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## Advocates Seek Improvements in Education for Foster Youth

By Sara Woodward

Foster youth face a daunting array of obstacles in their education. Many school districts and child welfare agencies fail to assume responsibility for monitoring and supporting the education of foster youth. For example, social service agencies frequently change the placements of foster youth mid-semester without considering the impact the move will have on the youth's education. A change in residential placement alone is a disruption in the youth's life that will have negative impacts on school performance. In addition, child welfare agencies and school districts are notorious for failing to share information. This can result in children spending extended periods out of school, awaiting necessary education and medical records to arrive at the new school, so they can enroll.

In other situations, missing records can result in inappropriate educational placements, or cause children to repeat previously completed classes. Once enrolled in a new school, foster youth face new teachers, new classmates, and often a new curriculum. It can take several months for students to recover academically from a change in schools. In addition, school district policies insensitive to the experience of foster youth mean that youth who move mid-semester can face

harsh rules regarding the awarding of credits. Such youth may receive no credit at all for work completed at a previous school, solely because they were moved before the end of the semester or school year.

As a result, after years spent in foster care, many high school foster youth are woefully behind in attaining the credits needed for graduation. Finally, in some cases, youth are also denied access to services and extra-curricular activities available to other students solely because they are in foster care.

National studies have found that anywhere from 30 percent to 96 percent of foster youth perform below grade level, and 26 percent to 40 percent are held back at least one grade.<sup>1</sup>

In addition, foster youth suffer from disabilities at a much higher rate than non-foster youth. Studies have found that one-quarter to one-third of foster youth are enrolled in special education classes.<sup>2</sup> Finally, foster youth are much less likely to graduate from high school and go on to higher education. One national study found that 46 percent of foster youth had not completed high school within 2.5 to 4 years after exiting care at age 18.<sup>3</sup> In addition, only 15 percent of foster youth enroll in college preparatory classes,<sup>4</sup> and an even lower percentage enroll

in post-secondary education. California reports that less than 3 percent of its foster youth go on to four-year colleges.<sup>5</sup>

In December of 2004, a report issued by the Chapin Hall Center for Children at the University of Chicago confirmed what the previous studies have shown—foster youth have poor educational outcomes. The study examined the performance of youth in out-of-home care on standardized tests, the number of youth who are older than their peers in their grade, and the graduation and dropout rates for high school students. In all of these areas, the study found that youth in out-of-home care have significantly worse outcomes than non-foster youth.<sup>6</sup>

These low educational outcomes correspond with equally troubling adult outcomes. For example, one study found that within the first 12 to 18 months after emancipation, 39 percent of foster youth were unemployed, 27 percent of males and 10 percent of females had been incarcerated at least once, and 39 percent were on public assistance.<sup>7</sup>

### Youth Advocates Seek a Better Way

In an innovative approach to increasing educational outcomes for foster youth, advocates and legislators are exploring clarification and expansion

<sup>1</sup> Elisabeth Yu et al., *Improving Educational Outcomes for Youth in Care, A National Collaboration* vii (CWLA Press, 2002).

<sup>2</sup> Pamela Choice et al., *Education for Foster Children: Removing Barriers to Academic Success 13* (Bay Area Social Services Consortium 2001).

<sup>3</sup> Ronna J. Cook, *Are We Helping Foster Youth Prepare for Their Future?*, 16 *Child & Youth Services Rev.* 213 (1994).

<sup>4</sup> Wendy Whiting Blome, *What Happens to Foster Kids: Educational Experiences of a Random Sample of Foster Care Youth and a Matched Group of non-Foster Care Youth*, 14 *Child and Adolescent Social Work Journal* 41-53 (1997).

<sup>5</sup> California Department of Social Services, Data Systems and Survey Design Bureau, *Independent Living Program, Annual Statistical Report (2002)*, <http://www.dss.cahwnet.gov/research/res/pdf/Soc405a/2003/SOC405AOct02-Sep03.pdf>.

