Partner - Now What?

After successfully engaging education partners around the importance of education stability and success for children in care, it is now time to think about how to actually make the collaboration happen. For a list of strategies and examples of best practices from around the country, please see the corresponding issue brief, [*Making It Work: How Child Welfare and Education Agencies Can Collaborate to Ensure School Stability for Children in Foster Care.*](#)

²⁰ Va. Dep't of Educ. & Va. Dep't of Soc. Servs., Joint Guidance on School Placement for Children in Foster Care, 1 (Dec. 2, 2010) available at http://www.dss.virginia.gov/family/fc/school_placement.pdf.

Foster Care & Education

Issue Brief

MAKING IT WORK: CHILD WELFARE AND EDUCATION AGENCIES COLLABORATING TO ENSURE SCHOOL STABILITY FOR CHILDREN IN FOSTER CARE

Introduction

Full implementation of the education mandates in the Fostering Connections Act requires close and effective collaboration between education and child welfare agencies.¹ This issue brief **offers guidance, resources, and examples on how to begin a collaboration and how collaborations can be structured to ensure school stability and educational continuity for children in care.**

Enacted in October 2008, the “Fostering Connections to Success and Increasing Adoptions Act of 2008,” (the Fostering Connections Act) is a comprehensive law designed to promote permanent family connections and improve the lives of youth in the child welfare system. Among other important provisions, the Act requires child welfare agencies to create “a plan for ensuring the education stability of the child while in foster care.” The Act emphasizes the importance of school stability as well as the need for collaboration between child welfare and education agencies.

This brief is part of a series of materials designed to be used together to support all stakeholders in implementing the education provisions of the Fostering Connections Act. To access the full series, please visit [The Legal Center for Foster Care and Education's Fostering Connections Toolkit.](#)

¹ Fostering Connections to Success and Increasing Adoptions Act of 2008 (hereinafter the Fostering Connections Act), Pub. L. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 42 U.S.C.).

Step One: Create a Common Knowledge Base

Each agency must do its “homework.” Before the agencies can begin to work together, each agency must understand its own laws, policies, practices, challenges, and goals relating to education. Educators and child welfare staff must determine if there are current challenges or barriers within their own agencies that hinder their ability to improve educational success for children in care. Each agency should then identify the issues that need to be changed or clarified to improve its own system in the short and long run and as well as its goals for collaborating with its partner system. Finally, each agency must have a leader identified to promote the cross-agency collaboration.

Each agency must understand the other. Child welfare and education agencies have different perspectives, structures, laws, policies, practices, and methods of operating. In order to collaborate as partners, each agency must increase its understanding of the role, practices, and laws governing the other agency. The more child welfare and education agencies learn about each other, the better the opportunity for informed, productive, and ongoing collaboration.

The Legal Center for Foster Care and Education can help you identify what other states are doing – including new court rules, local interagency agreements, and special arrangements for transporting children to maintain school stability. Examples from around the country can be found in the Legal Center for Foster Care and Education’s *Blueprint for Change*’s searchable online database.²

For many *education agency professionals*, the lives of children in foster care, and the challenges these youths face, are unfamiliar. Teachers and administrators often do not know how the child welfare system works – including what happens when legal custody transfers to a state or local child welfare agency, how juvenile courts and attorneys interact with children in care, the role of biological parents, foster families or residential facility staff, or the state or federal laws that govern the child welfare process. Educators often have little knowledge of the life experiences of children in care or the implications of those experiences on a child’s development and learning.

² Legal Center for Foster Care and Education’s *Blueprint for Change Foster Care and Education Database*, available at <http://new.abanet.org/blueprintforchange/pages/default.aspx>. Similarly, if you have best practices to share and add to our database, please email cleducation@staff.abanet.org.

There are several resources that can help to educate and support teachers, counselors, and school administrators to meet the educational needs of children in foster care:

[Endless Dreams](#), a video and training curriculum for teachers about children in foster care.

Articles:

[What Teachers and Educators Can Do to Help Youth in Foster Care](#)

[Why Special Education Teachers Should Care About Foster Care](#)

[How the Child Welfare System Works](#)

[Helping Traumatized Children Learn](#)

Factsheets, issue briefs and other information on the educational needs and rights of youth in care can be found at the Legal Center for Foster Care and Education's website at www.abanet.org/child/education/publications.

Child welfare professionals have similar knowledge gaps with respect to the education system. Some may not be aware of the many barriers to effective education children in care experience. Child welfare workers and administrators need to understand, at a minimum, the state's laws and policies regarding residency, enrollment, school discipline, and special education. They also need to learn how their state gives direction to local education agencies on key topics and laws.

State and local child welfare agencies must understand the organizational structure and responsibilities of the local school districts and school boards. Child welfare agencies need to know which school districts are in their county, whether different schools have different enrollment requirements, curricula or graduation requirements, and the transportation available in each district and to each school. Reviewing the website for the State Department of Education and then contacting an individual at that agency can be a useful starting point. The obligation to collaborate to ensure school stability and continuity under the Fostering Connections Act is an important incentive for state and local child welfare agencies to bridge the information gap with the education system and to build long-term partnerships and effective reforms.

[Research Highlights on Education and Foster Care](#) provides background information on the education obstacles facing youth in care, along with some promising practices.

[How Schools Work and How to Work with Schools](#), a primer for health and other professionals who seek to serve children and youth in school settings, available at

Factsheets, issue briefs and other information on the educational needs and rights of youth in care can be found at the Legal Center for Foster Care and Education's website at www.abanet.org/child/education/publications.



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Step Two: Set a Process and Goals for the Collaboration

Collaborations are successful when staff and leaders in all affected agencies recognize that an effective partnership is in each agency's self-interest – that is, it will help agency staff meet important agency goals and benefit the children they serve.

Establish a process for collaboration. Some examples of things to address include:

- Who else should be involved in the collaboration? For example, the juvenile court often has a role to play. Other agencies or community organizations may be important participants as well.
- Is there an existing structure that can facilitate the collaboration (e.g., a workgroup, committee, or task force)?
- Are there particular leaders (such as a legislator or judge) who will champion the effort?
- Are there particular individuals who are necessary for the effort to succeed (e.g., the agency director, school superintendent, or the director of special education)?
- How will the collaboration be institutionalized and sustained (e.g., through a law or regulation, an interagency agreement or joint protocol, ongoing training, workgroups or committees)?
- How will progress be measured, evaluated, and updated (e.g., data systems, updated protocols or policies)?

Establish and prioritize goals for the collaboration. Children in care face many educational challenges and the agencies should – collectively – prioritize their objectives and starting points. As a starting point, agencies can look to a framework established by the Legal Center for Foster Care and Education – and set forth in the *Blueprint for Change: Educational Success for Children in Foster Care*.³ This publication sets out eight goals that youth in care need to succeed in school:

³ BLUEPRINT FOR CHANGE: EDUCATIONAL SUCCESS FOR CHILDREN IN FOSTER CARE (2008) [hereinafter *the Blueprint*], available for download at http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/education/blueprint_second_edition_final_authcheckdam.pdf.

GOAL 1	Youth are entitled to remain in their same school when feasible
GOAL 2	Youth are guaranteed seamless transitions between schools and school districts when school moves occur
GOAL 3	Young children enter school ready to learn
GOAL 4	Youth have the opportunity and support to fully participate in all aspects of the school experience
GOAL 5	Youth have supports to prevent school dropout, truancy, and disciplinary actions
GOAL 6	Youth are involved and engaged in all aspects of their education and educational planning and are empowered to be advocates for their education needs and pursuits
GOAL 7	Youth have an adult who is invested in his or her education during and after his or her time in out of home care
GOAL 8	Youth have supports to enter into, and complete, postsecondary education¹

Agencies should consider the strengths, weaknesses, and opportunities in their own state to determine which of these goals to address and what to prioritize. For example, because of the requirements of the Fostering Connections Act, many child welfare agencies have found “school stability and continuity” (Goals 1 and 2 of the Blueprint for Change framework) to be priority areas. The Blueprint also sets forth benchmarks that agency staff and other advocates can use in determining whether progress towards a goal is being made in the relevant state or locality. Also included are national, state and local examples of how the goals have been achieved in other parts of the country.⁴ These benchmarks and examples can provide additional guidance for states and localities that are in the process of developing collaborations. Many states, including Nebraska, Florida, Texas and the District of Columbia, have used the Blueprint to guide conversations and launch collaborative efforts.⁵

Collaboratively identify obstacles, challenges, and solutions. Too frequently, each system sees the other as the source of the problem. But more often than not, both agencies will need to make changes. Working together to identify not only the barriers but possible solutions ensures that all partners have a common understanding of the mission and the plan for moving forward.

⁴ *Id.*

⁵ For more information on using the *Blueprint* to guide your state efforts in this area, please contact the Legal Center for Foster Care and Education at cleducation@staff.abanet.org.

Example:

In **Philadelphia, Pennsylvania** the child welfare and education agencies developed a detailed joint protocol to promote educational stability for all children in out-of-home placement.⁶ The protocol addresses how school stability decisions will be made and reviewed and tackles the difficult issue of transportation to the current school.⁷ To eliminate any confusion or conflict, the agreed-upon protocol provides transportation guidelines for short-term placements, identifies who will initiate transportation requests, and explains the types of transportation that will be provided in specific situations.⁸

Start simple. A simple, easy to achieve objective can be the perfect vehicle to start good cross-agency relationships and spur further collaboration.

Examples:

In **Iowa**, in 2009 the former state Director of Education issued a memo to all school superintendents in the state stressing the urgent education needs of children in foster care and highlighting the resources available in the state and elsewhere that could assist school districts in collaborating with their child welfare counterparts.⁹

Recognizing the challenges that schools face in identifying who is the child’s caretaker or whether that child is involved in special education, the **Washington, D.C.** Child and Family Services Agency created a simple “enrollment form” to be used whenever a child in care is enrolled in a new school.¹⁰ The form includes information about the child’s parent, living placement, previous school, and whether the child is receiving special education.¹¹ Caseworkers complete this form and makes sure that whoever is enrolling the child brings it to the school.¹²

Start small. Creating large-scale protocols or programs for all children in care may seem daunting – even though the number of children in foster care is generally a small percentage of the total number of children in school. Child welfare and education agencies have been successful in starting with more targeted efforts or

⁶ Joint Guidance and Policy and Procedure Guide Governing Implementation of the Educ. Stability Provisions of Fostering Connections, Philadelphia DHS and Philadelphia School Districts (Jan. 2010) (on file with the Legal Center for Foster Care and Education).

⁷ *Id.*

⁸ *Id.*

⁹ Memo from Judy Jeffrey, Director, Iowa Department of Education to School Superintendents (Sept. 25, 2009), available for download at http://www.iowa.gov/educate/index.php?option=com_docman&task=doc_download&gid=8525&Itemid=1507.

¹⁰ District of Columbia Child and Family Services Agency School Enrollment Process, <http://cfsa.dc.gov/DC/CFSA/For+Partners/Social+Workers/School+Enrollment+Process> (last visited May 12, 2011).

¹¹ *Id.*

¹² *Id.*

pilot sites to build momentum and work out problems before taking policies and practices to scale in a school district, county, or state..

Example:

In *Cincinnati, Ohio*, the Kids in School Rule! (KISR!) pilot project grew out of a Memorandum of Understanding (MOU) between six partner agencies.¹³ These agencies committed staff and resources to improving educational outcomes and promoting school stability for approximately 100 children in care who attended 22 schools within the Cincinnati Public School system (the schools with the highest percentage of children in care).¹⁴ This pilot project has a detailed plan to collect controlled data to document the impact of these interventions.¹⁵

But do not avoid the biggest challenges. While it is important to identify some smaller, short term goals or projects that can produce results quickly, it is also imperative to address more complex issues that will otherwise thwart more ambitious plans or impede long term successful implementation of more modest ones. Confront the inevitable challenges – such as who will pay to transport a child to maintain school stability or how to overcome confidentiality concerns to share necessary data and information across agencies – by breaking down the complex issues into smaller parts. Success will depend on each agency listening to – and addressing – the other agency’s concerns and jointly dedicating sufficient staff time and resources to assess and solve more complex problems.

Using the issue of transportation as an example, a first step is to understand the relevant legal framework. For detailed information about transportation costs, see the Legal Center for Foster Care and Education’s brief on this topic, [When School Stability Requires Transportation: State Considerations](#). To understand the overlap between the McKinney-Vento and the Fostering Connections Acts, see the Legal Center for Foster Care and Education’s factsheet, [Questions and Answers: The Overlap Between Fostering Connections and McKinney-Vento Acts](#). To avoid continuing problems and disputes, it is best for education and child welfare to identify jointly the factors to be used to determine if it is in a child’s best interest to change schools and to develop a protocol for how these decisions will be handled, who will pay, and under what circumstances education or child welfare agencies will be reimbursed.

¹³ Kids in School Rule! Project Description, *available for download at* http://www2.americanbar.org/BlueprintForChange/Documents/kisr_project_082609.doc.

¹⁴ *Id.*

¹⁵ *Id.*

Examples:

Prior to 2008, efforts to promote school stability for children in care in **Connecticut** floundered because no agency was willing to assume the cost of transporting children to support school stability. After the passage of the Fostering Connections Act, advocates, working together with the State Department of Family Services and the State Department of Education, secured Senate Bill 31 which provides that the child welfare system is responsible for the costs of transporting a child from a placement to school, with a \$3 million line item in the state budget to support this transportation.¹⁶ Many school districts and child welfare agencies have now developed agreements for addressing transportation, best interest determinations, and school enrollment.

Transportation costs and responsibilities were initial “barriers” to implementation of the Fostering Connections Act in **Virginia**. But recognizing the importance of school stability and continuity for youth in care, the state child welfare agency agreed to fund transportation.¹⁷ The two agencies were then able to move forward with other critical pieces of the collaboration such as school-based liaisons to support children in care.

Step Three: Keep the Conversation Going and Maintain Momentum

Once the collaboration has begun, the next challenge is to ensure that it continues with the same energy and enthusiasm. Below are some strategies to help ensure that the work continues, that change is institutionalized, and that the collaboration produces long term benefits for youth.

Ensure that staff resources within all agencies support the ongoing work. Child welfare and education agencies, as well as the courts and other community partners, need to devote time, attention, and resources to these issues. While this can be a challenge in tough fiscal times, the creation of dedicated expertise within each agency will help with efficiency and coordination, which ultimately can lead to a cost savings. Child welfare agencies need to lead by example by establishing internal expertise and a single point of contact around education issues at the state and local level. These staff can also reach out to education partners and providing training and support within and between agencies.¹⁸ Similarly, state and local education agencies should identify staff to be a single point of contact within the schools; they can assist students to enroll and get needed supports and services. These staff can be the liaisons to child welfare staff and can assist and train other school staff.¹⁹ Many courts around the country also have education liaisons who work with juvenile court judges and ensure that the judges have access to education records and other relevant information needed to

¹⁶ 2010 Conn. Pub. Acts 10-160.

¹⁷ See Va. Dep’t of Educ. & Va. Dep’t of Soc. Servs., Joint Guidance on School Placement for Children in Foster Care, 1 (Dec. 2, 2010), available at http://www.dss.virginia.gov/family/fc/school_placement.pdf.

¹⁸ See Washington, DC, Michigan, Pennsylvania.

¹⁹ California, Colorado and Missouri are three states that have foster care liaisons in each school district in the state.

make informed child-specific decisions. For more information on this issue see our forthcoming Legal Center for Foster Care and Education issue brief [The Role of Points of Contact in Helping Youth Succeed Educationally](#). (Available Fall 2011).

Celebrate early successes and victories and continue to collect best practices. There will always be more challenges and new issues to address as the collaboration moves ahead. Take time to celebrate the successes within each agency and those resulting from the multi-system collaboration. Collect promising practices around your jurisdiction and be sure to share successful strategies with the team.

Keep leadership (agency leaders and the courts) engaged and informed of ongoing work and use their authority to keep the momentum going. Initial buy-in by agency and court leaders is just the beginning. These leaders need to believe in and support the work over time. Leaders must understand the value of the collaboration and understand that real change takes time. Leadership changes can pose yet another challenge. It will be critical to engage the new leaders quickly and demonstrate the success the collaboration has achieved to date. Judicial champions can help to start conversations with old and new agency leaders and to maintain efforts over time. Ask your court to use its leadership and authority to get and keep educators and child welfare agencies working together.

Courts must also review court policies and practices that have an impact on school success for children in care. Sometime a change in court rules may be needed to ensure that juvenile court judges consider the education needs of children in care.²⁰ Several jurisdictions have used judicial “education checklists” to encourage judges to make education related inquiries at every hearing.²¹

Data drives change and supports progress. Initially, data can help engage new partners and start the conversation about the education needs of children in care. But data can also be tool to maintain the collaboration’s momentum over time because it provides ongoing information on the strengths and weaknesses of the system and the collaboration. Education and child welfare agencies, as well as the courts, are increasingly data-driven and outcomes-based. Everyone wants to learn what works and to show improved student achievement (as well as compliance with federal and state mandates). Increasingly, agencies and systems have sophisticated tools for achieving these objectives. This can be achieved separately by the agencies and courts, or processes can be devised to share data among systems. Many states and localities have developed

²⁰ For example, in April 2011, Pennsylvania’s Supreme Court approved court rules that require juvenile court judges to inquire into education issues for each child at each stage of the child welfare proceeding. LINK?

²¹ The National Council of Juvenile and Family Court Judges developed Asking the Right Questions II: Judicial Checklists to Meet the Educational Needs of Children and Youth in Foster Care which includes a checklist of critical questions every judge should ask about education in every case, and a checklist of critical questions every judge should ask about education and older youth. The checklist is available at <http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/EducationalOutcomes/education%20checklist%202009.pdf>.

²⁷ For a list of many state-specific judicial education checklists, please see <http://new.abanet.org/blueprintforchange/pages/SearchResult.aspx?k=checklist>.

ways to collect, share, and track important data on education needs and school progress while still complying with applicable confidentiality rules.²²

Memorialize good practice with changes to laws and policies. Key to successful collaboration is a willingness to review any policy or practice, whether new or long standing, to determine whether it is working for children in care. Often, state or local laws or policies serve as barriers to success for children in care. Pursuing changes to laws or policies helps ensure that the work being done to overcome barriers is institutionalized.

Institutionalize collaboration through ongoing communication, documentation, and trainings. Collaboration takes time to develop. Unless those involved build systems for ongoing relationship building and teamwork, it will end with a change in leadership or a shift in priorities. Be sure to establish long-term structure and process for the collaboration (i.e. ongoing workgroup or task force); document agreed upon procedures (if not in law and policy, then through reports, manuals and guidance); and provide ongoing training for new and old staff and leadership.

Conclusion

Improving school stability and educational outcomes for children in care requires changes in how education and child welfare agencies, courts, and other community partners do business, separately and together. Many states have found ways to work together to help specific students and to change entire systems. Successful collaboration is not easy – it is both one of the most challenging tasks that agencies and advocates can undertake and one of the most rewarding. Ultimately, the mandates of the Fostering Connections Act cannot be met unless systems learn to work together. The key to building a successful collaboration is simply to start the conversation. The best time to start is now.

²² See, e.g., the discussion of confidentiality in *Solving the Data Puzzle*, available at <http://new.abanet.org/BlueprintForChange/Documents/solvingthedata puzzle.pdf>.

²⁹ For a full list of state laws that have been enacted to support school stability and continuity for children in care, see http://www.abanet.org/child/education/publications/state_legislation_chart_10_5_10_final.doc



Foster Care & Education

Issue Brief

SCHOOL STABILITY UNDER FOSTERING CONNECTIONS: “PROXIMITY,” OR PLACING CHILDREN CLOSE TO THEIR CURRENT SCHOOLS

Introduction

Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) requires the child welfare agency to strive for school stability for each child.¹ Achieving school stability requires the child welfare agency and the education agency to collaborate effectively, and may necessitate that one or both agencies provide transportation for the child to remain in the same school when he or she changes living placements.² However, child welfare agencies can ensure school stability without the additional stress and cost of special transportation by selecting a new home for the child in the child’s current school catchment area or school district. Indeed, Fostering Connections directs the child welfare agency to document in the case plan “assurances that the placement of the child in foster care takes into account. . . . the proximity to the school in which the child was enrolled at the time of placement.”³ This issue brief focuses on **how agencies can implement this “proximity” requirement.**

Enacted in October 2008, the “Fostering Connections to Success and Increasing Adoptions Act of 2008,” (the Fostering Connections Act) is a comprehensive law designed to promote permanent family connections and improve the lives of youth in the child welfare system. Among other important provisions, the Act requires child welfare agencies to create “a plan for ensuring the education stability of the child while in foster care.” The Act emphasizes the importance of school stability as well as the need for collaboration between child welfare and education agencies.

This brief is part of a series of materials designed to be used together to support all stakeholders in implementing the education provisions of the Fostering Connections Act. To access the full series, please visit [The Legal Center for Foster Care and Education's Fostering Connections Toolkit](#).



The Benefits of Considering School-Placement Proximity

Finding a living placement in or near the child’s school can present challenges, especially in areas with few available foster homes or for children in sibling groups or with specialized needs. Additionally, school stability is one of numerous factors child welfare agencies must consider when making the best placement decision for a child, including decisions about placements that are best to achieve ultimate permanency for the child. Indeed, the Administration for Children and Families (ACF) released a Program Instruction on Fostering Connections that acknowledges that:

[t]he title IV-E agency is vested with the responsibility for making individual placement decisions on a case-by-case basis on behalf of a child in foster care. As such, we realize that the agency will be balancing the child’s needs for proximity to the family, the available foster care resources, along with the appropriateness of the child’s current educational setting, among other things.⁴

Locating a living placement that is proximate to the child’s current school can save the education and child welfare agencies time and money, and can reduce commuting time for the child. Focusing on school proximity can also improve the quality of the child’s school experience. For example, if the child lives close to his or her school, it will be much easier for the child to participate in extracurricular activities such as clubs and sports.

School proximity may also increase community support for the child outside the education system. To achieve proximity, the child welfare agency will often recruit community or family members to provide homes or placements for local youth. Engaging extended family and community members (such as coaches, teachers, and church members) in this way can bolster the child’s support network, sense of belonging to the community, and cultural identity. Keeping the child in the same community from which he or she was removed will also ease his or her transition in the likely event of family reunification.

