

FACT SHEET: Foster Children's Right to School Stability

Child and Family Services Agency (CFSA) often enrolls children in a new school after removing them from their family or following foster care placement changes. In some cases, these school placement changes are necessary to protect a child's safety or improve a child's academic performance. But many – perhaps most – school placement changes hurt children's academic performance and represent another emotionally difficult disruption. Under federal and District law, foster children have a right to school stability. Guardians *ad litem* and parents' attorneys have several grounds to help them enforce this right.

THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT

The federal McKinney-Vento Act, which is incorporated into District law,¹ addresses the harm of unnecessary school disruptions by providing children with two important rights: (a) the right to attend their "school of origin;" and, (b) when attending their school of origin does not serve their best interests, the right to enroll *immediately* in a new school, even without regular enrollment papers.

All District of Columbia foster children enjoy these McKinney-Vento rights. The McKinney-Vento Act covers all "homeless" students, a category defined to include children "awaiting foster care placement."² The District's state plan (the formal document governing how the District will comply with the federal law) defines "awaiting foster care" to include *all* foster children – meaning McKinney-Vento covers all foster children in the District.³ McKinney-Vento applies to children in public preschool programs, not only K-12 schools.⁴

Even with a right to attend their school of origin, obtaining transportation is complicated. The McKinney-Vento Act entitles foster children to receive "comparable" transportation assistance to non-homeless students. The District has not defined "comparable transportation services." The District's state plan requires it to provide Metro fare to homeless students and their parents.⁵ In many cases, this assistance will be insufficient to transport foster children to their school of origin, particularly if a child's foster placement is outside of the District.

TITLE IV-E AND THE FOSTERING CONNECTIONS TO SUCCESS ACT

Federal foster care law imposes an obligation on CFSA to "ensure" foster children's school stability. Federal and District law require CFSA to develop a "plan for ensuring the educational stability of the child while in foster care" including "an assurance" that CFSA has coordinated with the relevant schools "to ensure that the child remains in the school in which the child is enrolled at the time of placement," unless doing so is contrary to the child's best interests.⁶

Federal law also provides funding for CFSA to transport foster children to their schools of origin. For children eligible for Title IV-E assistance, the federal government will pay 70 percent of the cost of "reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement."⁷ The plain statutory language of this provision applies to *any* placement change, but the federal government has issued guidance suggesting it may only pay this 70 percent reimbursement to transport children to the school they were attending when first removed from their families.⁸ Even if this narrow interpretation prevails and CFSA cannot obtain the 70 percent reimbursement, CFSA can obtain 50 percent reimbursement under separate federal guidance regarding a different form of Title IV-E funding known as "administrative costs."⁹

DISTRICT LAW

The D.C. Council recently enacted legislation¹⁰ that also embraces school stability. *During the entire shelter care phase*, CFSA and the Family Court must presume that a child should continue to attend his/her school of origin (*i.e.* the school the child was attending at the time of removal or, if the removal occurred during the summer or another school vacation, the school the child would have attended).¹¹ The presumption may be rebutted, but only after the Family

Court makes a determination that school stability is contrary to the child's best interests. *During other stages of a neglect case*, the same presumption applies, but CFSA (as opposed to the Family Court) can first make the determination whether it is in the child's best interest – but only after consultation with other parties.¹² Other parties may still seek a Family Court order to protect a child's school stability under the Court's dispositional authority.

CFSA POLICY

The District law outlined above provides for school stability with respect to the school of origin, as does current CFSA policy.¹³ CFSA policy also provides that CFSA “exhaust all efforts to have the child or youth remain in the school of current enrollment, if it is in the best interests of the child or youth” – even at schools enrolled in *after the time of removal*. The policy provides for transportation to the original school while the decision is being made and thereafter.

HOW CAN I TROUBLESHOOT PROBLEMS IN MY CASES?

CFSA's vision is that school enrollment decisions should be made collaboratively with families and not unilaterally by social workers, and that they should respect the value of school stability. If that is not occurring in a particular case, lawyers for parents and for children should discuss with the social worker and his/her supervisor. Lawyers should also consider contacting Dr. Benjamin Dukes or Ms. Karen Combs in CFSA's Office of Clinical Practice to resolve school stability problems. Dr. Dukes may be reached at (202) 715-7789 or Benjamin.dukes@dc.gov. Ms. Combs may be reached at (202) 727-7511 or karen.combs@dc.gov.

