

EDUCATION LAW CENTER-PA, JUVENILE LAW CENTER

**EDUCATION STABILITY CONFERENCE
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LESSONS LEARNED

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OVERVIEW

In 2005, with the support of the Annie E. Casey Foundation and Casey Family Programs, Education Law Center and Juvenile Law Center convened a group of advocates at the Chapin Hall Center for Children at the University of Chicago to begin a discussion about how to improve educational opportunities and outcomes for children in foster care. The group of advocates and foundation staff identified improving the educational stability of these youngsters in transition as a major reform goal. The group recognized that a number of jurisdictions, at that point most notably California, had seized the initiative and persuaded their states to promulgate statutes or policies that ensured that a child's educational setting need not change with her living situation – that is, that a change in foster families or a return home would not result in a change in schools unless such a change benefited the child.

Throughout 2005 and into 2006, more and more states adopted laws or policies that enhanced the education stability of children in foster care. At the same time, at the national level, advocates began to strategize about the imminent reauthorization of the McKinney-Vento Act, a federal law designed to eliminate barriers to a quality education for another transient population, children who are homeless. Advocates for children in foster care began discussing whether it would be a good idea to include children in foster care in McKinney-Vento; how the law would need to be changed if this population were added; and what would be the impact on state reform models.

Again with support from Annie E. Casey and Casey Family Program, JLC and ELC convened another meeting at Chapin Hall of advocates for children in foster care, representatives of other stakeholder groups, and foundation staff to focus on improving educational stability for children in foster care in states and nationally. The conference began with an exploration of successful state education stability models. Promising practices included providing children with a right to remain in their school of origin when possible and in their best interests, providing transportation to make that right a reality, promoting seamless transitions between schools by facilitating the transfer of credits and partial credits and expediting enrollment, and enabling professionals and others – including family members and youth themselves - to be successful education advocates, and promoting placement stability so that youth would not even need to confront possible placement changes.

Participants did not select a specific model as the most appropriate in all contexts, recognizing that geographic and political differences between jurisdictions might well determine which approach was best in a particular location. We did, however, note that all models that were effective were clear about who was responsible for the child's education, both at the systemic and the individual level. Other consistent themes were the importance of fostering collaboration and communication between departments of education and child welfare, the clear identification of education decision-makers, and the provision of training for adults who can advocate for children's educational needs.

Participants also highlighted promising practices for obtaining the data necessary to advocate for and maintain education stability entitlements. Collaboration between government agencies proved essential to successful data collection.

Participants shared with each other advocacy strategies they had found useful in gaining an education stability entitlement. These included ideas on identifying necessary data to report reforms (a consistent problem area), forging support with allies and adversaries, planning legislation with an eye to potential compromises and options, and introducing the legislation. Throughout, advocates underscored the importance of listening to and including youth voices. Participants also recognized that these rights would be meaningless without adequate implementation, and in particular, without adequate training for all stakeholders. Participants shared training strategies and documents.

Finally, participants discussed the possibility of amending McKinney-Vento to explicitly cover all children in the foster care system. Participants' ideas have since been incorporated into a revised document highlighting five of the essential points that would need to be addressed for McKinney-Vento to be amended. The revised "five points" document is attached.

The conference was highly interactive; as a result, this document reflects the insights and ideas of all conference participants. While it was not possible to attribute each comment to its author, we have included a list of participants and the states they represent at the end of the document. Additionally, when participants made formal presentations, their contributions are specifically identified within. We are also deeply grateful to the contributions of Emily Buss of the University of Chicago School of Law and Madelyn Freundlich, consultant to Casey Family Programs, for facilitating the conference sessions.

This document could not have been completed without the thorough and thoughtful research assistance provided by Jessica Alms, Margaret Carlson, and Erin Archerd.

COMPONENTS OF A SUCCESSFUL STATE MODEL

Following an introduction by Janet Stotland, participants compared state education stability models, and identified advantages of particular components of the various models, including the following:

School of Origin Decision-Makers

Decision-makers for school of origin decisions include: parents or foster parents,¹ school personnel,² case managers or social workers³ and courts.⁴ The decision can be made by a team.⁵ Alternatively, a decision-maker can be identified with the participation of others encouraged or even required.⁶

A key challenge on this issue is how to respect parental rights while developing systems that adequately and efficiently protect children when the parent is absent, uninvolved, or is making decisions manifestly contrary to the child's best interest. A corollary concern is how to promote family involvement or the involvement of another adult whose interest reaches beyond simply making education decisions. Another concern is how to involve children in the school selection decision. Advocates cautioned that the term "education decision-maker" can be frustrating to youth who have so many adults making various decisions about their lives.