This brief highlights practices from jurisdictions around the country that have succeeded in increasing school stability by focusing on “school-placement proximity” – i.e. identifying living placements that are close to the school where the child has experienced stability. These practices include using technological tools to locate nearby families, as well as focused recruitment efforts in high-needs communities.

¹ Fostering Connections to Success and Increasing Adoptions Act of 2008 (hereinafter “Fostering Connections”), Pub. L. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 42 U.S.C.).

²For more information, see the other issue briefs in this series, including Making the Case: Engaging Education; Making it Work: Successful Collaboration; Making Best Interest Decisions; and When School Stability Requires Transportation, *available at* http://www.americanbar.org/groups/child_law/projects_initiatives/education/state_implementation_toolkit.html.

³ 42 U.S.C. 675(1)(G)(i).

⁴U.S. Dep’t of Health and Human Servs.Admin.for Children and Families, Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, 19 (July 9, 2010) (hereinafter “ACF Guidance”), *available at* http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm.

Using Technology to Find “Proximate” Placements

Several jurisdictions have successfully utilized technology to identify placements close to the home from which the child was removed and/or the school he/she currently attends.

Using GIS-mapping to find available placements

Geographic Information Systems (GIS) refers to systems that organize and analyze data in terms of geographic location. Most often a visual representation of the data is developed by plotting the data points on a map. For many foster care agencies nationwide, GIS is a powerful tool: it can help agency staff track the location of available foster homes, map the locations of schools and their catchment areas, and allow foster family recruiters to focus their efforts on the areas with the greatest need. As the examples below demonstrate, locales use GIS tools in different ways, but it serves a valuable purpose: finding the best possible placements for children—which means looking within their communities, their neighborhoods, and their schools. Cost for such software varies widely, from single computer use programs to server installed systems for multiple users.⁵

Louisiana provides GIS mapping technology to child protective workers to use when they remove children and are looking for appropriate placements. Workers can access the GIS from the office, their home, or from their laptops while out in the field. This means that they can immediately gather information about current foster placements anywhere, anytime, and can visually assess the feasibility of available homes based on their location and proximity to the child’s school. The GIS maps include other pertinent information as well, such as the location of courthouses, child care centers, hospitals, mental health therapists, etc. — which allows a worker to find the best possible placement location match for a child.

To keep the system up-to-date, data is pulled nightly from the agency’s child welfare information system which is used to track and pay all child welfare service providers and clients. Thus, workers have access to information about children’s recent removals and placements as well as the availability of new foster homes. This makes the data available to child welfare staff “on the fly,” with information updated regularly by all child welfare staff. Workers can use the data to find vacancies, make child placement decisions, and determine where to target recruitment efforts.

The impact of the GIS technology in Louisiana is impressive. Since installation of the technology, there has been an over 10% decrease in school changes.

⁵ The most commonly used software is called ArcMap, published by ESRI (<http://www.esri.com/>). The cost to run ArcMap on a single computer is currently \$1,500; to install it on a server for multiple users the cost is \$3,500. For more comprehensive GIS systems, the price can run upwards of \$50,000 for one jurisdiction’s system.

For an in-depth look at how to implement a GIS system, see *Using Geographical Information Systems to Enhance Community-Based Child Welfare Services*, Child Maltreatment, August 1998 3: 224-234.

Like many of the other jurisdictions using GIS technology, Louisiana uses ESRI products, as well as a business intelligence product known as WebFocus. The software is shared among various state program offices. This spreads costs and allows for greater collaboration between the agencies in a more streamlined and economical manner. For instance, the closure of a child care center reported by the state's child care licensing agency is automatically updated in the GIS system. Conversely, the status of a child care center under investigation for abuse or neglect is passed on to the licensing agency. The entire system is run on a server, and is accessible via the Internet. Though this kind of comprehensive GIS technology is more expensive than a more limited program, it also creates cost savings. Placements are made faster and with fewer changes since the caseworkers have both textual and visual information when making their placement decisions. For more information, please contact Terry Skaggs at Terry.Skaggs@la.gov.

The **Illinois** Department of Children and Families uses a GIS program called SchoolMinder to locate foster placements for children. SchoolMinder is used with children in homes not previously involved with the Department and when the child protective services investigator has been unable to find a willing and suitable relative with whom to place the child.⁶ A "placement worker" consults SchoolMinder for a list of eligible homes within 10 miles of the school the child attends (or, if unavailable, the address of the home of the parent or another landmark). The search parameters include basic demographics (age, sex and number of siblings) of the child or sibling group being placed.

The placement worker then creates a "call list" by loading the homes within the child's school catchment area (Chicago) or school district (rest of state) into a statewide system which then orders the list of eligible homes and agencies according to the performance contracting rules of the Department. The placement worker then begins calling agencies in the order presented on the call list. If the placement worker fails to obtain placement in the catchment area/district, she generates a new call list of all homes and related agencies within a mile of the child's school or home address, and from there 5 miles, and then in succeeding 5 mile increments until a placement is found. SchoolMinder's success depends on keeping the information about available homes up-to-date. Updating SchoolMinder takes one clerical staff about 15 hours/week.

The impact of the technology is impressive. Since Illinois began using the SchoolMinder application in 2007, the average distances for initial foster care placement in Cook County dropped from 9.9 to 2.5 miles. Outside Cook County, the average dropped from 22.5 to 11.4 miles. Children placed using SchoolMinder are 50% more likely to stay in the same school. For more information, especially about any of the technical aspects of implementing a GIS system like SchoolMinder, please contact Richard Foltz at richard.foltz@illinois.gov.⁷

⁶ Currently, SchoolMinder is only used for children upon removal from the home; it is not utilized for later placement changes.

⁷ For more information on SchoolMinder, see *There's No Place Like Close to Home: Illinois Takes a Geographic Approach to Foster Care*, available at <http://www.esri.com/news/arcnews/summer07/articles/theres-no-place.html>.

Using other software (non-GIS mapping) to find available placements

Other computer programs or enhancements to an existing case management system can also dramatically increase school-placement proximity, at a relatively low cost.

To keep foster youth in their schools of origin, **Sacramento County** is using a searchable database called School Connect to match the children with available housing within their school districts. Various Foster Family Agency (FFA) employees update the database daily with information about newly available foster placements. The database stores information about each placement's certifications, as well as other details that can help make good placement decisions, such as the family's experience with children with behavioral or physical disabilities, or whether there are pets or smokers in the placement. Child Protective Services (CPS) employees can then search the database for the placement closest to a child's school. The database lists the address of the placements, indicates whether busing is available, and states whether the potential caretaker is willing to transport the child to and from school. After considering the various other relevant factors, the CPS employee then matches the child with an appropriate placement.

Sacramento County mandates the use of this program for all CPS workers and FFAs. The creation and maintenance of the database was funded internally by the Sacramento County Foster Youth Services Agency. The database software is easily shared among other California districts and counties, and could be adapted to other states and jurisdictions. For more information, please contact Virginia D'Amico at vdamico@scoe.net.

Increasing Neighborhood Placement Options

Recognizing the importance of keeping children close to home, including in the same school, child welfare agencies have used technology to identify the areas children are being removed from, and targeted recruitment through those communities and schools.

Using GIS-mapping to target recruiting

The **Connecticut** Department of Children and Families (DCF) strives to maintain children that come into agency care in placements within their own communities. To help achieve that goal, DCF staff have used GIS products to pinpoint the locations of all schools, universities and foster and congregate care providers across the state. DCF staff can then determine where there may be concentrations of families with the greatest potential to become foster homes, and which areas are most in need of additional foster care capacity. This information is disseminated to local recruiters, who are then able to focus their efforts on the specific geographic areas where their time will result in the most benefit.

Connecticut is currently utilizing the ESRI Arc GIS Desktop software at the basic Arcview license level. Two employees use this software to produce descriptive and analytic map products. While the state has been able to provide useful services for relatively low cost, it is currently exploring an expansion of its software to allow for operational, web-based map services and automated address verification to improve data quality. For more information on Connecticut's use of GIS, please contact Fred North at fred.north@ct.gov.



Arizona has been using GIS to locate and recruit foster homes for approximately seven years. The state's child welfare division is divided into five regional districts, and GIS is used regularly to target recruitment efforts. Home recruitment managers in each region use the information to aim recruitment efforts at areas in which removal rates are higher than the number of available foster homes.

GIS maps are refreshed with updated foster home and removal information every six months so that home recruitment managers may reevaluate the areas that require focus. This geographical information is available publicly, and is sortable by zip code.

(See https://www.azdes.gov/Arizona_Serves.aspx?menu=332&id=4998#Maps). Arizona uses ESRI's GIS software, which includes ArcMap. The GIS technology is shared among several state agencies which has helped to reduce costs.

For more information about Arizona's use of GIS mapping, please contact Jakki Kolzow, Deputy Assistant Director of DCYF at JKolzow@azdes.gov or Lucas Murray, GIS programmer and analyst at LucasMurray@azdes.gov.

Illinois has been able to employ the same GIS software behind their SchoolMinder program (see above) to identify the areas with the greatest need for new foster homes. Yearly, Illinois uses their GIS program to determine the number of available foster homes per square mile, as well as number of homes per square mile from which children have been removed. Staff also consider the number of available homes within reasonable travel distance from the homes from which children have been removed and perform several analyses that demonstrate very specific areas in need of new foster homes. With this additional support and information, child welfare professionals in Illinois are able to focus their efforts and limited resources on the areas most in need of new homes. With this information, the state is able to guarantee that a child – most likely from the same community – will be placed with a qualified resource family, which helps recruitment efforts. Effective recruitment allows the SchoolMinder program to succeed because it ensures there will be sufficient homes available near a child's school.

For more information please contact Richard Foltz at richard.foltz@illinois.gov.

Community-based recruitment

Many jurisdictions improve proximity by taking advantage of a child's ties to the entire neighborhood. The following are examples of some innovative approaches to improving the recruitment and retention of foster families within a child's neighborhood.

Family to Family (F2F) was a **National** initiative started by the Annie E. Casey Foundation. It incorporated four key strategies to improve child welfare services: building community partnerships, using team decision making, providing resources for family recruitment, and expanding placement options. One of the goals of the F2F initiative was to establish a strong network of neighborhood-based resource families so that children can be placed with safe and stable families from their own community or neighborhood. Jurisdictions using the F2F held meetings with community stakeholders to create plans for the children in their neighborhoods. The program also recruited and trained foster families, particularly in neighborhoods with especially large numbers of children in the child welfare system. The F2F model was implemented in several states and counties; its



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principles are easily incorporated into existing programs and models. For more information about F2F, please visit <http://www.aecf.org/MajorInitiatives/Family%20to%20Family.aspx>.

Neighborhoods for Kids (N4K) in **San Diego** works to find placements within children's community to keep them connected to their current schools. To do this, investigators build "genograms" and "ecomaps" for each child. A genogram is like a family tree and is used to identify and locate possible kin care providers. The "tree" can include as many as five levels of family relationships—that is, it may include great-grandparents or cousins twice-removed. An ecomap is more of a social family tree; it includes other adults that are present in the child's life—teachers, therapists, Little League coaches, neighbors, church members, etc.—to identify leads for possible foster placements. Placing a child with a person from the child's ecomap would allow her to remain connected to her community in the care of a person she knows and trusts.

N4K is used to actively recruit new foster parents so that, if the genograms and ecomaps do not pan out for a particular child, there are other options. N4K uses Parent Teacher Associations to recruit at schools, and also recruits at community events. Additionally, N4K runs temporary foster placements called "Waystation" homes in each school district they serve. These homes are open 24 hours a day, and are available for temporary placements when a child is first removed from his or her home. These Waystations are responsible for transporting the child to and from school so that their education is not interrupted. For more information about the Neighborhoods for Kids program, including how to adapt it for other locales, contact Dennis Leggett at Dennis.Leggett@sdcounty.ca.gov.

The **Arizona** Division of Children, Youth and Families stresses the importance of recruiting and maintaining foster homes to best serve their children. Foster family agencies hold neighborhood events to raise awareness and support, inviting others to learn more about what being a foster parent is like. The Arizona SERVES initiative (<https://www.azdes.gov/arizonaserveshome.aspx>) also promotes foster care as an important volunteer effort. This culture of promoting and maintaining new foster parent relationships builds cohesion in the community, promotes permanency, and ultimately helps children to remain in their neighborhoods and schools. For more information about Arizona's programming, please contact Jakki Kolzow, Deputy Assistant Director of DCYF at JKolzow@azdes.gov.

School-based recruitment

Schools can be key partners in efforts to maintain proximity of school and placement.

In **Barre, Vermont**, the Resource Coordinator of the Family Services Division of the Vermont Department for Children and Families uses several tactics to recruit and maintain foster families within the school districts, with a focus on recruiting in the towns with the highest removal rates. The Resource Coordinator regularly reaches out to principals and administrators of schools to help raise awareness about the need for foster families. Every May and November—National Foster Care and National Adoption Months—the Resource Coordinator includes a letter in all local school newsletters thanking current foster or adoptive families and providing information about how to become a foster parent.



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Another strategy used in Barre is to maintain a directory with the contact information of guidance counselors and other contact persons (often the school secretary or the secretary of student services) in every district. The information is updated annually and is used for mailings, recruitment, and to conduct family- and kin-finding for a particular child. The school often provides caseworkers with the child's emergency contact or information about relatives and family friends. School administrators are also often able to provide DCF workers useful information regarding the type of setting that would be most suitable to meet the child's needs. For more information, please contact the Resource Coordinator, Ms. Joan Rock at Joan.Rock@ahs.state.vt.us.

In **Baltimore, Maryland**, the Baltimore City Public Schools entered into a protocol with Baltimore City Department of Social Services (DSS) to allow DSS access to a student's school emergency contact card when the child enters care. The emergency contact is often a relative, neighbor, or close family friend who may be a placement option for the child in close proximity to the school. By relying on these contacts, DSS is able to increase the chances that the child can be placed within the same school district despite removal from home. For more information about the protocol, please see http://www.huffingtonpost.com/daniel-heimpel/a-simple-answer-to-a-comp_b_766742.html.

The Our Community, Our Children (OCOC) campaign in **San Francisco** seeks to promote permanency for children in foster homes by conducting community-wide outreach, raising awareness, and focusing on recruitment efforts to keep children in San Francisco. As a part of its awareness campaign, San Francisco's Foster Youth Services (FYS) has produced several videos and campaign materials for foster family recruitment. The program has specifically targeted schools as a site for foster family recruitment. FYS, in collaboration with the San Francisco Human Services Agency and local foster and adoptive agencies, also provides permanency orientation sessions within local schools for families and teachers who may be interested in becoming foster parents or another form of permanent support.

Additionally, OCOC employs two permanency coordinators who collaborate with the schools, protective service workers, youth, and identified permanent supports to find the best possible placement for a given child. The coordinator also contacts the foster youth liaison at the school to try to discover other placement options through family, friends, or school staff. Permanency coordinators work to address school issues by connecting with the Child Protective Center to identify schools previously attended. For more information on Our Community, Our Children, please contact Maya Webb at WebbM1@sfusd.edu or visit www.healthiersf.org/fys.

Defining Proximity in Light of Transportation Options

Fostering Connections does not define the term "proximity," but one reasonable interpretation can be that a student is in proximity of a school if her location allows her to continue in the same school without the need for special transportation. Generally, this will mean that a student is in the same school district or catchment area. However, some districts have looked creatively at bus transportation to schools to help guide living placement determinations.



In **Broward County, Florida**, to allow the child welfare agency flexibility in identifying appropriate living placements that allow a student to attend the same school, the transportation department within the school district of Broward County has created a document called a “feasibility grid.” This grid separates the county into 8 geographic regions. For each of the schools in Broward County, the different regions are ranked from 0 to 5, 0 being the most difficult to secure transportation to and from the school, and 5 being the easiest. The child welfare agency then makes all efforts to select a placement in higher-ranked regions. This grid took only a few weeks to complete, and is updated approximately every 2 years.

For more information about Broward County’s policies concerning foster youth, please contact Debbie Winters at debbie.winters@browardschools.com.

Conclusion

Taking into account where the current school is located in relation to the proposed living placement can prevent a child from being placed so far away that a school change becomes inevitable or transportation becomes complex or expensive. This is the rationale behind Fostering Connections’ requirement that “proximity” to the current school be considered in placement decisions. As many of the state and local examples highlighted here demonstrate, strategies focused on proximity can often lead to the least disruption to the child’s education, social life, and family and community connections, and is best for the child welfare agency because it is cost effective.

Foster Care & Education

Issue Brief

SCHOOL STABILITY UNDER FOSTERING CONNECTIONS: MAKING BEST INTEREST DECISIONS

Introduction

Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) places a duty on the child welfare agency to work for school stability for children in care.¹ The Act emphasizes the importance of remaining in the same school by requiring child welfare agencies to work for that goal *unless* “remaining in such school is not in the best interests of the child.”² This issue brief focuses on **how agencies should make the best interest determination**: who they should engage in the decision, what factors they should consider, and how to resolve disputes.

Enacted in October 2008, the “Fostering Connections to Success and Increasing Adoptions Act of 2008,” (Fostering Connections) is a comprehensive law designed to promote permanent family connections and improve the lives of youth in the child welfare system. Among other important provisions, the Act requires child welfare agencies to create “a plan for ensuring the education stability of the child while in foster care.” The Act emphasizes the importance of school stability as well as the need for collaboration between child welfare and education agencies.

This brief is part of a series of materials designed to be used together to support all stakeholders in implementing the education provisions of the Fostering Connections Act. To access the full series, please visit [The Legal Center for Foster Care and Education's Fostering Connections Toolkit](#).

¹ Fostering Connections to Success and Increasing Adoptions Act of 2008 (hereinafter “Fostering Connections”), Pub. L. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 42 U.S.C.).

² Fostering Connections § 204(a)(1)(B); 42 U.S.C. § 675(1)(G)(ii).



The Duty of the Child Welfare Agency to Assess the Child’s Best Interests

Fostering Connections requires child welfare agencies to document in each child’s case plan that school stability has been carefully considered. Specifically, Fostering Connections requires that the case plan include “assurances that the [child welfare] agency has coordinated with appropriate local educational agencies... to ensure that the child remains in the school in which the child is enrolled at the time of placement” unless “remaining in such school is not in the best interests of the child...”³ The Program Instruction released by the Administration for Children and Families (ACF Program Instruction) underscores that it is the duty of the child welfare agency to make this decision, noting that the “agency should determine if remaining in the same school is in the child’s best interests.”⁴

The child welfare agency is well-positioned to make school stability decisions as it can assess non-educational factors such as safety, sibling placements, the child’s permanency goal, and the other components of the case plan. The agency 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.⁵

Seeking Input from Stakeholders

In making the initial best interests determination, child welfare agencies should consult (and perhaps in some instances defer to) other players such as the student, the parent, and school staff who may well be more knowledgeable than the child welfare agency about what is best for the child educationally. As the ACF Program Instruction explains

We encourage the title IV-E agency to specify the parties other than the caseworker and the child’s parents who should participate in discussions or decisions related to the educational stability plan. For example, the agency could delineate the circumstances in which the youth, school personnel or education advocates, foster parents, the child’s attorney, guardian ad litem, and other persons involved in case planning for the child are a part of the educational stability planning process... We encourage the title IV-E agency to develop a standard and deliberate process for determining best interests for this provision, guiding who is responsible for decision-making, and properly documenting the steps taken to make the determination.⁶

³ Fostering Connections § 204(a)(1)(B); 42 U.S.C. 675(1)(G)(ii).

⁴ U.S. Dep’t of Health and Human Servs. Admin. for Children and Families, Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, 19 (July 9, 2010) (hereinafter “ACF Guidance”), available at http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm.

⁵ Before even reaching this decision, child welfare agencies must attempt to maintain children in placements in proximity to their original school. See Fostering Connections § 204(a)(1)(B); 41 U.S.C. § 674(1)(G)(ii).

⁶ ACF Program Instruction, *supra* note 4, at 20.

Examples:

A **New Jersey** law that went into effect in September, 2010 requires the child welfare agency, in making the best interests determination, to make reasonable efforts to consult with the child, the child's parent or guardian, the child's GAL, a representative from the current school and a representative from the school in the district in which the new placement is located.⁷ Unless there is an immediate safety concern, the child welfare agency has five business days to make a best interest determination.⁸

In March, 2011, the **Virginia** legislature unanimously passed a bill to revise the state's Education Code to permit children in foster care to remain in the same school when in the child's best interests.⁹ The bill directs the local child welfare agency to make the best interests determination "jointly with the local school division."¹⁰ Policy guidance issued jointly on December 2, 2010 by the Virginia Department of Education and the Virginia Department of Social Services emphasizes that the local child welfare agency and the schools "must collaborate in determining the school placement that is in every child's best interest when his or her residence changes."¹¹ These two entities must also consult "with the child and other key partners" when making the best interests determination.¹² The guidance lists examples of "[e]ssential members for the team determination process," and states that the child welfare staff and school representatives should "make all reasonable efforts to involve other individuals who have knowledge of the child."¹³ The essential team members include: the child; child's birth parent(s) or prior custodian; an individual the child would like to have participate; caseworker; school representative; and the parents for special education purposes (if applicable).¹⁴ The school representative may also choose to consult with or involve: a school division representative from the child's new school at the time of placement in the new residence and/or the school of residence for the child's new residence; a parent for special education purposes; classroom teachers; a school social worker; school counselors; special education coordinators (if the child has an IEP or 504 plan); or coaches.¹⁵ The caseworker may involve: the child's birth parent(s) or prior custodian; other family members; resource parent(s) or the current placement provider; the guardian ad litem; and other adults who are significant for the child and family.¹⁶ The child welfare caseworker must also engage the child in the process.¹⁷

⁷ N.J. STAT. ANN. § 30:4C-26b(c) (West 2010).

⁸ *Id.*

⁹ 2011 Virginia Laws Ch. 154 (S.B. 1038) (amending VA. CODE ANN. §§ 16.1-281 and 22.1-3.4, and adding § 63.2-900.3).

¹⁰ *Id.*

¹¹ Va. Dep't of Educ. & Va. Dep't of Soc. Servs., Joint Guidance on School Placement for Children in Foster Care, 1 (Dec. 2, 2010) (hereinafter "Va. Joint Guidance"), available at http://www.dss.virginia.gov/family/fc/school_placement.pdf.

