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ENSURING EDUCATIONAL STABILITY

*Updated By: Sarah DeWitt, University of Minnesota Law School (J.D. Candidate, 2019)
and Eikoku Ikeno, Staff Attorney¹*

School Stability is Important for Children

In Minnesota, all children who are over seven years of age and eligible for foster care payments must be full-time elementary or secondary school students, unless they have graduated from secondary school.² For those youth experiencing trauma and chaos, school can provide a safe haven and security that may not otherwise exist. One former youth in foster care explained this phenomenon as follows:

Education was one of the few stabilities that I had in my life. My hope would be that a family would fill that role, but for me, it was education. That was the greatest gift. Everything else was taken away from me, but education wasn't. Even though it was a battle and a roller coaster, it was a sense of normalcy for me. It made the difference. For foster youth, who lose their culture, sense of self, and identity, education is their ticket out. It's one of the few things no one can take away from them.³

It is extremely important for youth in foster care to have educational continuity, meaning that even if a placement is disrupted, the child will not be forced to change schools.⁴ Changing schools has a host of associated problems: "[c]hildren consequently often struggle to adjust to new educational curricula, changes in teaching styles and expectations, and variations in the pace at which material is presented . . . In addition, school disruptions often result in lost credits, delayed academic progress, repetition of grades, and delays in enrollment and transfer of student records."⁵ A child may lose four to six months of academic progress with each move to a new school.⁶ School mobility also has harmful effects on emotional health, foster care placements, and the ability of the child to develop and sustain supportive relationships with teachers or peers.⁷

This is particularly salient as youth in foster care consistently and drastically fall behind their non-foster care peers on a wide range of educational measures.⁸ Research has found that when neglected or abused children

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² Federal law predicates federal funding on each state providing assurances that all children who have reached the minimum age of compulsory attendance are enrolled full-time. 42 U.S.C. § 671(a)(30)(2017); see *Fostering Connections Act of 2008*, *infra* note 13. In Minnesota, the minimum age for compulsory school attendance is seven years old. MINN STAT. § 120A.22, subd. 6 (2017).

³ Lupe Tovar, Program Coordinator of In My Shoes Inc., Tucson, Ariz., 2005 Foster Club All-Star, Arizona Chapter, *cited in* Conference of State Legislatures, *Educating Children in Foster Care: State Legislation 2004 – 2007* (2008).

⁴ Steve Christian, *Educating Children in Foster Care*, National Conference of State Legislatures: Children's Policy Initiative (2003), *cited in* Sachiko Bamba, *Educational needs of maltreated children in foster care in the US: Developing collaboration between educational and child welfare systems*, Unpublished doctoral dissertation, University of Illinois at Urbana Champaign 83 (2005).

⁵ Bamba, *supra* note 4, at 83, *citing* Christian, *supra* note 4, and Robert H. Ayasse, *Addressing the needs of foster children: The Foster Youth Services program*. 17:4 SOCIAL WORK IN EDUCATION 207-216 (1995).

⁶ MINN. DEP'T OF EDUC., *School - One Stable Place: McKinney-Vento Homeless Education 7* (2009).

⁷ THE LEGAL CTR. FOR FOSTER CARE AND EDUC. & THE NAT'L CTR. FOR HOMELESS EDUC., *BEST PRACTICES IN HOMELESS EDUCATION: WHEN WORKING TOGETHER WORKS: ACADEMIC SUCCESS FOR STUDENTS IN OUT-OF-HOME CARE 3-4* (2010); NAT'L WORKING GROUP ON FOSTER CARE AND EDUC., *EDUCATION IS THE LIFELINE FOR YOUTH IN FOSTER CARE 2* (2011); NAT'L WORKING GROUP ON FOSTER CARE AND EDUC., *FOSTERING SUCCESSSES IN EDUCATION: NATIONAL FACTSHEET ON THE EDUCATIONAL OUTCOMES OF CHILDREN IN FOSTER CARE 3* (2014) ("School mobility has negative effects on academic achievement and is associated with dropping out [. . .] Children who experience school changes may also face challenges in developing and sustain supportive relationships with teachers and peers [which otherwise] can be powerful contributors to the development of resilience [. . .]").

