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The following comments were transmitted electronically via the internet at <http://www.regulations.gov>.

**Comments and Recommendations for Regulations under the
Child and Family Service Reviews
Submitted By**

**Education Law Center
Juvenile Law Center**

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Pursuant to the notice published in the Federal Register on April 5, 2011 (Federal Register, vol. 76, no. 65), Juvenile Law Center and Education Law Center hereby submit comments and recommendations on regulations to be issued regarding federal monitoring of Child and Family Service Programs (45 CFR Parts 1355, 1356 and 1357).

These comments highlight the need for the Child and Family Service Review (CFSR) process to properly address the education stability provisions of the "Fostering Connections to Success and Increasing Adoptions Act of 2008" (hereinafter "Fostering Connections").¹

WHO WE ARE

Juvenile Law Center ("JLC") is the oldest multi-issue public interest law firm for children in the United States. JLC uses the law to ensure that youth, particularly those in the child welfare and juvenile justice systems, receive fair and developmentally appropriate treatment. JLC gives special attention to issues of access to education, physical and behavioral health care, employment and housing.

The Education Law Center – PA ("ELC") is a non-profit education advocacy organization that advocates on behalf of Pennsylvania's most educationally "at risk" children. In its more than 35 years of operation, ELC has contributed to policy reforms and also helped thousands of individual children in foster care obtain the educational services they desperately need to achieve life-long stability.

¹ Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 42 U.S.C.).

JLC and ELC work with parents, foster families, child welfare agencies, education agencies, and others to advocate for better educational opportunities for children in out-of-home care. We collaborate to improve educational outcomes for the thousands of youth in care in Pennsylvania and nationally through individual advocacy, impact litigation, and policy reform.

RECOMMENDATIONS

Enacted in October 2008, *Fostering Connections* is a comprehensive law designed to promote permanent family connections and improve the lives of youth in the child welfare system. Among other important provisions, the Act requires child welfare agencies to create “a plan for ensuring the education stability of the child while in foster care.” The Act emphasizes the importance of remaining in the same school by requiring child welfare agencies to work for that goal *unless* “remaining in such school is not in the best interests of the child.”² Addressing these requirements should be central to revising the CFSR process.

These provisions of the law seek to remedy an educational crisis faced by children and youth in the child welfare system. It is well documented that youth in foster care are among the most educationally at risk of all student populations. They experience lower academic achievement, lower standardized test scores, higher rates of grade retention, and higher dropout rates than their peers who are not in foster care.³ Based on a review of studies conducted between 1995 and 2005, one report estimated that about half of foster youth complete high school by age 18 compared to 70% of youth in the general population.⁴ Other studies show that 75% of children in foster care are working below grade level, 35% are in special education, and as few as 11% attend college.⁵

The current CFSR process requires minimal consideration of education issues, yet the majority of states fail to meet even the baseline requirements of *Well-Being Outcome 2: Children receive appropriate services to meet their educational needs*. Moreover, in addressing shortcomings on this issue, state responses in their Program Improvement Plans are widely disparate. By setting forth clear expectations regarding agency involvement in education issues, and required collaboration with education agencies, the CFSR process could properly assess compliance with *Fostering Connections*, and could thereby set the stage for improved education, permanency and life outcomes for youth in care.

To fully address *Fostering Connections* requirements, we suggest that the CFSR process should make changes at the **systemic** and **case-specific** level to ensure that the following are addressed:

² *Fostering Connections* § 204(a)(1)(B); 42 U.S.C. § 675(1)(G)(ii).

³ National Working Group on Foster Care and Education statistics factsheet , available at <http://www.casey.org/Resources/Publications/pdf/EducationalOutcomesFactSheet.pdf> .

⁴ Wolanin, T. R. (2005). *Higher education opportunities for foster youth: A primer for policymakers*. Washington, DC: The Institute for Higher Education Policy.

⁵ Only 11% of the youth in foster care in Washington State who were in the high school classes of 2006 and 2007 were enrolled in college during both the first and second year after expected high school graduation. By comparison, 42% of Washington State high school students in the class of 2006 enrolled in college during the first year after they were expected to graduate from high school and 35% were enrolled in college during both the first and second year after graduating from high school (Burley, 2009).

1. Incentivize collaborations between child welfare and education agencies.

Under Fostering Connections, the child’s case plan must contain “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....”

The requirement of coordination with education agencies is both essential to implementing the law, and a highly challenging obligation for child welfare agencies. While the child welfare agency can recommend school placement, only the education agency can enroll the child. Moreover, coordination can lead to host of other positive outcomes, including better data collection on the educational needs of youth in care, faster enrollment, and more appropriately tailored educational services. To this end, we recommend that the CFSR process provide supports and incentives for agencies to engage in this work. More detailed suggestions for how the CFSR process could review such coordination are provided in sections 2 – 4 below.

2. Address proximity and appropriateness of the educational setting

Under Fostering Connections, 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.”

To assess appropriateness of the educational setting, the CFSR process should consider (1) that the child welfare agency has established a process for determining appropriateness of the school; (2) that caseworkers have been trained regarding appropriateness; and (3) that case files reflect that the appropriateness determination occurred in each case involving a placement move.

To assess proximity of the educational setting, the CFSR process should consider (1) that the child welfare agency has established processes (such as GIS mapping or foster care recruitment) to maximize placement options within each school community; (2) that the case files reflect that an attempt was made to place the child within that proximity whenever in the child’s best interest.

The CFSR process should also collect data on the percentage of youth in out-of-home placements within their school attendance area.

3. Address school stability

Under Fostering Connections, 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; (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.”

To assess compliance with this provision, the CFSR process should assess (1) whether the child welfare agency has laws, policies or agreements in place to support collaboration with the education agency regarding school stability and school enrollment – or if not, that the child welfare agency has taken necessary steps to create such laws, policies, or agreements; (2) whether such laws, policies and agreements address confidentiality issues that arise under FERPA and CAPTA; (3) that the child welfare agency has a policy in place for determining the best interests; and (4) that a case file reflects that the best interest determination occurs in each case of a child in out-of-home care outside their school district or attendance area.

The CFSR process should also gather data on the percentage of youth placed in out-of-home care who remain in their original school.

4. Address enrollment and attendance of students

Under the Fostering Connections Act’, the State Plan must “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.”

The CFSR process should gather data on the percentage of youth enrolled in and regularly attending school, with specific information about the percentage of youth attending a full-time educational program.

5. Ensure that a full education record is in the case file

The CFSR process currently requires that an education record be in the child’s case file. However, it provides no definition of “education record.” Without a full scope of information in the education record, case workers cannot sufficiently determine whether youth in care are getting the educational services they need. The education record should be defined to include, at a minimum:

- Enrollment documents, such as proof of age, residence, immunizations
- Grade-level performance
- Attendance
- Disciplinary records
- Individualized education program for a student in special education, and any evaluations regarding special education eligibility
- Service Agreement (also known as 504 plan) for a child with disabilities.
- The name of relevant regular and special education decisionmakers
- Current school placement and contact information

CONCLUSION

We greatly appreciate your consideration of these comments. By addressing the legal requirements on educational stability set forth in *Fostering Connections*, the CFSR process could pave the way for better education outcomes – and ultimately better life outcomes – for youth in the child welfare system.

Thank you for this opportunity to present comments on the CFSR process. For further information please contact:

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