



How Can State Law Support School Continuity and Success for Students in Foster Care?

Legal Center for Foster Care and Education
American Bar Association Center on Children and the Law

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Introduction

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) promotes education stability for all children in foster care. A May 2014 joint letter from the U.S. Departments of Health and Human Services and Education reinforces the duty of education and child welfare agencies to ensure all children in foster care receive Fostering Connections' protections. The federal McKinney-Vento Homeless Assistance Act (McKinney-Vento) provides education stability for some children in foster care, especially children "awaiting foster care placement." Both laws recognize the need for school stability and continuity for highly mobile children, such as youth in foster care.

Many state laws also recognize the importance of improving education opportunities and outcomes for children in care.¹ These laws enhance school stability and success for children in care through different approaches. Some expand the number of children entitled to McKinney-Vento protections by defining which children in care meet the definition of "awaiting foster care placement." Some states imbed the Fostering Connections and McKinney-Vento requirements relating to school stability and seamless transitions in their state laws. Other states expand upon these federal protections. By understanding federal and state laws affecting the education rights of children in care, advocates can ensure children's education rights are protected.

How are state legislatures responding to Fostering Connections?

Before Fostering Connections became law, some states had already adopted legislation promoting education stability and success of children in out-of-home care. In 2004, California passed AB 490, a comprehensive law giving these children the right to remain in the child’s “school of origin” when in his/her best interest, and guaranteeing immediate enrollment when a school change was necessary. The law also ensured school records and credits were transferred quickly between the former and new school, and required educational liaisons in schools. This law provides a framework for other states and models many key elements needed to ensure school stability and continuity. After Fostering Connections was passed in 2008, at least 31 states enacted new laws.² Some states, such as Maine and Iowa, directly incorporated the provisions of Fostering Connections into state law.

What state law protections enhance the federal requirements?

Some states include significant added rights and protections. Connecticut requires the Department of Children and Families to consult all relevant parties before making a best interest determination. The Department is also responsible for transporting children in care to their schools of origin. Some states mandate immediate enrollment in a new school district without required documents, similar to the McKinney-Vento Act’s requirement. Some states require child welfare or education-based specialists or liaisons to help children in foster care navigate the education system and ensure school stability. Other states mandate transportation to the old school and identify responsible entities. See more details on how states handle transportation and liaisons below.

Some states expand access to the McKinney-Vento Act’s protections to ensure school stability and smooth transitions to youth in care. All children in care are entitled to the protections of Fostering Connections – school stability and immediate enrollment with all school records. Children who are homeless and protected by the McKinney-Vento Act – including those in care “awaiting foster care placement” – are entitled to school stability, immediate enrollment (even if they lack records normally required for school enrollment), and transportation to the school of origin. The McKinney-Vento Act does not define “awaiting foster care placement;” many states define the term broadly, while others are more restrictive.³

How do states ensure transportation so children remain in the same school?

Fostering Connections presumes children should remain in the same school when their living situation changes, and a school change should occur only when in the child’s best interest. Many state laws provide that children in foster care be transported back to their old school, although the details vary from state to state.⁴ Children receiving McKinney-Vento protections are entitled to transportation arranged and funded by local education agencies. If the school districts cannot decide how to divide the costs they are divided equally. So, in states that define “awaiting foster care placement” to include some children in foster care, those children are entitled to school transportation.

Fostering Connections does not directly address transportation to the school of origin, although it makes clear that child welfare agencies, collaborating with local education agencies, must ensure a child stays in the same school unless it is not in the child’s best interest. Further, the child welfare agency has discretion to use federal foster care maintenance payments authorized under Title IV-E of the Social Security Act (“Title IV-E

reimbursements”) to cover “reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.”⁵ The value of this benefit varies by state, but the IV-E reimbursement is only for some children in foster care, and requires a state match. Most states have no clear transportation mandate or rules addressing who should transport or fund transportation for children in foster care who are living in a different school district.

Child Welfare Agency

In some states, the child welfare agency is responsible for transportation to support school stability.⁶ In Oregon the child welfare agency pays the cost of transportation to and from school, when funds are designated for this purpose and additional transportation is needed due to placement by the public agency. Connecticut holds the Department of Children and Families responsible for costs of transporting a child from a placement to a school outside the normal district boundaries. Vermont also gives the Department for Children and Families responsibility for transporting students in care out of district boundaries.

