

STATE IMPLEMENTATION CHECKLISTS FOR EDUCATION PROVISIONS OF FOSTERING CONNECTIONS ACT

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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).