The two models highlighted by the presenters were the court-based model (exemplified by Oregon) and the school-based model (used in California, Delaware and elsewhere). In the court-based model it is the juvenile court judge who determines whether the child should change schools, and, if not, how transportation to the original school will be arranged and funded. In the school-based model (which is used in McKinney-Vento), the school of origin and the new school make the decision with the parent's input, subject to the parent's right of appeal. What follows is a discussion of the main advantages and disadvantages of each approach.

All participants contributed to the discussion. Brian Baker of Juvenile Rights Project, Inc. presented the Oregon model, Miriam Krinsky of Children's Law Center of Los Angeles presented the California model and Joanne Miro, Education Associate with the Delaware Department of Education presented the Delaware model.

¹ N.Y. Educ. Law. § 3209.

² Connecticut Commissioner of the Department of Education letter; *San Luis Obispo, CA*. Interagency agreement

³ *Massachusetts Homeless Education Advisory* 2004; Connecticut Commissioner of the Department of Education letter

⁴ Or. Rev. Stat. § 339.133(5); N.H. Rev. Stat. § 193:28; Wash. Rev. Code. Ann. § 28A.630.005.

⁵ Connecticut Commissioner of the Department of Education letter; Interagency Agreement by and between the School Board of Broward County, Florida, the Florida Department of Children and Families, District 10, and ChildNet, Inc.; *Fostering Student Success: Technical Assistance Manual for Foster Care Designees* 2004-2005; San Luis Obispo Interagency Agreement.

⁶ California A.B. 490

Court-based model

Strengths

Strengths of a court-based system for determining the school of origin include flexibility, efficiency and respect for the child's voice. Advocates felt the Oregon system is efficient because it allows any party to appear before the judge and request a best interest determination, allows a child's advocate to make such a request *ex parte*, and requires a court hearing on the issue within 24 hours of removal from the home. Advocates also stated that it was essential for the judge to have recent and relatively thorough information about the child, and that the process include the child's input.

Weaknesses

Potential weaknesses of a court-based system include a possible backlash against juvenile courts having jurisdiction over the education system. Placing the decision in the courts also reduces the incentives for school systems to develop expertise about foster care and homelessness.

School-based model

Strengths

A key strength of a school-based decision (if the full McKinney model is adopted) is the effective role that designated liaisons can play in helping children in care navigate the educational system. In California, in some districts the point person is the same for homeless and foster children; in others there are separate point people. California advocates valued the openness of liaisons to training. They also valued the school-based decisions in that they involve a variety of parties in the child's educational decisions. California's A.B. 490, for example, requires the liaison to consult with and obtain agreement from the foster child and the person holding educational rights for the child before recommending the child's school placement. California advocates also felt that by bringing schools into the fray, the school-based model fostered responsibility in the school system. Because McKinney-Vento may eventually be amended to cover all children in foster care, the school-based decision-making process also paves the way for a smooth transition to that federal model. It is less clear how a state system based on the court would fair if the school-based model is required by federal law.

Weaknesses

A central challenge in the school-based system is the reluctance by school administrators to work with the child welfare system. The NCLB accountability (AYP) provisions heighten this problem as schools often push children who don't test well out so that their test scores will not count against the school. Another challenge is how to ensure that the education decision-maker is actually involved in the school selection decision. In Delaware, for example, the liaison is supposed to collaborate with family, child welfare and school personnel. In reality, the caseworker often informs the school of the child and parents' wishes.

Who the Entitlement Covers

At least some jurisdictions extend school stability rights to children under five as well as to those of compulsory school age.⁷ Because stability is at least as important to children under five as it is to older children, this population would be helped significantly by a consideration of how education stability might affect them.

Length of the Entitlement

The entitlement generally lasts for the duration of the school year,⁸ but some jurisdictions allow the coverage to extend until completion of the terminal grade in that school.⁹ Others clarify that any changes in school should preferably take place at logical breaks in the school calendar, to prevent disruption in the child's studies.¹⁰ A few jurisdictions have short-term entitlements only.¹¹ One challenge advocates faced in Oregon was that the bill does not cover children leaving care to return to their parents. Although children are returning to permanency, the disruption in schooling at this point can still create academic challenges.

Dispute Resolution

Several jurisdictions have provisions clarifying that children are entitled to remain in their schools while disputes are being resolved;¹² some jurisdictions have delineated the processes through which disputes are to be resolved.¹³

Even if effective dispute resolution mechanisms are in place, the challenge of ensuring district compliance remains; some advocates have found dispute resolution provisions prove inadequate absent enforcement mechanisms to ensure district compliance. Advocates also expressed the concern that parents are often too overwhelmed to use a dispute resolution process, and that court oversight can therefore be helpful. Federal advocates noted that McKinney-Vento requires each state to have a dispute resolution process.

