

BACKGROUND

In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act. The bill contains provisions pertaining to school stability for children in foster care. Specifically, it states that foster care case plans must include assurances that the child will remain in the school in which he is enrolled at the time of placement unless it is not in the best interests of the child to do so. The law makes Title IV-E foster care maintenance funds available to pay for reasonable travel costs so that the child can remain in his school of origin. Excerpts from the relevant federal law and state implementing regulations follow.

FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008¹

School Stability (42 U.S.C. § 675(1)(G))

(1) The term “case plan” means a written document which includes at least the following:

* * *

- (G) A plan for ensuring the educational stability of the child while in foster care, including --
- (i) assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and
 - (ii)(I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the child remains in the school in which the child is enrolled at the time of each 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

Funding for Transportation (42 U.S.C. § 675(4)(A))

(4)(A) The term “foster care maintenance payments” means payments to cover the cost of (and the cost of providing)... reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

REGULATIONS OF THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES

18 N.Y.C.R.R. § 430.11(c)(1)(i): 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 placement location. When it is in the best interests of the foster

¹ The provisions of the Fostering Connections Act pertaining to school stability were amended by PL 112-34 (HR 2883) on September 30, 2011 to clarify that they apply to “each” placement in foster care, not just the child’s first foster home placement. Thus, school stability must be preserved throughout the child’s stay in foster care even if the child experiences multiple changes in foster home placements.

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 where the foster child is placed in order that the foster child is provided with immediate and appropriate enrollment in a new school; and the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities where the foster child previously attended in order that all of the applicable school records of the child can be provided to the new school.

GUIDANCE FROM US DEPARTMENT OF HEALTH AND HUMAN SERVICES

The U.S. Department of Health and Human Services issued interpretive guidance in 2010.² The full document can be found at: http://aaicama.org/cms/federal-docs/ACYF_CB_PI_10_11.doc

- The educational stability plan must be completed no later than 60 days after a child's removal from home and must be reviewed every 6 months.
- The educational stability plan is developed by the child welfare agency and the child's parents or guardians. Child welfare agencies are encouraged to invite other parties, including the student, school personnel, educational advocates, foster parents, the child's attorney or a guardian ad litem, to participate in drafting the plan.
- The child welfare agency determines whether it is in the child's best interests to remain in the school of origin or change schools. HHS lists several examples of factors to consider in making the best interests determination. The cost of school transportation should not be a factor in determining the best interests of the child. If the agency decides it is in the child's best interests to change schools, the rationale for the decision must be documented in the case plan.
- Title IV-E matching funds are available to reimburse the cost of "reasonable travel" for the child to remain in his/her school of origin.

GUIDANCE FROM THE NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, EDUCATION DEPARTMENT AND OFFICE OF COURT ADMINISTRATION

The New York State Office of Children and Family Services, Office of Court Administration, and State Education Department issued joint guidance in 2012 (12-OCFS-INF-04). A link to the full text can be found here: www.ocfs.state.ny.us/main/policies/externa/OCFS_2012/default.asp

- Local school district residency requirements are not a barrier to maintaining a foster child in the school of origin.
- The Family Court plays a role in reviewing the child's educational stability plan, particularly when disputes arise.
- The guidance lists factors that should be weighed when making the best interests determination and reiterates that the agency may not consider the cost of transportation when making the best interests determination.
- The guidance suggests ways for the social services department to provide transportation.

² The HHS interpretive guidance states that the school stability provisions apply only to a child's initial placement in foster care, but that guidance has been superseded by PL 112-34 (HR 2883), enacted September 30, 2011, which clarifies that the case plan must preserve school stability at the time of "each" placement in foster care.