<sup>6</sup> Cheryl Smithgall et al., *Educational Experiences of Children in Out-Of-Home-Care*, Chapin Hall Center for Children at the University of Chicago (2004), [http://www.chapinhall.org/article\\_abstract\\_new.asp?ar=1372&L2=61&L3=130](http://www.chapinhall.org/article_abstract_new.asp?ar=1372&L2=61&L3=130).

<sup>7</sup> Mark Courtney & Irving Piliavin, *Foster Youth Transitions to Adulthood: Outcomes 12 to 18 Months after Leaving Out-Of-Home Care* (1998).

of the definition of “homeless” under the federal McKinney-Vento Homeless Assistance Act<sup>8</sup>. In addition, two states have pursued legislative reform granting foster youth increased educational rights under state law.

The McKinney-Vento Homeless Assistance Act<sup>9</sup> recognizes that homeless youth face specific challenges to successfully completing their education. The act, reauthorized in 2002, seeks to give homeless youth increased access to public education, so they can overcome these challenges. The law requires school districts to provide educational stability for homeless students, by allowing them to remain in their school of origin as long as they are homeless, or, once housed, until the end of the academic year, even if they move outside of the school’s district of residence.<sup>10</sup> School districts are also responsible for providing transportation to the homeless student’s school of origin.<sup>11</sup> In addition, homeless students are entitled to immediate enrollment in school, even if they are missing educational and medical records.<sup>12</sup> Each school district must also appoint an educational liaison for homeless children to ensure the identification, enrollment, and attendance of homeless students.<sup>13</sup>

Significantly for foster youth, the 2002 reauthorization expanded the definition of homeless to include some foster youth.<sup>14</sup> McKinney-Vento defines “homeless children and youths” as “individuals who lack a fixed, regular and adequate nighttime residence.”<sup>15</sup> The definition goes on to specifically list “awaiting foster care placement” as a type of homelessness.<sup>16</sup> It is understandable that Congress would extend the protections of McKinney-Vento to some foster youth; children in the state’s custody who are in temporary, emergency, and short-term placements experience extreme instability and disruption in their lives. Maintaining

school stability can be crucial for these youth, and far preferable to changing schools several times within a short period of time.

While it is clear that at least some foster youth are entitled to the protections of McKinney-Vento, the law and corresponding regulations provide no additional language that explains exactly which youth the phrase “awaiting foster care placement” includes. As professionals working with foster youth know, there is a wide spectrum of possible types of foster care placements, each with a varying degree of permanence.

A foster youth can be placed in a shelter as the result of a safety emergency for days, weeks or months, while the child welfare agency looks for an appropriate foster family home. Another youth might be placed in a group home indefinitely, with the hope that placement in a more family-like setting will become available. Still other youth may be temporarily held in institutional settings, while waiting for the coordination of community mental health treatment, so that they can be placed into a less restrictive environment. All of the youth described are awaiting foster care placement, and arguably entitled to the protections of McKinney-Vento.

### Federal Rules Fail to Clarify Issues

In July 2003, US Department of Education attempted to clarify which youth fall under the phrase “awaiting foster care placement.” The department explained that “children and youth who have already been placed in foster care are not considered homeless; children and youth who are awaiting foster care placement are considered homeless.”<sup>17</sup> The department directed states to refer to the definition of “foster care” provided in regulations by the Department of Health and Human Services (HHS).<sup>18</sup>

The HHS definition of foster care includes all possible foster care placements, including “emergency shelters, residential facilities, [and] childcare institutions.”<sup>19</sup> Therefore, according to USDE, no youth removed from home by a child welfare agency is considered “awaiting foster care,” and thus no student in the care or custody of a state agency would qualify for McKinney-Vento’s protections. This interpretation renders the phrase “awaiting foster care” meaningless.