Protecting Confidentiality

Although confidentiality is a significant concern for foster care youth and their families, few states include explicit confidentiality protections in their education stability legislation. Existing solutions include requiring those releasing records to sign an oath of confidentiality and receive confidentiality training,¹⁴ a requirement that education and

⁷ Or. Rev. Stat. § 339.133(5); Fla. Stat. Ann. § 39.0016(4).

⁸ Cal. Code Educ. § 48853.5(d)(1)

⁹ N.Y. Educ. Law § 3205(1.c.); Or. Rev. Stat. § 339.133(5)(a).

¹⁰ *Florida Foster Care Procedures for Schools*, pg 8.

¹¹ Wash. Rev. Code. Ann. § 28A.630.005.

¹² California AB 1261; Md. Code Ann. Educ. § 8-501-8-505; *Massachusetts*; Delaware School Board Regulations

¹³ California AB 1261; San Luis Obispo County's Interagency and Community Agreement; Md. Code Ann. Educ. § 8-501-8-506; New York City; Delaware School Board Regulations

¹⁴ San Luis Obispo County's Interagency and Community Agreement

child welfare agencies enter inter-agency confidentiality agreements,¹⁵ and the instruction to caseworkers to be sensitive to a child's privacy when scheduling visits at a school.¹⁶

Facilitating Seamless Transitions Between Schools

Many jurisdictions have provisions for ensuring the enrollment of students in new schools.¹⁷ Typically, the new school must request records from the old school within a specified time period, or "immediately" or "promptly."¹⁸ Some jurisdictions also require immediate enrollment for children in care even in the absence of the child's records.¹⁹ In California, the law requires that school districts calculate and accept full and partial credit for transferring children; prohibits school districts from lowering a child's grades when the child is absent from school to go to court; and requires districts to ensure that children transferring into a school have access to the same academic resources and extracurricular activities as all other children.

Although some laws and policies are designed to facilitate children's transition between schools, in practice children's enrollment is often delayed and new schools still refuse to grant credit for courses students have already taken or dock them for absences caused by court hearings. Even in jurisdictions with a legal requirement to ensure credit transfer, advocates encountered difficulty calculating credits from classes that are different from those in the receiving school. In Arkansas, the compromise was that schools must accept credits when the child has satisfactorily achieved the work and passed tests provided by the state. This assures that children are meeting certain competency levels despite varying local standards. In Washington, liaisons are working with school districts and students to assess the fairest solution to credit transfers. Another challenge is ensuring that schools don't use federal confidentiality requirements (such as FERPA) to prevent sharing information about school records that is necessary for the child's continued education.

Funding Transportation.

Transportation can be costly, and thus has been the sticking point in most state educational stability legislation. A few states have passed laws providing transportation funding²⁰ or requiring state agencies to identify the availability of federal, charitable or grant funding for transportation.²¹ Others simply encourage the provision of transportation.²² Because of the difficulties in obtaining state funding for transportation, states have tried to include as many foster children as possible in McKinney-Vento; that

¹⁵ Fla. Stat. Ann. § 39.0016.

¹⁶ The Protocol for Maine Department of Health and Human Services Regarding the Educational needs of Youth in Foster Care

¹⁷ California A.B. 490, A.B. 1858; Va. Code § 22.1-289 B & E; Ark. Code. Ann. § 9-27-103(c)(1).

¹⁸ California A.B. 490, A.B. 1858; Or. Rev. Stat § 326.575(3); Ark. Code. Ann. § 9-27-103(c)(1); Ky. Rev. Stat. Ann. § 158.137

¹⁹ See e.g., NY Reg. of the Chancellor A-101(1)(C).

²⁰ Or. Rev. Stat. § 339.133(5).

²¹ Fla. Stat. Ann. § 39.0016(4)(b).

²² Ark. Code. Ann. § 9-27-103(b)(4).

law requires school district provide necessary transportation to the school of origin.²³ To genuinely ascertain funding and other costs, advocates need reliable data on the cost per child and number of children likely to remain in their school of origin, but none of the participants could point to any reliable data source. Lessons were provided by several states:

- In Oregon, transportation funding comes from a 10-year settlement agreement. \$350,000 has been set aside specifically for funding transportation. Fiscal responsibility devolves on child welfare, which made the legislation easier to sell to schools. To arrive at the \$350,000 figure, advocates estimated the number of children who might use the transportation benefit, and estimated \$1,000 transportation costs per child. In February, 2007, Oregon will release reliable cost data on transportation. Meanwhile, Oregon advocates will be requesting that the amount of money available for transportation be increased to 1 million dollars next year.
- The California legislation does not include a requirement that the child be transported. In California, transportation is worked out cooperatively between child welfare and schools. This is partly due to strategic concerns about funding and partly based on the idea that it is important to foster shared responsibility between the agencies.
- Delaware reported that there are approximately 800 children in foster care, and that 145 foster children are receiving transportation from another location to their school of origin. The state of Delaware reimburses the school districts for transportation. Their budget for 2005 was 1.6 million for transportation for 1500 homeless children.
- Advocates also suggested that transportation could be covered in foster care per diems, allowing states to access additional sources of federal funding.