¹² *Id.* at 1.

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 4.

Clearly child welfare staff should consult with the legally authorized education decision-maker. **Unless someone else has been appointed by the court, or in some cases the school, a child’s education decision-maker for a child in care is most likely the child’s parent.** Engaging parents in a child’s education is an important way to foster the child-parent bond that will ultimately support reunification. When a parent is unable or unwilling to make the decision in the best interests of the child, however, the law allows for alternative decision-makers. Because these decision-makers are already charged with working on behalf of the child’s educational interests, the child welfare agency should usually defer to their judgment.

Special Education Decision-Makers: Every child in special education has a right under federal law to have a parent (which in the default of an active parent could be the foster parent) making decisions for him or her, or to have an education decision-maker appointed by a court or a school district. This is a complex area of law. For details on the law defining who can play this role, see the Legal Center for Foster Care and Education series of special education decision-making fact sheets at <http://www.abanet.org/child/education/publications/specialeducation.html>.

General Education Decision-Makers: Judges may also limit parental rights and appoint education decision-makers for general education purposes. Sometimes the authority to do so arises implicitly from the judge’s authority to act in the best interests and for the safety and well-being of the child. In other cases, state law explicitly grants this authority. For example, **California** law allows the court to limit the parents’ rights to make education decisions for children adjudicated dependent.¹⁸ The court can then appoint an education decision-maker known as a “responsible adult.”¹⁹ For a child eligible for special education, if the court is unable to appoint a responsible adult, the court may refer the child to the local educational agency for appointment of a surrogate parent for education decision-making purposes.²⁰ The court also has the authority to make educational decisions for the child, with input from interested parties when there is no responsible adult, surrogate parent or foster parent to do so.²¹

Each stakeholder participating in the school stability decision should be given key information about the law and the stakeholder’s role. He or she should also be given the guidelines and criteria by which the decision should be made.

¹⁸ CAL. WELF. & INST. CODE § 361(a) (West 2007).

¹⁹ *Id.*

²⁰ CAL. WELF. & INST. CODE § 361(a)(5) (West 2007).

²¹ *Id.*

Establishing the Criteria for the Decision

The child welfare agency needs clear guidelines to assist it in making the school stability determination. The ACF Program Instruction lists examples of factors that may influence this decision:²²

- the child's preference to change schools or remain in the same school;
- the safety of the child;
- the appropriateness of educational programs in the current school; and
- how each school is serving or can serve the child's needs, including special education and other interests.

Additional factors include:

- preferences of the child's parent or education decision-maker;
- the expected length of the child's current placement and the child's permanency plan;
- the number of schools the child has attended over the past few years and this year, and how the school transfers have affected the child emotionally, academically and physically;
- how anxious the child is about upcoming moves and about being in out-of-home care;
- how each school can respond to the child's academic strengths and needs;
- whether the timing of the school transfer would coincide with a logical juncture such as after testing, after an event that is significant to the child, or at the end of the school year;
- how changing schools would affect the student's ability to earn full academic credit, participate in sports or other extra-curricular activities, proceed to the next grade, or graduate on time;
- how the length of the commute to the school of origin would impact the child;
- the schools siblings attend.²³

For a checklist guiding the decision-maker through the school selection decision, see Legal Center for Foster Care and Education and the National Center for Homeless Education, *Best Practices in Homeless Education: School Selection for Students in Out-of-Home Care* (Fall 2009), available at http://www.serve.org/nche/downloads/briefs/school_sel_in_care.pdf.

²² ACF Program Instruction, *supra* note 4, at 20.

²³ Adapted from Legal Center for Foster Care and Education and the National Center for Homeless Education, *Best Practices in Homeless Education: School Selection for Students in Out-of-Home Care* (Fall 2009), available at http://www.serve.org/nche/downloads/briefs/school_sel_in_care.pdf. This issue brief provides more information on the best interests determination and may be useful to readers.

NOTE: The Cost of Transportation Should NOT Be a Best Interests Factor

The ACF Program Instruction specifically states that the decision-maker should not consider the cost of transportation when determining which school serves the child's best interests.²⁴

Examples:

A recently passed law in **New Jersey** provides that “best interests” factors shall include, but are not limited to: safety considerations; the proximity of the resource family home to the child's present school; the age and grade level of the child as it relates to the other best interests factors; the needs of the child, including social adjustment and well-being; the child's preference; the child's performance, continuity of education and engagement in the school the child presently attends; the child's special education programming if the child is classified; the point of time in the school year; the child's permanency goal and likelihood of reunification; the anticipated duration of the placement; and other factors that may surface through future regulations.²⁵

Guidance issued by the **Pennsylvania** Department of Public Welfare establishes that “some factors that suggest that a school move may be appropriate are: the child's new living arrangement is likely to become permanent, the move coincides with a natural transition time (vacation/holiday closure), and the child would be better served by the new school; the child's social or academic needs would be better met at the new school; a significant commute to the original school would have a negative impact on the child; or the child's safety would be compromised by remaining in the current school.”²⁶

Joint policy guidance from the **Virginia** Departments of Education and Social Services notes that when making the best interests determination, the “child's safety and permanency plan shall be paramount,” and lists factors similar to those described above.²⁷ The guidance directs agencies to employ the “Best Interest Determination for Foster Care School Placement Form”²⁸ and to place it in the child's student file and the child welfare case file.²⁹

²⁴ ACF Guidance, *supra* note 4, at 20.

²⁵ N.J. STAT. ANN. § 30:4C-26b(f) (West 2010).

²⁶ Office of Children Youth and Families, Commonwealth of Pennsylvania, Dep't of Pub. Welfare, Bulletin 3130-10-04, 9 (Sept. 17, 2010) (hereinafter “OCYF Bulletin”).

²⁷ Va. Joint Guidance, *supra* note 11, at 5.

²⁸ *Id.*; see also Va. Dep't of Ed. and Va. Dep't of Soc. Servs., Best Interest Determination for Foster Care School Placement Form (2010), available at <http://www.dss.virginia.gov/files/division/dfs/fc/forms/032-04-0067-00-eng.doc>.

²⁹ Va. Joint Guidance, *supra* note 11, at 5.



Resolving Disputes

Because the best interest determination can have a profound impact on the child's well-being, states will need clear dispute resolution processes to address disagreements about the school selection decision.

A dispute resolution system should, at minimum:

- Establish where the child goes to school pending the dispute resolution. In California, for example, the child stays in his or her current school until the dispute is resolved.³⁰ This minimizes the number of moves a youth must make.
- Provide a written explanation to stakeholders – or at least to the education decision-maker for the youth.³¹

Examples:

Under **Connecticut** law, any party may object to the child welfare agency's best interest decision within three business days after receiving notice of the determination.³² Until the time for disagreement has passed, and during any dispute resolution process, the child remains in the school of origin.³³ Any aggrieved party has the right to request, in writing, a hearing before the commissioner of Children and Youth Services.³⁴ The commissioner must then provide a formal hearing, complete with an opportunity to present evidence and file briefs, within thirty days.³⁵ In the dispute process, the child welfare department bears the burden of proof that the school placement serves that child's best interests.³⁶ The commissioner must then issue a final decision within fifteen days.³⁷ Parties may appeal to the superior court for juvenile matters.³⁸

In **New Jersey**, if the child welfare agency finds that it is in the child's best interest to continue attending his or her current school, that decision is deemed conclusive. If not, the child welfare agency must notify the child's law guardian and parent or legal guardian within two days of the basis for the school move and the location of the new school placement (unless safety reasons preclude revealing this information).³⁹ A parent, legal guardian, or law guardian then has five business days to apply for court review of the agency's decision that it is in the child's best interest to change schools.⁴⁰ Any party who asks the court to review the agency's best interest determination must provide notice to the agency and

³⁰ See e.g. CAL. EDUC. CODE § 48853(c) (West 2006).

³¹ See e.g. 42 U.S.C. § 11432(g)(3)(B)(ii); CAL. EDUC. CODE § 48853.5(d)(3) (West 2011).

³² CONN. GEN. STAT. ANN. § 17a-16a(b)(3)(A) (West 2010).

³³ CONN. GEN. STAT. ANN. § 17a-16a(b)(3)(B) (West 2010).

³⁴ CONN. GEN. STAT. ANN. § 17a-15(c) (West 1994).

³⁵ *Id.*

³⁶ § 17a-16a(b)(3)(A).

³⁷ CONN. GEN. STAT. ANN. § 17a-15(e) (West 1994).

³⁸ *Id.*

³⁹ N.J. STAT. ANN. § 30:4C-26b(j) (West 2010).

⁴⁰ N.J. STAT. ANN. § 30:4C-26b(d)(2) (West 2010).

all other involved parties.⁴¹ The court must then hold a hearing and make its decision in an expedited manner.⁴² At the hearing, the child welfare agency bears the burden of proof, based on a preponderance of the evidence, that it is in the child's best interest to enroll in the new school.⁴³ While the court's decision is pending, the child must attend his or her current school.⁴⁴

If a case worker and school representative in **Virginia** disagree about which school is in the child's best interests, the child remains in the school he/she was attending at the time of placement in a new residence until the dispute is resolved.⁴⁵ The child welfare agency arranges and pays for transportation to that school during that time.⁴⁶ If the parties cannot resolve the dispute, it goes up the chain of command – first to the case worker's supervisor and local school administrator, then to the school district superintendent and child welfare administrator (or their designees), and then to the state agencies. There are short timelines for each stage of this process and submitting written requests to the next level.⁴⁷ All written documentation must be placed in the child's case file.⁴⁸

An effective dispute resolution procedure may also engage a multi-stakeholder group. For example, a **San Luis Obispo County, California** interagency agreement that preceded Fostering Connections requires all participants to engage actively in dispute resolution.⁴⁹ In the event that they cannot resolve their differences within two work days, the issue is brought to a Resolution Council, which includes a Foster Youth Services Coordinator, two representatives from Placing Agencies, two school district representatives and two community partners.⁵⁰

Conclusion

States and local jurisdictions need clear procedures for determining whether it is in the child's best interest to change schools despite Fostering Connections' presumption in favor of school stability. Carefully developed school selection procedures will ensure that children attend schools in which they are most likely to succeed academically and socially. This in turn will promote better educational outcomes, and ultimately better life outcomes, for youth in care.

⁴¹ N.J. STAT. ANN. § 30:4C-26b(b) (West 2010).

⁴² § 30:4C-26b(d)(2)

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Va. Joint Guidance, *supra* note 11, at 8.

⁴⁶ *Id.*

⁴⁷ *Id.* at 11.

⁴⁸ *Id.*

⁴⁹ San Luis Obispo County, Interagency and Community Agreement For the Coordination and Tracking of County Compliance with the 2001 McKinney-Vento Homeless Education Assistance Improvements Act and the 2004 California Assembly Bill AB 490 (2005).

⁵⁰ *Id.* at 8.

Best Interest Determination Evaluation Form

This document shall be kept in child's case file.

Child's Name: _____

Student Identifier ("personally identifiable" number): _____

School and District of Current Attendance: _____

Previous School(s): _____

Grade Placement: _____

Date of Best Interest Determination Meeting: _____

Factors Considered

The student shall remain in the current school *unless* consideration of the following factors indicates that a change of school placement is in the child's best interest. (Check all that apply.)

- The child's permanency goal, plan and expected date for achieving the permanency supports a change in school placement.
- The parents/prior custodians or child believe that changing schools is in the child's best interest. If so, state why?

- The length of the commute to return to the current school would negatively impact the child.
- The child's current school environment is negatively impacting the child (*e.g.*, bullying, etc.) and the child wants to change schools. If so, state why

- The child has only attended the current school for a short time or is not attached to the school. (*Consider*: What are the child's ties to his or her current school, including significant relationships and involvement in extracurricular activities.)
- Safety considerations favor a change in school placement. If so, state why

- Transferring schools will positively impact the child emotionally, socially or academically. (*e.g.*, the child's siblings attend the new school).
- The new school will better meet the child's academic needs. (*Consider*: How is the child performing academically in the current school? What are the child's academic/career goals? Does the child's new school have programs and activities that address the unique needs or interests of the student that the current school does not have?)

- The new school will better meet the child's special education needs. (*Consider:* Is the child receiving any special education services from his or her current school? Does the child participate in other specialized instruction? (e.g., gifted program, career and technical program) that would be impacted by a school move?)
- Changing schools will NOT undermine the child's ability to stay on track to graduate. (*Consider:* How would changing schools affect the student's ability to earn full academic credit, participate in sports or other extra-curricular activities, proceed to the next grade, or graduate on time? Does the new school have programs and activities that address the unique needs or interests of the student that the prior school does not have?)
- The timing of the school transfer will not undermine school success. (*Consider:* Would the timing of the school transfer coincide with a logical juncture in the child's academic or personal progress? (e.g., after an event that is significant to the child or end of the school year)

Documentation and Records

Attach any supporting documentation used in making this determination of best interest. (The following is checklist of sample documents that may be considered. The list is not intended to be exhaustive.)

- Report cards
- Progress reports
- Achievement data (test scores)
- Attendance data
- IEP or 504 Plan
- Emails or correspondence from individuals consulted
- Were child, child's biological parent and child's school informed of meeting, invited to attend and/or to provide information about decision?
- Caseworker _____ reviewed the child's education records?

Determination

- The student shall remain in the same school where the child is currently enrolled.
Name of School and District: _____ . Transportation to be provided by: _____
- Based on the best interest determination, a change in school placement is needed. The student shall be enrolled in the new school of current residence. Name of School and District: _____ .

Note: If a change in educational placement is needed, enrollment should take place immediately with all education records provided to the new school. Individual responsible for enrolling the child _____ .

Foster Care & Education

Issue Brief

SCHOOL STABILITY UNDER FOSTERING CONNECTIONS: STATE LAWS AND POLICIES IMPLEMENTING SCHOOL PLACEMENT DECISIONS

Introduction

It is the child welfare agency, in collaboration with the local school district, that decides whether the child should remain in the same school or whether it is in the child's best interest to change schools. But even if the decision is in favor of school stability, unless state law provides to the contrary, the school has the ultimate authority to decide whether the child will stay or be enrolled elsewhere. Moreover, state residency rules can impede the child's prompt enrollment in a new school district and the prompt transfer of school records. This issue brief **discusses the legislation, interagency collaborations, or other agreements needed to ensure school stability and prompt school transfers for children in care.**

Enacted in October 2008, the "Fostering Connections to Success and Increasing Adoptions Act of 2008," (Fostering Connections) is a comprehensive law designed to promote permanent family connections and improve the lives of youth in the child welfare system. Among other important provisions, the Act requires child welfare agencies to create "a plan for ensuring the education stability of the child while in foster care." The Act emphasizes the importance of school stability as well as the need for collaboration between child welfare and education agencies.

This brief is part of a series of materials designed to be used together to support all stakeholders in implementing the education provisions of the Fostering Connections Act. To access the full series, please visit [The Legal Center for Foster Care and Education's Fostering Connections Toolkit](http://www.abanet.org/child/education).



Note on Using the McKinney-Vento Act to Ensure School Stability

Under the McKinney-Vento Homeless Assistance Act,¹ states and local educational agencies (LEAs) must have systems in place to address school stability for homeless children, including children “awaiting foster care placement.” If a child is eligible for services under McKinney-Vento, the child may continue to attend the current school despite a change in his or her living situation unless a school change is in the child’s best interest. If the child needs to change schools, the new school district must enroll the child immediately, regardless of whether the child has the documentation otherwise required for school enrollment. McKinney-Vento requires the current school to make the “best interests” determination for a child who is homeless. While the definition of children “awaiting foster care placement” varies widely across states, children in foster care who meet the state’s definition are entitled McKinney-Vento’s protections. For more information on the interaction between Fostering Connections and the McKinney-Vento Homeless Assistance Act, see

- *How Fostering Connections and McKinney-Vento can Support School Success for All Children in Out-of-Home Care*, available at http://www.abanet.org/child/education/publications/qa_fc_and_mv_overlap_final.pdf; and
- *Best Practices in Homeless Education: Clearing the Path to School Success for Students in Out-of-Home Care*, available at http://www.abanet.org/child/education/publications/clearing_the_path_brief_final.pdf.

Staying in the Same School

State legislation or guidance requiring school districts to keep children in the same school or enroll them immediately in a new school – whichever is in the children’s best interest – can be crucial to effective Fostering Connections’ implementation. In many states, these laws will need to explain the enrollment process and address school residency requirements that can be an impediment to prompt school enrollment. It is important to ensure that, under state law, schools that retain students continue to receive state reimbursement even though the child now resides in another school district.

Examples:

A **Connecticut** statute, signed into law on June 8, 2010, requires schools to keep a student who has moved to an out-of-home placement and to treat him or her as a resident when the child welfare agency

¹ 42 U.S.C. § 11301, *et seq.*

determines that remaining in that school is in the child's best interests.² Like Fostering Connections, the Connecticut law includes a presumption that it is in the child's best interests to remain in his or her school of origin.³ The law requires the agency to provide written notice to all parties within three days of making the decision that the child should remain with a list of the factors the agency considered in making the decision.⁴ As long as the child remains in out-of-home care, the child's school placement can be revisited at any time.⁵

The law also authorizes the child welfare agency to remove a child from the school of origin immediately if the child's immediate physical safety is in jeopardy at that school.⁶ If the agency takes this action, it must notify the child's attorney, parents, GAL and surrogate parent on the same day.⁷ Any party then has three business days to object to the decision.⁸ The child welfare agency must hold an administrative hearing within three business days of any objection to the child's removal from the school of origin.⁹

Similarly, in **New Jersey**, a new law establishes a presumption that, when the child welfare agency places a child in a resource family home, the child will stay at his or her current school.¹⁰ The law clarifies that the "district of residence" for a child placed in out-of-home care is the present district of residence of the family with whom the child lived before being placed with a resource family.¹¹ That district is financially responsible for paying the child's tuition and transportation costs to the district in which he is placed.¹² If the child welfare agency concludes that attending the current school does not serve the child's best interests or finds that continued enrollment in that school would pose a significant and immediate danger to the child, the child may be immediately enrolled in the resource family's school district.¹³ While the child is placed in a resource home, the child welfare agency may reconsider the school placement and make a new determination at any time, and any party may ask the court to reconsider the best interest of the child and make appropriate orders regarding the child's school placement.¹⁴

A recently passed **Virginia** bill revises the Education Code to ensure that a child "shall be allowed to continue to attend the school in which he was enrolled prior to the most recent foster care placement" when in the child's best interests.¹⁵

² CONN. GEN. STAT. ANN. § 17a-16a(b)(1) (West 2010).

³ CONN. GEN. STAT. ANN. § 17a-16a(b)(3)(A) (West 2010).

⁴ *Id.*

⁵ CONN. GEN. STAT. ANN. § 17a-16a(b)(3)(B) (West 2010).

⁶ CONN. GEN. STAT. ANN. § 17a-16a(b)(3)(C) (West 2010).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ N.J. STAT. ANN. § 30:4C-26b(a) (West 2010).

¹¹ N.J. STAT. ANN. § 30:4C-26b(h) (West 2010).

¹² *Id.*

¹³ N.J. STAT. ANN. § 30:4C-26b(b) (West 2010).

¹⁴ N.J. STAT. ANN. § 30:4C-26b(e)(2) (West 2010).

¹⁵ 2011 Virginia Laws Ch. 154 (S.B. 1038) (amending VA. CODE ANN. §§ 16.1-281 and 22.1-3.4, and adding § 63.2-900.3).



Texas's Education Code provides that youth in grades 9 through 12 have the option to complete high school at the school in which they were enrolled when placed in foster care, even if the placement is outside the attendance area for the school district where the foster family resides.¹⁶

Even when no state law exists, positive collaborations between child welfare agencies and school districts can help. For more information on such collaborations, see [Making the Case: Engaging Education Partners in Addressing the Education Needs of Children in Care](#) and [Making It Work: How Child Welfare and Education Agencies Can Collaborate to Ensure School Stability for Children in Foster Care](#).

Enrolling in a New School

Fostering Connections provides that, if remaining in the same school is not in the child's best interests, the child welfare agency and the local educational agencies must ensure "immediate and appropriate enrollment" in a new school with all of the educational records of the child provided to the new school.¹⁷ The Program Instruction released by the Administration for Children and Families (ACF Program Instruction) specifically encourages each child welfare agency to work with its local educational agencies to identify and address any barriers to "expeditious enrollment" and "to consider further efforts that may be necessary to enroll children who must be moved across jurisdictions."¹⁸ States should also make clear the respective roles of the education and child welfare systems. Because neither the legislation nor the guidance clearly define "immediate" or "appropriate," state law and policy can be particularly vital to meaningful implementation.

Ensuring Immediate Enrollment

State law and policy can clarify precisely how many days constitutes "immediate" enrollment. Ideally, these laws will define "immediate" to mean that a child must be enrolled even in the absence of otherwise required records and provide other specific guidelines.

Examples:

In March 2009, **Texas** amended both its Family Code and Education Code to ensure the prompt enrollment of all children in out-of-home care. Under these new laws, a caseworker must enroll a child in school "no later than the third school day after the court order is rendered to remove the child from the home and place the child in child welfare's custody."¹⁹

¹⁶ TEX. EDUC. CODE ANN. § 25.001(f), (g) (Vernon 2007).

¹⁷ Fostering Connections, *supra* note 1, § 204(a)(1); 42 U.S.C. § 675(1)(G)(ii).

¹⁸ U.S. Dep't of Health and Human Servs. Admin. for Children and Families, Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, 19 (July 9, 2010) (hereinafter "ACF Guidance"), available at http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm.

¹⁹ Tex. Dep't Family and Protective Servs. CPS Handbook 4310 (March 2009), available at http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_4300.jsp. See also TEX. FAM. CODE ANN. § 264.115.