In July 2004, USDE issued additional non-regulatory guidelines on McKinney-Vento that included the following information in question and answer format:

**Q:** Are children who are awaiting foster care placement eligible for service under the McKinney-Vento Act?

**A:** Yes.

As stated [above], children who are awaiting foster care placement are considered homeless and eligible for McKinney-Vento services. Children who are already in foster care, on the other hand, are not considered homeless. LEA (Local Education Agency) liaisons should confer and coordinate with local public social service agency providers in determining how best to assist homeless children and youth who are awaiting foster care placement.<sup>20</sup>

The information above, like that of 2003, fails to sufficiently clarify the phrase “awaiting foster care placement.” USDE provides no further elaboration on what specific situations are considered “awaiting foster care placement,” and instead only reiterates that youth “in foster care” are not considered homeless. The American Bar Association has urged USDE to “provide an inter-

<sup>8</sup> 42 U.S.C. § 11431 et seq.

<sup>9</sup> 42 U.S.C. § 11431 et seq.

<sup>10</sup> 42 U.S.C. § 11432 (g)(3)(A).

<sup>11</sup> *Id.* at (g)(4).

<sup>12</sup> *Id.* at (g)(3)(C).

<sup>13</sup> *Id.* at (g)(1)(J)(ii), (g)(6).

<sup>14</sup> 42 U.S.C. § 11434a (2)(B)(i).

<sup>15</sup> *Id.* at (2)(A).

<sup>16</sup> *Id.* at (2)(B).

<sup>17</sup> Email from Gary Rutkin, Student Achievement and School Accountability Programs, U.S. Department of Education, to McKinney-Vento state coordinators (July 22, 2003).

<sup>18</sup> *Id.*

<sup>19</sup> 45 C.F.R. 1355.20

<sup>20</sup> U.S. Department of Education, Education for Homeless Children and Youth Program, Non-Regulatory Guidance 18 (July 2004), <http://www.ed.gov/programs/homeless/guidance.doc>.

pretation of 'awaiting foster care placement' ... that will include children and youth placed by public agencies in interim, emergency, or short-term placements to assure such children and youth in temporary out-of-home settings have uninterrupted educational access."<sup>21</sup> Such guidance would establish that the most unstable foster youth are entitled to protection under McKinney-Vento.

### Massachusetts, Tennessee Take the Initiative

Individual states, however, are not waiting for additional USDE guidance. In January, the Massachusetts Department of Education and Department of Social Services sent a joint letter to USDE explaining their interpretation of "awaiting foster care placement." The letter explained that the two states had agreed that "children and youth in the state's care or custody who are living in emergency, temporary or transitional housing are homeless as defined by the McKinney-Vento Homeless Assistance Act."<sup>22</sup> The Massachusetts departments further agreed that youth placed into shelters, emergency foster care, and temporary group home settings are homeless as defined by McKinney-Vento.<sup>23</sup> In response, USDE approved of their approach, and in March, the departments implemented their interpretation.<sup>24</sup>

Tennessee has also extended McKinney-Vento protections to some foster youth. The administrative policies for Tennessee's Department of Children's Services state:

If the youth is in a temporary, emergency type of placement, it is the Department's expectation that the child/youth remain in his old school if possible and if it is in the child's best interests. The local school system has the first obligation to provide transportation, under the McKinney-Vento Homeless Education Act of 2001,

but if they do not provide transportation, the DCS case manager may have to transport the child/youth back and forth to the old school, until his/her placement is made in a more permanent setting.<sup>25</sup>

Tennessee also is seeking to develop an interagency agreement, similar to Massachusetts, between its Department of Child Services and Department of Education.

McKinney-Vento can only be read to include some foster youth. While states have the flexibility to include youth in temporary and emergency foster care placements, the language of the act still clearly distinguishes between those "awaiting foster care placement" and those *in* foster care placements. Therefore, when attempting to increase access to public education for foster youth through McKinney-Vento, states are limited in which youth will be covered. In order to address the educational challenges faced by youth in long-term and permanent placements, advocates must look to amending state law.