Providing Transportation

In Oregon, there is an individualized determination of *how* children will get to school. Different local groups set up agreements. The transportation piece has worked well and has sufficient flexibility. The agency has been very good about paying for kids to have alternative transportation (such as cabs) where other options not available.²⁴

Promoting Placement Stability

Advocates underscored that fostering placement stability could help children maintain education stability. In Washington State, the child welfare agency was required to establish an interagency oversight committee to develop strategies to recruit foster parents in school districts with high rates of foster care placements and to promote best practices for educational continuity. In Arkansas, advocates saw recruiting local foster

²³ Florida interagency agreement; McKinney-Vento Homeless Education Assistance Improvement Act. House Bill 279; 14. Del. Code. Ann. § 202(c); Maryland **.

²⁴ Information presented by Brian Baker of Juvenile Rights Project, Inc.

parents as a significant challenge. Some children are moved so far away from their school of origin that transportation would not be feasible. Kentucky emphasized that encouraging Family-to-Family foster care helps to maintain both education stability and community connections.²⁵

Encouraging cooperation between education and child welfare

Advocates recognized that children in foster care could not successfully navigate the education system without sufficient cooperation between departments of education and child welfare. The following are methods followed by various states as well as strategies that could promote agency cooperation.

- In California, education units have been created in which people in education and child welfare talk to each other, have contact with each other, and better understand each others' language.
- In Washington, some school districts were not complying with the law and did not see themselves as accountable. Without accountability, there was no incentive for collaboration. Washington H.B. 1058 requires an oversight committee that is child welfare and education oriented. This has helped to address the problem of schools acting like their own "fiefdoms."
- Delaware is in the process of creating an MOU to define roles and relationships between the education and child welfare systems.
- In Virginia, financial incentives were provided to schools to hold onto kids who would otherwise be moved out.
- Kentucky has fostered relationships between the agencies by having people funded by the education system working in child welfare offices.
- Changes in NCLB could foster cooperation. Currently, schools have incentives to move under-performing children out of their schools so that their test scores won't count against the school. By adjusting these incentives to reward school stability, agency cooperation could be enhanced. Better training school staff to work with youth in placement, fosters cooperation between the two systems.
- By placing the school of origin decision in the school's hands, the education system must collaborate with the child welfare system to successfully make and carryout its decision.

Promoting Effective Advocacy

Conference participants recognized that children be served best if their advocates are trained to navigate juvenile court, the IDEA, and other education laws. In particular, participants suggested that advocates should prioritize youth involvement. Advocates can rely, in part, on youth to help them determine whether education stability is a good thing in a particular situation, when balanced against the isolation, standards, and environment of a particular school. Youth can also be instrumental in helping to figure out whether a particular placement is appropriate in light of the education consequences.

²⁵ For an overview of the Annie E. Casey Foundation's Family to Family program, see <http://www.aecf.org/initiatives/familytofamily/>.

DATA COLLECTION

Mark Courtney, Faculty Associate at Chapin Hall and McCormick Tribune Professor in the School of Social Service Administration at the University of Chicago, launched the discussion with a presentation about data collection and the social sciences. The following information builds on the information and outline he presented, with the addition of participant comments.

Conference participants recognized that collecting data on youth in the foster care system may be central to fostering legislative change and advocating for youth. Participants discussed which data would be most useful, obstacles to collecting data, and strategies to improve data collection.

Which data is useful?

- *Educational achievement markers* - enrollment and attendance, level and location, educational attainment (e.g., credits; grades; test scores, drop-out rates, grade repetition), special needs (disability; gifted and talented), disciplinary actions (suspensions, expulsions, etc.), extracurricular activities, education services provided (IEP compliance; tutoring and other remedial education); testing preparation
- *Educational opportunity marker* - AP courses, advanced diplomas, etc.
- *Student and family involvement* - communication with school, participation in school meetings, student attitude surveys, who is educational decision-maker and how does this affect child's educational success
- *Child welfare involvement* - communication with school, participation in school meetings
- *Child welfare markers* - how long has student been in care, how often has student changed placements and changed schools
- *Mental health markers* - diagnoses and providers

What are the obstacles to obtaining data?