In **Virginia**, joint policy guidance from the state’s Departments of Social Services and Education defines “immediate” as “no later than beginning of next school day after presentment for enrollment.”²⁰ Presentment for enrollment occurs when the person enrolling the child has appeared at the new school and presented the required enrollment information.²¹ If “despite all reasonable efforts” school officials are unable to enroll the child on the next school day, they must do so on the following day and document the reasons for delay.²² The guidance requires that schools enroll children in care even if they lack documents required for enrollment.²³ The state created a form entitled “Immediate Enrollment of Child in Foster Care Form” which the child welfare case worker submits to the school.²⁴ Using the form, the person enrolling the student certifies to the best of his/her knowledge the student’s age and that the student is free from communicable diseases and makes other certifications, thereby assuring that the student seeking to enroll meets the minimum requirements for enrollment.²⁵

In December 2008, state and local child welfare and education agencies in **Delaware** entered into a Memorandum of Understanding which provides that school districts must enroll a child in foster care within two school days of the child’s referral to a new school.²⁶ The school district must enroll the child even if the child welfare agency is unable to produce records, or the sending school has not yet transferred records such as previous academic records, medical records, and proof of residency. All parties (child, school, parent/legal guardian/Relative Caregiver, guardian ad litem, CASA, and DSCYF staff) must agree that it is in the best interest of the child to change schools using the McKinney-Vento best interest standard.²⁷

Defining “Appropriate” Enrollment

In determining whether a child is “appropriately” enrolled, states should consider not only whether the child has been admitted to the school, but also whether his or her educational needs are actually being met. Some factors to consider include whether the child is placed in the proper grade and classes (including general, special, advanced, or remedial education classes); whether the new school is awarding credit for work the child completed at another school (including full and partial credits); whether the child has been given the right to participate in all academic or extracurricular programs offered by the school and, when necessary, been given an exception from the normal timelines or program capacity rules.

²⁰ Va. Dep’t of Educ. & Va. Dep’t of Soc. Servs., Joint Guidance on School Placement for Children in Foster Care, 7 (Dec. 2, 2010) (hereinafter “Va. Joint Guidance”), available at http://www.dss.virginia.gov/family/fc/school_placement.pdf.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*; see also Va. Dep’t of Ed. and Va. Dep’t of Soc. Servs., Best Interest Determination for Foster Care School Placement Form (2010), available at <http://www.dss.virginia.gov/files/division/dfs/fc/forms/032-04-0067-00-eng.doc>.

²⁵ *Id.*

²⁶ Memorandum of Understanding between the Dep’t of Ed. and the Dep’t of Servs. for Children, Youth, and their Families, 14 (Dec.16, 2008) (hereinafter “Del. MOU”), available at <http://www.doe.k12.de.us/DDOEDSCYFMOU.pdf>.

²⁷ *Id.* at 15.

Examples:

In **Virginia**, joint policy guidance specifically notes that “enrollment” in this context “means the child is attending classes and participating fully in school activities.”²⁸

Facilitating Smooth Transitions Between Schools

Under the Fostering Connections Act, state education agencies must also ensure that state and local enrollment rules (*e.g.*, requiring proof of immunization or residency) do not pose barriers to a child’s school enrollment. Thus, in some states, legislation or agreements may need to address residency, enrollment documentation, and deadline requirements for special classes and extracurricular activities.

Although it is important that students not be prevented from enrolling in school because of missing records, it is also important to make sure that prior education records are promptly available to the new school district. Fostering Connections explicitly requires that the child’s case plan include assurances by the child welfare agency and the local education agency that the child’s records have been provided to the school immediately upon school enrollment. State legislation or guidance can clarify the process and timelines for records’ transfers. Additionally, the ACF Guidance itself recognizes that further support may be necessary or helpful to such transfers, citing as an example the creation of education “passports” – education files for each child including all enrollment documents which can follow the child from school to school.²⁹ States will need to consider what additional supports or services they must implement to ensure prompt enrollment.

Examples:

In May 2007, the **Texas** Education Code was amended to provide that a school district must enroll a child without a birth certificate, other proof of identity, or a copy of the records from the last school attended if the child is in child welfare custody.³⁰ The caseworker then has 30 days to provide the required records.³¹ If a child is transferring from another school district, the caseworker provides the new school with the name and address of the original school to facilitate prompt records’ transfer.³²

A **Connecticut** law enacted in June 2010 requires the school of origin to transmit all essential education records, including special education records and documents needed to determine class placement and appropriate educational services, within one business day of receiving notice from the child welfare agency of its decision to change the child’s school placement.³³

²⁸ Va. Joint Guidance, *supra* note 23, at 7.

²⁹ ACF Guidance, *supra* note 3, at 18-19.

³⁰ TEX. EDUC. CODE ANN. § 25.002(g) (Vernon 2007).

³¹ *Id.*

³² *Id.*

³³ CONN. GEN. STAT. ANN. § 17a-16a(c)(2) (West 2010).

In **Virginia**, joint policy guidance from the state’s Departments of Social Services and Education includes a form that allows the case worker to provide the information necessary to ensure a smooth transition and educational continuity for the child (including whether the child has an IEP and/or 504 plan) and the name of the last school attended. The form also lists who can act as the child’s “parent” for special education purposes.³⁴ Within 30 days, the child welfare agency must provide the school with the documents normally required for school enrollment that were missing when the student first enrolled.³⁵ Additionally, both schools must expedite the transfer of the student’s school records.³⁶

In December 2008, state and local child welfare and education agencies in **Delaware** entered into a Memorandum of Understanding which provides that the school district must enroll the child even if the child welfare agency is unable to produce records, or the sending school has not yet transferred all school records if all parties (child, school, parent/legal guardian/Relative Caregiver, Guardian ad litem, CASA, and child welfare staff) agree that it is in the best interest of the child to change schools using the McKinney-Vento best interest standard.³⁷ School districts must transfer school and medical records from a sending school to the new school within three school days during the school year or five working days in the summer.³⁸

Conclusion

Fostering Connections is a great step forward for agencies and advocates working to promote school stability for youth in care. But the Act places mandates primarily on child welfare agencies, and school stability can only be achieved for children in care if the education system is a full partner in this reform. Through legislation and policy guidance, states can and should establish clear mandates on the education system and promote positive collaborations between child welfare and education agencies. Only then will this important objective be achieved for these educationally “at-risk” youth.

³⁴ Va. Joint Guidance, *supra* note 23, at 7.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Del. MOU, *supra* note 29, at 15.

³⁸ *Id.* at 15-16.

Foster Care & Education

Issue Brief

WHEN SCHOOL STABILITY REQUIRES TRANSPORTATION: STATE CONSIDERATIONS¹

Introduction

To make school stability a reality for children in foster care, some children will need transportation to the school they are attending when they are moved to a placement in a new school district or attendance area. States and localities must identify the agencies responsible for arranging and paying for that transportation. This issue brief focuses on **how to ensure children receive transportation to support school stability when in their best interest.**

Enacted in October 2008, the “Fostering Connections to Success and Increasing Adoptions Act of 2008,” (Fostering Connections) is a comprehensive law designed to promote permanent family connections and improve the lives of youth in the child welfare system. Among other important provisions, the Act requires child welfare agencies to create “a plan for ensuring the education stability of the child while in foster care.” The Act emphasizes the importance of school stability as well as the need for collaboration between child welfare and education agencies.

This brief is part of a series of materials designed to be used together to support all stakeholders in implementing the education provisions of the Fostering Connections Act. To access the full series, please visit [The Legal Center for Foster Care and Education's Fostering Connections Toolkit](#).

¹ The Legal Center for Foster Care and Education would like to thank Dennis Blazey and Madelyn Freundlich, consultants for [FosteringConnections.org](#), for contributing significant time and expertise in editing this publication.

Overview

1) Child welfare agencies must **ensure that children stay in the school in which the children were enrolled at the time of placement (unless it is not in the children's best interest to do so)**.

Therefore, child welfare agencies must **ensure that transportation is provided when needed**.

2) **Federal child welfare reimbursement dollars are available** to assist with school transportation costs, but **work must be done to determine how these reimbursements will be actualized** in each state and jurisdiction.

3) New federal child welfare education stability requirements apply to *all* children in care, even though federal child welfare reimbursement is only available for *some* children in care. Therefore, **additional federal or state funding is necessary to ensure transportation for *all* children in foster care who need to remain in a stable school placement**.

4) Child welfare agencies must **collaborate with education agencies on how transportation will be provided and funded**. Rather than child welfare and education agencies struggling over these questions each time a child needs school transportation, states and localities should develop official policies that work for both agencies and for all children with additional transportation needs.

5) Collaborating agencies must find approaches that are **flexible and that make clear which agency is responsible** for arranging transportation and/or paying transportation costs and under what circumstances.

6) **The dependency court has a critical role in ensuring school stability for children in foster care**. Judges must oversee that child welfare agencies meet their obligation to ensure school stability for children, including providing transportation when necessary. The court can play a critical role in promoting collaboration between child welfare and education agencies.



What Child Welfare Law and Policy Currently Says About School Transportation: Background

Child Welfare Federal Financing Basics

States receive federal child welfare funds from a range of sources² to support the child welfare services provided to children. By far the largest funding source is Title IV-E of the Social Security Act.³ Title IV-E guarantees federal reimbursement to states for a portion of foster care costs. Title IV-E funds are used to provide foster care maintenance payments for children who are “IV-E eligible,”⁴ as well as for administrative and training costs associated with the foster care program.

Foster care maintenance payments (FCMPs) are the costs associated with maintaining a child in a foster care placement, and include food, clothing, shelter, daily supervision, school supplies, and personal incidentals.⁵ Foster care administrative costs cover case management and other items necessary for the proper and efficient administration of the Title IV-E state plan.⁶ The federal government reimburses states for a portion of the foster care maintenance cost for eligible children at a set rate for each state (the Federal Medical Assistance Percentages or “FMAP rate”), which ranges from 50% to 83% of the costs.⁷ The federal government reimburses states for a portion of the administrative costs at a set rate of 50% of the costs for all states.⁸

Fostering Connections to Success and Increasing Adoptions Act

In 2008, Congress enacted the Fostering Connections to Success and Increasing Adoptions Act⁹ (the Fostering Connections Act), which requires that child welfare agencies collaborate with local education agencies to ensure that children remain in the schools they were attending at the time of placement (unless to do so is not in their best interest).¹⁰ Furthermore, the Fostering Connections Act provides that FCMP can include “reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.”¹¹

² For a summary see ABA Child Law Practice Vol. 29, No. 3, *Federal Funding for Child Welfare: What You Should Know* (May 2010).

³ 42 U.S.C. § 670 *et seq.*

⁴ To be eligible for IV-E reimbursement, the child must meet all eligibility requirements under Title IV-E of the Social Security Act for foster care. For more discussion on what makes a child “IV-E eligible,” please refer to page 7.

⁵ 42 U.S.C. § 675(4)(A).

⁶ 42 U.S.C. § 674(a)(3).

⁷ 45 C.F.R. § 1356.60; 42 U.S.C. § 1396d.

⁸ 42 U.S.C. § 674(a)(3).

⁹ Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 42 U.S.C.).

¹⁰ 42 U.S.C. § 675(1)(G)(ii).

¹¹ 42 U.S.C. § 675(4)(A).



Federal Child Welfare Policy Manual and Program Instruction Guidance

In 2007, prior to the Fostering Connections Act, the United States Department of Health and Human Services, Administration on Children and Families (ACF), confirmed in its Child Welfare Policy Manual (CWPM) that school transportation for a child to remain in the same school can be reimbursable as a Title IV-E administrative cost.¹² After the enactment of the Fostering Connections Act, the CWPM indicated that FCMP reimbursement can include transportation for the child to remain in the school and for the foster parent to travel to attend school conferences at the school in which the child is enrolled at the time of placement.¹³ The CWPM also provides additional details on the types of school transportation that are allowable foster care administrative costs.¹⁴ Specifically, the CWPM makes clear that transportation to extracurricular activities is an allowable administrative expense.¹⁵ Finally, the CWPM states that transportation provided by a caseworker, foster parent, or a volunteer transporting a child is reimbursable as an administrative cost.¹⁶

Then, in July 2010, ACF released a Program Instruction (P.I.) that reaffirms many of the above clarifications from the CWPM, but also provides additional clarification on when school transportation is reimbursable. It states that FCMP can be used for school stability transportation when a child is initially placed and for all subsequent moves while the child is in care.¹⁷ The P.I. gives the child welfare agency the discretion to determine what is “reasonable” transportation for purposes of FCMP reimbursability and clarifies that the cost of transportation can be included in the payment provided to the child’s care provider or may be a separate payment made directly to the transportation provider. Finally, the P.I. clarifies that these transportation costs can be claimed as either maintenance or administrative costs. (For additional discussion and analysis, see below and Appendices C and D).

How Many Children in Care Will Require Transportation To Stay in The Same School?

Children Not Requiring Transportation

Not every child in foster care requires transportation to remain in their current school. As examples, the following categories of children will not require transportation:

¹² 45 C.F.R. § 1356.60(c)(2); Child Welfare Policy Manual section 8.1, Q&A3 (Dec. 31, 2007).

¹³ Child Welfare Policy Manual section 8.3B (Sept. 31, 2009).

¹⁴ For a detailed summary and analysis of allowable IV-E administrative and foster care maintenance payments, see Appendix B.

¹⁵ Child Welfare Policy Manual section 8.3B (Sept. 31, 2009).

¹⁶ Child Welfare Policy Manual section 8.1B (Jan. 9, 2009).

¹⁷ U.S. Dep’t of Health and Human Servs. Admin. for Children and Families, Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, ACYF-CB-PI-10-11, 19 (July 9, 2010) (hereinafter “ACF Guidance”), *available at* http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm.

Children who are placed within the school boundaries: A critical element of the Fostering Connections Act is that child welfare agencies must make a documented effort to place children within or close to their current school communities.¹⁸ If child welfare agencies are successful in these required efforts, fewer children will need to change schools.

Some agencies use mapping tools and data to assess locations and distances to compare where children are being removed to where children are being placed, in relation to school boundary lines. In this way, agencies are able to identify the communities where greater emphasis should be placed on recruiting and retaining resource families. For example, Illinois uses a geographic information system (GIS) application called “SchoolMinder” that supports school stability. GIS technology helps identify available foster homes that are near the child’s current educational setting and the home from which the child was removed.¹⁹

Children whose “best interest” dictates that they should be immediately enrolled in new schools: The Fostering Connections Act specifically requires that “best interest” determinations be made when deciding whether a child should remain in the current school or move to a new school. While the presumption is that children remain in their school, when these best interest determinations are made thoroughly and thoughtfully, the decision for some children will be that it is in their best interest to be immediately enrolled in a new school. In these situations, no special transportation will be needed. For an important resource to help in making these best interest decisions, see *School Selection for Students in Out-of-Home Care* at http://www.abanet.org/child/education/publications/school_selection_brief.pdf.

Children who have completed high school: Students who have successfully graduated from high school will no longer need school transportation as they have completed their secondary education. Also, some youth will have received a GED and not be planning to obtain a regular high school diploma. A goal of the school stability requirements of the Fostering Connections Act is to provide youth with opportunities to remain in school or return to school. Of course, youth who have left but will hopefully reengage should be included in the numbers that may require transportation to achieve school stability.

Children Requiring Transportation at Minimal or No Additional Cost

Some of the students requiring transportation can be transported for minimal or no additional cost. Here are some examples:

¹⁸ 42 U.S.C. § 675(1)(G)(i).

¹⁹ For more information about implementation of the education provisions of the Fostering Connections Act in Illinois, including the “SchoolMinder” program, see the National Association of Public Child Welfare Administrators, *How States are Implementing the Fostering Connections Act*, available at <http://www.napcwa.org/Legislative/docs/Illinois.pdf>.



Children in care who meet the definition of “homeless” children under the McKinney-Vento Act (McKinney-Vento): When a child meets the definition of a “homeless child or youth” under the McKinney-Vento Act, he or she is entitled to school stability, including transportation provided by the education system when necessary for the child to stay in the “school of origin.”²⁰ Children and youth who are homeless include children living in emergency or transitional shelters, children abandoned in hospitals, unaccompanied homeless youth, and children who are “awaiting foster care placement.”²¹ States and districts vary widely on their interpretation of children “awaiting foster care placement.”²¹ For children in foster care eligible for McKinney-Vento protections, transportation will be arranged and funded through the education system.²²

Children who have transportation written into their IEPs because of legitimate special education needs: When a child in care is eligible for special education services under the Individuals with Disabilities in Education Act (IDEA),²³ he or she must have an Individualized Education Plan (IEP) that outlines the child’s education needs and services, including related services. Transportation is a “related service” that must be provided to a child if the IEP team concludes that a child needs transportation to and from his or her special education program. Although transportation will not be added to the IEP for the sole purpose of preserving school stability, transportation for the child to attend his or her special education program may nevertheless support the child remaining in the current school.

Children who live close to or can be dropped off at a bus stop proximate to the existing transportation system for the current school: When students move across school district lines, the issue of transportation obviously becomes more complicated. However, there may be opportunities to transport the child to his or her current school using some or all of the school transportation system that is already in place. Good communication between the current and new school districts is critical. In 2009, Louisiana passed legislation to promote education stability for children in foster care.²⁴ Transportation is coordinated by both the Department of Social Services (DSS) and the school district in which the student is enrolled. DSS is responsible for arranging transportation of the child to a drop-off/pick-up point within the school district. The school district is responsible for transporting the child from the drop-off/pick-up point to the appropriate school and back to the pick-up point.

²⁰ 42 U.S.C. § 11432(g)(1)(J)(iii).

²¹ For a list of all states with an AFCP definition, see http://www.abanet.org/child/education/publications/afcp_chart_5_11_10.doc. For a factsheet detailing the overlap of McKinney-Vento and Fostering Connections, see http://www.abanet.org/child/education/publications/qa_fc_and_mv_overlap_final.pdf.

²² McKinney-Vento liaisons and State Coordinators are responsible for making determinations of eligibility for McKinney-Vento. For a list of all state coordinators, see <http://center.serve.org/nche/downloads/sccontact.pdf>. To access a list of state homeless program websites and resources, see http://center.serve.org/nche/states/state_resources.php. For a factsheet detailing the overlap of the rights and responsibilities for child welfare and education agencies under McKinney-Vento and Fostering Connections, see http://www.abanet.org/child/education/publications/qa_fc_and_mv_overlap_final.pdf.

²³ 20 U.S.C. §§ 1400 *et seq.*

²⁴ La. Rev. Stat. Ann. § 17:238.



Children who move within the same school district and transportation across the district is available for other reasons: Often, school districts have existing transportation options that allow students to be transported across the district (such as magnet schools, special education students, and McKinney-Vento routes). To meet a child's transportation needs, it may be necessary to add a bus stop to a preexisting bus route or reroute a school bus, steps that can often be taken without much difficulty or additional expense.

Children who have a relationship with an adult whose existing commute complements the child's transportation need: One way to solve the transportation puzzle is to identify all resources that can help transport the child. Engaging the youth in this search is critical. Individuals who are not the child's resource parent may nonetheless be able and willing to transport the child.

Calculating the Number of Children in Foster Care Needing School Transportation

Step #1: Take the total number of children in care

Step #2: Subtract the following:

- minus # placed within the school boundaries
- minus # in their best interest to be immediately enrolled in new school
- minus # who have successfully completed high school
- minus # eligible under the McKinney-Vento Act
- minus # have transportation written into the Individual Education Plans (IEPs) because of legitimate needs under the Individuals with Disabilities Education Act
- minus # who can be transported by existing bus routes or commutes, without additional costs incurred

The result EQUALS the total # of children who may need transportation to remain in their current schools with additional costs associated

Children Requiring Transportation at a Cost

Some children will need transportation provided at additional cost. The P.I. is very clear that cost should NOT be a factor in determining the best interest of the child for school selection purposes. Some examples of transportation with associated costs are:



- A foster parent, relative or other adult provides transportation but needs reimbursement for mileage
- An agency provides the youth or caretaker with bus passes or other public transportation vouchers
- An agency contracts with private transportation company to provide a bus/van/car
- A school district reroutes, or adds a bus to its fleet, to accommodate the transportation needs of children in foster care

How Can the Child Welfare Agency Use Title IV-E Dollars To Support School Transportation?

The Fostering Connections Act states that child welfare agencies must *ensure* that children stay in the school in which the children were enrolled at the time of placement (unless it is not in their best interest to do so). Therefore, child welfare agencies must ensure that school transportation is provided when needed. Federal child welfare reimbursement dollars are available to assist with transportation costs, but work must be done to determine how these reimbursements will be actualized in each state and jurisdiction. The following sections detail considerations for state and local child welfare agencies as they determine how to use Title IV-E dollars to support school transportation for children in care. Of course, this determination is only a portion of the equation. The mandate is to ensure school stability for all children in care, and federal reimbursement is available only for IV-E eligible children.

What is IV-E Eligibility and How Do You Determine Which Children Qualify?

To be eligible for IV-E reimbursement, the child must meet all eligibility requirements under Title IV-E of the Social Security Act for foster care, including that the child has been:

- Removed from an income-eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child,
- Placed and in the care of the child welfare agency, and
- Placed with a licensed foster family home or in a licensed child-care institution.

It is important to know the percentage of children in foster care who are IV-E eligible in your state, a percentage often called the state “penetration rate,” as the percentage varies widely across states. Although the state’s percentage will not provide an absolute number of IV-E eligible children, it will provide a good estimate of how much IV-E reimbursement may be available. For a resource that provides guidance on state IV-E eligibility percentages, see <http://cwla.org/advocacy/childreninfostercarereport08.pdf>, based on 2008 estimates.



Important Transportation Considerations

There are other considerations to keep in mind in structuring the transportation model that is most cost-effective and appropriate, including determining whether it is best for your state to classify school stability transportation as a FCMP or an administrative cost.

1) What is the State's FMAP Rate?

The FMAP rate provides you with the percentage of reimbursement your state can claim from the federal government related to IV-E foster care maintenance. To determine your state's rate, see <http://aspe.hhs.gov/health/fmap11.pdf>. The reimbursement rate for IV-E administrative costs is 50% for all states. Therefore, states that have FMAP rates much higher than 50% will have a strong incentive to include transportation as a FCMP. Alternatively, states that have FMAP rates closer to 50% will need to determine whether using FCMP or administrative costs is most cost-effective and efficient.

2) Should the State Claim School Transportation as a FCMP or an Administrative Cost?