### California's Assembly Bill 490

In 2003, California passed legislation that extends many of the rights and protections afforded to homeless youth under McKinney-Vento to foster youth under California state law. Assembly Bill 490 (AB 490), which became effective Jan. 1, 2004 is the first state law to provide a complete set of educational rights for foster youth. AB 490 includes provisions intended to increase school stability for foster youth, to ensure that foster youth are placed in mainstream educational environments, to improve the transfer of records process between schools, and to allow partial credits for classwork.

### School Stability

When placing agencies recommend an out-of-home-placement or a change in residential placement for a foster child,

AB 490 requires that they consider the impact that the move will have on the youth's educational stability.<sup>26</sup> In addition, when a child's residential placement is changed, the child has the right to remain in his or her school of origin for the duration of the school year, provided that it is in the child's best interest to do so.<sup>27</sup> This right, and the definition provided for "school of origin," mirrors the McKinney-Vento Act.<sup>28</sup>

AB 490 departs significantly from McKinney-Vento on the issue of transportation. McKinney-Vento requires that school districts provide transportation for homeless students to remain in their school of origin,<sup>29</sup> but AB 490 is silent on the issue, and does not assign responsibility to either the child welfare agency or the school district. An early version of the bill required school districts to provide transportation, but when it became apparent that the bill would not pass if it included such an expensive provision, the language addressing transportation was removed.

### Transfer Procedures

When foster youth change schools, AB 490 seeks to ensure that the transfer will proceed as smoothly as possible. Again, AB 490 provides many of the same protections as McKinney-Vento. First, AB 490 provides foster youth with a right to immediate enrollment in school, even if the child is missing the academic and medical records normally required for enrollment, or even if the youth owes fees or materials to the former school.<sup>30</sup> In addition, similar to McKinney-Vento, every school district must appoint an educational liaison for foster children; the liaison is responsible for ensuring proper school placement and enrollment in school, and assisting with the transfer of grades, credits, and records when youth transfer between schools.<sup>31</sup>

AB 490 also provides specific procedural requirements for record transfers

<sup>21</sup> American Bar Association, Commission on Homelessness & Poverty, Steering Committee on the Unmet Legal Needs of Children, Commission on Domestic Violence, Commission on Mental and Physical Disability Law, Section of Family Law, Recommendation (adopted Aug. 9-10 2004), <http://www.abanet.org/leadership/2004/annual/dailyjournal/11.3.doc>.

<sup>22</sup> Letter from David P. Driscoll, Massachusetts Commission of Education, and Harry Spence, Massachusetts Commissioner of Social Services, to Gary Rutkin, Student Achievement and School Accountability Programs, U.S. Department of Education (Jan. 30, 2004).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> State of Tennessee Department of Children's Services, Administrative Policies and Procedures: 21.14, Serving the Educational Needs of the Child/Youth in DCS Custody, Classified as Receiving Level 1 or Level 2 Services, Effective May 1, 2003, D-1, <http://www.state.tn.us/youth/policies/Chapter%2021%20Education/21-14%20Serving%20The%20Educational%20Needs%20of%20The%20Child-Youth%20in%20.pdf>.

<sup>26</sup> Cal. Welf. & Inst. Code § 16501.1(c).

<sup>27</sup> Cal. Educ. Code § 48853.5.

<sup>28</sup> *Id.*

<sup>29</sup> 42 U.S.C. § 11432 (g)(4).

<sup>30</sup> Cal. Educ. Code § 48853.5.

<sup>31</sup> *Id.*

when foster youth change schools. The law stipulates that both the child welfare agency and the school district are responsible for ensuring the timely transfer of records.<sup>32</sup> The transfer process begins with the placing agency, and as soon as the child welfare worker becomes aware of the need to transfer a student to a new school, the worker must notify the school of the day the student will need to transfer out.<sup>33</sup> The school the youth is leaving must transfer the student's educational record to the next school within two business days of the student's move.<sup>34</sup> Once the youth arrives at the new school, that school has two business days to contact the old school and request the youth's records.<sup>35</sup>

### School Placement

AB 490 includes a presumption that foster youth will be placed in an educational program operated by the local school district, unless the person holding the right to make educational decisions for the youth determines it is in the child's best interest to be placed in an alternative program, or the youth has an individualized education program (IEP) requiring a different placement.<sup>36</sup> This presumption seeks to combat the disproportionate placement of foster youth into non-mainstream or alternative educational environments.

