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EDUCATIONAL STABILITY FOR CHILDREN IN FOSTER CARE

Cara Chambers[*] *and Erika Palmer*[**]

I. EDUCATIONAL EXPERIENCES OF CHILDREN IN FOSTER CARE

A. Children in Foster Care

MS. CHAMBERS: Children in foster care face significant challenges with regard to their education. Consider Ilena, a student who lived in four different foster homes during her high school years. First, she was placed in Brooklyn, and then moved in with a relative in New Jersey. When this proved to be unsuccessful, she was then placed in a foster home in the Bronx, and later moved to a foster home in Staten Island. Each time she was forced to change schools. It took Ilena five and one-half years to graduate from high school. She lost access to a journalism program that she loved at her first school and often had to repeat coursework due to her need to transfer

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schools mid-school year. Furthermore, the new schools she attended would not give her partial credit, and sometimes, refused to accept credit for the work she had completed at her previous schools. By the time she got to her third school, she withdrew from social interactions because she figured "why bother, I'm going to end up moving. This is not worth the investment of my emotion and my time." Ilena missed important events that most young people relish; she did not attend her prom or graduation because she felt no connection to the school or her classmates. This story is fairly typical, except that many students in foster care would not have persevered to the extent Ilena did, and many would not have earned a diploma.

Statistics provide a sense of the scope of the problem. New York State has approximately 26,000 children in foster care.[1] A large number of those children—about sixty-two percent—are located in New York City,[2] and about seventy percent of the children are school age.[3] Most of these children—around sixty-six percent—end up exiting the system and returning to their families.[4] They usually return to their original communities, and often attend the same schools they initially attended.[5] The length of stay for a child in foster care can be as short as a few days or weeks, but in some cases it can be as long as several years.[6] This determination very much depends on the circum-

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[1] *Foster Care*, N.Y. STATE OFFICE OF CHILDREN & FAMILY SERVS., http://www.ocfs.state.ny.us/main/fostercare/ (last visited June 30, 2010) ("The number of children in foster care in New York State has decreased from 53,902 children in 1995 to 25,878 in 2008 . . . .").

[2] Table of *Facts About Children in Foster Care in New York-2008*, N.Y. STATE OFFICE OF CHILDREN & FAMILY SERVS., http://www.ocfs.state.ny.us/main/fostercare/stats.asp (last visited June 30, 2010).

[3] *Id.* (noting that as of December 2008, 15.7% of the children were between the ages of six and nine; 14.5% of the children were between the ages of ten and thirteen; 28.8% of the children were between the ages of fourteen and seventeen; and 11% of the children were at least eighteen years old). *See also Fact Sheet: Educational Outcomes for Children and Youth in Foster and Out-of-Home Care*, NAT'L WORKING GROUP ON FOSTER CARE AND EDUC., 1 (Dec. 2008), http://www.casey.org/Resources/Publications/pdf/EducationalOutcomesFactSheet.pdf (noting that 71% of children in foster care are school-age).

[4] Table of *Facts About Children in Foster Care in New York-2008*, *supra* note 2 (noting that as of December 2008, 53.1% of children in foster care were reunited with their parents, while 12.1% of children in foster care were released to a relative).

[5] *See id.*

[6] *See The AFCARS Report*, U.S. DEP'T OF HEALTH & HUMAN. SERVS., ADMIN. FOR CHILDREN & FAMILIES (Jan. 2008), http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report14.htm; *see also Foster Care Statistics*, U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES (2009), www.childwelfare.gov/pubs/factsheets/

stances of both the child and his or her family. Seventy-two percent of children are discharged from foster care within a two-year period;[7] the remainder linger in foster care for longer periods of time.[8]

B. School Mobility and its Effects

Unfortunately, when a child enters foster care, the foster home placements are not as stable as desired.[9] Most foster care children average "one to two home placement changes per year."[10] If an abused child is in foster care for a number of years, the number of placement changes is more likely to increase.[11]

More often than not, every time a child moves to a different foster care home, he or she also changes schools.[12] A study of former foster children from the Pacific Northwest found that sixty-five percent had "seven or more school changes from elementary through high school."[13] There is extensive research regarding the effects of school mobility on educational progress.[14] A variety of studies have

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foster.cfm.

[7] *See Foster Care Statistics*, *supra* note 6 (noting that for children exiting foster care in 2006, 15% had been in care for less than one month; 34% for 1-11 months; 23% for 12-23 months; 12% for 24-35 months; 9% for 36-59 months and 7% for more than 5 years).

[8] *Quick Facts About Foster Care*, CHILD WELFARE LEAGUE OF AM., http://www.cwla.org/programs/fostercare/factsheet.htm (last visited June 30, 2010) ("For the children in foster care on September 30, 2005, the average amount of time they had been in the system was 28.6 months."). *See also The AFCARS Report*, *supra* note 6.

[9] *Facts About Foster Care*, CHILDREN'S RIGHTS, http://www.childrensrights.org/issues-resources/foster-care/facts-about-foster-care/ (last visited June 30, 2010) ("The average child in foster care lives in two to five different homes over a period of just two and a half years.").

[10] *Fact Sheet: Educational Outcomes for Children and Youth in Foster and Out-of-Home Care*, *supra* note 3, at 2. *See also* Peter J. Pecora et al., *Improving Family Foster Care: Findings From the Northwest Foster Care Study*, THE FOSTER CARE ALUMNI STUDIES, 27 (Mar. 14, 2005), *available at* http://www.casey.org/Resources/Publications/pdf/ImprovingFamilyFosterCare_FR.pdf (stating that the mean number of placement changes per year for children in foster care in the Pacific Northwest was 1.4).

[11] Gail S. Goodman et al., *Predictors of Number of Out-of-Home Placements for Maltreated Children*, UNIV. OF CAL., DAVIS, CTR. FOR PUB. POLICY RESEARCH, 1-2 (Jan. 2006), *available at* http://cppr.ucdavis.edu/pdf/out_of_home.pdf.

[12] Delilah Bruskas, *Children in Foster Care: A Vulnerable Population at Risk*, 21 J. CHILDREN & ADOLESCENT PSYCHIATRIC NURSING 70, 71 (2008), *available at* http://alumniofcare.org/PNWAS%20Documents/jcap_134.pdf.

[13] Pecora et al., *supra* note 10, at 35.

[14] *See* Bruskas, *supra* note 12, at 71; *see also* Pecora et al., *supra* note 10 (discussing a study based on interviews with former foster care youth from Oregon and Washington's child welfare systems); Arthur J. Reynolds, et al., *School Mobility and Educational Success:*

found that children lose between four and six months of educational progress with each school change due to a variety of factors.[15]

First, the curriculum is different from school to school. For example, a child might be in the fifth grade in Manhattan studying fractions and decimals, but when he or she is placed in foster care in Long Island, the teacher may be focusing on geometry. Thus, the child never masters certain skills. This results in large gaps in the child's knowledge base and may cause the child to fall perpetually behind. Second, it takes time for teachers to learn a student's strengths, weaknesses, and learning styles.[16] Once a teacher becomes familiar with the child's learning style and becomes proficient in determining a particular child's needs, that child often moves to another foster home and school.[17] A third consideration is that when children transfer schools, their records often do not travel with them—at least not right away.[18] This often results in the child being placed in the incorrect grade, or in a class he or she has already completed. Furthermore, the child may be eligible for special education services of which the new school is unaware. In this case, the child will be deprived of the necessary special education services.[19] As a result, fos-

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A Research Synthesis and Evidence on Prevention, INST. OF CHILD DEV., UNIV. OF MINN. (June 22, 2009), *available at* http://www.fcdus.org/usr_doc/ReynoldsSchoolMobilityAndEducationalSuccess.pdf.

