



**NYS FIELD MEMO**  
**# 04 – 2012**

TO: District Superintendents  
Superintendents of Public Schools  
Charter School LEA Administrators

FROM: Ken Slentz 

SUBJECT: Education Stability Guidance

**I. Purpose**

The purpose of this guidance document is to provide information to child welfare staff of local departments of social services (LDSS) and voluntary agencies (VA), local educational agencies (school districts, charter schools, and Boards of Cooperative Educational Services - BOCES) and the judiciary about requirements related to the educational stability of foster children. Congress enacted the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) in October of that year. That legislation was designed to improve the well-being of children served by public child welfare agencies in many areas, including educational stability. The educational stability provisions were amended by the Child and Family Services Improvement and Innovation Act (P.L. 112-34) which went into effect on October 1, 2011.

This guidance will provide information about the significance of educational stability in the life of a foster child; detail the specific statutory requirements pertaining to educational stability; and address recommended implementation strategies for the child welfare agency, school district, and the court.

**II. Background**

Studies have shown that education is a significant factor in determining the success of youth transitioning from foster care into the adult world. Nevertheless, foster youth are statistically more likely to have lower levels of educational attainment and access to fewer resources, leaving them ill-equipped to face adult roles and responsibilities. For example:

- Nationally, only 50% of foster youth complete high school, compared to 70% of their peers.

- Of those foster youth who graduate, only 20% pursue postsecondary education, well below the 60% of their peers who do so. The effect on future earnings is very significant: The U.S. Census Bureau reports college graduates make \$24,000 more per year than those with high school diplomas.
- One in three former foster children needs public assistance after the age of 18.
- Three in ten of our nation's homeless adults are former foster children.

Every year in the United States, approximately 20,000 youth exit foster care and enter the adult world. In New York State, exits from foster care of youth discharged to their own responsibility have averaged 1,416 youth per year from 2009 – 2011.

The lower levels of educational attainment of youth in foster care are linked to the increased number of school transfers and the number of foster care placements that many have experienced. In a national study of 1,087 foster care alumni conducted by Casey Family Programs, youth who had even one fewer placement change per year were almost twice as likely to graduate from high school before leaving foster care. The same study found that 68% of the alumni from foster care surveyed attended three or more elementary schools; 33% attended five or more. With each school transfer, students on average lose four to six months of academic growth. Moreover, students who rarely or never change schools are far more likely to graduate from high school than their peers who have transferred schools more often.

Given how frequently foster children transfer schools, it is easy to see how they fall behind. Promoting educational stability and reducing school transfers are essential to ensuring that the approximately 14,000 school-age children in foster care in New York State get a quality education.

### **III. The Role of the Child Welfare Agency**

#### **A. The Educational Plan**

Pursuant to 18 N.Y.C.R.R. § 430.11(c) (1)(i) and 42 U.S.C. § 675(1)(G), the child welfare agency must have an educational plan for each child in foster care. The plan must address the following requirements:

- The initial placement of the child into foster care and all subsequent placements must take into account the appropriateness of the child's existing educational setting and the proximity of such setting to the child's foster care placement location.
- When it is in the best interests of the foster child to continue to be enrolled in the same school in which the child is currently enrolled, the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities to ensure that the child remains in such school.

- When it is **not** in the best interests of the foster child to continue to be enrolled in the same school in which the child is currently enrolled, the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities in order that:
  - the foster child is provided with immediate and appropriate enrollment in a new school; and
  - all applicable school records of the child are provided to the new school.

Note: Although these legal requirements only apply to children who have been placed in foster care, it is considered best practice to apply them to all children in out-of-home care.

## B. School Selection and Best Interests Determinations

The LDSS or VA is vested with the responsibility for deciding when it is in the best interests of a child in foster care to stay in the current school.

