



Testimony before the District of Columbia Council
Committee on Public Safety and the Judiciary
and
Committee on Human Services
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Public Hearing:
Bill 18-579, the Prevention of Child Abuse Amendment Act of 2009

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Good morning Chairman Mendelson, Chairman Wells and members of the Committees on Public Safety and the Judiciary and Human Services. My name is Sharra E. Greer. I am the Policy Director at the Children's Law Center¹ (CLC) and a resident of the District. I am testifying today on behalf of CLC, the largest non-profit legal services organization in the District and the only such organization devoted to a full spectrum of children's legal services. Every year, we represent 1,200 low-income children and families, focusing on children who have been abused and neglected and children with special health and educational needs. The majority of our clients are children in foster care or their caretakers.

I am pleased to testify regarding the Prevention of Child Abuse Amendment Act of 2009 and to offer suggestions to improve this bill so it provides strong and lasting protections for foster children's school stability. We propose an amendment that would, first, require the government to develop a comprehensive plan to improve dramatically foster children's school stability,² and, second, clarify foster children's legal rights and establish a clear legal process for making school enrollment decisions.³

Removal from home disrupts a child's entire family life. Unfortunately, currently when a child is removed from home it also disrupts her education because she is also often removed from school and enrolled in a new school across town or in Maryland. And, if this foster child moves from one foster home to another his school will probably change as well. Removal from school causes additional disruption dislocating children from where they are learning and where have formed friendships and positive relationships with adult professionals.

¹ Children's Law Center works to give every child in the District of Columbia a safe home, meaningful education and healthy life. As the largest nonprofit legal services provider in the District, our 70-person staff partners with hundreds of pro bono attorneys to serve 1,200 at-risk children each year. Applying the knowledge gained from this direct representation, we advocate for changes in the city's laws, policies and programs. For more information, visit www.childrenslawcenter.org.

² Proposed § 3.

³ Proposed § 4.

Each time a child enters a new school, she must adjust to new teachers, new peers, and often new special education or other services. Weeks of schooling can be lost due to enrollment delays or temporary placements. Research has clearly documented that foster children's academic performance suffers when they change schools. One study found that youths who had just one fewer placement change per year – and greater school stability as a result – were almost twice as likely to graduate high school.⁴ Another study documented that multiple school placement changes add up to one year of lost educational growth by sixth grade.⁵ One scholar summarized the research in this way: “Perhaps the single most important thing that each of us can do to improve the educational outcomes for foster children is to ensure that their school placement remains stable.”⁶

Removing a child from a District school and placing them in school near their foster home, frequently in Maryland, is also expensive, and DC cannot afford any wasted dollars. Hundreds of DC foster children are now enrolled in Maryland public schools, at a projected FY 2011 cost of \$3.2 million in out-of-state public school tuition.⁷

Steps to improve foster children's school stability should follow simple principles. First, whenever possible, foster children should remain in their current school even when CFSA removes them from their home or changes their foster care placement. Second, when a school placement change must be made, the transition should be as quick as possible. Foster children should never sit at home waiting for paperwork to make their transition to school possible. Third, decisions regarding foster children's school enrollment should be made through a clear process which respects

⁴ Casey Family Programs, *Educating Children in Foster Care: The McKinney Vento and No Child Left Behind Acts*, at 5 (2007). http://www.ncsl.org/print/cyf/foster_care_education.pdf

⁵ National Working Group on Foster Care and Education, *Educational Outcomes for Children and Youth in Foster and Out-of-Home Care* at 2 (2008), <http://www.casey.org/Resources/Publications/pdf/EducationalOutcomesFactSheet.pdf>.

⁶ Casey Family Programs, *A Road Map for Learning: Improving Educational Outcomes in Foster Care*, at 9 (2004) (quoting Heybach, L. and Winter W., *Improving educational services for foster children: An Advocates Guide* (1999)). <http://www.casey.org/Resources/Publications/pdf/RoadMapForLearning.pdf>

⁷ The Office of the State Superintendent for Education is projected to pay more than \$3.2 million in out-of-state tuition for foster children enrolled in Maryland public schools in FY 2011. FY 2011 Proposed Budget, OSSE, D-44.

the legal rights of all parties to a neglect case. We are proposing changes to the bill that reflect these principles.