### Grades and Credits

AB 490 prohibits a school from lowering the grades of a foster youth for absences caused by a change in placement, appearance at a court hearing, or another court ordered activity.<sup>37</sup> AB 490 also requires that schools in California provide all students (not just foster youth) with credit for full or partial coursework completed at another public school or at a juvenile court school.<sup>38</sup>

AB 490 gives the child welfare agency access to the child's educational records without parental consent or a court order.<sup>39</sup>

### Florida's Interagency Agreement Bill

In 2004, Florida passed House Bill 723 (HB 723), which requires the state's Department of Children and Family Services (DCFS) and Department of Education to develop an interagency agreement regarding the education of dependent children or children in shelters.<sup>40</sup> The agreement facilitates the delivery of services or programs to children in shelter and foster care.<sup>41</sup> Under HB 723, DCFS will provide training for caseworkers, foster parents, surrogate parents, biological parents, and pre-adoptive parents regarding the education of youth in shelter and foster care.<sup>42</sup>

In addition, the Florida law requires that DCFS enter into agreements with local school districts regarding education for shelter and foster youth. The local agreements must include provisions requiring DCFS to enroll youth in school, to promote school stability, and to establish a protocol for sharing information with the school district.<sup>43</sup> The local agreements will require local school districts to determine whether transportation is available to promote school stability, and to work with DCFS to seek "federal, charitable, or grant funding for such transportation."<sup>44</sup> Finally, DCFS and the local school districts must cooperate to access special education services for foster youth with disabilities.<sup>45</sup>

HB 723 became effective on July 1, and advocates in Florida are currently working with DCFS and the Florida Department of Education to develop the interagency agreement. The Agency for Workforce Intervention

has also joined the negotiations to address the need for transition services for youth aging out of care. In 2003, in Broward County, DCFS and the local school board developed an interagency agreement regarding the education of youth in foster care.<sup>46</sup> This agreement is likely to be a model for the agreements under HB 723.

Oregon and Pennsylvania are currently considering legislative approaches to improving educational outcomes for foster youth. The National Center for Youth Law will continue to track legislative developments across the country. Advocates interested in developing legislative approaches for their states should contact Sara Woodward at (510) 835-8098, ext. 3002.

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<sup>32</sup> Cal. Educ. Code § 49069.5.

<sup>33</sup> Cal. Educ. Code § 49069.5.

<sup>34</sup> *Id.* at (d).

<sup>35</sup> Cal. Educ. Code § 48853.5 (d)(4)(C).

<sup>36</sup> Cal. Educ. Code § 48853.

<sup>37</sup> Cal. Educ. Code § 49069.5 (g)(h).

<sup>38</sup> Cal. Educ. Code § 48645.5.

<sup>39</sup> Cal. Educ. Code § 49076.

<sup>40</sup> *Id.* at § 3, adding Fla. Stat. § 39.0016 (1)(a).

<sup>41</sup> *Id.* at § 3, adding Fla. Stat. § 39.0016 (3).

<sup>42</sup> *Id.* at (5).

<sup>43</sup> *Id.* at (4)(a).

<sup>44</sup> *Id.* at (4)(b).

<sup>45</sup> *Id.* at (4)(c).

<sup>46</sup> Interagency Agreement between the School Board of Broward County, Florida

and the Florida Department of Children and Families, District 10, [http://www.floridaschildrenfirst.org/04\\_reports/proj/Education/National/F\\_6\\_20EXEC\\_3Aagree.pdf](http://www.floridaschildrenfirst.org/04_reports/proj/Education/National/F_6_20EXEC_3Aagree.pdf).