

# 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.<sup>1</sup> 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.”<sup>2</sup> 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](#).

<sup>1</sup> 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.).

<sup>2</sup> 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...."<sup>3</sup> 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."<sup>4</sup>

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.<sup>5</sup>

### 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.<sup>6</sup>

---

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

<sup>4</sup> 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](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm).

<sup>5</sup> 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).

<sup>6</sup> 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.<sup>7</sup> Unless there is an immediate safety concern, the child welfare agency has five business days to make a best interest determination.<sup>8</sup>

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.<sup>9</sup> The bill directs the local child welfare agency to make the best interests determination "jointly with the local school division."<sup>10</sup> 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."<sup>11</sup> These two entities must also consult "with the child and other key partners" when making the best interests determination.<sup>12</sup> 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."<sup>13</sup> 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).<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> The child welfare caseworker must also engage the child in the process.<sup>17</sup>

---

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

<sup>8</sup> *Id.*

<sup>9</sup> 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).

<sup>10</sup> *Id.*

<sup>11</sup> 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](http://www.dss.virginia.gov/family/fc/school_placement.pdf).

<sup>12</sup> *Id.* at 1.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 4-5.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *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.<sup>18</sup> The court can then appoint an education decision-maker known as a “responsible adult.”<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

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.

---

<sup>18</sup> CAL. WELF. & INST. CODE § 361(a) (West 2007).

<sup>19</sup> *Id.*

<sup>20</sup> CAL. WELF. & INST. CODE § 361(a)(5) (West 2007).

<sup>21</sup> *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:<sup>22</sup>

- 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.<sup>23</sup>

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](http://www.serve.org/nche/downloads/briefs/school_sel_in_care.pdf).

---

<sup>22</sup> ACF Program Instruction, *supra* note 4, at 20.

<sup>23</sup> 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](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.<sup>24</sup>

*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.<sup>25</sup>

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.”<sup>26</sup>

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.<sup>27</sup> The guidance directs agencies to employ the “Best Interest Determination for Foster Care School Placement Form”<sup>28</sup> and to place it in the child’s student file and the child welfare case file.<sup>29</sup>

---

<sup>24</sup> ACF Guidance, *supra* note 4, at 20.

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

<sup>26</sup> 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”).

<sup>27</sup> Va. Joint Guidance, *supra* note 11, at 5.

<sup>28</sup> *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>.

<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

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

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).<sup>39</sup> 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.<sup>40</sup> Any party who asks the court to review the agency's best interest determination must provide notice to the agency and

---

<sup>30</sup> See e.g. CAL. EDUC. CODE § 48853(c) (West 2006).

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

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

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

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

<sup>35</sup> *Id.*

<sup>36</sup> § 17a-16a(b)(3)(A).

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

<sup>38</sup> *Id.*

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

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



all other involved parties.<sup>41</sup> The court must then hold a hearing and make its decision in an expedited manner.<sup>42</sup> 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.<sup>43</sup> While the court's decision is pending, the child must attend his or her current school.<sup>44</sup>

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.<sup>45</sup> The child welfare agency arranges and pays for transportation to that school during that time.<sup>46</sup> 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.<sup>47</sup> All written documentation must be placed in the child's case file.<sup>48</sup>

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.<sup>49</sup> 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.<sup>50</sup>

## 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.

---

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

<sup>42</sup> § 30:4C-26b(d)(2)

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Va. Joint Guidance, *supra* note 11, at 8.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 11.

<sup>48</sup> *Id.*

<sup>49</sup> 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).

<sup>50</sup> *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.](#)

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

Under the McKinney-Vento Homeless Assistance Act,<sup>1</sup> 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](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](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

---

<sup>1</sup> 42 U.S.C. § 11301, *et seq.*

determines that remaining in that school is in the child's best interests.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> As long as the child remains in out-of-home care, the child's school placement can be revisited at any time.<sup>5</sup>

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.<sup>6</sup> If the agency takes this action, it must notify the child's attorney, parents, GAL and surrogate parent on the same day.<sup>7</sup> Any party then has three business days to object to the decision.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> That district is financially responsible for paying the child's tuition and transportation costs to the district in which he is placed.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

---

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

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

<sup>4</sup> *Id.*

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

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

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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

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

<sup>12</sup> *Id.*

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

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

<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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."<sup>18</sup> 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."<sup>19</sup>

---

<sup>16</sup> TEX. EDUC. CODE ANN. § 25.001(f), (g) (Vernon 2007).

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

<sup>18</sup> 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](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm).

<sup>19</sup> 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](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.”<sup>20</sup> Presentment for enrollment occurs when the person enrolling the child has appeared at the new school and presented the required enrollment information.<sup>21</sup> 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.<sup>22</sup> The guidance requires that schools enroll children in care even if they lack documents required for enrollment.<sup>23</sup> The state created a form entitled “Immediate Enrollment of Child in Foster Care Form” which the child welfare case worker submits to the school.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

## 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.

---

<sup>20</sup> 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](http://www.dss.virginia.gov/family/fc/school_placement.pdf).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *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>.

<sup>25</sup> *Id.*

<sup>26</sup> 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>.

<sup>27</sup> *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.”<sup>28</sup>

## 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.<sup>29</sup> 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.<sup>30</sup> The caseworker then has 30 days to provide the required records.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup>

---

<sup>28</sup> Va. Joint Guidance, *supra* note 23, at 7.

<sup>29</sup> ACF Guidance, *supra* note 3, at 18-19.

<sup>30</sup> TEX. EDUC. CODE ANN. § 25.002(g) (Vernon 2007).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup> Additionally, both schools must expedite the transfer of the student’s school records.<sup>36</sup>

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.<sup>37</sup> 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.<sup>38</sup>

## 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.

---

<sup>34</sup> Va. Joint Guidance, *supra* note 23, at 7.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Del. MOU, *supra* note 29, at 15.

<sup>38</sup> *Id.* at 15-16.