- *Limitations of child welfare data systems* - difficulty adding data fields; difficulty linking to other data; timeliness; poor data entry means missing or erroneous data; staff capacity to manage and interpret data
- *Limitations of education data systems* - multiple jurisdictions; timeliness; staff capacity
- *Confidentiality issues* - whether real, imagined, or used as excuse not to cooperate
- *Lack of understanding of the "other" system* by those involved - policy; terminology; culture and ideology
- *Few researchers interested* and competent enough to conduct useful applied research on the topic

Advocacy ideas relating to data:

- Although most states track only attendance, other factors (attainment, extracurriculars, disciplinary actions, special needs, etc.) are recorded which

- provide a more comprehensive picture of a youth's educational well-being. If this data exists, it should be used.
- Federal court improvement grants could be a useful vehicle for data collection.
 - A focus on local and county data may be more manageable initially. If that works, federal government could use those efforts as examples.
 - Foster political will to help push the education systems to partner with child welfare agencies to collect valid and helpful data. In most cases, cross system data matches and analyses will be needed. In Kentucky, for example, collaboration between departments resulted in informative data.
 - Collaboration between agencies and the use of grants can go a long way to broadening the scope of data collection so that it is more widely useful (i.e. if surveying kids, may be useful to talk to them about issues beyond education).
 - When pushing for data collection, special attention should be paid to the issue of foster children with disabilities – the involvement of their parents and foster parents, their diagnoses, the appropriateness of their educational plans.

Data collection – state model

- In Los Angeles County, California, an Education Coordinating Council, created by the Board of Supervisors, helps collect and analyze data on foster youth in Los Angeles County. It facilitates data matching between the Los Angeles Unified School District and DCFS. An April 2006 data matching report reviews demographic and educational information for children in the child welfare and juvenile justice systems.²⁶ An April 2006 report produced by the ECC found that DCSF and Probation students in the LAUSD significantly underperformed on assessments.

STATE SYSTEMS ADVOCACY TIPS

Following a presentation by Miriam Krinsky of the Children's Law Center of Los Angeles on successful advocacy strategies in California, Conference participants discussed their ideas on how best to advocate for systemic changes such as education stability legislation, interagency agreements and memoranda of understanding. The following tips were generated:

Researching the Issues

- Listen to youth and their needs. Youth may be especially helpful in highlighting needs that advocates haven't considered and that don't raise funding issues. In California, for example, advocates learned from youth about importance of a right to participate in extracurricular activities.

²⁶ "Data Match Results: Los Angeles Unified School District, Los Angeles Department of Children and Family Services, and Los Angeles County Probation Department, April 2006." Available at http://www.educationcoordinatingcouncil.org/ECC_Reports.htm. Notable findings include: African-American students constitute 11% of the general student population but 39.2% of DCFS and 24.8% of Probation students; DCFS and Probation students have significantly lower test scores (in middle school 24.6% of students scored Proficient or Advanced, but only 11.6% of DCFS and 8.3% of Probation students); and almost twice as many DCFS students were suspended as the general population.

- *Meet with adversaries* to learn about their opposition, consider compromises and decide on whether any creative drafting can help you move forward. Arkansas advocates, for example, worked out the legislative compromises with judges and other parties before they even introduced legislation. They also made a lot of compromises at the committee stage, which meant that the legislation passed unanimously, but with many holes.
- *Compile data* such as information on effects of school changes on children, number of children who would be affected, amount of money per child, amount of money necessary for liaisons, etc.
- *Consider possible unexpected ramifications* of the legislation such as whether creating an entitlement exclusively for children in the child welfare system might impede the chances of gaining entitlements for those in the juvenile justice system, or whether an entitlement for foster children might take away financial resources currently allocated to homeless children.
- *Consider non-legislative approaches* that might accomplish the same goals. For example, MOUs, interagency agreements, judicial involvement can all help solve the problem without legislation. Washington advocates say that there has been good work on a local/regional level to reach agreements on how McKinney applies to foster youth. In one region, 8 districts came together to decide that McKinney applies to all kids that come into care. In New York, family court judges worked together to promote education for kids.