[15] *See* Scott Joftus, *Educating Children in Foster Care: The McKinney-Vento and No Child Left Behind Acts*, CASEY FAMILY PROGRAMS, 11 (2007), *available at* http://www.nrcyd.ou.edu/resources/publications/pdfs/casey_NCLB.pdf; *see also* S. 1353, Reg. Sess., at D (Cal. 2010).

[16] Patricia F. Julianelle & Maria Foscarinis, *Responding to the School Mobility of Children and Youth Experiencing Homelessness: The McKinney-Vento Act and Beyond*, 72 J. NEGRO EDUC. 39, 42 (2003) ("When students change schools frequently, it can be very difficult for teachers, counselors, and other educators to identify their educational needs.").

[17] *Id.* at 43.

[18] *Educational Neglect: The Delivery of Educational Services to Children in New York City's Foster Care System*, ADVOCATES FOR CHILDREN OF N.Y., INC., 4 (July 2000), *available at* http://www.advocatesforchildren.org/pubs/2005/fostercare.pdf (noting that with respect to the enrollment of foster care children in school, 42% of the children in foster care who were surveyed "stated that they did not start school immediately upon entering foster care. Nearly 50% who stated that they experienced a delay in school entry said that they were kept out of school because of lost or misplaced school records."). *See also* Bruskas, *supra* note 12, at 71.

[19] *See Educational Neglect: The Delivery of Educational Services to Children in New York City's Foster Care System*, *supra* note 18, at 6 (noting that 60% of social workers and caseworkers who were surveyed stated that "they were not aware of existing laws when referring children to special education," and "[o]ver 50% indicated that their clients did not receive appropriate services very often while in special education").

ter care children fall increasingly behind and become less likely to graduate.[20]

There is a correlation between children who have high school-mobility rates and those who have been held over multiple times.[21] There are fifteen-year-olds who are in the eighth grade and eighteen-year-olds who are still considered freshman in high school. Often, these students cannot accumulate enough credits to graduate simply because they have not remained in one school for a sufficient period of time.[22]

The unfortunate likelihood is that many of these students will fall so far behind that they will become disengaged from school and drop out. In fact, a study in California confirmed that high school students who experience even one change in school placement during the course of their high school years are "less than half . . . as likely to graduate."[23] As the numbers indicate, children in foster care are more likely to repeat a grade, less likely to graduate from high school, and less likely to complete college.[24] Obviously, there is a huge impact on a child's future earnings as a result of his or her poor educational outcome.[25] One-third of former foster youths live at or below the poverty level.[26] They often rely on public assistance, and experience homelessness at a higher rate than their peers who were not in foster care.[27] In addition to school mobility affecting a child's

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[20] Bruskas, *supra* note 12, at 71.

[21] *See Educational Neglect: The Delivery of Educational Services to Children in New York City's Foster Care System*, *supra* note 18 at 6-7 (stating that in New York, "[n]early 45% [of children in foster care] stated that they had been held over at least once in school. Of those who answered yes to being held over 92% indicated they were held over once. [Eight percent] indicated they were held over twice.").

[22] *See* Bruskas, *supra* note 12, at 71 (noting that "[s]chool credits may not always transfer between schools").

[23] Russell W. Rumberger et al., *The Educational Consequences of Mobility for California Students and Schools*, POLICY ANALYSIS FOR CAL. EDUC., PACE, 37 (Feb. 1999), *available at* http://gse.berkeley.edu/research/pace/reports/Conseq_of_mobility_for_CA_schools.pdf.

[24] *See* Dylan Conger & Marni J. Finkelstein, *Foster Care and School Mobility*, 72 J. NEGRO EDUC. 97, 97 (2003), *available at* http://www.jstor.org/stable/3211293; *see also Educational Neglect: The Delivery of Educational Services to Children in New York City's Foster Care System*, *supra* note 18, at 6-7.

[25] *See* Pecora et al., *supra* note 10, at 37.

[26] *Id.*

[27] *Id.* (stating that in the Pacific Northwest, 22.2% of former foster care youth have found themselves homeless for at least one day and 16.8% of them are currently "receiv[ing] cash public assistance").

academic achievement, it also takes a great emotional toll.[28] It is devastating for a child to be displaced from his or her family.[29] Sometimes the only source of stability in a foster child's life is the school environment. Once school is taken away, there is an additional layer of trauma and loss for that child.[30] Ultimately, not only does school mobility have a negative impact on educational outcomes, but it also has a substantial negative impact on a child's social and emotional development.

C. Parallels to Other Highly Mobile Children

Children in foster care are not the only group of children who are highly mobile and experience multiple school changes. It is beneficial to look at other highly mobile groups to incorporate strategies that can be applied to children in foster care. First, consider children who reside in temporary housing. For many years, these children faced similar challenges to children in foster care, as they would move from one temporary shelter to another.[31] These children would be forced to change schools every time a family's temporary housing fell through.[32] Like children in foster care, homeless students also face tremendous barriers to enrollment. For example, they often do not have access to the documents that are typically required for registration, such as a copy of their birth certificate or proof of residency within a district.[33] As a result, many of these children were barred

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[28] Patricia Julianelle, *The McKinney-Vento Act and Children and Youth Awaiting Foster Care Placement*, NAT'L ASS'N FOR THE EDUC. OF HOMELESS CHILDREN & YOUTH, 2, *available at* http://www.naehcy.org/dl/mv_afcp.pdf.

[29] *See* Bruskas, *supra* note 12, at 70-71; Pecora et al., *supra* note 10, at 32, 34 (stating that in the Pacific Northwest, a larger number of former foster care youth are diagnosed with mental health problems than the general population. Such diagnoses include: 54.4% suffer from one or more disorders; 25.2% suffer from post-traumatic stress disorder; 20.1% suffer from major depression; and 17.1% suffer from social phobia.).

[30] *See* Julianelle, *supra* note 28, at 2 ("Changing schools frequently also challenges emotional development, as the constant disruption of ties to friends and mentors exacerbates the anxiety and trauma the children experience from being separated from their families or from experiencing homelessness.").

[31] Julianelle & Foscarinis, *supra* note 16, at 42. *See also Facts About Homeless Education*, NAT'L ASS'N FOR THE EDUC. OF HOMELESS CHILDREN & YOUTH, www.naehcy.org/facts.html (last visited Aug. 25, 2010).

[32] *Id.*

[33] *Education of Homeless Children and Youth*, NAT'L COAL. FOR THE HOMELESS, http://www.nationalhomeless.org/factsheets/education.html (last visited July 9, 2010). *See also Facts About Homeless Education*, *supra* note 31.

from attending school altogether.[34]

The McKinney-Vento Homeless Assistance Act was designed to address these issues.[35] The Act was first passed in 1987 and was subsequently reauthorized in 2001.[36] It applies to any child who lacks a nighttime residence that is "fixed, regular, and adequate," including children who are "awaiting foster care placement."[37] The term "awaiting foster care placement" is not defined in federal law,[38] and the states have interpreted it different ways, some broadly and some quite narrowly.[39]

New York does not have a formal definition of this term, but it tends to be interpreted very narrowly to mean a child who has been removed from his or her parents' home and has not yet been placed in a foster home.[40] Typically, in New York City, these children reside at The Children's Center, which is a congregate care facility run by the Administration for Children's Services.[41] The children who are temporarily residing at that facility are protected by the McKinney-Vento Homeless Assistance Act.[42] However, currently in New York City, foster care children residing elsewhere are rarely protected under McKinney-Vento.[43]

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[34] *Education of Homeless Children and Youth*, *supra* note 33. *See also Facts About Homeless Education*, *supra* note 31.

[35] *See* 42 U.S.C.A. § 11431 (West 2010) (effective Jan. 8, 2002).

[36] *See* Stewart B. McKinney Homeless Assistance Act, Pub. L. No. 100-77, 101 Stat. 482 (1987) (codified as amended at 42 U.S.C.A. §§ 11301-11472 (West 2010)); *see also* Julianelle & Foscarinis, *supra* note 16, at 45 (stating that in 2001 "Congress reauthorized the McKinney-Vento Act, as part of the No Child Left Behind Act").