The Fostering Connections Act allows FCMP to be used to pay for "reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement," and the P.I. reiterates that Title IV-E administrative dollars can also be used for this purpose. These provisions allow the child welfare agency considerable flexibility in determining how to classify the cost of school transportation. For many states, the FMAP rate is well above 50%; these states will probably prefer to claim school transportation costs as FCMP. States with 50% or only slightly higher FMAP rates may prefer to claim school transportation costs as administrative costs given the less rigorous documentation and other requirements.

3) Can FCMP be used for costs regardless of whether the child is in an initial or subsequent placement?

Yes. States can claim FCMP reimbursement for transportation to the school in which the child was enrolled at the time of placement at ANY point in the case, regardless of how many placement changes have occurred.²⁵

4) How do child welfare agencies determine what is considered "reasonable travel"?

The Fostering Connections Act provides that FCMP includes "reasonable travel," yet the law does not define this term. The P.I. makes clear that the child welfare agency has the discretion to determine what is "reasonable," and mentions cost, distance and length of travel as examples of factors

²⁵ ACF Guidance at 20.



that an agency can consider.²⁶ Whether it is in a child's *best interest* to remain in the current school is a different question than whether transportation qualifies as "reasonable" for purposes of federal reimbursement. The P.I. is very clear that cost should NOT be a factor in determining the *best interest* of the child for school selection purposes.²⁷ Child welfare agencies should not be unduly restrictive in determining whether a particular cost or travel is "reasonable" for purposes of federal reimbursement; transportation that is not determined to be "reasonable" by the child welfare agency will not be eligible for IV-E reimbursement.

5) Are child welfare agencies permitted to include school transportation costs in a FCMP paid to the child's provider OR as a separate payment directly to the transportation provider?

Yes, child welfare agencies are permitted to do either.²⁸ There is great flexibility in deciding the most efficient way to provide school transportation. Furthermore, the FCMP reimbursement may be claimed to cover school transportation costs incurred by non-child welfare agencies such as school districts that provide school stability transportation

From Law and Policy to Practice: Effective State and Local Implementation of School Transportation

Required Elements of Successful State Implementation

Although the Fostering Connections Act has highlighted the responsibility of the child welfare agency to ensure school stability and continuity for children in foster care, there are obstacles to ensuring that children in foster care have the transportation they need to remain in stable school placements. Successful state implementation requires:

- **Patience.** Although the Fostering Connections Act is a large step towards ensuring school stability and continuity for children in foster care, all stakeholders must recognize that change takes time. State and local child welfare agencies are working diligently to implement *all* of the provisions of the Fostering Connections Act; education stability is just one of many requirements. Although the law requires collaboration across education and child welfare agencies, many education agencies are not yet even aware of the law. Successful state implementation requires equal parts diligence and patience.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*



- **Understanding.** Both child welfare and education agencies must have a clear understanding of what federal law requires. State and local agencies must review their laws and policies to determine to what extent they have already addressed school stability and transportation issues and which issues need to be addressed. Currently, there is widespread and understandable confusion about the overlap between the McKinney-Vento Act and the Fostering Connections Act and the differences in the responsibilities and requirements under each. There also is confusion about the specific aspects of the Fostering Connections Act, especially around what transportation costs are and are not covered by existing law. Successful state implementation requires a solid understanding of the current legal requirements as well as the areas of ambiguity or need for additional state or federal clarification.
- **Communication and relationships.** Clear communication and collaboration across systems are essential to making school transportation a reality. The Fostering Connections Act and the P.I. make clear that collaboration across child welfare and education agencies is required. Joint protocols and policies will be needed to ensure that all parties are following the same procedures.
- **Philosophy.** A culture shift must occur within agencies to embrace the presumption that children remain in their current schools (unless not in their best interest), even when their foster care placements change. In both the child welfare and education systems, the prevailing assumption has been that when a child's living situation changes, so does the school. Work must be done so that staff's assumption now favors school stability – that is that a child's school remains stable UNLESS it is in the child's best interest to change schools.

Conclusion

States must analyze carefully what transportation is needed to keep children in care in the same schools and must develop state-specific plans. Although there is some federal law and guidance regarding IV-E reimbursement for school transportation, each state must address its own Title IV-E financing structure and policies to determine what will work best there. Since only IV-E eligible students are eligible for federal reimbursement for transportation, states must tackle both the state match contribution for IV-E eligible children and transportation costs for non IV-E eligible children to effectively meet the law's school stability requirements. These are challenging tasks, but if undertaken in a spirit of cooperation, and with an understanding of the importance of school stability to children in foster care, school stability can be achieved.



APPENDIX A

State Implementation Examples

Many states have been working to address school transportation challenges since the passage of the Fostering Connections Act. Below are some examples of implementation efforts from across the country. We are always interested in hearing more from the field about how school transportation is being provided and how costs are being met. Please share your stories, challenges, promising practices, and examples by emailing us at ccleducation@staff.abanet.org.

Example #1: Connecticut

In the spring of 2010, Connecticut passed Senate Bill 31, which went into effect July 1, 2010. The law established that, when it is in the child's best interest to remain in his or her school of origin (SOO):

- The Connecticut Department of Children and Families (DCF) and the board of education for the SOO will **collaborate on developing a transportation plan** for a child.
- DCF will **be responsible for any additional or extraordinary cost of the transportation.**
- DCF will **maximize federal reimbursements** under Title IV-E for the costs of transporting IV-E eligible children.
- DCF and the board of education for the SOO shall consider **cost-effective, reliable and safe transportation options.**

Importantly, approximately **\$3 million state dollars** have been allocated to support child welfare agencies in providing transportation to keep children in the SOO. This feat is remarkable given the economic climate of the state and will be significant in making school stability a reality for children in foster care in Connecticut. The state child welfare agency has developed a Request for Proposals to seek bidders for a contract to provide the transportation needed for children in care. Proposals must include several elements, including a transportation coordinator to oversee the identification and provision of the transportation. Proposals must also provide various transportation options that can be provided, including buses with monitors, various sized passenger vans, and private cars.

For the full text of SB 31 see <http://www.cga.ct.gov/2010/ACT/PA/2010PA-00160-R00SB-00031-PA.htm>.

Example #2: Minnesota

In Minnesota, a county administered child welfare system, the Minnesota Department of Human Services released a Bulletin to address implementation of the education provisions of the Fostering Connections Act, including details about reimbursement of transportation costs. The goal of the Bulletin is to provide counties with the maximum allowable flexibility to encourage maximization of the federal reimbursement. The Bulletin states that:



- Child welfare agency should **work with foster parents** to provide transportation
 - The general rate paid to the foster parent can be increased,²⁹ or
 - The foster parent can receive a separate payment.
- Payments **can be made to another provider**
 - Reimbursement can be to the local school district
- **Retroactive reimbursement** is allowed dating back to October 2008, when the Fostering Connections Act passed and allowed FCMP to be used to reimburse school transportation.
- The child welfare agencies will **update their data systems** to allow for future electronic submissions for reimbursements.

For full details of the DHS Bulletin 10-68-05 issued June 14, 2010 see *Education Stability for Children in Foster Care* at

http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_150905.pdf.

Example #3: Butte & San Diego Counties, California

Two California counties – Butte and San Diego – have developed collaborative approaches to ensure that children and youth in foster care have needed school transportation. Both counties respond to children’s transportation needs on a case-by-case basis, using McKinney-Vento funds when available. Otherwise, costs are distributed among various parties.

San Diego

- Transportation costs are usually **split equally between the school** that the child attends and the school district where the child is living.
 - **Social workers generally coordinate transportation** for individual children and youth, which may take the form of reimbursing foster parents for mileage, paying for public transportation, or allowing child welfare or school district personnel to provide transportation.
 - Transportation costs are **reimbursed by the education agencies**.

Butte County

- Relies on a **five-way cost sharing plan** among the Butte County Office of Education, the Children’s Service Division of the Department of Social and Employment Services, the foster family agency, the school district of attendance, and the school district where the child is living.
 - The logistics are **coordinated through a central person in the Office of Education** who determines the type of transportation needed.³⁰

²⁹ In Minnesota, this was done by increasing the “Difficulty of Care” level of care.

³⁰ California Foster Youth Education Taskforce, *Memo: Transportation to the School of Origin* (2010).



For more information, please contact Jesse Hahnel, Director of the National Center for Youth Law's FosterEd Initiative, or visit the FosterEd Initiative's website at http://www.youthlaw.org/child_welfare/foster_youth_education_initiative/.

Example #4: Philadelphia, Pennsylvania

In Philadelphia, the Department of Human Services (DHS), the School District of Philadelphia (School District), and the Family Court collaborate to ensure school transportation for all children in foster care in accordance with the State's definition of "awaiting foster care placement"³¹ and the Fostering Connections Act. DHS, through its Education Support Center, and the School District have developed a **joint protocol** to address the transportation needs of children in care on a student-centered and practical basis. The protocol considers such factors as the distance from the school, the temporary or permanent nature of the living placement, and existing school district policies. The protocol specifically provides:

- **For children placed in new home within a 1.5 mile radius of the current school:** The foster parent/provider is responsible for taking the child to school and is eligible for reimbursement.
- **For children placed outside a 1.5 mile radius of the current school:** The School District pays through one of the following methods **as determined by DHS staff in consultation with school counselors:**
 - Public transit and reimbursement by the District is explored first.
 - DHS requests that the school's guidance counselor submit a busing form (through sixth grade). Arranging busing may take up to two weeks. During this interim period, the foster parent provides transportation and is reimbursed through the provider agency.
 - DHS submits a request to the guidance counselor to provide a public transportation pass (seventh grade and up).
- **For emergency, overnight, respite, or temporary placements:** The child automatically remains in school of origin with transportation provided by the School District.
- **For complex cases (e.g., a DHS caseworker and school counselor disagree as to how transportation should be provided or there is no available bus route for a particular child):** Either a caseworker or school counselor consults with the DHS Education Support Center to resolve the matter.

³¹ Pursuant to guidance issued by Pennsylvania's Department of Education, "awaiting foster care placement" is defined as including children in: shelters; emergency, interim or respite foster care; kinship care; evaluation or diagnostic centers or placements for the sole purpose of evaluation; and, in addition "local school officials should consult with their county children and youth agencies whenever necessary to determine if a child meets the definition of awaiting foster care placement, including, on a case-by-case basis, whether a child who does not clearly fall into one of these categories is nevertheless a child "awaiting foster care placement." For more information, see Pennsylvania Dep't of Educ., Basic Education Circular, *Education for Homeless Youth* (February 29, 2008). <http://www.iu5.org/sites/curriculum/20092010%20Meetings/2010-03-25/Homeless%20BEC%20February%202010.pdf>.



- The DHS Support Center trains all caseworkers and school counselors on this protocol and continues to work with DHS and the School District staff on an ongoing basis.

For more information, please contact Maura McInerney at the Education Law Center or visit www.elc-pa.org.



APPENDIX B

STATE IMPLEMENTATION QUESTIONS: TRANSPORTATION

States should ask themselves the following questions to determine (1) how they can best ensure school stability for children in foster care by providing transportation; and (2) how Title IV-E foster care maintenance payment and administrative dollars can be used to reimburse school transportation costs.

- ✓ How many children are in out-of-home care?
- ✓ What percentage of children are placed within *school* boundaries? Within school *district* boundaries?
- ✓ What percentage of children are placed at far distances or there are other reasons that it is not in their best interest to remain in the school they attended at the time of placement?
- ✓ What percentage of children in care have already successfully completed high school?
- ✓ What is the state or district's McKinney-Vento policy for children in care and/or the definition of children "awaiting foster care placement" under McKinney-Vento?
- ✓ What percentage of children in care with IEPs have transportation listed as a related service? What percentage of those children already receives transportation services that can address school stability needs?
- ✓ What are the state and school district policies for transporting *all* students within a school district? Between school districts?
- ✓ Are there any state laws, policies, or programs that impact education stability for children in care or other highly mobile children?
- ✓ What percentage of children in care are IV-E eligible?
- ✓ What is the state's FMAP rate (the percent of children eligible for federal reimbursement for IV-E maintenance costs)?
- ✓ How are the IV-E maintenance payments structured? Can transportation costs be added to the core maintenance payment? Can a separate payment be made?
- ✓ How are IV-E administrative payments structured?
- ✓ Does it make sense to claim transportation costs as administrative or maintenance costs?
- ✓ Who will actually provide the additional transportation needed so that children can remain in their current schools? Will a number of transportation options be available?
- ✓ When schools or other entities provide additional transportation, is there a formula that allows for calculation of the specific costs for that IV-E eligible child?
- ✓ If the state is a IV-E waiver state, do provisions of the waiver impact how these payments can be calculated or made?



APPENDIX C³²

FEDERAL REIMBURSEMENT FOR SCHOOL TRANSPORTATION COSTS: FUNDAMENTAL PRINCIPLES OF IMPLEMENTATION

As states evaluate the most cost-effective manner to provide school transportation so that children can remain in their current schools, the following “principles of implementation” can serve as a guide for determining whether costs may be reimbursed as Title IV-E foster care maintenance payments or administrative costs.

- 1) A child welfare agency must determine children’s IV-E eligibility to receive IV-E reimbursement. IV-E *reimbursability* of child-specific costs is conditioned upon establishing the connection between the purpose of the cost and the term foster care maintenance payment and/or an allowable administrative activity.
- 2) The cost of transporting IV-E eligible children to school to receive education instruction will only be IV-E reimbursable if the cost is associated with transporting the child to “the school the child was enrolled in at the time of placement.”
- 3) In those instances where a cost can be treated as either a foster care maintenance expense, or as an administrative expense, the choice of how the cost is treated for claiming rests with the State. While the State has the flexibility to determine how the cost is treated, once it makes that determination, the State must take care to ensure that all such costs are subsequently treated, and claimed, consistent with that determination. An inconsistent treatment of costs - that is claiming like costs as administration on some occasions and foster care maintenance on others - will create greater audit risk for the State.
- 4) Costs which HHS has determined to be included within a IV-E eligible child's basic/core foster care maintenance payment cost may not be treated as a separate foster care maintenance nor claimed as an administrative cost. For example, the cost of transporting a IV-E eligible child to a location to participate an extra-curricular activity that substitutes for "daily supervision" is treated as a foster care maintenance payment and is already included in the child's basic/core foster care maintenance cost.

³² The Legal Center for Foster Care and Education would like to thank Dennis Blazey for authoring Appendices C and D, as well as contributing significant expertise throughout the document around Title IV-E transportation financing. For more information or questions on Appendices C and D, please email FosteringConnections.org at info@fosteringconnections.org.



APPENDIX D

FEDERAL IV-E REIMBURSEMENT FOR SCHOOL TRANSPORTATION COSTS: COST MATRIX

IV-E reimbursability is complex, and there are a number of considerations for states as they determine the best model for providing and seeking federal reimbursement for necessary school stability transportation. The following matrix outlines the variety of reimbursable transportation categories as well as whether the transportation can be reimbursed as a Title IV-E FCMP or administrative cost. Furthermore, for those categories of transportation that qualify for reimbursement as FCMP or administrative, each is broken down by whether it can be reimbursed as a separate payment. This analysis is drawn from federal law, regulations, and guidance available as of November 1, 2010, especially the Fostering Connections Act and July 2010 P.I. For more information, or questions, please email FosteringConnections.org at info@fosteringconnections.org.

Category of Transportation Cost	Allowable as FCMP?	Separate item of expense?	Allowable as Administrative cost?	Separate item of expense?
Cost of transporting a child to a school in which the child was enrolled at the time of placement	YES	YES	YES ⁱ	YES
Cost of transporting a child to a school other than the school in which the child was enrolled at the time of placement	NO	NOT APPLICABLE	NO	NOT APPLICABLE
Cost for foster parent to attend school conferences in the school in which the child is enrolled at the time of placement	YES	YES	YES	YES
Cost for foster parent to attend school conferences in a school other than the in the child was enrolled at the time of placement	NO	N/A	UNKNOWN ⁱⁱ	N/A
Cost to transport a child to a school in which the child was enrolled at the time of placement to attend extracurricular activities that substitute for daily supervision	YES	NO	NO ⁱⁱⁱ	N/A



Category of Transportation Cost	Allowable as FCMP?	Separate item of expense?	Allowable as Administrative cost?	Separate item of expense?
Cost to transport a child to a school other than the school in which the child was enrolled at the time of placement to attend extracurricular activities that substitute for daily supervision	YES	NO	NO ^{iv}	N/A
Cost to transport a child to a school in which the child was enrolled at the time of placement to attend extracurricular activities that do not substitute for daily supervision	NO	N/A	YES	YES
Cost to transport a child to a school other than the school in which the child was enrolled at the time of placement to attend extracurricular activities that do not substitute for daily supervision	NO	N/A	UNKNOWN ^v	N/A

ⁱ May be treated as a foster care maintenance cost without regard to the location of the placement setting with regard to the school's enrollment area. May be treated as an administrative cost if the placement setting is located outside the school's enrollment area.

ⁱⁱ There is no federal guidance directly on point. However, costs related to this activity are arguably in support of the case plan and case management administrative function and thus allowable to be treated as administration.

ⁱⁱⁱ This cost is presumed to be included in the basic foster care maintenance payment and may not be claimed as a separate cost. Because the cost is presumed to be a foster care maintenance cost, it cannot be treated as an administrative cost.

^{iv} Because this cost is associated with the provision of supervision, it is treated as a foster care maintenance cost without regard to the child's enrollment status in the school at the time of the child's placement. This cost is presumed to be included in the basic foster care maintenance payment and may not be claimed as a separate cost. Because the cost is presumed to be a foster care maintenance cost, it cannot be treated as an administrative cost.

^v There is no federal guidance directly on point. However, if a direct nexus can be established between the child's case plan and the extracurricular activity, then any cost associated with the transportation is arguably in support of the case management administrative function and allowable for treatment as an administrative cost.



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Foster Care & Education

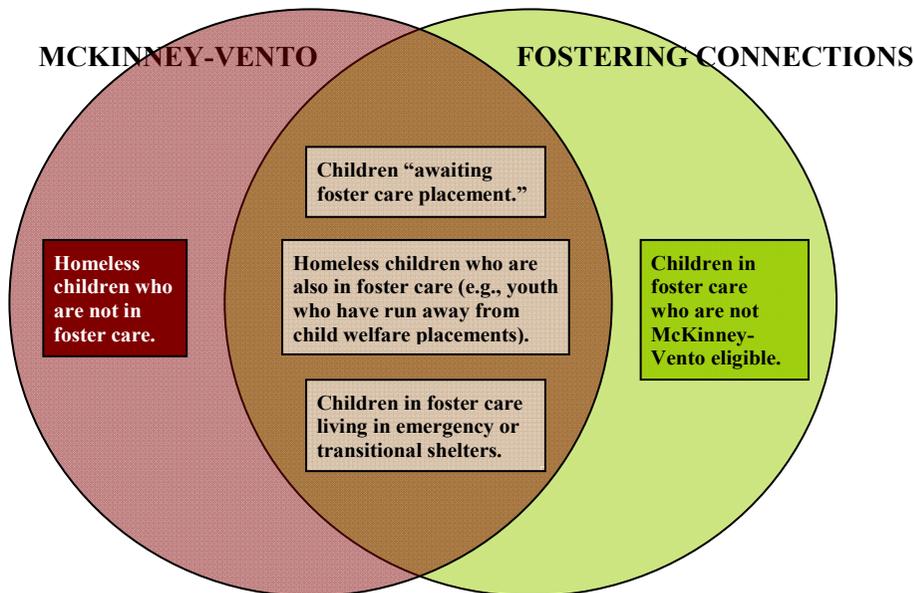
Q&A

HOW FOSTERING CONNECTIONS AND MCKINNEY-VENTO CAN SUPPORT SCHOOL SUCCESS FOR ALL CHILDREN IN OUT-OF-HOME-CARE

Current education law, the McKinney-Vento Homeless Assistance Act (McKinney-Vento), has been providing education stability for some children in out-of-home care. A child welfare law, the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections), also supports education stability for all children in out-of-home care. Both laws recognize the need for school stability and continuity for these highly mobile children. However, each provides a different set of rights and responsibilities. This fact sheet provides a brief overview of the overlap between the two laws, and the critical importance of collaboration between the education and child welfare systems to appropriately serve the needs of children in out-of-home care.

Q: Who is eligible under each law and can some children be eligible under both?

A: The diagram at right demonstrates that those children eligible under the McKinney-Vento Act and Fostering Connections Act may overlap. For example, if a child is in out-of-home care and also meets the definition of awaiting foster care placement, both Fostering Connections and McKinney-Vento apply. State laws may also apply. The application of one law does not diminish the rights provided by the others. Rather, each law adds a layer of rights and protections for children, based on their circumstances and needs.



Q: What education rights do the Fostering Connections Act and the McKinney-Vento Act provide for children in out-of-home care? Who is eligible? How do the two laws overlap?

A: The chart on page 2 summarizes the education rights available under each law, who is eligible, and the overlap between the laws in terms of rights and who is covered.



Rights and Eligibility Under the McKinney-Vento and Fostering Connections Acts

LAW	WHO'S ELIGIBLE	RIGHTS				
		Remain in School	Transportation	Immediate Enrollment	Expedited Record Transfer	Designated Staff Resource
McKinney-Vento Homeless Assistance Act	Homeless children, including: children in emergency or transitional shelters, unaccompanied homeless youth, or those “awaiting foster care placement” as defined by state or school district policy or at the discretion of the McKinney-Vento Liaison.	If in their best interest, children are entitled to remain in their school of origin unless their parent disagrees.	LEAs are required to provide or arrange transportation to the school of origin. (When disputes between LEAs arise, they must split the cost.)	Schools must enroll children immediately, even without typically required documents (e.g. birth certificate, immunization record).	Schools must maintain records so they are available in a timely fashion when a child enters a new school or school district.	Every SEA has a McKinney-Vento State Coordinator and every LEA must designate a McKinney-Vento Liaison.
Fostering Connections to Success and Increasing Adoptions Act of 2008	Every child in out-of-home care.	Unless not in the child’s best interest, the child welfare agency must work with the education agency to ensure child can remain in their school at the time of placement. ¹	No specific mandate, ² but for IV-E eligible children in out-of-home care, “foster care maintenance payments” may include reasonable transportation to a child’s school.	When staying in the same school is not in the child’s best interest, child welfare and LEAs must provide immediate and appropriate enrollment in a new school, with all of the education records of the child provided to the school.	When staying in the same school is not in the child’s best interest, child welfare and LEAs must provide immediate and appropriate enrollment in a new school, with all of the education records of the child provided to the school.	Not specified.
McKinney-Vento AND Fostering Connections	Children in out-of-home care who are McKinney eligible including: children in emergency or transitional shelters, unaccompanied homeless youth, and those “awaiting foster care placement.”	Unless not in the child’s best interest, the child welfare agency and the McKinney Vento liaison must work together to ensure child remains in the school of origin. ³	Unless another state or local agreement exists between education and child welfare, LEA must provide transportation.	Child welfare agency and education agency must work together to ensure immediate enrollment, even without typically required documents.	Child welfare agency and education agency must work together to expedite record transfers.	Child welfare agency caseworker and liaison must work together to provide for all of the child’s rights under both Acts.