Each best interests decision should be made on a case-by-case basis. It is recommended that the LDSS or VA consider the following factors in making the best interests decision about whether the child should stay in the current school:

- Safety concerns
- Child's preference to change schools or remain in the current school
- Parent's preference to have the child change schools or remain in the current school
- 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)
- Expected length of child's foster care placement, considering whether the child is likely to be returning home after a brief stay in foster care, or whether a change in placement is anticipated in the near future
- Child's permanency plan
- Child's need for proximity to the family
- Placement with siblings or relatives
- Available foster care resources
- Child's age
- Child's grade level
- Child's maturity level
- Number of school disruptions the child has already experienced
- Other child-centered needs, including social adjustment and well-being (for example, what are the strengths of the child's ties to peers and staff members at the current school; how would changing schools affect the child emotionally)
- How changing schools would affect the student's ability to earn full academic credit, proceed to the next grade, or graduate on time
- Involvement in extracurricular activities
- Input from representative of child's current school at time of removal or move

- Proximity of placement home to child's current school
- Length of commute and its impact on the child
- What schools any siblings attend
- What schools any other children in the foster home attend
- Point of time in school year and whether the timing of any school transfer would coincide with a logical juncture such as standardized testing, report card period, end of semester, end of school year.<sup>1</sup>

Input from the child's caseworker, the child's parent(s) (if available and able to provide input), and the child (if developmentally able) must be sought in making the decision related to the child's educational stability plan. In addition, other parties' input should be encouraged, including school personnel or education advocates, foster parents, the child's attorney, and others involved in case planning for the child.

If, as a result of a best interests determination, the child changes schools, the LDSS or VA must coordinate with the appropriate school officials to ensure immediate and appropriate enrollment in and transfer of all applicable school records to the new school. These provisions apply at the initial placement of the child into foster care and each time the child is moved to a different foster care placement.

Child welfare staff is reminded to make every effort to recruit and retain foster parents from neighborhoods and communities with high numbers of entering foster children. Recruitment efforts should include utilizing school-based recruitment activities, where possible. With such efforts, foster care placements are more likely to be available in the school district the child already attends, obviating any need for the child to change schools in the first instance.

Please note that the cost of transportation should **not** be a factor when making a best interest determination. See U.S. Department of Health and Human Services' Administration for Children and Families, "Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008," ACYF-CB-PI-10-11 (July 9, 2010).

The State Education Department, Office of Children and Family Services, and the Office of Court Administration are engaged in continuing discussions regarding educational best interests determinations. We expect to issue updated guidance to the field with more detailed recommendations about how best interests decisions about school selection should be made.

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<sup>1</sup> The first four considerations come from the Fostering Connections Program Guidance issued by the U.S. Department of Health and Human Services' Administration for Children and Families. See U.S. Department of Health and Human Services' Administration for Children and Families, "Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008," ACYF-CB-PI-10-11 (July 9, 2010). Some of the remaining considerations have been adapted from the ABA's Legal Center for Foster Care and Education's publication, "School Stability Under Fostering Connections: Making Best Interests Decisions" (May 2011).

### C. Education Liaison at the LDSS

It is recommended that each LDSS and VA designate a staff member as the education liaison who will field questions from school districts and help facilitate the exchange of information and speedy transfer of educational records.

## IV. The Role of the School District

### A. Immediate Enrollment and Records Transfer

If it is determined to be in the best interests of the foster child to remain in the same school in which the child was enrolled when placed into care or the school most recently attended, the school district in which such school is located should maintain enrollment for the duration of the child's placement in foster care or until a subsequent best interests determination is made. Local school district residency requirements are not a barrier to maintaining a foster child in his/her school of origin.