SO, WHAT'S MY ARGUMENT IN COURT?

If CFSA is seeking to or has recently changed the school placement of your client or your client's child contrary to your client's wishes and the child's best interests, argue forcefully why the change is contrary to the child's best interests and consider making the following arguments:

1. CFSA has violated child's right to attend school of origin as provided by McKinney-Vento Act and District law.¹⁴
2. CFSA has failed to satisfy obligation under federal and District law to “ensure” child's right to school stability.¹⁵
3. D.C. law provides that there is a presumption for school stability at the school of origin at all stages of a neglect case.¹⁶
4. During the shelter care phase, the presumption for school stability can be rebutted only if the Family Court makes a determination that school stability is contrary to a child's best interests.¹⁷
5. During other phases of the case, CFSA can override that presumption only if it determines that doing so is in the child's best interests after consultation with other parties.¹⁸ Other parties may seek a Family Court order to override such a determination¹⁹ – especially if CFSA has not followed its own policy to exhaust all efforts to have the child remain in their current school (even if not the school of origin) if it is in the best interests of the child,²⁰ or has violated other authorities, such as the McKinney-Vento Act.
6. CFSA must provide the transportation necessary to effectuate the child's right to school stability and fulfill its obligation to ensure the child attends his school of origin.²¹ CFSA can receive federal financial support for the cost of this transportation,²² which lessens concerns that cost makes it impossible for CFSA to meet its legal obligation to foster school stability, and CFSA policy explicitly provides for it to provide transportation assistance.²³

WHAT IF THE CHILD'S BEST INTERESTS REQUIRE ENROLLMENT IN A NEW SCHOOL?

Sometimes a new school placement is required – to keep the child safe, to improve his academics, or because the new foster home is so far away from the child's school that a long commute is worse than a school disruption. These children have a right to immediate enrollment in a new school, without adhering to formal enrollment procedures, and this is explicitly set forth in relevant law and CFSA policy.²⁴

WHAT IF THE CHILD RECEIVES SPECIAL EDUCATION SERVICES?

If a child has an individual education plan (IEP), special education law provides another protection for her school stability. In many cases, only the child's educational decisionmaker (not CFSA) should be changing her school placement and only in accordance with special education procedures. Also, children receiving special education services may be eligible for special education transportation to their school of origin.

QUESTIONS ABOUT A CASE?

Call the Children's Law Center Helpline, 202-467-4900, option 4. Our Helpline attorney will be happy to discuss the issue with you after conducting a conflict check.

ENDNOTES

¹ 42 U.S.C. § 11431 *et seq.* The federal law is incorporated into District law at 5 D.C.M.R. §§ 2010 & 5099.

² 42 U.S.C. § 11434a(2)(B)(i); 5 D.C.M.R. § 5099.

³ McKinney-Vento Homeless Assistance Act State Plan at 3,

http://www.osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/mckinney-vento_state_plan_0910.pdf.

⁴ 42 U.S.C. §§ 11431(1), 11432(g)(1)(F)(i).

⁵ State Plan at 10.

⁶ 42 U.S.C. § 675(1)(G). D.C. law incorporates the language from the federal law into D.C. Code § 1301.02(3)'s definition of a "case plan." D.C. Act 18-633, Prevention of Child Abuse and Neglect Amendment Act of 2009, available at <http://www.dccouncil.us/images/00001/20101129155213.pdf> (took effect on March 12, 2011).

⁷ 42 U.S.C. § 675(4)(A).

⁸ ACYF-CB-PI-08-05, at 8, http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2008/pi0805.pdf.

⁹ U.S. Dep't of Health and Human Services, Administration for Children and Families, Children's Bureau, Child Welfare Policy Manual section 8.1B Question 27,

http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/questDetail.jsp?QAId=1803.

¹⁰ D.C. Act 18-633, Prevention of Child Abuse and Neglect Amendment Act of 2009, available at <http://www.dccouncil.us/images/00001/20101129155213.pdf> (took effect on March 12, 2011).

¹¹ D.C. Code § 16-2312(k).

¹² D.C. Code § 4-1303.03(b)(11).

¹³ CFSA Administrative Issuance 10-2, Educational Stability for Children and Youth Entering or In Foster Care, http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_EducationalStabilityChildrenYouthEnterFosterCare.pdf.