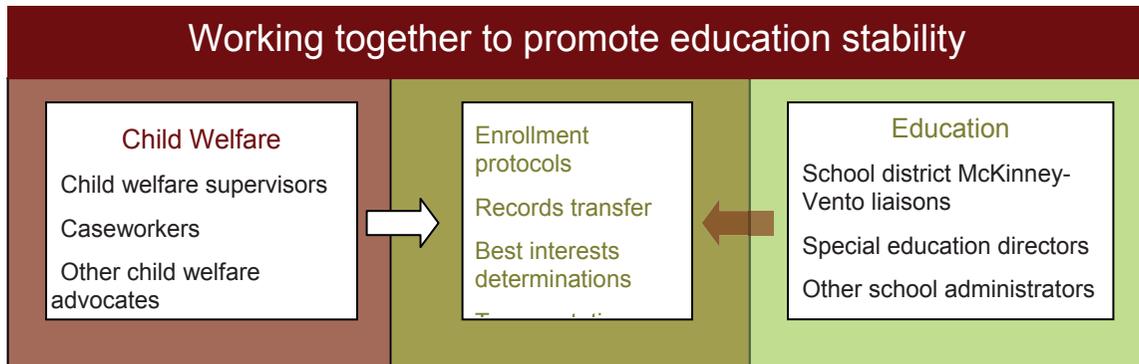
¹ The 2011 Child and Family Services Improvement and Innovation Act clarified in statute that the school stability requirements of Fostering Connections apply at a child’s *initial* placement into foster care, as well as any *subsequent* placement changes. Previous guidance had *encouraged* this, but now it is absolutely clear that the requirements apply throughout the time the child is in care.

² While not explicit in the statute, legislative intent of providing children in foster care with school stability and continuity implies that child welfare’s responsibility to “ensure” school stability for children in foster care, consistent with their best interest, includes providing transportation to the child’s school when necessary and appropriate.

³ While both child welfare agencies and McKinney-Vento liaisons must determine what is best for the child (and best practice would suggest making those decisions collaboratively), if the child is being found eligible under McKinney-Vento, the McKinney-Vento liaison oversees the final decision. If disagreement occurs, the McKinney-Vento dispute procedures can be followed.

Q: How should child welfare advocates navigate the two laws?

A: Fostering Connections, McKinney-Vento, and other federal and state education and child welfare laws must work together to support students in out-of-home care. Initially, advocates should determine which federal and state laws and policies apply to a particular child. Advocates should then ensure the child receives the protections of *all* applicable laws.



To ensure proper implementation of federal and state laws for children in out-of-home care, child welfare supervisors, caseworkers, and other advocates should meet with school district McKinney-Vento liaisons, special education directors, and other administrators. Meetings should address topics such as best interest determinations, transportation plans, enrollment protocols and record transfers. Communication and collaboration among education and child welfare professionals are critical to support school success for children in out-of-home care.

Q: Does Fostering Connections impact eligibility for McKinney-Vento protections for children in out-of-home care?

A: No. The passage of Fostering Connections, a child welfare law, does not change the rights and protections of McKinney-Vento. Children in out-of-home care may continue to be eligible under McKinney-Vento if they are living in transitional or emergency shelters, are “awaiting foster care placement,” or are unaccompanied homeless youth.

Q: How should best interest school selection decisions be made under Fostering Connections and McKinney-Vento and who should make these determinations?

A: The passage of Fostering Connections, a child welfare law, does not change in any way the best interest determination for children who qualify for McKinney-Vento. This decision is still made by the McKinney-Vento liaison. Just as before, best practice suggests that the McKinney-Vento liaison should gather information about a child from the child, foster parent, child’s caseworker and child advocate or attorney in making a best interest determination. While the input of a caseworker is very critical in making a best interest determination under the McKinney-Vento Act, it is only the McKinney-Vento liaison and parent who will ultimately make this decision.

However, when a child in out-of-home care is not eligible for McKinney-Vento, the rights of Fostering Connections still apply. As such, it may be the child welfare agencies’ responsibility to make the best interest determinations. Best practice would suggest that education agency staff should be consulted in making these decisions.

Q: What is the role of the parent in making education decisions?

A: Unless a court has limited a parent's education rights, the parent continues to be the decisionmaker for all special and general education decisions. This is true under both Fostering Connections and McKinney-Vento.

Q: How is transportation covered under both laws?

A: Children in care who are eligible under McKinney-Vento and require transportation to remain in their schools of origin are still entitled to transportation under McKinney-Vento by the education agency. However, child welfare agencies should collaborate to support these efforts as much as possible. For children in care not eligible under McKinney-Vento, child welfare agencies may use IV-E foster care maintenance or administrative dollars to support transportation to keep children in the same school. While this is an allowable reimbursement, it is not mandatory. However, since the agency is required to ensure that when in a child's best interest he or she remains in the same school, providing transportation will often be necessary to comply with this requirement.

Resources

The following organizations provide these additional resources on the McKinney-Vento and Foster Connections Acts:

The Legal Center for Foster Care and Education

www.abanet.org/child/education

- *Q&A: Fostering Connections to Success and Increasing Adoptions Act* (outlines the Act's education provisions)
- *Implementation Guide* (helps states implement the education provisions of the Act)
- Fostering Connections Implementation Issue Brief Series (covering such topics as Best Interest Determinations, Transportation, and Collaborating with Schools)

All available at:

http://www.americanbar.org/groups/child_law/projects_initiatives/education/state_implementation_to_olkit.html

The National Association for the Education of Homeless Children and Youth (NAEHCY)

www.naehcy.org

- *The McKinney-Vento Act and Children and Youth Awaiting Foster Care Placement: Strategies for Improving Educational Outcomes Through School Stability*
www.abanet.org/child/education/publications/stability.html

The National Center for Homeless Education (NCHE)

www.serve.org/nche

- *Best Practices in Homeless Education* (fact sheet about how to determine best interest)
www.serve.org/nche/downloads/briefs/sch_sel_checklist.pdf
- *Clearing the Path to School Success for Students in Out-of-Home Care*
www.serve.org/nche
- *Homeless Education Issue Briefs*

School Selection for Students in Out-of-Home Care

Introduction

The **Legal Center for Foster Care and Education** and the **National Center for Homeless Education** present this brief to provide a framework for local homeless education liaisons, educators, child welfare caseworkers, and other child welfare advocates for assessing best interest when selecting a school for students in out-of-home care. While the brief focuses on students “awaiting foster care placement” under the McKinney-Vento Act, it provides information relevant to school selection and school stability for all children and youth in out-of-home care.

Two federal laws give children and youth in out-of-home care certain rights to remain stable in one school despite changes in their living placement: The **McKinney-Vento Homeless Assistance Act** and the **Fostering Connections to Success and Increasing Adoptions Act**.

Legal Background: The McKinney-Vento Act

The McKinney-Vento Act guarantees eligible children the right to continue attending their school of origin despite changes in their living situation.¹ Children and youth “awaiting foster care placement” are eligible for services under the McKinney-Vento Act. While the McKinney-Vento Act does not define this term further, some states have created policies to provide its districts with more specific guidance on serving this population. Contact your State Coordinator for Homeless Education to see if further state-level policy or guidance can be provided; contact information is available at http://www.serve.org/nche/states/state_resources.php. For the full McKinney-Vento definition of “homeless,” see the panel to the right.

¹ McKinney-Vento Homeless Assistance Act, Subtitle VII-B: 42 USC 11432(g)(3) (A)-(B).



Who is homeless?

(McKinney-Vento Homeless Assistance Act of 2001 – Title X, Part C of the No Child Left Behind Act – Sec 725)

The term “homeless children and youth”—

- A. means individuals who lack a fixed, regular, and adequate nighttime residence...; and
- B. includes —
 1. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 2. children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings...
 3. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 4. migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

School Selection Under McKinney-Vento

The McKinney-Vento Homeless Assistance Act guarantees children and youth experiencing homelessness the right to attend one of two schools: the school of origin or the local attendance area school.

“The local educational agency [LEA or school district] serving each child or youth to be assisted under this subtitle shall, according to the child’s or youth’s best interest-

- i. continue the child’s or youth’s education in the school of origin for the duration of homelessness-
 - I. in any case in which a family becomes homeless between academic years or during an academic year; or
 - II. for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or
- ii. enroll the child or youth in any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.”

[M-V: 722(g)(3)(A)]

Schools Defined Under McKinney-Vento

School of Origin: “The school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled”

[M-V: 722(g)(3)(G)]

Local Attendance Area School: “Any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend”

[M-V 722(g)(3)(A)(ii)]

Best Interest Under McKinney-Vento

“Best Interest—In determining the best interest of the child or youth under subparagraph (A), the local educational agency shall—

- i. to the extent feasible, keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child’s or youth’s parent or guardian;
- ii. provide a written explanation, including a statement regarding the right to appeal under subparagraph (E), to the homeless child’s or youth’s parent or guardian, if the local educational agency sends such a child or youth to a school other than the school of origin or a school requested by the parent or guardian; ...”

[M-V 722(g)(3)(B)]

U.S. Department of Education: Education for Homeless Children and Youth Program Guidance

"G-4. What should a school district consider when determining the extent to which it is feasible to educate a homeless child in his or her school of origin?"

As stated above, to the extent feasible, a district must educate a homeless child or youth in his or her school of origin, unless doing so is contrary to the wishes of the parent or guardian. The placement determination should be a student-centered, individualized determination. Factors that an LEA may consider include the age of the child or youth; the distance of a commute and the impact it may have on the student's education; personal safety issues; a student's need for special instruction (e.g., special education and related services); the length of anticipated stay in a temporary shelter or other temporary location; and time remaining in the school year."

(Education for Homeless Children and Youth Program Non-Regulatory Guidance, July 2004)

Legal Background: The Fostering Connections Act

In addition to the McKinney-Vento Act, a relatively new child welfare statute supports school stability for children in out-of-home care. This law is the Fostering Connections to Success and Increasing Adoptions Act of 2008, and it applies both to students eligible under the McKinney-Vento Act as "awaiting foster care placement" and those in foster care but not eligible under McKinney-Vento. The Fostering Connections Act requires that child welfare agencies have a plan for ensuring the educational stability of every child in care.² When placing a child in out-of-home care, the child welfare agency must take into account the appropriateness of the current educational setting and the distance between the school and the child's living placement. The agency also must coordinate with local educational agencies to ensure that children in care remain in the school in which they were enrolled when they were brought into care, if that is in their best interest. In other words, child welfare agencies must focus on school stability in their planning and placements and must be active participants in best interest determinations for all children in care.

How do McKinney-Vento and Fostering Connections Work Together?

When a child is "awaiting foster care placement" under the McKinney-Vento Act, both that Act and the Fostering Connections Act provide the child with rights. Since the McKinney-Vento Act applies to schools, it establishes the proper framework for best interest decisions for children awaiting foster care placement. Therefore, the LEA and the local homeless education liaison should take the lead in assessing best interest and ensuring immediate enrollment for students awaiting foster care placement. The child welfare agency must participate in the best interest decision by sharing appropriate information, coordinating with the LEA, and assisting the local liaison with the practical aspects of enrollment and transportation, as needed.

² *Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351); 42 USC 675(1)(G).*

School Stability Under Fostering Connections

Children in out-of-home care who do not meet the local or state definition of “awaiting foster care placement” are not eligible for the McKinney-Vento Act’s protections. However, the Fostering Connections Act requires child welfare agencies to coordinate with LEAs to ensure that all children in care remain in the school in which they were enrolled when they were brought into care, if that is in their best interest. Therefore, child welfare agencies should work with LEAs to provide school stability for all children in care, consistent with their best interest. Child welfare caseworkers who are determining a child's best interest can use the information below as a guide to assist in making their decisions.

Making Best Interest Decisions

Children in out-of-home care tend to have many adults involved in their lives, and it may be unclear who has the authority to make general education decisions for them. Usually, birth or adoptive parents are the decision makers, even if a child has been removed from the home. However, a state law, regulation, or court order may restrict parental authority, giving general educational decision-making rights to foster parents, caseworkers, relatives, or other advocates. In these cases, for children in out-of-home care and those awaiting foster care placement, the educational decision maker will assume the rights of the parents under the McKinney-Vento Act, including the right to select the school in the child's best interest and pursue any disputes with the school district. The school must be informed of who has decision-making authority for each student; the responsibility of informing the school typically lies with the student's child welfare caseworker.

In order for parents or other educational decision makers to make informed decisions about selecting the school that is in a child's best interest, they need to have as much practical information as possible. Every LEA has a local homeless education liaison, who must ensure each eligible child receives his or her rights under the McKinney-Vento Act, including the right to attend the school of origin. The local liaison and school or district staff can play an instrumental role in assisting with choosing the school that is in a student's best interest. For children in foster care who are not McKinney-Vento eligible, schools should identify staff to assist with the school selection provisions of the Fostering Connections Act. In these situations state laws and policies will determine the schools' specific role in best interest decisions; however, school staff always should be involved and provide input related to the decisions.

In all of these situations, the local liaison, teachers, and other school or district staff can:

- Reinforce the importance of school stability and educational continuity for children.
- Provide input on the academic, social, and emotional impact that transferring to a new school may have on children.
- If the child has special education needs, provide input on the impact that changing schools may have on the child's progress and services. If a school change is indicated, ensure that evaluations and/or services are not interrupted.
- Help determine which programs at the two schools are comparable and appropriate for the child and make arrangements for the parents or educational decision maker and the

child to visit the school considered for a possible transfer.

- Provide information on the commute to the schools under consideration in terms of the distance, mode of transportation, and travel time, and work with caseworkers to develop transportation plans.
- Work with school staff and data managers to ensure appropriate confidentiality about the student's out-of-home placement.
- Work with caseworkers to develop immediate and long-term educational plans for the student, ensuring that the student's education is not interrupted and considering the anticipated duration of the child's out-of-home placement and permanency plan.

Key Questions to Consider When Making a School Selection

1. How long is the child's current placement expected to last?
2. What is the child's permanency plan?
3. How many schools has the child attended over the past few years? How many schools has the child attended this year? How have the school transfers affected the child emotionally, academically and physically?
4. How strong is the child academically?
5. To what extent are the programs and activities at the potential new school comparable to or better than those at the current school?
6. Does one school have programs and activities that address the unique needs or interests of the student that the other school does not have?
7. Which school does the student prefer?
8. How deep are the child's ties to his or her current school?
9. Would the timing of the school transfer coincide with a logical juncture such as after testing, after an event that is significant to the child, or at the end of the school year?
10. How would changing schools affect the student's ability to earn full academic credit, participate in sports or other extra-curricular activities, proceed to the next grade, or graduate on time?
11. How would the length of the commute to the school of origin impact the child?
12. How anxious is the child about having been removed from the home and/or any upcoming moves?
13. What school do the child's siblings attend?
14. Are there any safety issues to consider?

Conclusion

Decisions regarding school selection should be made on a case-by-case basis, giving attention to the circumstances of each individual student. The following checklist may help local liaisons or other designated education and child welfare agency staff guide a discussion on school-selection options available to the student and the advantages and disadvantages of each option. If a district has large numbers of homeless, foster, and other highly mobile students, it may be beneficial to train several staff members at both the child welfare agency and the school district to assist in this decision-making process.

Additional Information

For additional information on supporting the education of students in out-of-home care, visit the Legal Center for Foster Care and Education at <http://www.abanet.org/child/education/> and the National Center for Homeless Education at http://www.serve.org/nche/ibt/sc_foster.php.

School Selection: A Checklist for Decision Making

(adapted from the Texas Homeless Education Office)

School of Origin Considerations		Local Attendance Area School Considerations	
<input type="checkbox"/>	<p>Continuity of instruction <i>Student is best served due to circumstances that look to his or her past.</i></p>	<input type="checkbox"/>	<p>Continuity of instruction <i>Student is best served due to circumstances that look to his or her future.</i></p>
<input type="checkbox"/>	<p>Age and grade placement of the student <i>Maintaining friends and contacts with peers is critical to the student's meaningful school experience and participation. The student has been in this environment for an extended period of time.</i></p>	<input type="checkbox"/>	<p>Age and grade placement of the student <i>Maintaining friends and contacts with peers in the school of origin is not particularly critical to the student's meaningful school experience and participation. The student has attended the school of origin for only a brief time.</i></p>
<input type="checkbox"/>	<p>Academic strength <i>The child's academic performance is weak, and the child would fall further behind if he/she transferred to another school.</i></p>	<input type="checkbox"/>	<p>Academic strength <i>The child's academic performance is strong and at grade level, and the child would likely recover academically from a school transfer.</i></p>
<input type="checkbox"/>	<p>Social and emotional state <i>The child is suffering from the effects of mobility, has developed strong ties to the current school, and does not want to leave.</i></p>	<input type="checkbox"/>	<p>Social and emotional state <i>The child seems to be coping adequately with mobility, does not feel strong ties to the current school, and does not mind transferring.</i></p>
<input type="checkbox"/>	<p>Distance of the commute and its impact on the student's education and/or special needs <i>The advantages of remaining in the school of origin outweigh any potential disadvantages presented by the length of the commute.</i></p>	<input type="checkbox"/>	<p>Distance of the commute and its impact on the student's education and/or special needs <i>A shorter commute may help the student's concentration, attitude, or readiness for school. The local attendance area school can meet all of the necessary educational and special needs of the student.</i></p>
<input type="checkbox"/>	<p>Personal safety of the student <i>The school of origin has advantages for the safety of the student.</i></p>	<input type="checkbox"/>	<p>Personal safety of the student <i>The local attendance area school has advantages for the safety of the student.</i></p>
<input type="checkbox"/>	<p>Student's need for special instruction <i>The student's need for special instruction, such as Section 504 or special education and related services, can be met better at the school of origin.</i></p>	<input type="checkbox"/>	<p>Student's need for special instruction <i>The student's need for special instruction, such as Section 504 or special education and related services, can be met better at the local attendance area school.</i></p>
<input type="checkbox"/>	<p>Length of anticipated stay in a temporary shelter or other temporary location <i>The student's current living situation is outside of the school-of-origin attendance zone, but his/her living situation or location continues to be uncertain. The student will benefit from the continuity offered by remaining in the school of origin.</i></p>	<input type="checkbox"/>	<p>Length of anticipated stay in a temporary shelter or other temporary location <i>The student's current living situation appears stable and unlikely to change suddenly; the student will benefit from developing relationships with school peers who live in his local community.</i></p>

This brief was developed by:

National Center for Homeless Education

800-308-2145 (Toll-free Helpline)

<http://www.serve.org/nche>

Legal Center for Foster Care and Education

202-662-1733

<http://www.abanet.org/child/education/>

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LEGAL CENTER FOR
FOSTER CARE & EDUCATION

Every state is required to have a State Coordinator for Homeless Education, and every school district is required to have a local homeless education liaison. These individuals will assist you with the implementation of the McKinney-Vento Act. To find out who your State Coordinator is, visit the NCHE website at http://www.serve.org/nche/states/state_resources.php.



For more information on the McKinney-Vento Act and resources for implementation, call the NCHE Helpline at 800-308-2145 or e-mail homeless@serve.org.



Local Contact Information:

Clearing the Path to School Success for Students in Out-of-Home Care

Introduction

The Legal Center for Foster Care and Education and the National Center for Homeless Education present this guide to help educators and child welfare advocates clear the path to school success for children and youth who are forced to leave their homes due to abuse, neglect, and family dysfunction. Two federal laws, among others, provide tools to clear the way: The McKinney-Vento Act and the Fostering Connections to Success and Increasing Adoptions Act. This guide provides basic information about both laws and suggests practical strategies for their implementation. The lives of three young people provide the context to show how child welfare and education staff can ensure school stability, attendance, and full participation for children and youth in out-of-home care.



Student Profiles

Ricky

Fourteen-year-old Ricky and his 8-year-old sister Tracey have been in the custody of the Department of Child and Family Services for several years, placed in the same foster home. Yesterday (April 9), Ricky's foster family contacted his case worker to inform her that today would be the last day they could have Ricky in their home. With little time to find an alternate placement, the case worker has secured a space for Ricky in the Capital City Youth Center. She has requested a court hearing, which will take place next week. It is unclear how long Ricky will remain at Capital City, although his permanency plan calls for adoption.

Who is homeless?

(McKinney-Vento Homeless Assistance Act of 2001 – Title X, Part C of the No Child Left Behind Act – Sec 725)

The term “homeless children and youth”—

- A. means individuals who lack a fixed, regular, and adequate nighttime residence...; and
- B. includes —
 1. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 2. children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings...
 3. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 4. migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

A Joint Publication

The Legal Center for Foster Care ■ www.abanet.org/child/education/
 The National Center for Homeless Education ■ www.serve.org/nche

Mariana

Mariana is also staying at Capital City. She is a 17-year-old girl who ran away from her home in another state several months ago because her stepfather was abusing her. Mariana's mother believes it is better for the family if Mariana stays away from home. Mariana is not now, and never has been, in the custody of a child welfare agency. She has been out of school and surviving on her own since leaving home, but hopes to enter Capital City's nearby transitional housing program and return to school soon.

Tracey

Meanwhile, Tracey is struggling to adjust to Ricky's absence. She has not had a good year at school, and her foster parents and case worker have been considering enrolling her in a local public charter school with small classes and an arts program that interests her. Tracey is refusing to return to school and begging to be transferred to the charter school immediately. Tracey's foster parents hope to adopt her and are worried about her current difficulties.