⁸ Marni Finkelstein *et al.*, *What Keeps Children in Foster Care from Succeeding in School?: Views of Early Adolescents and the Adults in Their Lives*, Vera Institute of Justice 1 (2002) ("[s]tudies comparing foster children with non-foster children show that they are more likely to have behavioral and discipline problems, more likely to experience gaps in their education because of school transfers, more likely to be in special education, more inclined to gravitate towards vocational classes, and less likely to be on a college preparatory track.").

succeed in school, they are less likely to engage in violence or be incarcerated. “In other words, success in school can help foster children overcome even very disadvantaged beginnings.”⁹ Continuity matters.

Stability and continuity of instruction in the school that the child was enrolled in prior to any disruption (“school of origin”) are linked to higher levels of achievement, promotion, and graduation.¹⁰ Even an incremental reduction of placement changes can make a difference with educational attainment. A national study of 1,087 foster care alumni found that youth “who had even one fewer placement change per year were almost twice as likely to graduate from high school before leaving foster care.”¹¹

Advocating for your clients ability to remain in their school of origin is an important part of creating stability and fostering healthy relationships for them. Minnesota and Federal law provide the necessary authority to keep youths in their school of origin or, if moved to a new school, facilitate an easier transition from one school to the next.

TIP: Early on in your representation, determine your client’s preferences regarding school (e.g. if she likes school, what her favorite subject is, if she has teachers or friends whom she likes), especially whether your client would wish to remain in her school. ¹²

TIP: Address your clients’ education at every court hearing. Inform the court and parties of your clients’ educational strengths, needs and desires to ensure everyone has the same information and the court understands the importance of educational stability for your clients.

TIP: You do not have to wait for a hearing to advocate for your client to remain in their school of origin. If it ever appears that your client’s placement is in danger of disrupting, you may immediately engage the county attorney, caseworker, and Guardian ad Litem, in discussing alternative placements within your client’s current school district or where transportation will be provided. If necessary, you may file a motion with the court to have your client remain in her school of origin.

Federal and State Law Require Educational Stability in Placement Decisions

The Fostering Connections Act of 2008¹³ compels child welfare agencies, if feasible, to keep youth in foster care in their school of origin unless it is not in their best interests.¹⁴ The state agency must coordinate with local educational agency to “ensure that the child remains in the school in which the child is enrolled at the time of each placement.”¹⁵ This includes ensuring that the youth will continue attending their school of origin for the following year, as school and district continuity are necessary factors in a youth’s educational stability. Additionally, The Child and Family Services Improvement and Innovation Act of 2011 clarified that the educational stability provision applies to *each* placement change for the youth, not just the initial placement into care.¹⁶

When placing a child, it is Minnesota’s policy to ensure the child’s best interests are being met by requiring an individualized determination of the child’s needs and how the selected placement will serve those needs.¹⁷ In making an individualized placement determination assessment, the child welfare agency must also address

⁹ *Id.* at 2.

¹⁰ MINN. DEP’T OF EDUC., *supra* note 6, at 7.

¹¹ NAT’L WORKING GROUP ON FOSTER CARE AND EDUC. (2011), *supra* note 7, at 2; NAT’L WORKING GROUP ON FOSTER CARE AND EDUC. (2014), *supra* note 7, at 3.

¹² For additional tips see also, THE LEGAL CTR. FOR FOSTER CARE AND EDUC., BLUEPRINT TOOLS: GOAL 1 SCHOOL STABILITY: ATTORNEYS’ ROLES (2008).

¹³ Fostering Connections to Success and Increasing Adoptions (Fostering Connections) Act of 2008, Pub. L. 110-351, §204, 122 Stat. 3949, 3960-61 (2008) (codified as amended at 42 U.S.C. § 671(a)(30), 42 U.S.C. § 675(1)(G)(2017), 42 U.S.C. § 675(4)(A) (2017)).