Forging Support

- *Don't start by seeking buy-in to specific legislation*; start with consensus-building. Focus on the youth's cause and a need for change in *their* education. At the start, talk about understanding each other's challenges. Focus on common interest to help children. This is where the LA coordinating council began – they now have a leadership group to deal with 80+ districts cooperating. Similarly, Oregon had success once they had developed a strong working group. The year previous to their successful legislation, they had introduced a bill modeled on AB 490. That bill went far enough to get a working group going with members from all constituent groups. It helped build understanding and multi-system support for legislative efforts. By the time the final bill was presented to the legislature, the support was there. There was minimal resistance during lobbying and minimal partisan debate. Because they had worked with the senators early, only one senator opposed the bill.
- *Legislation itself can create working groups* (i.e. Oregon legislation mandated that people work together on the issues – this eventually led to legislation).
- *Put potential allies in leadership positions*. In LA, for example, they put the superintendent of the LA Unified School District in charge of the Education Coordinating Council – this made the superintendent a champion of the legislative change.
- *Remember that you are dealing with two different systems (education and child welfare) and get BOTH engaged early*. Recognize the power structure in your state – in Virginia, for example, education is a bigger and more powerful group

- than social services. DOE in Virginia can order any public agency to do what the law provides. Getting the DOE engaged is therefore very important.
- *Create visibility* around these issues & build public interest (see background materials below).
 - *Create working group with members from various constituent groups* and have stakeholder meetings. These may include:
 - Child Welfare directors
 - Department of Education directors
 - Education and youth advocacy groups
 - Children’ attorneys
 - Parents’ attorneys
 - Youth (California Partnered with CA Youth Connection) - when working with youth, create youth –friendly materials
 - Judges
 - CASAs
 - Chamber of commerce (Casey Family Programs alumni study shows economic impact of foster care)
 - Anti-crime groups (show public safety benefits of education to at-risk children)
 - Those interested in the success of vulnerable populations
 - *Build upon existing collaborations.* For example, 23 states have high level commissions that bring together members of the courts, child welfare and education agencies, among others. Bring the issue of education stability and achievement of foster youth to the agenda of these commissions.
 - *Return to constituents multiple times* to make sure they are still on board.
 - *Choose legislative staffer & sponsor with care*, especially someone with fiscal clout (e.g. California used chair of appropriations committee). Lay the groundwork in the capital early. (In California, they met with people in the governor’s office even before the bill was introduced.)
 - *Find key informants* who can help you figure out what buttons to push for what people!

Creating Background Materials

- *Use data* (e.g. how many school moves during time in care?) as well as personal accounts of youth to support your efforts. Oregon, for example, used national and state data, which had a large impact. They presented that 65% of children in the foster care system had seven or more school moves while in care.
- *Involve youth in media outreach.* In Virginia, for example, youth in foster care testified in front of legislative committee, which had a huge impact on legislators.
- *Reach a variety of audiences* through:
 - Op-ed
 - Investigative reports (i.e. San Fran Chronicle has run since 2005 a series of articles and editorials on foster care which has made a huge impact on knowledge and advocacy on the issue)
 - Monthly column in legal journal
 - Trainings

Planning the Legislation

Must be ready to compromise (e.g. CA had to give up transportation mandate).

- Draft alternative proposals that satisfy your main goals (CA had plan B, C, and D—different “fix it” bills.)
- Draft something simple that changes the minimum number of structures in place (e.g. Oregon bill didn’t disturb federal funding structure)
- Think ahead of time about how this will interact with other laws (e.g., McKinney, IDEA)
- Consider splitting the legislation up into different packages
- Consider tacking it on to a different bill
- Don’t give up if you don’t have buy-in by others. Florida just went ahead and wrote what they thought would work in their community, and it was passed!
- Work with larger broad-based children and youth groups to promote the issue. Frame it as a children’s issue, not just a foster youth issue. Work with a smaller group to draft legislation.
- Decide on whether to get consensus on problem from larger group or whether you should get general agreement on a model.
 - Advocating for court-driven model in OR was not that tough. Not that many disputes even go back to court and people don’t really question the model. Advocates did make some presentations to constituents about why the court-based model was selected.
 - Arkansas asked all constituents for input. The bill came from the judicial council, and from the beginning included a presumption in favor of the school of origin. Their goal was to have the most minimal process possible, so they made it the attorney’s responsibility to bring the issue before the court.
- Be creative/flexible on financial component of bill.
 - CA - First bill started with a transportation mandate, but implementation costs for the legislation were substantial and the state was broke. At the end advocates removed the transportation mandate to save the bill. Their view was that even without transportation this was a good start, and when times were better the transport funding piece could be worked in.
 - Oregon passed a mandate to fund transportation, with a clause that allowed the state to opt out if it didn’t have the money.
- Think in advance about opposition – whose job will change as a result of the legislation?

Promoting the Legislation

- Avoid partisan debate
- Show people how including children in foster care can be a natural extension of what schools are already doing for the homeless (and what many schools are already doing for children in care). One example: California argued that foster care liaisons were natural extension of McKinney liaisons – this gave them an anchor in every school district.