Support for Overcoming Obstacles

The path to school success for Ricky, Mariana, and Tracey is cluttered with obstacles: family dysfunction, precarious connections to siblings, residential instability, school mobility, emotional unhealth, unmet basic needs, and inconsistent relationships with peers and adults. However, countless youth, educators, local homeless education liaisons, and child welfare professionals have shared effective strategies to clear away these obstacles. With support, students like Ricky, Mariana, and Tracey can travel the path to school success, high school graduation, higher education, and beyond.

Ricky and the McKinney-Vento Act

1. Is Ricky covered by the McKinney-Vento Act?

The McKinney-Vento Act applies to children and youth experiencing homelessness. The law defines homeless to include children and youth: sharing the housing of others due to loss of housing, economic hardship or a similar reason; living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; living in emergency or transitional shelters; living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or awaiting foster care placement.¹

The law does not define the phrase "awaiting foster care placement"; however, many states have adopted definitions through policy or practice.² Where state guidance is lacking, many school districts have defined the term. Almost universally, a student who has been placed in a group home or shelter on a short-term or emergency basis will be considered to be "awaiting foster care placement." Therefore, Ricky will be covered by the McKinney-Vento Act in virtually every school

¹ 42 U.S.C. 11434a(2).

² State policies vary from tailored definitions that focus on the intended duration or stability of the placement, to eligibility for all children in out-of-home care. To search for policies by state, visit <http://www.abanet.org/abanet/child/education/search.cfm>.

district in the country.

The school district's local homeless education liaison must determine each student's eligibility for McKinney-Vento services. In making the determination, the local liaison should consult persons who could provide needed information to inform the decision fully and should explain to those persons the state or local definition of "awaiting foster care placement." Such persons may include a birth parent (even if the child is not living with the parent) a foster parent, relatives or other potential caretakers, a child welfare case worker, a Court-Appointed Special Advocate (CASA), the child's attorney, or a Guardian ad Litem (GAL). For an accurate determination of eligibility, it is critical that these persons provide the school with basic information about the nature of the student's placement and its expected duration. Any information provided must be in compliance with federal and state laws that protect the child's and family's privacy. Such information is extremely sensitive and personal; school staff should not be informed that a child is in out-of-home care unless they need the information to comply with the law or provide appropriate services, and details about the family's situation should always remain confidential.

If there is a dispute about eligibility, the local liaison must provide the student's parent or guardian with information about the state's dispute resolution process and facilitate access to that process. When a child is in foster care, it may not always be obvious who is fulfilling the role of parent or guardian. In general, even when a child is in care, the child's birth parent will continue to make education decisions unless a court has limited those rights; in such cases, another individual, such as a foster parent or relative caretaker, may be the one to make these decisions. The caseworker should inform the local liaison about who has the authority to make parental decisions.

Clearing the Path

State education and child welfare agencies should develop shared definitions of "awaiting foster care placement" via inter-agency agreements. They should train state and local personnel on the definition and strategies to implement it. Local child welfare workers, advocates, and McKinney-Vento/Homeless liaisons should consult the State Coordinator for Homeless Education¹ at the state education agency to see if their state has a policy defining "awaiting foster care placement."

¹ Every state has a State Coordinator. Contact information is available at http://www.serve.org/nche/states/state_resources.php.

2. What school should Ricky attend?

The McKinney-Vento Act gives Ricky the right to attend the school other students living in the same attendance area as Capital City are eligible to attend.³ The law also allows Ricky to attend his "school of origin": the school he attended when permanently housed, or the school in which he was last enrolled.⁴ Ricky must be enrolled immediately in whichever one of those schools is in his best interest.⁵

In evaluating Ricky's best interest, the school district must keep him in his school of origin, unless that is not feasible or is against his parent's or guardian's wishes. The feasibility determination is student-centered and centers on a consideration of Ricky's specific circumstances, such as: his age; the

³ 42 U.S.C. 11432(g)(3)(A).

⁴ 42 U.S.C. 11432(g)(3)(A)&(G).

⁵ 42 U.S.C. 11432(g)(3)(B)&(C).

distance to the school of origin and the impact the commute may have on his education; his safety; his need for special instruction; the length of anticipated stay in his current placement; and the time remaining in the school year.⁶

Based on the information provided, it would be in Ricky's best interest to continue attending the school in which he was last enrolled.⁷ It is April, and changing schools this close to the end of the school year will disrupt Ricky's educational continuity, relationships with peers and teachers, and participation in extracurricular activities. Perhaps most importantly, Ricky is unlikely to stay at Capital City for more than a few days or weeks, which would permit him to make little, if any, progress if he transferred to the local school. Finally, Ricky is 14 years old, old enough to cope with commuting to a distant school (within reason).

Clearing the Path

To make an informed best interest determination, the school district needs input from those involved in the child welfare case, including the biological parents (if their rights have not been limited), caseworker, advocates, and foster parents. The caseworker should explain the expected duration of the placement and any special needs or safety concerns. Caseworkers could inform the local liaison of family team meetings or team decision making meetings (FTMs or TDMs) that are happening for the child and invite the local liaison to attend and participate. If no such meetings are scheduled, the local liaison could work with the caseworker to find another efficient way of gathering information from all appropriate parties to make an informed best interest determination. The local liaison must consider this information, as well as input from the student's school. If there is a dispute, the local liaison must provide the student's parent or guardian, or the appropriate education decision maker for the child, with information in writing about the state's dispute resolution process and facilitate access to that process.

3. How will Ricky get to and from his school of origin?

The McKinney-Vento Act requires the school district to provide or arrange transportation for Ricky to and from his school of origin.⁸ If Capital City is in the same school district as his school of origin, that school district is responsible for transportation. If Ricky will be crossing district lines, the two school districts share the responsibility and cost.

The specific method of transportation can vary, as long as it is safe and appropriate.⁹ In Ricky's case, he is old enough to travel on public transportation at the school's expense, if it is available and gets him to school on time and safely. Other options would include a school bus (including special routes and sharing routes with other districts), a taxi, reimbursing a licensed adult from Capital City for the transportation, or other appropriate means of transportation available in the local area and consistent with state and local student transportation policies.

⁶ U.S. Department of Education (2004). *Education for Homeless Children and Youth Program, Non-Regulatory Guidance, G-4.*

⁷ For more information on feasibility and best interest, including a checklist of considerations, see *School Selection for Students in Out-of-Home Care* at <http://www.serve.org/nche/briefs.php>.

⁸ 42 U.S.C. 11432(g)(1)(J)(iii).

⁹ U.S. Department of Education (2004). *Education for Homeless Children and Youth Program, Non-Regulatory Guidance, H-4.*

Clearing the Path

Schools must arrange transportation expeditiously, so the student does not miss school. Caseworkers must inform schools immediately of pending changes in a student's home placement, or when the student has moved, so the school can adjust transportation arrangements. Particularly when students are crossing school district lines, transportation can be expensive and logistically complex. Therefore, caseworkers, foster parents, and others can facilitate transportation by helping to coordinate logistics and sharing the responsibility for transportation.

4. What other strategies can be used to clear the path to school success for Ricky?

The McKinney-Vento Act requires Ricky's school of origin to provide him with full participation in school; therefore, Ricky must be allowed to continue his participation in extracurricular activities, special classes or projects, and other school activities. The school must provide transportation to those activities that is comparable to what is provided to other students and must work to remove barriers to Ricky's retention in school.¹⁰ The Act also requires the school to ensure that Ricky is not "stigmatized or segregated" based on his experiencing homelessness.¹¹ For example, school staff who know Ricky is in out-of-home care must keep that information confidential; Ricky cannot be placed in a separate school or class; and he cannot be penalized for absences due to court appearances or other obligations related to his child welfare case.

Finally, the McKinney-Vento Act requires schools to coordinate with other agencies or programs serving eligible children.¹² Ricky's teachers, counselors, the local liaison, and other appropriate educators should work with his caseworker, other child welfare advocates, and staff from Capital City to ensure all his educational needs are met.

Clearing the Path

Since the school's obligation to transport Ricky to and from afterschool activities is limited, caseworkers, foster parents, staff at Capital City, coaches, teachers, and other advocates can ensure Ricky's full participation by facilitating transportation. They should also help Ricky maintain his school friendships, which may be strained now that he is living farther from school. Finally, the school must ensure access to any needed and available mental health services, physical health services (including those provided by a school nurse), academic support, and Title I programming.¹

¹ McKinney-Vento students are automatically eligible for Title I services. 20 U.S.C. 6315(b)(2)(E) & 6313(c)(3).

¹⁰ 42 U.S.C. 11432(g)(1)(I) & (g)(4).

¹¹ 42 U.S.C. 11432(g)(1)(J)(i).

¹² 42 U.S.C. 11432(g)(5).

Ricky and the Fostering Connections Act

1. Is Ricky covered by the Fostering Connections Act?

Most of the education provisions of the Fostering Connections Act apply to all children in foster care. Although he is currently living in a group home/shelter, Ricky is in the custody of the child welfare system. Therefore, the Act covers Ricky.

Clearing the Path

Child welfare agencies and school districts should conduct joint trainings on the Fostering Connections and McKinney-Vento Acts so that each agency is aware of all the education rights of students in out-of-home care. Although the McKinney-Vento Act provides Ricky with the most important educational rights, the Fostering Connections Act requires the child welfare agency to participate actively in ensuring his school stability, participation, and success. It also requires the school and child welfare agency to coordinate their efforts to support Ricky.

2. What school should Ricky attend?

The Fostering Connections Act requires child welfare agencies to include “a plan for ensuring the educational stability of the child while in foster care” as part of every child's case plan.¹³ Further, the placement of the child in foster care must take 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 the child welfare agency must coordinate with school districts to ensure that the child remains in the school in which the child is enrolled at the time of placement, unless moving to a new school would be in the child's best interest.¹⁴ The same best interest factors considered under the McKinney-Vento Act should be considered under the Fostering Connections Act.

The Fostering Connections Act is clear that child welfare agencies should strive to minimize school changes for students in care. School stability and success contribute to placement stability and success. Therefore, Fostering Connections complements the McKinney-Vento Act fully in requiring the child welfare agency to keep Ricky in his school of origin.

Clearing the Path

Providing Ricky with stability in his foster care placement and placing him close to his school of origin will clear significant obstacles to his school success. Therefore, when Ricky's caseworker is working to identify possible living options for Ricky, she should work closely with other child welfare advocates, as well as teachers and other staff from Ricky's school, who could help identify a suitable, stable placement for him as quickly as possible. Once Ricky is placed, the caseworker should provide consistent support and services to Ricky and his placement family or agency, to avoid the need to move him again.

¹³ 42 U.S.C. 675(1)&(5).

¹⁴ 42 U.S.C. 675(1)&(5).

3. How will Ricky get to and from his school of origin?

The McKinney-Vento Act requires schools to provide or arrange transportation for Ricky. The Fostering Connections Act permits states to access federal child welfare funding that may be used to cover reasonable transportation to the school of origin for a student in foster care.¹⁵ State child welfare agencies still have to contribute state dollars in order to access these federal funds.

Clearing the Path

In Ricky's case, the child welfare agency could pursue the use of child welfare funds to assist the school district in meeting the cost of transportation.

4. What other strategies can be used to clear the path to school success for Ricky?

It is the responsibility of both schools and child welfare agencies to meet the education needs of children in out-of-home care.¹⁶ For that reason, the Fostering Connections Act requires child welfare agencies to coordinate with school districts to ensure educational stability for students in foster care.¹⁷ Finally, many states have laws providing additional education rights to students in out-of-home care. Advocates should work to ensure that the full weight of these laws is used to support Ricky in his education and placement.¹⁸

Clearing the Path

Ricky's current residential instability may undermine his emotional well-being, making it harder for him to focus on schoolwork. Therefore, Ricky's caseworker, staff at Capital City, his school counselor, and his teachers should work together to support him during this stressful time. Ricky's caseworker should also strive to limit his case-related absences from school by scheduling appointments, visits, court hearings, and other meetings after school hours. The child welfare agency should ensure Ricky's physical and mental health needs are met quickly and completely and assist in coordinating visits with friends, participation in afterschool activities, and contact with his sister and other family members, as appropriate. Each of these strategies will increase Ricky's stability and allow him to focus on his schoolwork.

¹⁵ 42 U.S.C. 675(4).

¹⁶ Under the federal Child and Family Service Reviews (CFRSs), one of the seven case outcomes reviewed by federal child welfare auditors is: "Are we meeting the education needs of children in foster care?" All states are required to examine the education outcomes for children in foster care and take steps to improve efforts and results; 45 C.F.R. 1355.34(b)(1)(iii)(B).

¹⁷ 42 U.S.C. 675(1)&(5).

¹⁸ For information about such state laws, visit <http://www.abanet.org/abanet/child/education/search.cfm>.

Mariana and the McKinney-Vento Act

1. Is Mariana covered by the McKinney-Vento Act?

The McKinney-Vento Act applies to youth who are living in emergency or transitional shelters, among others. Mariana ran away from a foster home and entered Capital City on her own. Therefore, Capital City is serving as an emergency or transitional shelter for Mariana. As such, Mariana would be eligible for McKinney-Vento rights and services.

Clearing the Path

Most, if not all, of the children and youth staying at Capital City and in similar situations will be covered by the McKinney-Vento Act. Therefore, local liaisons from nearby school districts should establish relationships with the shelter director and staff, develop enrollment and transportation protocols, and adopt other practices to facilitate the immediate enrollment and attendance of students at the shelter.

What school should Mariana attend?

Mariana can continue attending her school of origin or enroll immediately in any school other students living in the same attendance area as Capital City are eligible to attend, depending on her best interest. The local liaison should seek more information from Mariana regarding the school she attended when permanently housed and the school in which she was last enrolled. However, since Mariana's home was far from Capital City, we may assume returning to her school of origin would require a lengthy commute. Mariana has been separated from her school of origin for some time and plans to remain at Capital City's transitional housing program for the near future. Given these facts, it is likely in Mariana's best interest to enroll in the local school.

If students living in the same attendance area as Capital City are eligible to attend more than one high school (for example, charter schools or alternative high school programs), the local liaison should ask Mariana about her educational strengths, interests, and goals to ensure Mariana enrolls in the school best suited to her needs and wishes. The local liaison is responsible for helping Mariana choose and enroll in a school, ensuring her enrollment, and informing her of her rights.¹⁹

¹⁹ 42 U.S.C. 11432(g)(6)(A).

Clearing the Path

The McKinney-Vento Act requires the local school to enroll Mariana immediately, even without school records or other documents required normally for enrollment, and even if her parent or guardian is not present to sign or help her enroll.¹ The local school district should have a policy for enrolling unaccompanied youth; for example, Mariana may enroll herself in school, or may be enrolled by staff at Capital City or the local liaison. The school must contact Mariana's previous school immediately to request her records.² In the meantime, the enrolling school can ask Mariana about her classes and academic level, or call the counselor or teachers at her previous school.³

¹ 42 U.S.C. 11432(g)(3)(C).

² 42 U.S.C. 11432(g)(3)(D).

³ For strategies to enroll students without records, see *Prompt and Proper Placement* at <http://www.serve.org/nche/briefs.php>.

2. How will Mariana's new school ensure she can participate fully in school?

Mariana's right to immediate enrollment includes attending classes and participating fully in school activities.²⁰ Therefore, Mariana has the right to participate in classes, educational programs, extracurricular activities, sports, and other school activities without regard to deadlines, fees, or duration-of-residency requirements; the school must waive such requirements. The McKinney-Vento Act also requires the school to eliminate barriers to Mariana's retention in school.²¹ For example, Mariana must be able to earn credits and otherwise progress academically. If Mariana has no means to pay fees for special classes, field trips, or extracurricular activities. The school may waive those fees or pay for them with Title I funds or funds from a McKinney-Vento subgrant, if the school district receives one.

Clearing the Path

Given that Mariana has been out of school for some time, she likely will need support in catching up academically. First, the school should ensure Mariana will earn full or partial credit for the work she completes between now and the end of the academic year. Second, the school should offer her credit recovery opportunities to make up for the time she's missed, such as independent study, computer-based modules, online learning, and opportunities to complete additional schoolwork before or after school.

3. What other strategies can be used to clear the path to school success for Mariana?

The McKinney-Vento Act requires schools to eliminate barriers to Mariana's enrollment and retention in school and to ensure she is not "stigmatized or segregated" due to her living situation. Further, the Act requires schools to coordinate with other agencies or programs working with Mariana. Therefore, Mariana's school counselor, teachers, school nurse, and the local liaison should work with Mariana and Capital City staff to ensure that her basic needs are met, including hygiene, clothing, nutrition, housing, and physical and mental health care.

²⁰ 42 U.S.C. 11434a(1).

²¹ 42 U.S.C. 11432(g)(1)(I).

If Mariana's teachers suspect she may have a disability, they should contact the school district special education office for guidance as to who can refer her for evaluation in the absence of a parent. It is likely that the school district will have to assign a surrogate parent to consent to the evaluation and for services to begin, if Mariana is eligible; the appointment of a surrogate parent should take place within thirty days of the school district deciding an evaluation is needed. It can be difficult to recognize a disability in highly mobile students like Mariana, especially when they are older and have missed extended periods of school, so educators should act quickly if they suspect Mariana may need special education and related services.²²

Clearing the Path

Many schools provide peer and/or adult mentors for youth like Mariana, to help them adapt to a new school and to guide them through the challenges of high school. Since Mariana does not have a stable adult at home, a mentor or school counselor should help support her in meeting her educational and personal goals, and work with her to meet those goals.¹

¹ For additional strategies to support unaccompanied youth, see *Using What We Know: Supporting the Education of Unaccompanied Homeless Youth* at http://www.naehcy.org/naehcy_pubs.html.

Mariana and the Fostering Connections Act

Mariana is not in the custody of the child welfare system. Therefore, the Fostering Connections Act does not apply to her.

However, Mariana has experienced abuse and neglect. While she may not wish to be involved in the foster care system, other resources within the child welfare system can support her school success. For example, Mariana's full participation and integration into school requires that her basic needs be met. The local child welfare agency could help Mariana obtain adequate food, appropriate clothing, hygiene products, and physical and mental health care. The agency can provide such services without necessarily taking Mariana into custody, through deliberate partnerships with Capital City, Mariana's school, local health and mental health systems, the family or juvenile justice court, and other organizations serving youth.

Most importantly, the child welfare agency should respect Mariana's wishes and support her placement in Capital City's transitional housing program. Like Ricky, Mariana's current residential instability is likely to undermine her emotional well-being, making it harder for her to focus on schoolwork. Mariana wants to enter Capital City's transitional housing program. This is her solution, which also appears to be appropriate and beneficial for her. By connecting her and Capital City with additional financial resources and other support, the child welfare agency can help maintain her stability over time.

²² For additional information about special education for youth experiencing homelessness, see *Supporting Homeless Students with Disabilities: Implementing IDEA* at <http://www.serve.org/nche/briefs.php>.

Clearing the Path

Although Mariana is caring for herself with the help of Capital City’s staff, it may be advisable for her and her advocates to consider the benefits and legalities of opening a child welfare case. Benefits may include independent living services, counseling and employment services, and Education Training Vouchers (ETVs), which can fund post-secondary education and related needs. This additional support can play an important role in Mariana’s achieving her personal and professional goals.

Tracey and the McKinney-Vento Act

Tracey has been in a stable, pre-adoptive foster home for some time. Despite her struggles since Ricky left the home, her foster family remains committed to adopting her. Under most interpretations of “awaiting foster care placement”, Tracey would not be eligible for the McKinney-Vento Act’s protections.²³

However, educators have an important role in clearing the path to school success for all children in out-of-home care, even if the McKinney-Vento Act does not apply. Many of the strategies suggested to support Ricky are equally applicable to Tracey. Further, if Tracey enrolls in the charter school, the school should ensure her enrollment is accomplished quickly and smoothly, providing her with immediate access to all needed services and full participation in all school activities. Her previous school should forward school records to the charter school immediately.

Several additional strategies can ease Tracey’s transition into her new school, including: giving Tracey and her foster family a tour of the school and her classroom; explaining school rules clearly, so she will know what is expected of her; describing all the school services and activities available to Tracey and her foster parents so she can be sure to get the services she needs and participate in all the activities that interest her; assigning Tracey a peer mentor to orient her to the school culture and introduce her to a social group; giving Tracey a small welcome gift with the school colors and/or mascot; encouraging Tracey’s teachers to take the time to involve classmates in welcoming Tracey to the school; and inviting Tracey to share information with the teacher through a “get-to-know-you” questionnaire or journal assignment.

Clearing the Path

Being “the new kid” in school is difficult in the best of situations. Being in foster care may complicate Tracey’s transition to school further. The school should ensure she has access to the school counselor, who can ask her if she would like her teachers or any other school staff to know she is living apart from her birth family. Such awareness will allow them to be sensitive to Tracey’s situation.

²³ Many states have laws that provide Tracey with education rights as a child in foster care, regardless of her eligibility under the McKinney-Vento Act.

Tracey and the Fostering Connections Act

1. Is Tracey covered by the Fostering Connections Act?

Most of the education provisions of the Fostering Connections Act apply to all children in foster care. Tracey's pre-adoptive foster placement makes her eligible for all the Act's protections.

2. If Tracey's foster parents and caseworker decide to enroll her in the public charter school, how should the child welfare agency support Tracey's immediate enrollment and full participation?

The Fostering Connections Act requires child welfare agencies and schools to provide immediate and appropriate enrollment in a new school and to provide all of the student's educational records to the new school. Child welfare agencies must keep updated education records as part of students' case plans, including names and addresses of educational providers, information on grade-level performance, and school records. Therefore, Tracey's caseworker should have education records available and must provide them to the new school promptly. The Fostering Connections Act also requires the child welfare agency to coordinate with the education agency to ensure this immediate enrollment and transfer of records. The child welfare agency must take the lead in forging this collaborative relationship to ensure the appropriate enrollment of Tracey.

Clearing the Path

Tracey's new art program is likely to require a variety of supplies and materials. Tracey may need a school uniform, an art smock, or other clothing to "fit in" at school. Her caseworker and foster parents should ensure Tracey has all the clothing and supplies she needs to participate fully in school. Additionally, many charter schools do not offer transportation to extracurricular activities, so Tracey's foster parents and caseworkers should coordinate to ensure transportation does not pose a barrier to Tracey's participation.