[37] 42 U.S.C.A. § 11434a(2)(A)-(2)(B)(i) (West 2010) (effective Jan. 8, 2002).

[38] *See Questions and Answers: What Child Welfare Professionals Need to Know about Awaiting Foster Care Placement and the McKinney-Vento Act*, LEGAL CTR. FOR FOSTER CARE & EDUC. (2008), http://www.abanet.org/child/education/%235_AFCP_FINAL.pdf.

[39] *See* Julianelle, *supra* note 28, at 28-31 (summarizing the definitions of "awaiting foster care placement" from eight different states); *Questions and Answers: What Child Welfare Professionals Need to Know about Awaiting Foster Care Placement and the McKinney-Vento Act*, *supra* note 38.

[40] *See FAQs: Definitions/Eligibility*, NYS-TEACHS, http://www.nysteachs.org/faqs/definitions-eligibility.html (last visited July 9, 2010); *see also* N.Y. EDUC. LAW § 3209(1)(a)(3) (McKinney 2010) (effective July 1, 2007).

[41] *See* Press Release, Mayor's Press Office, Mayor Giuliani & ACS Commissioner Scoppetta Dedicate New $67 Million Children's Center (Nov. 16, 2000), *available at* http://www.nyc.gov/html/om/html/2000b/pr433-00.html ("The Children's Center . . . operated by ACS . . . will provide a child-friendly environment for children entering [foster] care.").

[42] *See* 42 U.S.C.A. § 11434a(2)(A)-(2)(B)(i).

[43] *See FAQs: Definitions/Eligibility*, *supra* note 40.

The McKinney-Vento Act confers a number of rights upon children who fit within the definition of "homeless children and youths" under the statute.[44] The Act provides students the right to remain in their school of origin, or to enroll in the school that serves the area where the student is temporarily housed.[45] It also gives the family a choice with respect to preserving school stability for that child; the family can decide whether it is too difficult, due to distance and other considerations, for the child to remain in his or her school of origin.[46] If the latter prevails, the family has the right to enroll the child elsewhere.[47] Furthermore, if the family chooses to keep the child in the same school, the Act provides the child with the right to transportation back to the school of origin.[48] The McKinney-Vento Homeless Assistance Act also addresses the issue of documentation by providing that homeless children have the right to enroll in a school without showing the documentation that is typically required for registration.[49] For example, under McKinney-Vento, there is no need for the family to show proof of address, immunizations, or a birth certificate.[50]

Moreover, the McKinney-Vento Act states that each school district must provide a liaison for students in temporary housing.[51] The liaison's role is to assure that children in temporary housing are afforded the option to remain in their school of origin or enroll immediately in a new school.[52] The liaison is responsible for ensuring that transportation is provided,[53] and informing the families about their rights under the corresponding state law.[54] States must also have in place a dispute resolution mechanism.[55] Any disputes that arise with respect to a child's eligibility for McKinney-Vento protection are subject to an administrative review process that parents can

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[44] 42 U.S.C.A. § 11432 (West 2010) (effective July 30, 2008).
[45] *Id.* § 11432(g)(3)(A).
[46] *Id.* § 11432(e)(3)(C)(ii)(I), (g)(3)(A).
[47] *Id.* § 11432(e)(3)(C)(ii)(I), (g)(3)(A)(ii).
[48] *Id.* § 11432(g)(1)(J)(iii).
[49] 42 U.S.C.A. § 11432(g)(3)(C)(i).
[50] *Id.*
[51] *Id.* § 11432(g)(1)(J)(ii).
[52] *Id.* § 11432(g)(6)(A)(ii).
[53] *Id.* § 11432(g)(6)(A)(vii).
[54] 42 U.S.C.A. § 11432(g)(6)(A)(iv)-(v).
[55] *Id.* § 11432 (g)(1)(C).

access to adjudicate those disputes.[56] The McKinney-Vento Act is a comprehensive law that serves as an example for other programs designed to improve school stability for children in foster care.[57] Several states have used the McKinney-Vento Act as a guide in enacting legislation with respect to foster care children.[58]

Another group of highly mobile children are those in military families.[59] Most children in military families are not covered by the McKinney-Vento Act, even though they are highly mobile.[60] On average, children in military families attend school in nine different school districts between kindergarten and the twelfth grade.[61] Many children in military families are protected by the Interstate Compact on Educational Opportunity for Military Children ("Compact").[62] Thirty-five states, which are home to most of the military bases in the United States, participate in this compact.[63] The Compact sets a timeline for sharing school records and transcripts so children can enroll in the correct grade, attend appropriate classes, and learn the proper curriculum for their age.[64] It also requires new school districts to honor a child's placement in specialized classes.[65] As a result, if a

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[56] *Id.* § 11432(g)(3)(E)(iii).

[57] *See generally* Julianelle, *supra* note 28.

[58] *Id.*

[59] *See Interstate Compact on Educational Opportunity for Military Children*, The COUNCIL OF STATE GOV'TS, 1 (Jan. 1, 2008), *available at* http://www.csg.org/knowledgecenter/docs/ncic/FinalCompactLanguage011108.pdf.

[60] *See* 42 U.S.C.A. §11434a(2)(A)-(2)(B).

[61] Bob Fehringer, *Help for Military Children: Illinois Governor Signs State Law Easing School Transitions*, U.S. AIR FORCE (June 26, 2010), http://www.af.mil/news/story.asp?id=123211557.

[62] *See Interstate Compact on Educational Opportunity for Military Children*, *supra* note 59, at 1.

[63] *See Interstate Compact on Educ. Opportunity for Military Children, State-by-State Legislative Status*, NAT'L CTR. FOR INTERSTATE COMPACTS (July 1, 2010), http://www.csg.org/programs/policyprograms/NCIC/documents/DODState-by-statechart7-1-10.pdf.

[64] *Interstate Compact on Educational Opportunity for Military Children*, *supra* note 59, at 8-10.

> [T]he school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the . . . records to the [other] school . . . within ten (10) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

Id. at 8-9.

[65] *Id.* at 10.

child was in North Carolina in an advanced placement class or a career and technical education class and then moves to Texas, he or she would have access to this same specialized programming, assuming such programming is provided by the school. The student cannot be barred because the class is full or the time to apply has passed.[66]

The Compact further provides school districts flexibility to waive certain prerequisites and graduation requirements.[67] For example, if a child has to take a year-long course in Texas history, and then moves to Maryland, which requires a year-long course in Maryland history, the child may be exempt from taking the Maryland history course. In addition, the Compact allows twelfth graders to earn a diploma from their sending school if the new school district that they enroll in would delay their graduation for failure to fulfill local requirements.[68]

Another highly mobile group is children of migrant workers. Of the three groups discussed, children of migrant workers is the least

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> The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL).

Id.

[66] *See id.* at 11 ("Local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in course/programs offered under the jurisdiction of the local education agency.").

[67] *Interstate Compact on Educational Opportunity for Military Children*, *supra* note 59, at 11, 13.

> Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

Id. at 13.

[68] *Id.* at 14.

> Should a military student transferring at the beginning or during his or her Senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency.

Id.

developed group in terms of data and legal protections; however, the information that does exist is noteworthy. The Migrant Student Information Exchange Act[69] requires states to collect certain data and information about migrant workers' children and put that information into a database that is compatible with other state databases.[70] In essence, the Federal Government has a system that links these state databases so as children move from state to state during the course of a growing season, or during the course of a year, school districts can access information about the child's grades, coursework, and any special education information.[71] It is a means to facilitate the transfer of records and avoid delays in registration.[72] One significant limitation of this program is the reliance on migrant families to self-report. Some migrant families may be reluctant to identify themselves for fear of repercussions related to their immigration status.[73]

II. CURRENT LEGAL FRAMEWORK

A. Federal and New York Law

In the fall of 2008, Congress passed the Fostering Connec-

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[69] 20 U.S.C.A § 6398 (West 2010).