¹⁴ *See* n. 1-4.

¹⁵ *See* n. 6, 10.

¹⁶ *See* n. 10-12.

¹⁷ *See* n. 11.

¹⁸ *See* n. 12.

¹⁹ D.C. Code § 16-2320(a)(5).

²⁰ *See* n. 13.

²¹ *See* n. 5-6.

²² *See* n. 7-9.

²³ *See* n. 13.

²⁴ *See* n. 1-4, 13.

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

2011 Winter
Supp.

To amend the Prevention of Child Abuse and Neglect Act of 1977 to include in the definition of case plan additional requirements for any child in foster care whose permanency plan is placement with a relative guardian and receipt of kinship guardianship assistance, to amend the definition of case plan to include a plan for ensuring the educational stability of a child in foster care, and to establish a presumption that, prior to a determination by the Family Court of the Superior Court of the District of Columbia, a child removed from the home and placed in shelter care will attend the same school he or she attended prior to removal unless it is not in the best interests of the child; and to amend section 16-2312 of the District of Columbia Official Code to establish a presumption that, following a determination by the Family Court of the Superior Court of the District of Columbia, a child will attend the same school he or she attended prior to removal unless it is not in the best interests of the child.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Prevention of Child Abuse and Neglect Amendment Act of 2010”.

Sec. 2. The Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.01 *et seq.*), is amended as follows:

(a) Section 102(3) (D.C. Official Code § 4-1301.02(3)) is amended by adding new subparagraphs (F) and (G) to read as follows:

Amend
§ 4-1301.02

“(F) In the case of a child with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under D.C. Official Code § 16-2399, a description of the:

“(i) Steps taken to determine that it is not appropriate for the child to be returned home or adopted;

“(ii) Reasons for any separation of siblings during placement;

“(iii) Reasons a permanent placement with a fit and willing relative through a kinship guardianship-assistance arrangement is in the child's best interests;

“(iv) Ways in which the child meets the eligibility requirements

ENROLLED ORIGINAL

for a kinship guardianship-assistance payment;

“(v) Efforts made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore; and

“(vi) Efforts made to discuss with the child's parent the kinship guardianship-assistance arrangement, or the reasons the efforts were not made; and

“(G) A plan for ensuring the educational stability of the child while in foster care, including:

“(i) 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; and

“(ii)(I) An assurance that the Agency has coordinated with appropriate local educational agencies, as defined under section 9101(26) of the Elementary and Secondary Education Act of 1965, approved January 8, 2002 (115 Stat. 1425; 20 U.S.C. § 7801(26)), 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 the school the child is enrolled in at the time of placement is not in the best interests of the child, assurances by the 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 new school.”.

(b) Section 303(b) (D.C. Official Code § 4-1303.03(b)) is amended by adding a new paragraph (11) to read as follows:

**Amend
§ 4-1303.03**

“(11) At all stages of a neglect case, the presumption shall be that a child will attend the same school that he or she would have attended but for the child's removal from his or her home, unless the Agency determines that it is not in the child's best interest to do so. The Agency shall determine the child's best interest in consultation with parents, when feasible, the child, resource providers, guardian ad litem, and other significant persons.”.

Sec. 3. Section 16-2312 of the District of Columbia Official Code is amended by adding a new subsection (k) to read as follows:

**Amend
§ 16-2312**

“(k) A presumption shall exist that a child will attend the same school that he or she would have attended but for the child's entry into shelter care, unless it is determined that it is not in the child's best interest to do so.”.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency



Administrative Issuance: CFSA-10-2

TO: All CFSA and Contracted Agency Staff

FROM: Debra Porchia-Usher, Deputy Director for Agency Programs
Cheryl Williams, M.D., Deputy Director for the Office of Clinical Practice
Winifred Wilson, Deputy Director for Community Services

DATE: April 26, 2010

RE: Educational Stability for Children and Youth Entering or In Foster Care

Research shows that on average, a child in foster care may change schools two to three times per year; and with each move, a child falls three to six months academically behind their classmates. Further, almost half of foster youth nationally do not complete high school. The Child and Family Services Agency (CFSA) believes that children and youth in foster care deserve equal access to positive academic experiences as their non-foster care peers and therefore is committed to improving educational stability for all young people in care.