3. What other strategies can be used to clear the path to school success for Tracey?

School success and stability at home are interrelated. Federal law recognizes this fact by giving both schools and child welfare agencies responsibilities to meet the education needs of children in out-of-home care. Tracey's school must ensure that her educational needs are met, including meeting any special education needs, and providing her with access to Title I services, free school meals, and other supports. The child welfare agency needs to support Tracey's school achievement by providing her with safety, stability, physical and mental health services, and material needs.

Clearing the Path

It appears that Tracey is struggling to cope with separation from her brother. It will be extremely challenging for her to adjust to a new school while dealing with this emotional crisis. Therefore, Tracey's caseworker and foster parents should make every effort to ensure that Tracey and Ricky can spend as much time together as possible and appropriate, and should make sure she gets the counseling she needs, either in school or out of school, to help her deal with this issue.

Whom Can I Call for Help?

For school-related issues: To determine the local definition of "awaiting foster care placement", evaluate best interest, facilitate transportation, and ensure immediate enrollment and full participation in school, contact the school district's local homeless education liaison by calling the school district central office, or by contacting the State Coordinator for Homeless Education to request contact information. Contact information for State Coordinators is available at http://www.serve.org/nche/state/state_resources.php. Some state and local education agencies also have designated Foster Care liaisons. Check with the state department of education and local school district to see if Foster Care liaisons have been designated or to suggest that someone fill this role.

Depending on the students' needs, advocates may consult with the school district's offices of Title I, special education, bilingual education, gifted/talented programs, vocational education, community colleges, alternative programs, and others. Finally, many school building staff should be involved in supporting the education of students affected by abuse and neglect, such as school counselors, social workers, nurses, and teachers.

For child welfare-related issues: For information about a child's foster care placement, education decision maker, special needs, or other concerns, contact caseworkers and supervisors via the local child welfare office. Many state, regional, and local child welfare agencies also have designated education specialists. Check with these offices to see if education specialists are in place or to suggest that the agency hire, contract with, or designate such staff.

General coordination: Child welfare caseworkers and advocates, group home staff, foster parents, school and school district staff, and other advocates should work together to ensure a coordinated approach to education. The goals, wishes and needs of the students should guide these efforts.

This brief was developed by:

National Center for Homeless Education

800-308-2145 (Toll-free Helpline)

<http://www.serve.org/nche>

Legal Center for Foster Care and Education

202-662-1733

<http://www.abanet.org/child/education/>

Fall 2009

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LEGAL CENTER FOR
FOSTER CARE & EDUCATION

Every state is required to have a State Coordinator for Homeless Education, and every school district is required to have a local homeless education liaison. These individuals will assist you with the implementation of the McKinney-Vento Act. To find out who your State Coordinator is, visit the NCHE website at http://www.serve.org/nche/states/state_resources.php.

For more information on the McKinney-Vento Act and resources for implementation, call the NCHE Helpline at 800-308-2145 or e-mail homeless@serve.org.



Local Contact Information:

Insert Tab

Insert Tab

LINKS AND RESOURCES

Legal Center for Foster Care and Education (ABA Center on Children and the Law, Education Law Center, Juvenile Law Center, Casey Family Programs, Annie E. Casey Foundation, and the Stuart Foundation) serves as a national technical assistance resource and information clearinghouse on legal and policy matters affecting the education of children and youth in out-of-home care. The Legal Center provides expertise and relevant information to states and constituents, facilitates networking to advance promising practices and reforms, and provides technical assistance to respond to the ever-growing demands for legal support and guidance. www.ambar.org/LegalCenter

- ***Blueprint for Change: Education Success for Children in Foster Care:*** The Blueprint for Change is a tool for change. The 8 Goals for Youth and Benchmarks for each goal indicating progress toward achieving education success are a framework for both direct case advocacy and system reform efforts. Following each goal are National, State, and Local Examples of policies, practices, programs, and resources that exist to improve educational outcomes for children in foster care.

www.ambar.org/LegalCenterBLUEPRINT

- ***Blueprint for Change – Searchable Database***

<http://www2.americanbar.org/blueprintforchange/pages/default.aspx>

- ***Solving the Data Puzzle: A How-To Guide on Collecting and Sharing Information to Improve Educational Outcomes for Children in Out-of-Home Care:*** This How-To Guide is divided into two sections: a Manual and Tools. The Manual provides details on relevant legal and policy considerations, as well as examples from around the country engaging in this important work. The Tools provide checklists to guide education and child welfare agencies in collaboration.

<http://www.americanbar.org/content/dam/aba/migrated/child/education/publications/solvingthedata puzzle.authcheckdam.pdf>

- ***Questions & Answers Factsheets Archives:*** The Legal Center has developed a series of two-page factsheets about important issues related to education needs for children in out-of-home care.

http://www.americanbar.org/groups/child_law/projects_initiatives/education/QAarchives.html

- ***Legal Center Listserv:*** Join the conversation about foster care and education issues with representatives of child welfare and education agencies, the courts, and advocates from around the country. The Legal Center's listserv is the best way to stay up-to-date with changes in the law, examples from other states, or new publications or resources, announcements and events.

http://www.americanbar.org/groups/child_law/projects_initiatives/education/education_listserv.html

Mythbusting: Breaking Down Confidentiality and Decision-Making Barriers to Meet the Education Needs of Children in Foster Care (ABA Center on Children and the Law)

<http://www.abanet.org/child/education/mythbusting2.pdf>

Judicial Guide to Implementing the Fostering Connections to Success and Increasing Adoptions Act of 2008 (ABA Center on Children and the Law, National Council of Juvenile and Family Court Judges (NCJFCJ), National Center for State Courts(NCSC))
www.grandfamilies.org

National Resource Center on Legal and Judicial Issues (NRCLJI) provides consultation, training, and technical assistance on all legal and judicial aspects of the child welfare system, including federal law, court improvement, agency and court collaboration, permanency planning, legal representation, and other emerging child welfare issues. The Resource Center, funded by the Children’s Bureau, is comprised of the American Bar Association Center on Children and the Law, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges.

- ***Learning Curves: Education Advocacy for Children in Foster Care*** (ABA Center on Children and the Law and National Child Welfare Resource Center on Legal and Judicial Issues)
http://www.americanbar.org/groups/child_law/projects_initiatives/rclji/education0.html

Juvenile Law Center, founded in 1975, is one of the oldest multi-issue public interest law firms for children in the United States. Juvenile Law Center maintains a national litigation practice that includes appellate and amicus work, and promotes juvenile justice and child welfare reform through policy initiatives and public education. Juvenile Law Center's work focuses on ensuring that the juvenile justice and child welfare systems, which were created to help vulnerable children and youth, provide them with access to education, housing, physical and behavioral health care, employment opportunities and other services that will enable them to become productive adults. Juvenile Law Center also works to ensure that public systems do not harm children and youth in their care.
www.jlc.org

Education Law Center of Pennsylvania (ELC) has worked to make good public education a reality for vulnerable children – poor children, children of color, children with disabilities, English language learners, children in foster homes and institutions, and others. Our strategies include not only “traditional” legal work, but also training and information-sharing; advocating for new laws and policies in Harrisburg and Washington; and working with organizations and media. www.elc-pa.org

Asking the Right Questions II: A Judicial Checklist to Ensure That the Educational Needs of Children and Youth in Foster Care Are Being Addressed (National Council for Juvenile and Family Court Judges)
<http://www.casey.org/Resources/Publications/AskingQuestions.htm>

Endless Dreams (Casey Family Programs)
<http://www.casey.org/Resources/Initiatives/EndlessDreams>

National CASA E-Module: Education Advocacy (National Court Appointed Special Advocate Program – CASA) www.nationalcasa.org

H. R. 6893

One Hundred Tenth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and eight*

An Act

To amend parts B and E of title IV of the Social Security Act to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, improve incentives for adoption, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fostering Connections to Success and Increasing Adoptions Act of 2008”.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—CONNECTING AND SUPPORTING RELATIVE CAREGIVERS

- Sec. 101. Kinship guardianship assistance payments for children.
- Sec. 102. Family connection grants.
- Sec. 103. Notification of relatives.
- Sec. 104. Licensing standards for relatives.
- Sec. 105. Authority for comparisons and disclosures of information in the Federal Parent Locator Service for child welfare, foster care, and adoption assistance program purposes.

TITLE II—IMPROVING OUTCOMES FOR CHILDREN IN FOSTER CARE

- Sec. 201. State option for children in foster care, and certain children in an adoptive or guardianship placement, after attaining age 18.
- Sec. 202. Transition plan for children aging out of foster care.
- Sec. 203. Short-term training for child welfare agencies, relative guardians, and court personnel.
- Sec. 204. Educational stability.
- Sec. 205. Health oversight and coordination plan.
- Sec. 206. Sibling placement.

TITLE III—TRIBAL FOSTER CARE AND ADOPTION ACCESS

- Sec. 301. Equitable access for foster care and adoption services for Indian children in tribal areas.
- Sec. 302. Technical assistance and implementation.

TITLE IV—IMPROVEMENT OF INCENTIVES FOR ADOPTION

- Sec. 401. Adoption incentives program.
- Sec. 402. Promotion of adoption of children with special needs.
- Sec. 403. Information on adoption tax credit.

TITLE V—CLARIFICATION OF UNIFORM DEFINITION OF CHILD AND OTHER PROVISIONS

- Sec. 501. Clarification of uniform definition of child.
- Sec. 502. Investment of operating cash.
- Sec. 503. No Federal funding to unlawfully present individuals.

percentage set forth in such section 474(a)(3)(B), the percentage that shall apply is—

- (1) 55 percent, if the expenditure is made in fiscal year 2009;
- (2) 60 percent, if the expenditure is made in fiscal year 2010;
- (3) 65 percent, if the expenditure is made in fiscal year 2011; or
- (4) 70 percent, if the expenditure is made in fiscal year 2012.

SEC. 204. EDUCATIONAL STABILITY.

(a) **IN GENERAL.**—Section 475 of the Social Security Act (42 U.S.C. 675), as amended by section 101(c)(4) of this Act, is amended—

(1) in paragraph (1)—

(A) in subparagraph (C), by striking clause (iv) and redesignating clauses (v) through (viii) as clauses (iv) through (vii), respectively; and

(B) by adding at the end the following:

“(G) A plan for ensuring the educational stability of the child while in foster care, including—

“(i) assurances that the 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 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the child remains in the school in which the child is enrolled at the time of 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.”; and

(2) in the 1st sentence of paragraph (4)(A)—

(A) by striking “and reasonable” and inserting “reasonable”; and

(B) by inserting “, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement” before the period.

(b) **EDUCATIONAL ATTENDANCE REQUIREMENT.**—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by sections 101(a) and 103 of this Act, is amended—

(1) by striking “and” at the end of paragraph (28);

(2) by striking the period at the end of paragraph (29) and inserting “; and”; and

(3) by adding at the end the following:

“(30) provides assurances that each child who has attained the minimum age for compulsory school attendance under State law and with respect to whom there is eligibility for a payment under the State plan is a full-time elementary or secondary

school student or has completed secondary school, and for purposes of this paragraph, the term ‘elementary or secondary school student’ means, with respect to a child, that the child is—

“(A) enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located;

“(B) instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located;

“(C) in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or

“(D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child.”.

SEC. 205. HEALTH OVERSIGHT AND COORDINATION PLAN.

Section 422(b)(15) of the Social Security Act (42 U.S.C. 622(b)(15)) is amended to read as follows:

“(15)(A) provides that the State will develop, in coordination and collaboration with the State agency referred to in paragraph (1) and the State agency responsible for administering the State plan approved under title XIX, and in consultation with pediatricians, other experts in health care, and experts in and recipients of child welfare services, a plan for the ongoing oversight and coordination of health care services for any child in a foster care placement, which shall ensure a coordinated strategy to identify and respond to the health care needs of children in foster care placements, including mental health and dental health needs, and shall include an outline of—

“(i) a schedule for initial and follow-up health screenings that meet reasonable standards of medical practice;

“(ii) how health needs identified through screenings will be monitored and treated;

“(iii) how medical information for children in care will be updated and appropriately shared, which may include the development and implementation of an electronic health record;

“(iv) steps to ensure continuity of health care services, which may include the establishment of a medical home for every child in care;

“(v) the oversight of prescription medicines; and

“(vi) how the State actively consults with and involves physicians or other appropriate medical or non-medical professionals in assessing the health and well-being of children in foster care and in determining appropriate medical treatment for the children; and

“(B) subparagraph (A) shall not be construed to reduce or limit the responsibility of the State agency responsible for administering the State plan approved under title XIX to administer and provide care and services for children with

IMPORTANT LEGISLATIVE CLARIFICATION REGARDING FOSTERING CONNECTIONS ACT

On September 20, 2011, H.R. 2883, the Child and Family Services Improvement and Innovation Act, reauthorizing title IV-B of the Social Security Act, was signed into law. Among the many important provisions of the Act, it provides clarification to a critical element of the education stability provisions of the Fostering Connections Act.

Specifically, it clarifies that the requirement for the child welfare agency to consider proximity and appropriateness of the school when making living placement decisions, as well as the responsibility to maintain children in the same school unless not in the child's best interest, applies to the initial placement in foster care and any subsequent placement changes. Previous guidance had encouraged agencies to follow the education stability requirements during all subsequent placement changes, but now it is clear that the requirements apply throughout the time the child is in care.

**112TH CONGRESS, 1ST SESSION (2011)
H. R. 2883**

AN ACT To amend part B of title IV of the Social Security Act to extend the child and family services program through fiscal year 2016, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Child and Family Services Improvement and Innovation Act”.

SEC. 106. PROVISIONS RELATING TO FOSTER CARE OR ADOPTION.

(a) EDUCATIONAL STABILITY FOR EACH FOSTER PLACEMENT.—Section 475(1)(G) of the Social Security

Act (42 U.S.C. 675(1)(G)) is amended—

**(1) in clause (i), by striking “the placement” and inserting “each placement”; and
(2) in clause (ii)(I), by inserting “each” before “placement”.**

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-PI-10-11	2. Issuance Date: July 9, 2010
	3. Originating Office: Children's Bureau	
	4. Key Words: Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008	

PROGRAM INSTRUCTION

To: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, Indian Tribes, Tribal Organizations and Tribal Consortia (Tribes)

Subject: Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) Comprehensive Guidance, Titles IV-B and IV-E Plan Requirements, Title IV-E Plan Amendment – Definition of “Child”, Extension of Title IV-E Assistance, Patient Protection and Affordable Care Act (Public Law (P.L.) 111-148)

Legal and Related References: Titles IV-B and IV-E of the Social Security Act (the Act); P.L. 110-351; P.L. 111-148

Purpose: The purpose of this Program Instruction (PI) is to provide title IV-E agencies comprehensive information on the provisions of titles IV-B and IV-E as a result of the amendments made by the Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351. In addition to providing new guidance on the option for a title IV-E agency to extend assistance for the foster care maintenance, adoption assistance, and/or kinship guardianship programs to an eligible youth age 18 and older up to age 21, this instruction provides additional guidance on the other provisions of P.L. 110-351 and the flexibilities afforded to a title IV-E agency in complying with the law. We are also providing instruction on changes to the titles IV-B/IV-E plan requirements as a result of the Patient Protection and Affordable Care Act (P.L. 111-148).

INFORMATION:

Section A: Title IV-E Definition of Child and Extending Assistance to Youth Age 18 and Older

Section B: Provisions Specific to the Extension of Title IV-E Foster Care Age 18 and Older

Section C: Transition Plan for Emancipating Youth

Section D: Guardianship Assistance Program

Section E: Enrolling Children in School, Educational Stability and Payments for School Transportation

Section F: Health Care Oversight and Coordination Plan

Section G: Sibling Placement

Section H: Notifying Relatives

Section I: Waiving Non-Safety Licensing Standards for Relatives

Section J: Adoption Assistance, Reinvestment, and Adoption Tax Credit
Section K: Indian Tribes and Title IV-E
Section L: Short-Term Training
Section M: Funding and Administrative Costs
Section N: Instructions for Amending the Title IV-E Plan

Section E: Enrolling Children in School, Educational Stability and Payments for School Transportation

School Enrollment

A title IV-E agency must assure in the title IV-E plan that each child receiving a title IV-E payment who has attained the age for compulsory school attendance is a full-time elementary or secondary student in a school, in an authorized independent study program, or is being home schooled consistent with the law of the State or other jurisdiction in which the school, program or home is located. Alternatively, the title IV-E agency must assure that such a child has completed secondary school or is incapable of attending school full time due to a medical condition as established in section 471(a)(30) of the Act.

To be considered a full-time student at a school, the child has to be enrolled or in the process of enrolling in the school. We encourage the title IV-E agency to work with their local educational agency to identify and address any barriers to expeditious enrollment in schools for children and consider further efforts that may be necessary to enroll children who must be moved across jurisdictions. For example, a title IV-E agency may address school enrollment by creating an “education passport” or an education file for the child which includes all essential documents needed to enroll the child in a school. It may also be helpful for a title IV-E agency to identify those who have expertise on educational issues who can serve as points of contact and may aid in the continuity of services when addressing educational stability for children in foster care. The courts can also play an important role in educational stability.

If a child in foster care is incapable of attending school full time due to a medical condition, the title IV-E agency must regularly (as determined by the title IV-E agency) document and update the incapability in the child’s case plan. The agency should update the status of the child’s medical condition whenever the child’s case plan is updated. The title IV-E agency is not required to develop a case plan for an adopted child or a child under a guardianship solely for the purpose of documenting the child’s medical condition and therefore, the agency may determine whether and how to document the child’s medical condition.

This is a title IV-E plan requirement, and therefore, does not place conditions on a child’s title IV-E eligibility. A title IV-E agency has the flexibility to determine how to assure that it is meeting these requirements, the frequency of any procedures for doing so, and how the requirements are documented (see CWPM section 8.4 Q/A #3). As part of this assurance, we encourage an agency to work to ensure that children are not only enrolled, but are in fact attending school. This could be accomplished by documenting children’s attendance or establishing methods to identify patterns of chronic absence from school. We also encourage the

title IV-E agency to monitor the progress the child is making in school consistent with case plan requirements in section 475(1)(C) of the Act.

Educational Stability

A title IV-E agency is required to include a plan for ensuring the educational stability of a child in foster care in the child's case plan as established in section 475(1)(G) of the Act. The plan must include:

- 1) an assurance that the child's placement in foster care takes into account the appropriateness of the current educational setting and the proximity to the school the child was enrolled in at the time of placement; and,
- 2) an assurance that the title IV-E agency has coordinated with the local education agency or agencies to ensure the child can remain in that school, or if remaining in that school is not in the best interests of the child, an assurance to enroll the child immediately in a new school with all of his or her educational records.

These assurances relate to the circumstances at the time of the child's initial placement into foster care, however, we encourage the title IV-E agency to update educational stability plans whenever a child changes schools during his/her stay in foster care. As part of the update process, the agency should determine if remaining in the same school is in the child's best interests. If it is in the child's best interests, the agency should coordinate with the local education agency to ensure the child can remain in the same school. If remaining in the same school is not in the child's best interests, the agency should coordinate with the local education agency to ensure that the child is immediately enrolled in a new school. While we are not setting specific time limits for enrollment, we expect the title IV-E agency to assure that children are enrolled or re-enrolled without delay both when the child is initially placed into foster care and, when applicable, each time the child is moved to a different foster care placement.

Section 475(1)(G) of the Act is a case plan requirement that falls under the guidance provided in 45 CFR 1356.21(g), and as such, the educational stability plan must be a written part of the child's case record which is jointly developed with the child's parents or guardians no later than 60 days after a child's removal from the home, and every six months thereafter. We encourage the title IV-E agency to specify the parties other than the caseworker and the child's parents who should participate in discussions or decisions related to the educational stability plan. For example, the agency could delineate the circumstances in which the youth, school personnel or education advocates, foster parents, the child's attorney, guardian ad litem, and other persons involved in case planning for the child are a part of the educational stability planning process. If the agency determines that it is not in the child's best interests to remain in the same school, the rationale for this decision must be documented in the case plan. We encourage the title IV-E agency to develop a standard and deliberate process for determining best interests for this provision, guiding who is responsible for decision-making, and properly documenting the steps taken to make the determination.

The title IV-E agency is vested with the responsibility for making individual placement decisions on a case-by-case basis on behalf of a child in foster care. As such, we realize that the agency will be balancing the child's needs for proximity to the family, the available foster care resources, along with the appropriateness of the child's current educational setting, among other things. The title IV-E agency also has the flexibility to determine which factors will be examined in determining whether remaining in the school of origin is in the child's best interests. Some examples of factors the agency may consider are: the child's preference to change schools or remain in the current school; the safety of the child; and the appropriateness of educational programs in the current school or another school and how each school serves or can serve the child's needs (including special education and other interests). It should be noted that the cost of school transportation should not be a factor in determining the best interest of the child for school selection. (See *Payments for School Transportation* below.)

Payments for School Transportation

The definition of foster care maintenance payments now includes the cost of reasonable travel for the child to remain in the same school he or she was attending prior to placement in foster care (section 475(4) of the Act). The payment may include these costs regardless of whether the child is in his or her initial foster care placement or subsequently moves to another foster care placement. The title IV-E agency has the discretion to determine what is considered reasonable travel in examining factors such as cost, distance, and length of travel. As with any cost enumerated in the definition of foster care maintenance payments in section 475(4) of the Act, the title IV-E agency may decide which of the enumerated costs to include in a child's foster care maintenance payment. The title IV-E agency may include the cost of reasonable travel for the child to remain in the same school in the child's foster care maintenance payment paid to the child's provider or may make a separate payment directly to the transportation provider. In addition, transportation costs associated with the child's attendance at his or her school of origin remain allowable administrative costs under title IV-E because such transportation is related to case management and is therefore necessary for the proper and efficient administration of the title IV-E plan (see CWPM section 8.1B and 45 CFR 1356.60(c)(2)).

Inquiries: Children's Bureau Regional Program Managers

/s/

Bryan Samuels
Commissioner

Attachments

- A – Title IV-E Preprint Amendments
- B – Single Resource on Fostering Connections, updated 6/7/10
- C – CB Regional Office Program Managers

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