If it is determined to be in the best interests of the foster child to leave the school in which the child was enrolled when placed into foster care or the school most recently attended, the new school, or the school district where the foster placement is located should immediately enroll the child, even if the child does not have the documents normally required for enrollment, such as immunization records, birth certificate, and educational records. It is recommended that the child be permitted to enroll in the school zoned for the out-of-home placement or any school that other children living in the same attendance zone are entitled to attend. The enrolling school or district should promptly request the full educational records from the previous school or district. The previous school or district should forward the records within five business days of the request. The process for accessing student transcripts will be significantly enhanced once the planned electronic student transcript system is operational. The child welfare caseworker should assist the new school or district in locating any needed educational records, including academic records, special education records, immunization records. The child should be enrolled in the new school or district while these records are being obtained. If the child is enrolled in a new school district, such district may then directly bill the district of residence for the cost of instruction pursuant to Education Law § 3202(4).<sup>2</sup>

### B. School Liaisons

To facilitate this process, local school districts may choose to designate a staff member as the liaison with the LDSS or VA for purposes of exchanging information and the speedy transfer of records. School districts could consider using the staff member designated as the McKinney-Vento Homeless Education Assistance Improvements Act ("McKinney-Vento") liaison to perform this function as well, provided that this staff member liaison has sufficient time to adequately perform this task in addition to their existing responsibilities.

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<sup>2</sup> The LDSS responsible for placing the child in out-of-home care should complete Form LDSS-2999 to arrange for tuition payments to the school district of location. The form is available at: [http://www.ocfs.state.ny.us/main/Forms/Foster\\_Care/](http://www.ocfs.state.ny.us/main/Forms/Foster_Care/).

## **V. Role of the Courts**

It is the role of the family court judge to oversee the permanency and well-being of children in foster care. This includes reviewing their educational plans, particularly if conflicts arise over the plans. The initial determination of what school placement is in the best interest of the child shall be made by the child welfare agency (see Section IIIB above). The judge or judicial officer should inquire about a foster child's educational plan at preliminary proceedings following a removal, at disposition, at each permanency hearing or upon a motion being filed. (Note: Although these legal requirements only apply to children in foster care, it is considered best practice to apply them to all children in out-of-home care.)

The federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g, et seq.) prohibits the disclosure of personally identifiable student information maintained in a student's education records without parental consent. The child welfare agency is encouraged to get consent from the parent so that the agency may obtain the child's education records. If the parent's consent cannot be obtained, FERPA provides a "court order" exception to the prohibition against disclosing information from education records under certain circumstances. The child welfare agency may seek the assistance of the court to gain access to a child's educational records under this court order exception. Additionally, under FERPA, a school may release a child's education records without parental consent to officials of another school where the student seeks or intends to enroll if the disclosure is for the purposes of the child's enrollment in the receiving school.

## **VI. Transportation**

The State Education Department and the Office of Children and Family Services have formed a taskforce to explore transportation responsibilities for children in out-of-home care, and the potential costs and funding sources for such transportation. The agencies expect to issue a future guidance document outlining the taskforce's findings and more clearly defining the roles of LDSS and school districts with respect to transportation for children in out-of-home care. In the interim, LDSS and school districts are encouraged to collaborate to ensure that students in foster care who remain in their current school are provided with transportation. They are encouraged to explore all available resources and employ alternative strategies to facilitate transportation such as:

- Using existing school district bus routes. For example, a foster parent could transport the student to an established stop where the school district bus could pick up the student.
- Using alternate pick-up and drop-off points. For example, school district A could transport the student to school district B, and then school district B could transport the student to a drop-off point within walking distance of the out-of-home placement.
- Using transportation available through the Individuals with Disabilities Education Act. Students receiving special education services who have transportation

marked as a related service on their Individualized Education Program (IEP) are entitled to transportation from the school district where the child is enrolled.

- Having the child welfare caseworker, or other agency staff transport the child.
- Reimbursing the foster parent for the cost of mileage or public transportation to take the child to school.
- Using transportation available through the McKinney-Vento Homeless Assistance Act. Students who are “awaiting foster care placement” are considered homeless under the McKinney-Vento Act and are eligible for transportation to the school of origin.

It should be noted that in cases where the LDSS pays for the cost of transportation, federal reimbursement at 50% of the cost is available if the child is Title IV-E eligible.

Similarly, in cases where the school district pays for the cost of transportation, the school district is eligible for State Aid to offset this cost based on its State Aid transportation aid ratio (the average rate of reimbursement is 60% statewide).

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