Education Agency

Other states hold education agencies responsible for transporting students to their school of origin.⁷ Arkansas maintains that the school district should provide school stability transportation for a child after a change in placement when reasonable and practical. In Maine, school district staff and/or the child’s surrogate (if in special education) must work together to arrange transportation so the child can attend the same school for the rest of the school year. In New Jersey, the district of residence must pay transportation costs to the district in which the child is placed.

Some states use a cooperative approach. For example, in Maryland, students in foster care are eligible for transportation under the McKinney-Vento Act for the first school year. After the first year, the child welfare agency provides transportation.

Which states have points-of-contact or liaisons within agencies?

What are their roles and responsibilities?

An increasing number of states have statutes requiring foster care liaisons or points-of-contact in the school district, child welfare agency, or both.⁸ This person is responsible for transfers, enrollment, and other school issues. Two states, Maine and Pennsylvania, require the child welfare system to designate liaisons, while several other states designate individuals within the school system. Arkansas, California, Colorado and Texas require each local educational agency to designate a staff person as the educational liaison for foster children. The liaisons work with child placement agencies, county departments, and the state department of child welfare to facilitate placement, transfers, and enrollment in school for children in out-of-home placements.

Do any states require immediate enrollment in the new school district when a school change is needed, or have laws addressing enrollment?

Several states have laws addressing enrollment of children in new schools after a placement change.⁹ Most laws ensure a child’s enrollment is not delayed when the new district has not received enrollment records

(required for children covered by the McKinney-Vento Act). Some states require that a child be enrolled within a certain number of days, and often create a clear enrollment process. For example, New Jersey requires that a student be enrolled within three days. Arkansas requires immediate enrollment. To speed up enrollment, some states, such as Virginia, have uniform enrollment forms for children in foster care.

Do states have statutes and/or policies expediting the transfer of records?

A number of states have statutes and/or policies that speed the transfer of records from the student's school of origin to the new school.¹⁰ Most states have short time limits for the new school to request and transfer records, from 2-14 days. For example, Missouri law requires the liaison to request the records within two business days and requires the school of origin to transfer the records within three business days of the request. Texas requires the agency to assist with the record transfer within 14 days of the enrollment date.

Do any states expand the length of time the child is entitled to school stability?

Fostering Connections requires school stability only during the child's placement in care. Some states provide longer "duration" requirements, while McKinney-Vento only covers the period until the end of the school year in which homelessness ends. California allows students to remain in their schools of origin as long as the child remains under juvenile court jurisdiction; if the court's jurisdiction ends, the child can still remain in his or her school of origin for the rest of the school year. Most states do not include language extending the duration of the right to remain in the same school.

Do other state laws increase school stability and success for students in foster care?

Many states have passed laws to improve education outcomes for children in foster care. Innovative approaches include:

School Transition Plan for Mobile Students

Because students in foster care move often, some states have passed laws to mitigate the challenges students face when schools change. For example, Maine requires that when students in foster care change schools, the student, student's guardian, and staff at the student's previous and new schools must collaborate on a "school work recognition plan."¹¹ The plan outlines how the student will complete coursework and earn credit to meet the state's educational standards, as well as any diploma requirements for secondary students.

Alternative Graduation Requirements

A few states have adjusted high school graduation requirements to accommodate students in foster care. California and Kansas have state laws allowing students in foster care to graduate with the minimum number of required state graduation credits. Maine has a State Diploma option for students in foster care or other highly mobile students.

Education Decision makers

All children in foster care need a clearly identified education decision maker. In most cases, the child’s parent remains the education decision maker while the child is in foster care. However, in cases where the parents will not or cannot make education decisions for the child, the court may limit the parents’ education rights.

For students in special education, the Individuals with Disabilities in Education Act (IDEA) has guidelines for appointing an education decision maker, usually called a “surrogate parent.” California law addresses decision making in general and special education situations. It allows the juvenile court to appoint a “responsible adult” to be the child’s education rights holder, and clarifies the roles and responsibilities of this person, including meeting with the child, attending school meetings, and reporting to the court on educational progress.¹²

Data Collection and Reporting

Collecting education data for children in foster care helps ensure education success. Collecting and reporting on aggregate data can increase accountability among state and local agencies. Reliable statistics can help stakeholders advocate for better laws and policies and increased funding. California, Texas and Washington all have laws requiring reporting of the educational performance of students in foster care. For example, California passed a law requiring the state child welfare and education agencies to share information about which students are in foster care. The state department of education must then produce an annual report detailing educational outcomes of students in foster care.