To address the issue of school stability, *The Fostering Connections to Success and Increasing Adoptions Act of 2008* requires that child welfare agencies partner with local education agencies (LEAs) to ensure that children and youth in care have educational stability while in foster care. Educational stability means:

1. Keeping children or youth in the school he/she attended prior to entering foster care or when there is a change in foster care placement, unless it is not in the child or youth's best interest to remain at the school.
2. When it is best for the child or youth to transfer to a new school, the child welfare agency and the LEA will work together to ensure the immediate enrollment and transfer of educational records to the new school.

CFSA recognizes that enabling children and youth to remain in their school of origin will allow for consistency and stability in their education and improve their chances for academic success. Therefore, in its commitment to adhere to best practice standards as well as federal legislation, CFSA requires that all CFSA and contracted private provider staff make educational stability a priority when assessing a child's placement needs.

This administrative issuance provides guidance to CFSA and private agency staff for determining whether children and youth should remain in their school of origin when entering foster care, or changing placements while in care. If you have any questions regarding this issuance, please contact your Program Administrator.

Criteria for determining continued placement in the child or youth's school of origin:

Foster children and youth shall remain in their school of origin at the time they enter foster care unless it is determined that it is not in their best interest to do so. If the child or youth is currently in foster care and is changing placements, the social worker, placement staff and the Innovative Family Support Services Administration (IFSSA) educational specialist shall exhaust all efforts to have the child or youth remain in the school of current enrollment, if it is in the best interests of the child or youth.

1. CFSA and contracted private provider staff shall use the Educational Best Interest Determination Guidelines (see attachment A) to help inform decisions regarding the best school placement. CFSA and contracted private provider staff shall also consider the following when determining whether it is in the child's or youth's best interest to remain in their school of origin:
 - a. Is the child or youth safe if he or she remains in his or her school of origin or school of current enrollment?
 - b. All case planning factors shall be considered, including why the child or youth came into care, the permanency goal, the anticipated length of stay in care, identification of potential relative placement caregivers that reside in close proximity to the school of choice?
 - c. The level of parental involvement and his or her access and proximity to the child or youth's school, school activities and school personnel?
 - d. The child's or youth's safety when travelling to and from school, i.e., is the child safely able to utilize the transportation being considered based on the child's or youth's developmental functioning, age, and level of mental or physical disability?
 - e. The length of time it takes to travel to and from the home school?
 - f. Is the child or youth likely to abscond from school?
 - g. Is the school placement appropriate for the child or youth's academic needs (i.e., is the child or youth currently receiving/or scheduled to receive special educational services?)
 - h. Does the child or youth have siblings and/or other close relationships with individuals who attend the school?
 - i. Does the child or youth wish to remain in the school?
 - j. Does the child or youth have any "significant ties" with school officials or staff (i.e., teachers, counselors, etc.)
 - k. What is the child's connection with/or involvement in school activities?
 - l. Is there a need for before- and after-school care that is provided at or in close proximity to the home?
2. The determination of whether a child or youth remains in the same school should be made collectively with parents, the child or youth, resource providers, guardian ad litem, and other significant parties when feasible.

Note: Family involved meetings, such as FTMs, and other teaming meetings may serve as an opportunity for all team members to discuss a child or youth's academic performance and his or her school placement needs. However, CFSA and contracted private provider staff remain ultimately responsible for teaming with the individuals named above to determine if a child or youth will remain in his/her school of origin or current school placement. Additionally, the social worker and other members of the child or youth's team must discuss and ensure that the necessary supports, such as transportation and special education services, are considered, planned for and implemented.

3. Unless there is a safety risk, the social worker, social service assistant (or designee) shall transport the child or youth to his or her school of origin until school placement considerations are assessed, a school placement decision is made, and the necessary supports (i.e. transportation) are arranged and implemented.

4. Once it is determined that the child or youth is to remain in the school of origin, the social worker and the child or youth's team shall discuss the transportation needs and options (i.e. family members, foster parent, public transportation, etc.). If private transportation is required, the social worker (or designee) shall make a referral to the IFSSA education specialist by submitting an electronic referral form (see Attachment B) to cfsa.ftmu@dc.gov.

Note: Transportation services can take up to three (3) business days to be arranged and implemented.