[70] *Id.* § 6398(b)(2)(A). *See also Migrant Student Records Exchange Initiative*, U.S. DEP'T OF EDUC., http://www2.ed.gov/admins/lead/account/recordstransfer.html (last visited July 10, 2010) ("[T]he Migrant Student Information Exchange Initiative['s] . . . primary mission is to ensure the appropriate enrollment, placement, and accrual of credits for migrant children.").

[71] *See id.* ("The Migrant Student Information Exchange (MSIX) is the technology that allows States to share educational and health information on migrant children who travel from State to State and who as a result, have student records in multiple States' information systems.").

[72] *Id.*

> The timely transfer of student records can be an effective means of reducing the effects of educational disruption on migrant students. It enables school officials (e.g., school registrars, teachers, and guidance counselors) to make appropriate decisions regarding a student's enrollment in school, grade placement, and academic plan (including . . . credit accrual and exchange).

Id.

[73] *See, e.g.*, *Immigration/Documentation*, CHADWICK CTR., http://www.chadwickcenter.org/Documents/WALS/Adaptation%20Guidelines%20-%20Immigration-Documentation%20Priority%20Area.pdf (last visited July 16, 2010) ("After arriving in the U.S., many immigrants isolate themselves for fear of being discovered and deported.").

tions to Success and Increasing Adoptions Act.[74] The passage of this Act was the first time federal law addressed the school stability of children in foster care.[75] The Act imposes conditions on states that accept federal child welfare dollars.[76] Specifically, it requires the child welfare agency to ensure that a child who enters foster care remain in the school where the child was enrolled when placed in foster care.[77] If remaining in the school of origin is not in the child's best interest, the child welfare agency must ensure that the child is provided with "immediate and appropriate enrollment in a new school," and must arrange for the transfer of educational records.[78] The Act also makes federal matching dollars available to help defray the cost of transportation for transporting children between their foster home and their school of origin, assuming such is in the child's best interest.[79] After the federal law was passed, New York State adopted emergency regulations that mirrored the federal law.[80]

B. Barriers to Implementation

Despite the fact that there is a federal law and a New York State regulation that address these issues, there are several barriers to implementation. First, with regard to the best-interest determination, neither the federal law nor the state regulation specifies who makes the best-interest determination regarding whether a child should re-

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[74] Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949.

[75] *Description of the Law*, FOSTERING CONNECTIONS RES. CTR., http://www.fosteringconnections.org/about_the_law?id=0001 (last visited July 21, 2010) ("The Fostering Connections Act builds on prior law by adding a new requirement that case plans ensure the educational stability of the child in foster care . . . .").

[76] *See* 42 U.S.C.A. § 675(1)(G) (West 2010) (listing the conditions the states must abide by to make sure the plan ensures "the educational stability of the child while in foster care").

[77] *Id.* § 675(1)(G)(ii)(I) (stating that foster care case plans must include "[a] plan for ensuring the educational stability of the child while in foster care, including . . . 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 placement").

[78] *Id.* § 675(1)(G)(II) (stating that if remaining in the school of origin is not in the best interests of the child, the case plan must include "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").

[79] *Id.* § 675(4)(A).

[80] *See* N.Y. COMP. CODES R. & REGS. tit. 18, § 430.11(c)(1)(i) (2010), *amended by* 2010 N.Y. Reg. 227522 (July 7, 2010).

main in his or her school of origin or attend a school in the district where the new foster home is located.[81] The law does not state whether the family court judge, the child welfare agency, the school district, the child's attorney, the parent, the foster parent, or some combination of these individuals should oversee this decision. The law also neglects to specify the factors that must be considered when making the best-interest determination.[82] For example, states may want to consider the distance the child must travel to get back to his or her school of origin and safety issues, such as whether it is safe for the child to remain in the school of origin. Another factor that may be considered is the child's access to specialized services. For example, at one particular school, a child may have access to a gifted and talented program, advanced placement courses, or special education services that are not available elsewhere. The law and regulation provide no guidance as to how these factors should be balanced.

Second, the law is silent as to whether the child welfare agency or the school district should provide transportation.[83] Similarly, and more importantly, the law is silent on whether the child welfare agency or the school district should pay for transportation back to the child's school of origin.[84] Currently, federal law matches state contributions for transportation, meaning there must be an expenditure on the state or local level in order to tap into those federal funds.[85] It is not a cost that is covered one hundred percent by the federal government.[86]

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[81] *See* 42 U.S.C.A. § 675(1)(G); N.Y. COMP. CODES R. & REGS. tit. 18, § 430.11(c)(1)(i).

[82] *Id.*

[83] 42 U.S.C.A. § 675(4)(A) (making federal matching funds available to help cover the cost of transportation, but declining to specify which state or local agency—child welfare or education—must provide the transportation).

[84] *Id.* (declining to specify which state or local agency—child welfare or education—must pay for the transportation costs that are not covered by federal matching dollars).

[85] *See id.* §§ 671-679b. Title IV-E of the Social Security Act provides federal funds to partially reimburse states and localities for certain foster care and adoption expenditures. *Id.* Among the reimbursable expenses listed in the statute are "payments to cover the cost of . . . reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement [in foster care]." *Id.* § 675(4)(A). *See also Overview of the Title IV-E Foster Care Program*, CHILD WELFARE LEAGUE OF AM. (June 2003), http://www.cwla.org/advocacy/overviewtitleIV-E.htm (explaining that Title IV-E provides federal reimbursement for certain foster care or adoption expenses that a state has already paid).

[86] *Id. See also Title IV-E Home Page*, N.Y. STATE OFFICE OF CHILDREN & FAMILY SERVS., http://www.ocfs.state.ny.us/main/fostercare/titleiv-e/ (last visited Aug. 20, 2010) (explaining that in New York State, the federal reimbursement rate under Title IV-E of the Social Securi-

The other large gap in the existing federal law and state regulations concerns dispute resolution and enforcement.[87] It is still unclear who has the final word if there is a dispute or disagreement about where a child should attend school.[88] Furthermore, the law is silent as to whether decisions are appealable through a court.[89] In addition, at this point, there is no administrative review process that would give parents or children a way to review or appeal decisions.[90]

Aside from the existing gaps in federal law and state regulations, local control of school districts is another barrier to implementation.[91] Many states, including New York State, operate under a system that allows for local control of school districts.[92] In New York State, for example, there are fifty-eight local social service districts that oversee foster care.[93] In contrast, there are over seven hundred school districts in New York.[94] It is completely impractical for local social service districts to negotiate separate procedures, policies, and memoranda of understanding with seven hundred school districts throughout the State of New York. Thus, this issue cannot be resolved solely at the local level.

Moreover, there are often state and local laws that stand in the way of implementation.[95] Some cities and school districts have resi-

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ty Act is 50%).

[87] *See* 42 U.S.C.A. § 675(1)(G)(i) (failing to establish a mechanism for dispute resolution); N.Y. COMP. CODES R. & REGS. tit. 18, § 430.11(c)(1)(i) (failing to establish a mechanism for dispute resolution).

[88] *See supra* note 87 and accompanying text.

[89] *See supra* note 87 and accompanying text. *But cf.* 42 U.S.C.A. § 11432(g)(1)(C), (g)(3)(E). In contrast to Fostering Connections, The McKinney-Vento Homeless Assistance Act requires states to develop procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youth. *See id.* § 11432(g)(1)(C). In New York State, parents may submit an appeal to the State Education Department. N.Y. COMP. CODES R. & REGS. tit. 8, § 100.2(x)(7)(ii) (2010).

[90] *See* 42 U.S.C.A. § 675(1)(G)(i); N.Y. COMP. CODES R. & REGS. tit. 18, § 430.11(c)(1)(i), *amended by* 2010 N.Y. Reg. 227522 (July 7, 2010).

