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FOSTERING CONNECTIONS ACT – IMPLEMENTATION CHECKLISTS FOR EDUCATION PROVISIONS

State and local education and child welfare agencies will need to work separately and together in a structured way to ensure that children in foster care get the benefits of the education provisions of *Fostering Connections to Success and Increasing Adoptions Act of 2008* (Fostering Connections). Courts and, in many states, legislators will also need to be involved. Are your state and local agencies and your state’s courts and legislators taking the right steps? These checklists are designed to guide conversations in your state-- conversations that will ensure thoughtful implementation of these important education provisions and that will involve representatives from these agencies and entities as well as other stakeholders interested in implementing Fostering Connections and improving education outcomes for children in foster care.

Enacted in October 2008, *Fostering Connections* amended parts B and E of Title IV of the Social Security Act. Among its many provisions to address the needs of children and youth in foster care, it seeks to promote education stability for foster children. First, child welfare agencies must include “a plan for ensuring the educational stability of the child while in foster care” as part of every child’s case plan. The required elements of the plan are detailed below. To support the education stability of children in care, *Fostering Connections* also expands the definition of “foster care maintenance payments” to include reasonable transportation to a child’s school of origin. *Fostering Connections* further supports the educational well-being of children in out-of-home care by requiring states to provide assurances in their Title IV-E state plans that every school-age child in foster care is a full-time elementary or secondary school student or has completed secondary school. Finally, *Fostering Connections* includes a number of important provisions specific to older youth, each detailed below.¹

Checklist 1: Setting the Stage lays out the foundational questions for implementing *Fostering Connections*: What do child welfare agencies, education agencies, courts, and legislators need to do to prepare for implementing the Act? ***Checklist 2: Education Obligations and Considerations under the Fostering Connections Act*** details the responsibilities of the various agencies under *Fostering Connections*, and suggests the questions and considerations for each.

¹ For a detailed summary of the education provisions of the new law, please download our “Questions and Answers Factsheet: *Fostering Connections Act*” available at www.abanet.org/child/education/publications/fosteringconnections.

CHECKLIST 1: SETTING THE STAGE

What do child welfare agencies, education agencies, courts, and legislators need to do to prepare to appropriately and effectively implement the education provisions of the *Fostering Connections Act*? What laws, policies, and practices need to be changed and what individuals and agencies must be involved in making the needed change?

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 requirements of *Fostering Connections*?
- ✓ Has the state child welfare agency provided local child welfare agencies with guidance on implementing these federal provisions?
- ✓ Do the state child welfare agency and state education agency need to meet to discuss implementation of *Fostering Connections*? Will a joint discussion about a memorandum of understanding, interagency agreement, or joint directive be helpful? 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*?
- ✓ Is there a system at the state and local levels that collects and tracks education data on each child at time of placement in foster care and periodically thereafter?
- ✓ Has the state determined how federal Title IV-E dollars (either administrative or maintenance) can be used and the protocol to be followed to support transportation to a child's home school?

ROLE OF EDUCATION AGENCIES

- ✓ Has the state education agency provided local education agencies with clear guidance on the 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?
- ✓ Do the state child welfare agency and state education agency need to meet to discuss implementation of *Fostering Connections*? Will a joint discussion about a memorandum of understanding, interagency agreement, or joint directive be helpful?

ROLE OF JUVENILE COURTS

- ✓ 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, 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 before or during court proceedings?
- ✓ Does the juvenile court need to convene a meeting with the state child welfare and education agencies to discuss effective implementation of *Fostering Connections* and identify obligations and responsibilities?

ROLE OF STATE LEGISLATORS

- ✓ Is state legislation needed to appropriately implement *Fostering Connections*?

CHECKLIST 2: EDUCATION OBLIGATIONS AND CONSIDERATIONS UNDER THE *FOSTERING CONNECTIONS ACT*

The following checklist identifies the obligations imposed under the *Fostering Connections Act*, as well as considerations for implementing each obligation². Some of the obligations apply only to the child welfare agency, but, without the support of the education agencies and the court, appropriate implementation of the obligations will not be possible.

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”³

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)?
- ✓ 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? What is the role of the local education agencies?
- ✓ Are the state and local child welfare agencies offering training to caseworkers, legal advocates, and other stakeholders on how to assess appropriateness, use any assessment tools developed, or advocate for proper assessment?
- ✓ Which individual is responsible for making the final determination about appropriateness?
- ✓ 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 Original School

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.abanet.org/child/education/blueprint.

³ 42 U.S.C.A. 675(1)(G)(i).

- ✓ Does the local child welfare agency need to recruit and retain more resource families and/or other foster care placements within the school jurisdictions or attendance areas from which children come into foster care? Can the local school districts 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 regarding the efforts that should be made to keep children’s living placements close to their original schools?
- ✓ Are the local child welfare and education agencies working closely together to eliminate barriers to the child remaining in the same school if in her best interest?