¹⁴ 42 U.S.C. § 675(1)(G)(ii) (2017).

¹⁵ *Id.* at (1)(G)(ii)(I) (2017).

¹⁶ Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34 § 106(a), 125 Stat. 369, 377 (2011) *Emphasis added* (codified as amended at 42 U.S.C. § 675(1)(G)(2017)).

¹⁷ MINN. STAT. § 260C.212, subd. 2(a)(2017).

school stability.¹⁸ The child welfare agency must consider the youth's educational needs, school connection, and the youth's reasonable preference if found to be of sufficient age.¹⁹ These statutory requirements help ensure that youth in foster care stay in their old schools or experience fewer moves between schools.

Moreover, Minnesota requires an out-of-home placement plan ("OHP plan") for each youth placed in foster care to be prepared within thirty days from the date of placement.²⁰ The OHP plan must address factors pertaining to the youth's educational stability, including: the agency's efforts to keep the child in his or her school of origin by working with local education authorities,²¹ and contain a statement addressing how the youth's current placement takes into account the proximity of the youth to the school of origin.²² If remaining in the school of origin is not in the best interests of the child, the state agency must immediately enroll the youth in an appropriate school and transfer their educational records.²³

TIP: The easiest way to ensure educational stability is by minimizing changes in placement. Advocate for your client to avoid unnecessary moves in placement and collaborate with your client and client's team to minimize placement disruptions.

TIP: When the court is reviewing or considering a possible placement change, advocate for your client's educational stability when in alignment with your client's wishes and best interests. If necessary, remind the agency of its responsibility to consider educational stability as a placement factor, if it has not already done.

TIP: When your client is removed from her home, or subsequently disrupts from a placement, advocate for your client to remain in their school of origin (so long as it is in alignment with your client's wishes). Request your client be placed in relative proximity to their school, or at least be placed in the same school district, so they can be provided with busing. If they cannot be placed in the same school district, request the county ensure the client is provided with transportation to and from school (See *infra* section Ensuring Transportation to School of Origin).

TIP: When advocating for your client to remain at the same school for following year, argue the plain language of Fostering Connections,²⁴ followed with the best interests of the youth,²⁵ and policy reasons addressing the importance of educational stability and school continuity.

TIP: If your client is transferred to a new school, review your client's Out-of-Home Placement Plan to ensure all the necessary statutory provisions have been followed. If not, make a clear record for the court of what was not properly followed.

Ensuring Transportation to School of Origin

Transportation is often a necessary component for allowing youth to remain enrolled in their school of origin.²⁶ Fostering Connections expanded the definition of "foster care maintenance payments" to include reimbursement for the cost of reasonable travel expenses for a child to attend the school they were enrolled in at the time of placement.²⁷ Although the youth must be eligible under the requirements of Title IV-E of the

¹⁸ 42 U.S.C. § 675(1)(G)(ii) (2017).

¹⁹ MINN. STAT. § 260C.212, subdiv. 2(b)(3), (7) & (10)(2017).

²⁰ MINN. STAT. § 260C.212, subdiv. 1 (2017).

²¹ *Id.* at 1(c)(8)(i).

²² *Id.* at 1(c)(9)(iv).

²³ *Id.* at 1(c)(8)(ii).

²⁴ 42 U.S.C. § 675(1)(G)(ii)(I) (2017) (ensuring that the child remains in the school the child is enrolled at the time of *each* placement).

²⁵ MINN. STAT. § 260C.212, subdiv. 2(b)(3), (7) & (10)(2017).

²⁶ AM. BAR ASS'N CTR. ON CHILDREN AND THE LAW, EDUC. LAW CTR. & JUVENILE LAW CTR., *When School Stability Requires Transportation: State Consideration*, 1 and 11 (2011).

²⁷ *See Id.* at 8-9; 42 U.S.C. § 675(4)(A) (2017).