[91] *See* Paynter v. State, 797 N.E.2d 1225, 1229-30 (N.Y. 2003) ("The premise of the [education] Article [of the New York State Constitution] is thus in part that a system of local school districts exists and will continue to do so because the residents of such districts have the right to participate in the governance of their own schools.").

[92] *See id.*

[93] *County Departments of Social Services*, OFFICE OF CHILDREN & FAMILY SERVS., http://www.ocfs.state.ny.us/main/localdss.asp (last visited July 9, 2010).

[94] *See School District Index for The NYS Administrators Listing*, N.Y. STATE EDUC. DEP'T, http://www.nysed.gov/admin/admindex.html (last visited Aug. 27, 2010) (listing all school districts in New York State).

[95] *See, e.g.*, N.Y.C. DEP'T OF EDUC., REGULATION OF THE CHANCELLOR, A-101,

dency requirements that prohibit a child from attending school in a particular district unless he or she lives within certain boundaries.[96] Other states have laws that give the school district discretion as to whether or not to allow nonresidents to attend.[97] For example, if a child from New York City was placed in foster care in Yonkers, that child may be prevented from attending his or her school in the Bronx despite the fact that the distance between the school in New York City and the child's foster home in Yonkers could be quite short, and despite the fact that it might be in the child's best interest for him or her to remain in the New York City public school system.[98]

Lastly, there are well-entrenched child welfare practices in place that make it difficult to implement this law.[99] For many years, the standard operating procedure has been to place a child in a foster home and register the child in a new school the following day.[100] Training is always a challenge when attempting to implement changes. It is a struggle to retrain the staff of the child welfare system and change its expectations about children who are in danger of having their school placement interrupted.[101]

III. MODELS FOR IMPLEMENTATION

MS. PALMER: Other states have developed models that shed some light on these issues and may serve as helpful instruction for

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ADMISSIONS, READMISSIONS, TRANSFERS, AND LIST NOTICES FOR ALL STUDENTS (2009), *available at* http://docs.nycenet.edu/docushare/dsweb/Get/Document-11/A-101%20Final.pdf (controlling the enrollment and transfer of students within New York City's public schools—this type of local governance is typical of the obstacles present to reforming and improving the educational placement of foster children).

[96] *See id.* (requiring that children live within New York City limits in order to enroll in New York City Schools).

[97] *See, e.g.*, 105 ILL. COMP. STAT. ANN. 5/10-20.12b(b) (West 2010) (permitting the enrollment of foster children in school districts other than the one in which they reside).

[98] *See* NYC DEP'T OF EDUC., *supra* note 95. Children "in grades K through [twelve] who change residence *within* New York City are entitled to remain in their current school until completion of the terminal grade." *Id.* (emphasis added). In contrast, students who move to a residence *outside* of New York City are not entitled to the same treatment.

[99] *See generally Educational Neglect: The Delivery of Educational Services to Children in New York City's Foster Care System*, *supra* note 18, at 14-15 (outlining the general procedures followed by social workers upon transferring foster child placements).

[100] *See id.* at 14 ("Historically, change of placement of the child has meant an almost automatic change of school for foster children across the country.").

[101] *Id.* at 14, 56-57.

implementing Fostering Connections in New York.[102] Several states actually had laws in place prior to the passing of Fostering Connections that aim to address school stability issues for children in foster care.[103]

A. Pre-Existing Laws

The first is AB 490, which was passed in California in 2003 and went into effect in 2004.[104] AB 490 is a comprehensive statute that provides protection to children in foster care similar to the rights afforded to children in temporary housing under the McKinney-Vento Act.[105] This law grants children in foster care the right to stay in their school of origin for the remainder of the school year when they enter foster care or move between foster care placements.[106] The Act also creates liaison positions within the local school district that are very similar to those required under McKinney-Vento.[107] In fact, in many counties the same people perform both job functions.[108] Under AB 490, the best-interest determination is made by the liaison in consultation with the child and the child's educational decision-maker.[109] This person could be the child's birth parent, the foster parent, or someone else assigned by the judge to make educational

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[102] *See, e.g.*, CAL. EDUC. CODE § 48853.5 (West 2010); OR. REV. STAT. ANN. § 339.133 (West 2010), *amended by* Act of Mar. 4, 2010, No. 988, 2010 Or. Laws Spec. Sess.

[103] *See* sources cited *supra* note 102.

[104] Jennifer Troia et al., *Frequently Asked Questions & Answers About AB 490*, CAL. YOUTH EDUC. TASK FORCE, 5 (May 2006), http://www.cfpic.org/children/pdfs/AB490 QA.pdf.

[105] *Id.* at 5, 15 ("Both McKinney-Vento and AB490 may simultaneously cover foster children placed into temporary living situations. Where McKinney-Vento provides greater protection (for example, McKinney-Vento specifically requires that school districts provide transportation to the school of origin), the youth is entitled to this greater level of protection.").

[106] CAL. EDUC. CODE § 48853.5(d)(1). "School of origin" is defined as "the school that the foster child attended when permanently housed or the school in which the foster child was last enrolled." *Id.* § 48853.5(d)(6)(e).

[107] *See id.* § 48853.5(b).

[108] *Model Education Projects for Foster Youth Summaries*, YOUTH LAW CTR., 5 (Jan. 27, 2006), http://www.nww.org/publications/fosteryouth/modeledprojectsforfy.pdf ("California requires every local education agency (LEA) to designate a staff person as a foster care liaison to ensure proper placement, transfer and enrollment in school for foster youth. LEA's have met this requirement in a variety of ways, including designating their McKinney-Vento Coordinator as the liaison.").

[109] CAL. EDUC. CODE. § 48853.5(d)(2).

decisions.[110]

One of the drawbacks of AB 490 is that it does not include transportation mandates or funding for transportation.[111] Instead, within the various counties, social services agencies and school districts are encouraged to come to an agreement about who provides transportation in certain circumstances, as well as work together to lay out the different transportation options.[112] In the current budget climate this process may prove difficult, as oftentimes viable transportation options are limited.[113] This lack of a mandate with regard to transportation can be a real challenge to maintaining school stability for children in foster care.[114]

Oregon also enacted a law prior to the passage of Fostering Connections, in 2005.[115] Under this law, children who enter foster care may become residents in one of two school districts—the district where they lived prior to placement or the district where they are currently placed—and have the right to attend school in either district, depending on what is in their best interests.[116] In Oregon, the juve-

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[110] *AB 490 Roles and Responsibilities: Caregivers*, CHILDREN'S LAW CTR. OF L.A., 4, http://www.clcla.org/Images/pdfs/pdfs_train_ed_law/490Rule_Caregivers.pdf (last visited July 17, 2010).

[111] *See Policy Brief-AB 490 Implementation*, CAL. FOSTER YOUTH EDUC. TASK FORCE, 1, *available at* http://www.cfpic.org/summit_pdfs/AB490-Transportation.pdf (last visited July 17, 2010) (noting that the lack of a transportation mandate may result in school placement decisions being based upon factors other than the best interest of the child, such as cost and transportation time).

[112] CAL. EDUC. CODE § 48853.5(d)(6) ("The local educational agency and the county placing agency are encouraged to collaborate to ensure maximum utilization of available federal moneys, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability.").

[113] Telephone Interview with Dr. Michelle Lustig, Coordinator, San Diego Cnty. Office of Educ., Student Support Servs., Foster Youth Servs. & Homeless Educ. Programs (Jan. 5, 2010).