- Consider making compromises before introducing legislation so that it can pass more easily
- Include financial incentives to keep children in foster care in the same school. For example, Virginia suggested that the new district would get money for the child from the state, and that this funding would get funneled to the original district if it holds on to the child.
- See how the legislation fits in with other efforts. CDF talks often about breaking the cradle-to-prison pipeline. See this as part of a larger effort to bring about better educational outcomes for all kids.
- Test the waters to understand where you are in the process
- If you don't have the bill, you may at least get a study or a hearing. If you can get a hearing, it is a great way to bring visibility to the issue, and set the stage for legislation at a later date.
- Get children involved. Their testimony is powerful.
- Give constituents talking points, have them contact their legislators by mail, phone or in person.

Implementation

- Recognize that the after life of a bill is almost more important than the bill itself. The bill is only as good as the training efforts. Some states mandate training on education issues.²⁷ Even when there is no mandated training, advocates engaged in important training efforts:
 - California advocates created training sheets on their bill for all different groups—foster youth, parents, social workers, etc., and know-your-rights wallet cards for children. Training information created by Children's Law Center of Los Angeles can be found at http://www.clcla.org/train_educat.htm.
 - Delaware had a big conference soon after their law passed with child welfare system, the department of education, McKinney coordinators, judges and caseworkers to discuss the law. They have now trained caseworker supervisors and intend to continue these trainings.
 - For additional examples of state training materials, see the National Child Welfare Resource Center website, at <http://www.abanet.org/child/rcjji/education/>.
- Engage agencies in making the law work. For example, the Department of Education in Virginia ensures compliance by other agencies.
- The work is never done. Always be prepared for new hurdles and the need for fix-its. In many states, legislative reform took place over the course of a few years. In Oregon, for example, the initial legislation just got people to the table to work together – but the end-product was a comprehensive bill to promote school stability for children in care.
- Constantly keep eye on data! Being able to show the difference the bill makes helps the legislation to have greater resilience.

²⁷ Fla. Stat. Ann. § 39.0016(5); Tennessee Administrative Policies and Procedures 21.14(F).

PROPOSALS TO AMEND THE MCKINNEY-VENTO ACT

Following a wrap-up of the state sessions by Robert Schwartz, conference participants discussed whether the federal McKinney-Vento education provisions should be amended to cover all children in foster care – particularly in light of the forthcoming reauthorization of the Act. Kathleen McNaught of the American Bar Association Center on Children and the Law and Barbara Duffield of the National Association for the Education of Homeless Children and Youth provided conference participants with information about the current McKinney-Vento Act, and a framework for considering amendments.

Following are proposals made by federal advocates on how to address certain key issues relating to the inclusion of children in care in the Act. The version below incorporates the ideas and comments of conference participants.

1. Definition of Eligible Children & Youth: *Which groups of foster children should be included under McKinney-Vento?*

Foster Care Issue: McKinney-Vento currently includes in the definition of homeless children who are “awaiting foster care placement.” This doesn’t include all of the children who need the benefits of M-V – which is all children in the child welfare system, including children who are in kinship care arrangements and institutionalized kids. Our guiding principle is that kids remain vulnerable/unstable throughout their involvement with the child welfare system and need protections throughout their tenure in that system and for a reasonable period after they return home. On the other hand, we want to include only “active cases” — kids who have returned from placement have educational barriers, but those problems aren’t unique to children in foster care. Children who are in kinship care but not in the custody of child welfare may fit under the McKinney definition of unaccompanied youth. Also, we did not explicitly include children in the juvenile justice system, although some may meet this definition, since in some states at least some children in the JJ system are also considered to be “in the custody of the child welfare system.”

Recommendation:

- “All children in the custody of the child welfare system in out of home care, including kinship care arrangements, institutions, and group homes.”
- Clarify that we do not propose to include these foster children in the definition of “homeless” children. Our intention is to add another category of McKinney-eligible youth so that we will have two separate populations of “children in transition.” (Change name of title? Currently is Education for Homeless Children and Youths.)
- The additional group should receive all the benefits of McKinney-Vento. We need to educate people on these other benefits, which also are important for education stability.

2. Parental Involvement in Decision-Making: *Who is the “parent” for the purpose of decisions under McKinney-Vento for children in foster care?*

Foster Care Issue: In McKinney-Vento, parents/guardians are the decision-makers with the exception of unaccompanied youth. With foster children, other parties could potentially be involved: child welfare agency, foster parents, the courts, etc. Where there are opportunities for “parents” to make decisions in this statute, we want to make sure that there is clarity as to who is the “parent” for foster kids. Under M-V, decision-making duties include being consulted by the LEA in school selection (subject to the McKinney-Vento presumption in favor of school of origin), appealing the LEA’s school placement decisions, participating in enrollment disputes, and requesting transportation. Decisions should be timely; the decision-maker needs to be someone who is available with reasonable promptness.

