

EDUCATIONAL STABILITY FOR CHILDREN

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- 6.1 What does the new act require about the education of children in foster care, kinship guardianship and adoptive families?**

There are two important education requirements in the new law, both intended to promote educational stability for children in a variety of settings with foster families, kinship guardianship families, or adoptive families. Many children living with relatives in these family settings will benefit from these new education requirements.

School Attendance:

State agencies must ensure that every school-age child receiving federal foster care, kinship guardianship or adoption assistance payments is a full time elementary or secondary school student or has completed secondary education. This requirement applies to children in public or private schools or other legally authorized education programs (such as home schooling). We interpret this to require agencies to ensure children attend school since the law specifies that children are full time students and this section in P.L. 110-351 is entitled the "Education Attendance Requirement." Some have interpreted this requirement more narrowly to refer only to enrollment, but that interpretation does not seem to be supported in the statute and does not

offer children the protection that was intended. Members of Congress heard from graduates of foster care who talked about being out of school for long periods of time or from moving frequently from school to school as their placements changed. (§471(a)(30); P.L. 110-351 §204(b))

Maintaining the Child in the Same School:

State agencies also must improve educational stability for all children in foster care by coordinating with the local schools to ensure that children remain in the school they are enrolled in at the time of placement into foster care or any subsequent placement change, unless that would not be in the child's best interests. If it is not in the child's best interest to remain in that school, the state must ensure immediate enrollment in a new school with all of the educational records the child needs for the new school. The new law also allows state child welfare agencies to be reimbursed in part for the transportation costs associated with keeping children eligible for Title IV-E payments in their current school. They may include transportation costs as a cost related to the maintenance of a child in foster care, rather than as an administrative cost. This means that some states will be eligible for higher federal reimbursement for transportation costs than they had been previously. (See question 6.5 for further details). (§475(1)(G) & (4)(A); P.L. 110-351 §204(a))

6.2 Why were these education requirements included in the new law?

Children in foster care often face a number of education-related difficulties. For children struggling to overcome abuse or neglect and cope with the trauma of being removed from their parents, focusing and succeeding in school may be difficult. Additionally, those whose experience in foster care is marked by instability often lose educational gains as they move from school to school. Research suggests that fewer school changes are associated with increased likelihood of high-school graduation. Further, school — and the friends and teachers the child has there — can provide a sense of stability and security for children whose lives are disrupted by maltreatment and foster care. The educational requirements in the new law help children involved with the child welfare system maintain important school-based connections and improve their opportunities for educational success.

6.3 Do the education requirements apply to all children in foster care, kinship guardianship and adoptive families or just those who are receiving federal assistance under Title IV-E?

The answer differs depending on which education requirement you are discussing. The act's requirement that state child welfare agencies take steps to improve educational stability for children by minimizing the number of school moves they must make applies to all children in

foster care — whether eligible for Title IV-E payments or not. The state child welfare agency must coordinate with local education agencies to ensure that children remain in their current school, unless that would not be in the child’s best interests. If it is not in the child’s best interest, the state must ensure immediate enrollment in a new school with all of the child’s educational records provided to that new school. The agency must document its efforts to maintain educational stability in the child’s case plan. The requirement that school-age children attend school only applies to children who are eligible for a Title IV-E payment (foster care, adoption assistance or kinship guardianship). School attendance, however, might be most likely to occur if school attendance is an expectation for all children in foster care, regardless of their eligibility for Title IV-E. (§471(a)(30), §475(1)(G)(i); P.L. 110-351 §204)

6.4 How will the decision be made that sufficient steps have been taken to keep a child in his or her current school?

The new law requires a determination about whether it is in the child’s best interest to remain in his or her current school, or whether the child should be enrolled in a new school. The new law also requires collaboration between the child welfare agency and the relevant local education agencies. Child welfare agencies need to consult all relevant parties who have useful information regarding whether remaining in the current school is best for the child. This includes the child, birth parents, relative caregiver/foster parent, caseworker, teachers, school staff, and attorneys and other advocates for the child. It is also especially important for the agency to collaborate with the school the child attends. Some factors to consider in making the best interest determination include:

- the child’s ties to the current school;
- whether the child’s current program is appropriate;
- the effect of a move on the child’s academic performance;
- the distance of the commute;
- the personal safety of the student;
- which school can better serve the child’s educational needs, including special education needs; and
- the length of stay expected in this living placement (the shorter the stay, the more important it is to keep the child in his or her current school).

6.5 What funding is available to help with transportation costs necessary to maintain the child in his or her current school?

The new law permits state child welfare agencies to be reimbursed in part for the cost of transporting Title IV-E eligible children to their current school based on the states' foster care maintenance payment rate. The federal reimbursement rate may vary from 50 percent to 83 percent. Before the new act was passed, state child welfare agencies were permitted to claim federal reimbursement for transportation costs as part of Title IV-E administrative costs at a 50% federal match. Thirty-seven states and the District of Columbia receive federal reimbursement for maintenance payments at a rate higher than 50 percent. (§475(4)(A); P.L. 110-351 §204(a)(2))

6.6 What is the court's role in ensuring the agency meets its responsibilities under these new education provisions?

The requirement that the state agency assure educational stability for the child must be addressed in the child's individual case plan, which the court and other reviewing bodies are to examine when reviewing the status of the child at least every six months and when reviewing the child's permanency plan every 12 months. It may also be appropriate for the court to inquire about educational stability at the initial removal hearing. These reviews provide opportunities for the advocate for the child to highlight efforts to provide educational stability for the child, including efforts to keep the child in his or her current school, provide transportation to help the child remain in that school, or provide assistance to the child while enrolling in a new school. The school attendance requirement, on the other hand, is not an individual case plan requirement. It is an assurance that the state child welfare agency has to make in its state plan. Nonetheless, since the agency is obligated to ensure children are attending school and the case review process requires that the child's status and education records be reviewed, it makes sense for the court or other reviewing body to consider school attendance at the six-month reviews and permanency hearings as well.