[114] *See Executive Summary of Foster Youth Services End of Year Report: 2008-2009*, SAN DIEGO CNTY. OFFICE OF EDUC. 23, http://www.sdcoe.net/ssp/support/fys/?loc=res (follow "2008-2009 FYS Report to the CDE (Main Grant)" hyperlink). In fact, because "[t]ransportation can be costly, . . . [it] has been the sticking point in most state educational stability legislation" given "the difficulties in obtaining state funding for transportation." Jessica Feierman & Janet Stotland, *Lessons Learned*, EDUC. LAW CTR-PA, JUVENILE LAW CTR., 7 (Oct. 23-24, 2006), *available at* http://www.abanet.org/child/educ-1.pdf.

[115] *See* OR. REV. STAT. ANN. § 339.133; Juvenile Rights Project, Inc., *Oregon Legislature Passes HB 3075-A; Bill Aimed at Promoting School Stability for Children in Foster Care*, 2 THE JUVENILE LAW READER 1 (June 2005), *available at* http://www.jrplaw.org/documents/JRPReaderV2Is5.pdf.

[116] *Id.* § 339.133(4), (5)(a) (stating that children in foster care shall be considered residents in the district in which they are placed, but the juvenile court may allow the child to be con-

nile court makes the best-interest determination.[117] The social services agency is required to pay for transportation when the child is placed outside of the school district and needs transportation to continue to attend his or her school of origin.[118] The state has appropriated $700,000 to fund transportation over a two-year cycle.[119]

There have been some hurdles to successfully implementing this new law in Oregon. The intent of the Oregon law was for the social services agency to provide transportation when it placed a child outside of his or her school district, with the expectation that the school district will provide transportation to the child when he or she is placed into care within the same school district. Because the law does not explicitly state who is responsible for transporting children who have remained in the same school district, but may have been placed outside the attendance zone of their school of origin, disagreements can arise between school districts and social services agencies. Disagreements can also occur about who is ultimately responsible for transporting students with disabilities who qualify for special education transportation.[120] In the past, social service districts also had difficulty contracting for transportation, as some of the private transportation companies did not offer the same rates to them that the school districts would receive if they contracted with the companies.[121] Finally, the law does not contain rigorous record-keeping requirements, which can make it difficult to monitor the

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sidered a resident of the district in which he or she prior to placement if it is the best interest of the child).

[117] *Id.* § 339.133(5)(a). This determination can be made through a variety of procedures, such as an ex parte motion, shelter hearing order, or court review hearing order, depending on the county and the case. Telephone Interview with Brian Baker, Staff Attorney, Juvenile Rights Project (Sept. 8, 2010).

[118] *Id.* § 339.133(5)(b).

[119] OR. DEP'T OF HUMAN SERVS., BUDGET REP. AND MEASURE SUMMARY, SB 5529-A, Reg. Sess., at 8 (2009), *available at* http://www.oregon.gov/DAS/BAM/docs/KPM/Budget_2009/SB5529DHS.pdf?ga=t (noting that "[t]he Children, Adult and Families (CAF) Division shall reserve $700,000 . . . for the 2009-11 biennium to . . . provid[e] transportation for children in foster care pursuant to ORS 339.133(5)").

[120] Telephone Interview with Brian Baker, *supra* note 117. According to Mr. Baker, there is also some confusion about which students are covered under McKinney-Vento as "awaiting foster care placement" and which are covered under HB 3075. *Id.* He advocated for a bright line definition in all cases to alleviate confusion about who must provide transportation and avoid unnecessary delays for students. *Id.*

[121] *Id.*

law's effectiveness.[122]

Both the California and Oregon laws create timelines for transferring records when foster care children change schools and provide for immediate enrollment before the records are available.[123] Arkansas and Florida also had laws in place prior to the passage of Fostering Connections that are similar to AB 490, but are not as comprehensive.[124]

B. Eligibility Under the McKinney-Vento Act

Some states have addressed the issue of school stability for children in foster care by looking directly to the McKinney-Vento Act.[125] For example, in Delaware, all children in foster care are considered to be "awaiting foster care placement" and eligible for the protections that are afforded students under McKinney-Vento.[126] Of course, Delaware is a small state geographically, with only about eight hundred children in out of home care.[127]

Michigan, a much larger state, also has a state policy that utilizes McKinney-Vento for students in foster care.[128] In Michigan, the state Department of Education considers any child who has been in a foster care placement for less than six months to be awaiting foster care placement and, therefore, eligible under McKinney-Vento.[129] If a child moves from one foster care placement to another within the six-month period, the timeline begins again and the child is eligible

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[122] *Id.*

[123] CAL. EDUC. CODE § 48853.5 (d)(4)(B), (d)(4)(C) (explaining that the "liaison for the new school" must request records within two days of the "child's request for enrollment"); OR. REV. STAT. ANN. § 326.575(3) (West 2010) (explaining that school records must be transferred within five days after a request is received).

[124] *See* ARK. CODE ANN. § 9-27-103 (West 2010); *see also* FLA. STAT. ANN. §§ 39.0016, 39.6012(2)(b)(4), 39.701 (West 2010).

[125] *See, e.g.*, DEL. CODE ANN. tit. 14, § 202(c) (West 2010).

[126] *Id.*

[127] *See* DEP'T OF SERVS. FOR CHILDREN, YOUTH AND THEIR FAMILIES, VENN REPORT: DECEMBER 31, 2009 SNAPSHOT 3, 6 (Dec. 31, 2009), *available at* http://kids.delaware.gov/pdfs_archive/venn/2009/Venn_Report_200912_Dec.pdf (indicating that on December 31, 2009, there were 799 children in out-of-home care in Delaware through the Divisions of Family Services, Child Mental Health, and Youth Rehabilitative Services).

[128] Memorandum from the State of Mich. Dep't of Human Servs. (Sept. 23, 2009) (on file with the authors).

[129] *Id.*

for the next six months.[130] Since Fostering Connections was passed, the state Department of Human Services (DHS) has issued a policy memo directing that when a child is no longer eligible for transportation under McKinney-Vento, DHS—the child welfare agency—will assume responsibility for transportation.[131] This newer policy just went into effect during the 2009-2010 school year, so it is too early at this point to judge its effectiveness.[132] Last year, Michigan also passed a bill that amended state law to provide that all children in foster care may remain in their school of origin, if it is in their best interest to do so, even if they are living outside the school district.[133]

C. Recently Enacted Laws

Other states have enacted laws since Fostering Connections came into effect.[134] Indiana and Louisiana warrant mention because both have come to definitive decisions with respect to transportation. In both states, the social services district makes the best-interest determination, and children must remain in their school of origin when it is in their best interest to do so.[135] The Louisiana law also explicitly eliminates any residency requirement.[136] In Indiana, when a child is placed within his or her school district, but not within the same attendance zone, the school district is responsible for transporting the child back to the school of origin, therefore creating an entitlement to

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[130] *Id.* Once a student is eligible for protections under McKinney-Vento, the student is entitled to remain in his or her school of origin for the remainder of the school year, with transportation provided by the local school district(s). If a temporary foster home placement (i.e., the first six months of a placement) extends over summer vacation, then the student may remain in his or her school of origin for the remainder of the following school year. *Id.* at 3; Telephone Interview with Tobin Miller, Legislative & Policy Assistant, Children's Servs. Admin., Dep't of Human Servs. (Feb. 26, 2010 & Aug. 23, 2010).

[131] Memorandum from the State of Mich. Dep't of Human Servs., *supra* note 128, at 4.

[132] Telephone Interview with Tobin Miller, *supra* note 130. Mr. Miller indicated that there has of yet been no formal data analysis regarding students who have received transportation from DHS pursuant to Fostering Connections. *Id.*

[133] *See* MICH. COMP. LAWS ANN. § 380.1148 (West 2010).

[134] *See* IND. CODE ANN. § 20-50-3-1 (West 2010); *see also* LA. REV. STAT. ANN. § 17:238 (2010).

[135] *See* IND. CODE ANN. §§ 31-34-15-2, 31-34-15-4(7) (requiring the Department of Social Services to create a case plan for every child in foster care, after negotiating with the child's parent, which includes educational stability provisions); LA. REV. STAT. ANN. § 17:238(C); *see also* LA. ADMIN. CODE tit. 28, § 341(H)(3) (2010).