Social Security Act for the state to receive federal reimbursement, the federal stability requirements apply to all youth in foster care.²⁸ Agencies are *not* permitted to include the cost of transportation as a factor in determining the best interests of the child for school selection purposes.²⁹

In addition, the Every Student Succeeds Act of 2015³⁰ requires local educational agencies to collaborate with child welfare agencies to produce written procedures ensuring transportation for youth in foster care to their school of origin. The procedures must detail how transportation will be provided, arranged, and funded for the duration of the child's time in foster care.³¹ Local education and child welfare agencies share the responsibility of ensuring educational stability for youth in foster care. Regarding transportation, the agencies must decide whether 1) the child welfare agency pays additional costs, 2) the education agency pays additional costs, or 3) the two agencies agree to share the cost.³² In sum, so long as your client remains in foster care, she is entitled to transportation to her school of origin.

TIP: Each school district has a designated representative to address any issues pertaining to Fostering Connections and Educational Stability. To determine the district's representative, call the client's school/school district.³³ This person should be different from the school district's McKinney-Vento homeless education liaison.³⁴ If necessary, you may contact Minnesota Department of Human Services Foster Care Educational Stability Program Consultant, Helen Bassett, at 651-431-4919 or Hellen.Bassett@state.mn.us.

TIP: Make sure that the school district is aware of your client's status as a child in foster care, early on. If the school district is aware your client is in foster care, ahead of time, they can adjust their busing or coordinate with the county to provide alternate means of transportation more quickly.

TIP: If your client is placed outside the original school, advocate for them to get transportation to their original school. If your client is not Title IV-E eligible, consider other ways to ensure your client attends their school of origin. Speak with the child welfare agency, foster parents, and school specialists to find solutions.³⁵

Ensuring the Transfer of Educational Records and Credits for Youth in Foster Care

In the past, when a youth changes schools, enrollment to the new school was often delayed because of missing health and immunization records.³⁶ Now, the child must immediately be enrolled in a new school, even if the child is unable to provide records normally required for enrollment.³⁷ After enrollment, the new school must contact the previous school attended to obtain relevant academic or medical records.³⁸

Another significant problem youth in foster care face when changing schools is unaccepted or lost school credits.³⁹ One solution proposed is an education passport to keep track of all of a child's credits, making it

²⁸ See 42 U.S.C. § 672(a)(1) (2017).

²⁹ U.S. DEPT. OF EDUC., NON-REGULATORY GUIDANCE: ENSURING EDUCATIONAL STABILITY FOR CHILDREN IN FOSTER CARE 20 (2016).

³⁰ Every Student Succeeds Act, Pub. L. 114-95, §§ 1005 and 1006, 129 Stat. 1801, 1820-59 (2015) (codified as amended at 20 U.S.C. §§ 6311 and 6312 (2017)).

³¹ 20 U.S.C. § 6312 (c)(5)(B) (2017).

³² 20 U.S.C. § 6312 (c)(5)(B)(ii)(I)-(III) (2017).

³³ If your client attends school in the St. Paul School District, contact Fostering Connections Specialist, Lisa Grant, at (651)744-1456.

³⁴ 20 U.S.C. 6311 (g)(1)(E)(iv) (2017).

³⁵ Possible questions include: Could the foster parents be reimbursed for transportation? Is the school willing to add a new stop to the bus route, use special education, or use magnet school transportation? Can the agency pay for taxis to transport your client?

³⁶ NAT'L WORKING GROUP ON FOSTER CARE AND EDUC. (2014), *supra* note 7, at 4.

³⁷ 20 U.S.C. 6311 (g)(1)(E)(ii)(2017); MINN. DEP'T OF HUM. SERV., *Bulletin: The Every Student Succeeds Act of 2015*, 3 (2017).

³⁸ 20 U.S.C. 6311 (g)(1)(E)(iii)(2017).