Recommendation:

- Clarify that the presumption is in favor of the “school of origin” (CA as an example). Therefore, even if there is a problem with promptly identifying a decision-maker, the child will be placed in the school of origin unless the LEA makes a different decision. The child will not be without a school to attend.
- The person who will collaborate with the LEA in making the school placement decision, and who has the right of appeal, is the birthparent (or adoptive parent or legal guardian) unless the Court, or someone the Court appoints, determines otherwise.
- The decision-maker must be available with reasonable promptness, or the Court should make the decision or appoint an alternate decision-maker. In making a decision regarding an alternate decision-maker, the Court shall take into account who is making special education decisions for IDEA eligible students.
- Whoever is making the education decisions should consult with the child. At a minimum, for school selection, the LEA, parent, or if appropriate, the court, should hear the child’s input. Children and children’s attorneys do not have an independent right of appeal or decision-making power, but they can ask the court to make a contrary decision or to appoint a different decision-maker.

3. Notice to Parents: *Who should receive notice where McKinney-Vento requires notice to “parents”?*

Foster Care Issue: For children in foster care, there are multiple parties who could theoretically receive notice in addition to, or instead of, the decision-maker when dealing with children in foster care, *i.e.*, foster parents, caseworkers, birthparents, and the courts. However, it might be confusing for notice of school of origin/transportation decisions/appeals to be supplied to parties that don’t have authority to make decisions on those issues.

Recommendation:

- We recommend that the statute require “notice” of school of origin decisions and appeals and transportation to be given to the decision-maker and also to the child welfare agency.

NOTE: Through child welfare legislation, we should require child welfare agency to give notice to all parties to a case, including the children and children’s lawyers.

4. Transportation/Funding: *Who should provide and fund transportation for children in foster care when the children continue to attend school in the LEA of origin but live in an area served by another LEA?*

Foster Care Issue: The key question is whether there is a role for the child welfare system in providing and funding the transportation to the school of origin, given that the child welfare system has substantial financial and other responsibility for the child’s placement and care. The recommendation must not result in additional negotiations and delay, and, if child welfare reimbursement is part of the scheme, it must be provided promptly. Due to the reimbursement scheme, transportation for homeless and foster kids will look the same on the front-end; the difference in treatment is “behind the scenes,” on an administrative level. However, it should be up to the LEA(s) whether they want financial reimbursement from the child welfare agency.

Recommendation:

- The sending and receiving LEAs should negotiate a cost-sharing arrangement in the same manner as per McKinney-Vento (if the two LEAs cannot agree they have to split the costs 50/50 by default).
- The LEAs front the costs, but, for foster kids, the school district(s) can ask the child welfare agency to reimburse the paying LEA(s) by working out a cost-sharing arrangement. If the LEA(s) and the child welfare agency cannot reach an agreement, the paying LEA(s) and child welfare will split the cost 50-50.
- If the LEA(s) request reimbursement from the child welfare agency, reimbursement must be made promptly.

Question: Is this still too complicated? Are there other state reimbursement models that we should be reviewing?

5. Confidentiality: *In light of concerns about avoiding stigma, what duties/disclosures should McKinney mandate or allow on the part of the child welfare agencies and the schools?*

Foster Care Issue: We want to ensure that the maximum number of children in foster care receive McKinney benefits (enrollment, liaison assistance, school of origin, etc.). However, unique issues of confidentiality and stigma arise in revealing foster care status and the status of parental rights. While our chosen model ensures that all eligible children are covered, it ignores the fact that

McKinney is a voluntary statute and may therefore unnecessarily stigmatize some children who don't want to (or need to) invoke McKinney.

Recommendation:

- Whenever a child enters a placement or changes school, the child welfare agency, in consultation with the parent, should notify the new school's McKinney liaison that the student will be enrolling and the old school's liaison that the student will be leaving. This includes disclosing the child's foster care status and the status of education rights/parental rights. Making the liaison the first point of contact will hopefully direct the information to someone with the training and sensitivity to deal with the information appropriately.
- In addition to providing notice, the child welfare agency should have an active role in collaborating with the education liaison(s) on records, credit transfers, transportation, etc. Should make sure that schools share health/immunizations info while waiting for official records transfer.
- The statute should require that the child's foster care status and the status of parental rights only be shared with people in the school on a need-to-know basis.
- Utilize language in McKinney-Vento that prohibits stigmatizing in order to push for training. Focus on stigma as a practice and implementation issue.

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