[136] *See* LA. REV. STAT. ANN. § 17:238(C).

transportation.[137] When a student is placed in a neighboring school district, the school districts involved are expected to come to an agreement about transportation and how the cost will be shared.[138] If the school districts come to an impasse, they then must share the cost and the responsibility equally.[139] This law, however, does not address a situation where a child is placed in a school district further away, when it still may be in his or her best interest to return to the school of origin despite the distance.[140]

Louisiana's law was passed as part of a larger piece of legislation that adopted the military interstate Compact discussed earlier.[141] In Louisiana, when children are placed in a foster home within the same school district, the school district is responsible for transporting them back to their school of origin.[142] When a child is placed outside of the school district and is returning to his or her school of origin, the Department of Social Services has the responsibility to transport the child from his or her foster care placement to the school district boundary.[143] At the district boundary, the school district takes over and becomes responsible for transporting the child the rest of the way to school.[144]

As of July 1, 2010, Connecticut passed An Act Concerning Educational Stability for Children in the Care and Custody of the Department of Children and Families.[145] This Act, like those of Louisiana and Indiana, indicates that if it is in the best interest of the child in foster care who has been relocated to a new school district to attend his or her school of origin, then he or she will be permitted to do so.[146] It is presumed that it is in the child's best interest to remain in the school of origin, and the Department of Children and Families has the burden of proving that a change in school is necessary if any of the parties to the case dispute the transfer.[147] An immediate change

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137 IND. CODE ANN. § 20-50-3-5(a) (West 2010).
138 *Id.* § 20-50-3-5(b).
139 *Id.* § 20-50-3-5(c).
140 *See id.* § 20-50-3-5.
141 *See* H.B. 590, 2009 Leg., 35th Reg. Sess. (La. 2009).
142 *See* LA. REV. STAT. ANN. § 17:238(C).
143 *Id.*
144 *See id.*
145 H.B. 5066, 2010 Gen. Assemb., Feb. Sess. (Conn. 2010).
146 *Id.* § 1(b)(1).
147 *Id.* § 1(b)(3)(A).

in schools is only permissible when the child is in imminent physical danger.[148] The law requires the Department of Children and Families and the Board of Education to collaborate in forming a transportation plan,[149] but ultimately places responsibility for any additional or extraordinary transportation costs back to the school of origin on the Department of Children and Families.[150]

D. Technological Approaches

Other states have developed innovative approaches to address school stability that do not involve legal or regulatory changes. For example, Illinois and Arizona use Geographic Information System ("GIS") mapping software to recruit and locate foster homes that are in close proximity to a child's school.[151] Illinois has had positive results with a mapping application called SchoolMinder.[152] In Chicago's Cook County, prior to implementation of the software, the average distance from a child's home to his or her first significant foster care placement was 9.9 miles.[153] Remarkably, the average distance to placement dropped to 2.5 miles upon implementation of SchoolMinder.[154]

Finally, some states are looking to utilize electronic passports.[155] Essentially, this is an electronic version of the child's school records that would follow the child from one placement to the next.[156]

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[148] *Id.* § 1(b)(3)(C).

[149] *Id.* § 1(c)(1).

[150] H.B. 5066 § 1(c)(1).

[151] *See There's No Place Like Close to Home*, HEALTHY GIS, 8 (Fall 2007), *available at* http://www.esri.com/library/newsletters/healthygis/healthygis-fall2007.pdf; *How States are Implementing the Fostering Connections Act*, NAT'L ASS'N OF PUB. CHILD WELFARE ADM'RS, 2 (Apr. 27, 2009), http://www.napcwa.org/Legislative/docs/Arizona.pdf.

[152] Telephone Interview with Richard Foltz, Manager, Office of Agency Operations Analysis, Div. of Quality Assurance, Ill. Dep't of Children & Family Servs. ("IDCFS") (Jan. 29, 2010 & Aug. 23, 2010). IDCFS now uses similar applications to target neighborhoods for foster parent recruitment efforts in a more cost-effective way. *Id.*

[153] *There's No Place Like Close to Home*, *supra* note 151, at 9. The first "significant" placement is the first placement, following removal, where the child stays for at least 30 days. Telephone Interview with Richard Foltz, *supra* note 152.

[154] *There's No Place Like Close to Home*, *supra* note 151, at 9.

[155] *See, e.g.*, MASON BURLEY & MINA HALPERN, WASH. STATE INST. FOR PUB. POLICY, EDUCATIONAL ATTAINMENT OF FOSTER YOUTH: ACHIEVEMENT AND GRADUATION OUTCOMES FOR CHILDREN IN STATE CARE 27 (2001), *available at* http://www.wsipp.wa.gov/rptfiles/FCEDReport.pdf (noting that Washington has a passport system for foster care children).

[156] *Id.* at 27-28 (describing what is included in the state's health and education database

Obviously, there are confidentiality issues at stake here, as well as compatibility issues involving different districts' computer systems.[157] Tennessee, Texas, and Kansas have developed sophisticated electronic passports for medical records, and Texas is working on doing the same for education records.[158] New Hampshire and Oklahoma are also developing electronic passports in this area.[159]

IV. PROPOSED LEGISLATION

A. Proposed New York Legislation: New York State Senate Bill S.6185

In New York, a bill was recently introduced in the Senate by Senator Velmanette Montgomery that would amend the social services law, education law, and the Family Court Act to afford children in foster care rights similar to those provided to students in temporary housing under the McKinney-Vento Act.[160] Under the proposed bill, children would be classified as awaiting foster care placement under McKinney-Vento until the end of the school year in which they came into foster care.[161] Essentially, if a child came into foster care in Sep-

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and how education records could be kept current through a regular electronic transfer of information between various databases).

[157] *See* KATHLEEN MCNAUGHT, MYTHBUSTING: BREAKING DOWN CONFIDENTIALITY AND DECISION-MAKING BARRIERS TO MEET THE EDUCATION NEEDS OF CHILDREN IN FOSTER CARE 7-8 (2005), *available at* http://www.svcf.org/media/articles/files/Mythbusting-Information_Sharing.pdf; *see also* LEGAL CTR. FOR FOSTER CARE & EDUC., SOLVING THE DATA PUZZLE: A HOW-TO GUIDE ON COLLECTING AND SHARING INFORMATION TO IMPROVE EDUCATIONAL OUTCOMES FOR CHILDREN IN OUT-OF-HOME CARE 13-14 (2008), *available at* http://www.casey.org/Resources/Publications/pdf/SolvingDataPuzzle.pdf (describing methods used to link data between school districts).

[158] The Children's Partnership, *Improving Health Outcomes for Children in Foster Care: The Role of Electronic Record Systems* 5 (Working Paper Oct. 15, 2008), *available at* http://www.childrenspartnership.org/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=12942.

[159] *How States are Implementing the Fostering Connections Act*, NAT'L ASS'N OF PUB. CHILD WELFARE ADM'RS, 2, http://www.napcwa.org/Legislative/docs/NewHampshire.pdf (last visited Aug. 28, 2010); OKLA. STAT. ANN. tit. 10A, § 1-7-104(C) (West 2010) (requiring the Department of Human Services to create a passport for every child in care that includes education, physical and behavioral health records, and to develop a secure database to store the information).

[160] *See* S. 6185, 2009 Leg., 232d Sess. (N.Y. 2009).