What state law elements ensure school stability and success for children in foster care?

As summarized in State Legislation Chart: Providing School Stability and Continuity for Children in Foster Care, many state laws support school stability and continuity of students in foster care. Fostering Connections provides a good foundation for what child welfare agencies and schools must do to support the education of students in foster care, but additional protections are necessary. Below is a list of recommended elements:

Child welfare elements:

- Clearly defined process for making best interest decisions, including factors, individuals involved, and a dispute resolution process;
- Right to transportation to same school;
- Clearly defined process for speeding school enrollment and records transfers;
- Point of contact or education specialist within state and local child welfare agencies;
- Child welfare data collection and information-sharing around education; and
- Clearly identified education decision makers for all children in foster care.

Education elements:

- Right to remain in the same school, regardless of residency;
- Right to attend local school, even if placed in group homes or residential placement facilities with on-site schools;
- Right to transportation to same school;
- Right to immediate enrollment, even without required records;
- Clear process for seamless school enrollment and records transfers;
- Process for recognizing partial credits,
- Process for awarding diplomas, including school administrator flexibility and/or state diploma;
- Point of contact or foster care liaison within the state and local education agency;
- Education data collection and information-sharing around foster care; and
- Required coordination and collaboration with child welfare agency.

Court elements:

- Required education information included in court reports submitted before hearings;
- Required education questions at each hearing, including around school stability and education decision makers; and
- Court data collection and information-sharing around foster care and education.

Where can I learn more about this topic or share information from my jurisdiction?

The Legal Center for Foster Care and Education has an online database of resources and tools relating to school stability and continuity. <http://www.fostercareandeducation.org/Database.aspx>. If you have resources, tools, policies, and laws from your jurisdiction to add, please contact us at ccleducation@americanbar.org.



The First Focus State Policy Advocacy and Reform Center (SPARC), an initiative funded by the Annie E. Casey Foundation, Jim Casey Youth Opportunities Initiative, and Walter S. Johnson Foundations, aims to improve outcomes for children and families involved with the child welfare system by building the capacity of and connections between state child welfare advocates. You can visit us online at www.childwelfaresparc.org or on Twitter at [@ChildWelfareHub](https://twitter.com/ChildWelfareHub).

The Legal Center for Foster Care and Education is a collaboration between the American Bar Association Center on Children and the Law, Education Law Center (PA), and Juvenile Law Center.

Notes

¹ For a chart of state laws relating to school stability and continuity for children in foster care, see: http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=1861&Command=Core_Download. The chart may not be exhaustive of all state legislation on this topic. Moreover, while we have included some state regulations or policies, they are by way of example only and do not represent all such state efforts. Despite these limitations, the chart shows many states are ensuring that more children in care have school stability and seamless transitions and trends regarding what elements are needed to ensure school stability.

² For example, Arizona, Arkansas, California, Colorado, Connecticut, DC, Florida, Georgia, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, and Washington.

³ For example, Colorado, Connecticut, Delaware, DC, Florida, Georgia, Iowa, Maryland, Massachusetts, New Hampshire, Pennsylvania, and West Virginia.

⁴ For example, Arkansas, California, Connecticut, Florida, Indiana, Iowa, Louisiana, Maine, Maryland, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Tennessee, Vermont, Virginia, and Washington.

⁵ 42 U.S.C §675(4).

⁶ For example, Connecticut, Oregon, Vermont.

⁷ For example, Arkansas, Indiana, Iowa, Maine, Maryland, New Jersey, Ohio, Tennessee, and Washington.

⁸ For example, Arkansas, California, Colorado, Connecticut, Georgia, Iowa, Maine, Missouri, Pennsylvania, Tennessee, Texas, Washington, and West Virginia.

⁹ For example, Arkansas, California, Colorado, Connecticut, DC, Georgia, Indiana, Iowa, Louisiana, Maryland, Michigan, New Jersey, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, and Virginia.

¹⁰ For example, Arkansas, California, Colorado, Connecticut, Georgia, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Missouri, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington.

¹¹ Maine Public Law Chapter 451.

¹² CA AB 2060.