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.”⁴

3. Required Coordination between Local Education and Child Welfare Agencies

- ✓ Are new laws (i.e., legislation or regulation) or collaborative agreements (i.e., memoranda of understanding, interagency agreements or joint directives) needed to hold local education agencies responsible for coordinating with child welfare and for ensuring school stability and prompt enrollment?
- ✓ Are new laws (i.e., legislation or regulation) or collaborative agreements (i.e., memoranda of understanding, interagency agreements or joint directives) needed to hold child welfare agencies responsible for coordinating with the educational system to ensure school stability and prompt enrollment?
- ✓ What are the minimum necessary elements of those laws or agreements to ensure that school stability and prompt enrollment will be achieved?
- ✓ Does a system need to be in place to periodically reevaluate (e.g. each school year) the collaborative process and make any necessary changes or adjustments?
- ✓ 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?
- ✓ Are key staff with expertise about *Fostering Connections* identified at the state and local education and child welfare agency to help facilitate necessary coordination?

⁴ 42 U.S.C.A. 675(1)(G)(ii).

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.”⁵

4. Child Remains in Same School

- ✓ Best Interest Determinations: How does the local child welfare agency determine when it is not in the child’s best interest to remain in the same school?
 - What criteria should be used in making best interest determinations?
 - Who needs to provide input in the best interest determination?
 - Where will the best interest decision will occur (i.e., local education agency, child welfare agency, court)?
 - Who will ultimately make the best interest decisions?
 - Who will hold education decisionmaking rights for the child (i.e., does the birth parent retain these rights or is someone else designated)?
 - Is there a process to repeat best interest decision making at each change of placement?
- ✓ Is there a clear procedure at the local level for resolving disputes regarding whether a school change is needed? Does the procedure address the following: written decisions, notice to parents, and what happens to the child pending resolution of the dispute?
- ✓ 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*?

⁵ 42 U.S.C.A. 675(1)(G)(ii).

(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

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? Is there consensus on the definition of “immediate,” and does this need to be quantified in state law or policy?
- ✓ 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 implementing the “immediate enrollment” requirement? Examples include expedited efforts to obtain necessary documentation, waiver of normal enrollment requirements or enroll the child pending, and changes in required documentation to allow for prompt enrollment.
- ✓ 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 include language in a child-specific juvenile court order that grants access to a child’s education records to a child welfare agency or other necessary stakeholders?⁷

⁶ 42 U.S.C.A. 675(1)(G)(ii).

⁷ 20 U.S.C. § 1232(g)(b)(1)(J).

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.⁸

7. Permissible Use of IV-E Maintenance Dollars for School Transportation

- ✓ Has the state or county child welfare agency ever used Title IV-E administrative dollars to support school transportation (in accordance with the December, 2007 Guidance from the Department of Health and Human Services)⁹?
- ✓ Is the state considering using Title IV-E maintenance dollars to support school 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?

⁸ 42 U.S.C.A. 675(4)(A).

⁹ *Child Welfare Policy Manual*, 8.3B.1 TITLE IV-E, Foster Care Maintenance Payments Program, Payments, Allowable costs, Question 4. 12/31/07.

http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=46.

(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.¹⁰

8. State Plan Assurances of School Enrollment and Attendance

- ✓ How will assurances of school enrollment and attendance be provided?
- ✓ Has the state child welfare agency included the process to ensure school enrollment and attendance in its Title IV-E State Plan?
- ✓ 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?
- ✓ How will the requirement for tracking enrollment and attendance be implemented for children receiving guardianship and adoption assistance?
- ✓ Is training for child welfare and education leadership and staff as well as court and legal advocates provided on school enrollment and attendance requirements? Does the training include the limitations of the exceptions to enrollment and attendance? Are there processes to assure that these exceptions do not interfere with a child’s right to a free and appropriate education?

¹⁰ 42 U.S.C.A. § 671.

- ✓ Is there additional educational information that could or should be tracked (at the state and local level) as part of a system for tracking 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)?

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.¹¹ *Fostering Connections* also includes a new requirement for a “transition plan” to be developed 90 days prior to a youth’s exit from care.¹² 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.¹³

9. Older Youth Provisions

- ✓ Is the state working on implementation of the *Fostering Connections* provisions that affect older youth (i.e., new requirement for 90 day transition plan, eligibility for Chafee Independent Living services and Education Training Vouchers (ETVs), and the state option to extend care until age 21)?
- ✓ Is the state making the link between these provisions for older youth and the impact on youth’s education success and outcomes?

¹¹ 42 U.S.C.A. § 677; 42 U.S.C.A. § 677(i)(2).

¹² 42 U.S.C. § 675(H).

¹³ 42 U.S.C.A. §675(8)(A).