[161] N.Y. S. 6185 § 1(2)(f). The proposed bill would define a " '[c]hild awaiting foster care placement' . . . [as] a child in out-of-home care through the end of the school year in which the child entered out-of-home care." *Id.*

tember, he or she would be eligible for McKinney-Vento protections for the entire school year.[162] However, if a child came into foster care in May or June, he or she would only be eligible for about a month.[163] Having a consistent cut-off date would ease administration burdens, since McKinney-Vento eligibility would change on the same day for all students. After McKinney-Vento eligibility expires, the social services district would assume responsibility for providing and paying for the child's transportation.[164] The law would give children the right to remain in their school of origin when they enter foster care or when they move between foster homes.[165] Of course, children would also have the right to enroll in the local school district, if it was in their best interest to do so.[166]

When children must change schools, this law would provide them the right to immediate enrollment without the documents that are normally required.[167] Furthermore, it creates timelines for transferring school records.[168] The new school would be required to request the student's records within one day, and the old school would have to send the records within five business days.[169] Moreover, under this proposed Senate bill, the best-interest determination would be made by the local social services agency, the parent, and the child, through his or her attorney.[170] If the parties cannot agree, the dispute would be resolved by the family court judge.[171] Disputes involving a school district would be resolved on appeal by the State Education Department Commissioner as provided for under the McKinney-Vento Act.[172] Although not exhaustive, some factors to be considered when determining the child's best interest are safety concerns, the length of the child's commute, access to specialized supports and services such as special education services, extracurricular activities,

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[162] *See id.*

[163] *Id.*

[164] *Id.* § 6(2)(b)(2).

[165] N.Y. S. 6185 § 6(2)(c)(1), 6(2)(c)(2).

[166] *Id.*

[167] *Id.* § 6(2)(e).

[168] *Id.*

[169] *Id.* § 6(2)(e), 6(2)(f).

[170] N.Y. S. 6185 § 1(6)(b).

[171] *Id.* at § 1(7)(a) (providing that "[i]f there is a dispute among any of the parties to a proceeding in family court . . . the aggrieved party may make an application to the family court").

[172] *Id.* § 1(6)(d)(iii); N.Y. COMP. CODES R. & REGS. tit. 8, § 100.2(x)(7)(ii).

gifted and talented programming, and the child's and parents' preferences.[173]

Under this legislation, the cost of transportation is not a factor in making the best-interest determination.[174] Children would be entitled to transportation in order to remain in their school of origin.[175] The agency responsible for transporting the child would shift, depending on the stage of the case. Emergency transportation, such as transportation immediately following a child's placement into foster care, would be funded by the local social services district until more permanent transportation is put into place.[176] During the first school year, while the student is considered "awaiting foster care placement," the local educational agency would be responsible for transporting the child back to his or her school of origin.[177] After the first school year in which the child enters foster care, when he or she is no longer considered "awaiting foster care placement," the social services district would then be responsible for transporting the child.[178] Eligibility would continue until the end of the school year in which the child is finally discharged from foster care.[179] Children in foster care, who transfer to their local school at any point, would be entitled to transportation to the same extent as other students in the school district.[180]

B. Proposed Federal Legislation: The Fostering Success in Education Act (S. 2801)

In addition to local laws and policies that recently have been put into place in response to Fostering Connections, pending federal legislation, entitled the Fostering Success in Education Act, was introduced by Senators Franken and Murray in November 2009.[181]

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[173] N.Y. S. 6185 § 6(i)(1)-6(i)(5).

[174] *Id.*

[175] *Id.* § 1(10)(c).

[176] *Id.* § 1(10)(a), 1(10)(b).

[177] *Id.* § 1(10)(b), 1(10)(c).

[178] N.Y. S. 6185 § 1(10)(d).

[179] *Id.* § 1(10)(d), 1(10)(e) ("[A]ny child who requires transportation to continue attendance in the designated school through the remainder of the school year in which the child is finally discharged from out-of-home care pursuant to subdivision nine of this section shall be entitled to transportation . . . .").

[180] *Id.* § 1(10)(b).

[181] Fostering Success in Education Act, S. 2801, 111th Cong. (2009).

This bill was introduced as a companion bill to S. 2800, a proposed reauthorization of the McKinney-Vento Act.[182] The Fostering Success in Education Act would create a McKinney-Vento-like system of rights for students in foster care.[183] The bill would provide protections to children in foster care similar to those afforded to students in temporary housing, while still recognizing the differences between homeless students and students in foster care.[184] This legislation would affirm the rights of children in foster care to remain in their school of origin when they change foster care placements, as well as the right to immediate enrollment even without the records normally required.[185] It also creates timelines for transferring school records, gives children an entitlement to transportation, and allows children to remain in their school of origin when it is in their best interest to do so.[186]

This legislation further addresses the possibility of transferring school credits, receiving partial credit, and giving students access to credit recovery programs.[187] Additionally, it would require states to develop procedures for resolving disputes similar to those that exist under the McKinney-Vento Act, which would include the right to immediate and continued school enrollment while the dispute is pending.[188] The legislation also creates a private right of action in federal court.[189] Most significantly, the bill would provide federal funding to implement the law.[190]

Another key part of this legislation would require state and local education agencies to collaborate with state and local child welfare agencies to ensure that students are immediately and appropriately enrolled in school.[191] Furthermore, every local school district

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[182] Educational Success for Children and Youth Without Homes Act of 2009, S. 2800, 111th Cong. (2009).

[183] *See The Fostering Success in Education Act*, AL FRANKEN, U.S. SENATOR FOR MINNESOTA (Nov. 20, 2009), http://franken.senate.gov/?p=news&id=691.

[184] *See* Statement from Senator Patty Murray, Introduction of the Educational Success for Children and Youth Without Homes Act of 2009 (Nov. 19, 2009) (on file with authors).

[185] S. 2801 § 101(a)(3).

[186] *Id.* § 101(a)(4), (a)(5)(B), (a)(1)(B)(i).

[187] *Id.* § 111(f)(1)(E).

[188] *Id.* § 101(b)(5)(A), (b)(5)(C).

[189] *Id.* § 102(a)(1).

[190] S. 2801 § 114 (allotting "$150,000,000 for each of the fiscal years 2011 through 2015").

[191] *Id.* § 101(b)(2)(B).

would be required to designate a foster care liaison, and local child welfare agencies would be required to designate an education liaison to work on these issues.[192] The states would be responsible for implementing a process that brings together the school district, family court, the state or local child welfare agency, or a combination of these parties to determine the best interest of the child.[193] In cases where a court has weighed in on the best interests determination, the court's decision would always be binding on all parties.[194]

This legislation further includes a very lengthy list of factors that could be considered in making the best interest determination, such as the child's age, the length of the commute to the school, the number of times the child may have previously changed schools, access to specialized services, and the extent to which the current school nurtures the child's emotional needs.[195] Finally, in terms of the payment for transportation, the federal bill places ultimate responsibility for necessary transportation on the state child welfare agency.[196] An exception would apply when a child is finally discharged from foster care in the middle of the school year; in this case, the school district would be responsible for providing transportation.[197] Lastly, the federal bill provides incentives for local school districts and social services districts to enter into cost-sharing agreements with respect to transportation.[198]

V. CONCLUSION

Children in foster care face many well-documented barriers to educational achievement. Despite high expectations for children in foster care, many will not reach their potential, but instead will suffer poor educational outcomes. A growing body of literature, as well as the authors' own experience working with children in foster care, attributes these poor outcomes, at least in part, to high rates of school mobility.[199] Given these findings, it is imperative that states take ad-

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[192] *Id.* § 101(b)(2)(A), (b)(3)(A).
[193] *Id.* § 101(b)(4)(C)(i).
[194] *Id.* § 101(b)(4)(D).
[195] S. 2801 § 101(b)(4)(E)(i)(I)-(XII).
[196] *Id.* § 101(b)(4)(H)(i).
[197] *Id.* § 101(b)(4)(H)(ii).
[198] *Id.* § 101(b)(4)(H)(i).
[199] *Id.* § 2(a)(8).

vantage of the opportunities provided by the Fostering Connections Act, so that school districts and child welfare agencies can work together at the local, state, and national levels to improve school stability for these vulnerable students.