³⁹ NAT'L WORKING GROUP ON FOSTER CARE AND EDUC. (2014), *supra* note 7, at 4 ("These delays are often caused by failure to transfer records in a timely manner [. . .] and have a number of adverse consequences such as students having to repeat courses previously taken, schools failing to address the special education needs of the students, and students being enrolled in inappropriate classes."); NAT'L CTR. FOR MENTAL HEALTH PROMOTION AND YOUTH VIOLENCE PREVENTION, THE ROLE OF SCHOOLS IN SUPPORTING CHILDREN IN FOSTER CARE 2 (2010) ("Students in foster care score 16–20 percentile points below their peers in state standardized testing."); NAT'L WORKING GROUP ON FOSTER CARE AND EDUC. (2011), *supra* note 7 at 10 n. 21 ("[m]ore than three quarters of the California group home operators who were surveyed in 2000 reported that educational records for foster children in group homes are

easier for both transferee schools and post-secondary institutions to see gaps.⁴⁰ A second solution is for child welfare agencies to request and receive a foster child's educational records pursuant to a court order.

Further, it is important for educational stability to remain a priority even if the youth is in a treatment facility. In Minnesota, day treatment services for youth with a "severe emotional disturbance" must be coordinated with the youth's educational program.⁴¹ The case manager must work with the local education agency to verify the youth is receiving education credits that will transfer to the school once the youth is out of treatment.⁴² The county welfare agency is required to ensure educational stability for youth in foster care which includes obtaining and providing their school records when the youth is no longer attending the school of origin.⁴³

TIP: If a client must transition to a new school, take actions to advocate for a smooth the transition: ensure the child's record is transferred to the new school before the student arrives; ask the caseworker to obtain information on student strengths and weaknesses from the prior school and communicate them to the new school; make sure a support person is identified in the new school that the client can talk to about issues as they arise; and see if it is possible for the new school to identify a peer mentor for your client.

TIP: If your client is transferred to a new school, request a copy of your client's school credits to ensure all their credits are transferred or converted (for those in residential placements). Each school has a designated employee who helps foster children in their school. Call the new school, find out who the contact person is and introduce yourself and your client's needs to this individual. Be prepared to provide the school with the court's appointment order and your certificate of representation for your client. Also ask about specific school resources for your client's educational and transitional needs.

Conclusion

The benefits that youth receive from educational stability have not always received due consideration in the child protection system. When talking to your clients, make sure to ascertain their educational needs, wishes, and goals. Coordinate with relevant agencies to ensure that your clients do not have to change schools, especially at inopportune times, and request court action to prevent the move when necessary. If clients change schools, help ensure their transition is as smooth as possible. Recent federal developments have recognized the importance of school stability. Do not hesitate to use these resources to preserve the educational continuity of your clients. As always, do not hesitate to contact CLC with any questions or concerns regarding your clients.

either 'frequently' or 'almost always' incomplete, 60% reported that the transfer of educational records is 'frequently' or 'almost always' delayed when youth change schools or group home placements, three quarters reported that youth recently placed in group homes experience long delays when attempting to enroll in public school, and more than two thirds reported that educational placement decisions were 'frequently' or 'almost always' compromised by incomplete school records . . .").

⁴⁰ Gail Chang Bohr, *For the Well-Being of Minnesota's Foster Children: What Federal Legislation Requires*, 31 WM. MITCHELL L. REV. 897, 919 (2004).

⁴¹ MINN. STAT. § 245.4884, subdiv. 2 (a)(4) (2017).

⁴² MINN. STAT. § 245.4873, subdiv. 4 (2017) ("The case manager . . . is responsible for ongoing coordination with any other person responsible for planning, development, and delivery of . . . education . . . for the individual child."); see also MINN. STAT. § 245.4871, Subdiv. 4 (2017) ("Case management service provider" means a case manager or case manager associate employed by the county or other entity authorized by the county board to provide case management services . . .").

⁴³ MINN. STAT. § 260C.212 subdiv. 1 (8), (9) (i)-(v) (2017).