5. The social worker shall document the reasons and the decision-making process related to the determination for the child or youth to remain in the school of origin/current school or to be transferred to a new school, in the case plan and in FACES on the Contact Screens. The case plan must also document considerations related to the appropriateness of the current educational setting.

When Children and Youth Transfer to a New School

If it is determined that the child or youth cannot remain in his or her home school because it is not in his or her best interest, CFSA and contracted private provider staff shall ensure that the child or youth makes an immediate transition into an alternate school placement. This transition must include the transfer all school records, which must occur immediately but no later than two (2) business days after the request has been made.

1. It is the social worker and foster parent's responsibility to ensure that children and youth are immediately enrolled to the new school when it is determined to be in the child's or youth's best interest.
2. Enrolling in a District of Columbia school: A social worker or foster parent may enroll a child or youth if he or she is being enrolled in a DC school, public or charter. The documents listed below must be presented to the IFSSA educational specialist for review prior to enrolling the child or youth in school. The IFSSA educational specialist will immediately, but no later than the start of the next school day, review the packet for completeness and return it to the social worker. Once the packet is approved by the IFSSA education specialist the social worker or foster parent must present the documents below to the new school at the time of enrollment:
 - a. Most recent commitment court order from DC Superior Court with the child or youth's name, date of birth and legal status.
 - b. The name and address of the foster parent.
 - c. The social worker must show a current employee ID badge if he or she is enrolling the child or youth.
 - d. The CFSA Student Enrollment Form.
 - e. The CFSA Enrollment and Withdrawal Form (Attachment C) to obtain a signature from a school representative (i.e. Principal and Registrar) verifying enrollment of the child or youth. The signed form must be returned to the IFSSA education specialist within two (2) business days of enrollment.
3. Enrolling in a school outside of the District of Columbia: It is preferred that children and youth being enrolled in a school outside of the District of Columbia be enrolled by the foster parent whenever possible. The documents listed below must be presented to the IFSSA educational specialist for review prior to enrolling the child or youth in school. The IFSSA educational specialist will immediately, but no later than the start of the next school day, review the packet for completeness and return it to the social worker. Once the packet is approved by the IFSSA education specialist the foster parent must present the documents below to the new school at the time of enrollment:
 - a. Most recent commitment court order from DC Superior Court with the child or youth's name, date of birth and legal status.
 - b. CFSA Student Enrollment Form

- c. Tuition contract
- d. The CFSA Enrollment and Withdrawal Form to obtain a signature from a school representative (i.e. Principal and Registrar) verifying enrollment of the child or youth. The signed form must be returned to the IFSSA education specialist within two (2) business days of enrollment.

Note: Counties outside of the District of Columbia may require additional documents to prove residency and complete its registration process. The specific requirements for each county are available on the CFSA intranet and www.cfsa.dc.gov.

- 4. Once the child or youth has been enrolled in his or her new school the social worker must ensure the withdrawal of the child or youth from the school last attended and the immediate transfer of school records to the new school. In order to initiate this, the social worker shall complete the following:
 - a. Withdraw the child or youth from the school he or she was attending by completing the withdrawal paperwork provided by the school.
 - b. The social worker must obtain a signature from a school representative (i.e. Principal or Registrar) on the CFSA Enrollment and Withdrawal Form to verify withdrawal of the child or youth. This form must be returned to IFSSA education specialist within two (2) business days of the child or youth's withdrawal.
 - c. Complete the records request form(s) provided by the last school attended. The school will immediately, but no later than two (2) business days, transfer the child or youth's school records directly to the new school.
 - d. The social worker or foster parent should follow up with the child or youth's new school within two (2) business days of the records request to confirm the transfer. If the records were not transferred, the social worker (or designee) should contact the IFSSA education specialist for assistance.
- 5. The social worker shall document all interaction and information regarding the new school placement in both the FACES Education and Contact screens.
- 6. The social worker shall also include assurances in the child's or youth's case plan that demonstrate that the enrollment into the new school was in the child or youth's best interest and occurred immediately. Dates of transfer of the student and transfer of the records should be documented in FACES on the contact screens as well as in the case plan.

Fair Hearings to Appeal Service Decisions

The social worker shall notify the parent(s) or legal guardian(s) of a child or youth, as well as the youth, who is of an appropriate age and maturity level, and aggrieved by the agency's home school placement decision, of the right to a fair hearing. (See *Fair Hearings Policy*).