The federal government, through the 2008 Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections), requires local jurisdictions to assure educational stability for children in foster care through stricter case plan requirements. Fostering Connections also added the cost of travel to school to the foster care maintenance payment definition, enabling CFSA to obtain a seventy percent federal reimbursement for the cost of transporting foster children to school.⁸

The Mayor and the Child and Family Services Agency (CFSA) responded to this part of Fostering Connections by asking that this bill be introduced. The bill's language is almost identical to the federal language.⁹ CFSA also recently-published an "Administrative Issuance" (AI) on "Educational Stability for Children and Youth Entering or in Care."¹⁰

While these are good first steps, they are not sufficient. Neither the bill nor AI address the key issue of creating a clear process to make school enrollment decisions, nor do they establish foster children's right to school stability or, when that is not appropriate, to immediate enrollment in a new school.

Our proposed Amendment will create a clear process to make school enrollment decisions.¹¹ This process will create a presumption in favor of school stability because we know that it is generally, but not always, best for foster children.¹² It will establish the right of foster children to attend their current school and thus prohibit schools from using their foster care status as an excuse to push them out – a practice sufficiently common that the DCPS Chancellor issued a memo

⁸ Pub. L. 110-351 § 204(a)(2), *amending* 42 U.S.C. § 675(4)(A).

⁹ Compare 42 U.S.C. § 675(1)(G) & Bill 18-579 § 2(b).

¹⁰ CFSA Administrative Issuance 10-2, at 1,

http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_EducationalStabilityChildrenYouthEnterFosterCare.pdf

¹¹ *See* Proposed §4.

¹² Proposed § 4(b), *to be codified at* D.C. Code § 16-2312b(b); Proposed § 4(c), *to be codified at* D.C. Code § 16-2320.02(b).

instructing principals to cease that practice.¹³ For children who should not attend their current school, our proposal will create a clear legal process through which prompt school enrollment decisions can be made while respecting all parties' fundamental constitutional rights and preventing erroneous decisions.

Our proposal lists clear factors that must be considered and ensures that all parties to a case have a meaningful voice in the decision.¹⁴ Current law and practice disempowers parents, foster parents, and youth and instead relies almost exclusively on individual social workers to make appropriate decisions.¹⁵ Unfortunately, this can lead to improper infringements on children and parents' rights to make educational decisions and reduce parental involvement. Our proposed amendment helps to clarify the appropriate roles of the children, youth, and families in school placement.

When it truly is in a child's best interests to attend a different school, our proposal will establish a clear legal right to immediate enrollment, so lack of normal enrollment documents – an unfortunate fact of life in foster care – does not cause a student to miss any school. Our proposal will also guarantee that foster children have the same access to all public and public charter school options that other students have.¹⁶

Lastly, the bill and the AI do not address the important legal difference between a child in “shelter care” – when allegations of parental unfitness are mere allegations, and parents' legal rights

¹³ Proposed § 4(b), *to be codified at* D.C. Code § 16-2312b(e)(2); Proposed § 4(c), *to be codified at* D.C. Code § 16-2320.02(c)(2). The Chancellor's memo is appended to our testimony.

¹⁴ Proposed § 4(b), *to be codified at* D.C. Code § 16-2312b(e)(2); Proposed § 4(c), *to be codified at* D.C. Code § 16-2320.02(b)(2).

¹⁵ CFSA's policy guideline “provides guidance to CFSA and private agency staff.” CFSA Administrative Issuance 10-2 at 1, http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_EducationalStabilityChildrenYouthEnterFosterCare.pdf. Neither the AI nor the bill as proposed empowers anyone to seek Family Court redress for bad school stability decisions or violations of the AI. All the AI provides is an opportunity to file a for a “Fair Hearing,” *id.* at 4, which in practice are anything but fair – they do not occur for months and thus do not provide meaningful relief.

¹⁶ Proposed § 4(b), *to be codified at* D.C. Code § 16-2312b(e)(1); Proposed § 4(c), *to be codified at* D.C. Code § 16-2320.02(c)(1).

remain intact – and those in foster care.¹⁷ Hundreds of children in shelter care reunify in short order with their parents – one-third of all children removed by CFSA leave foster care in less than four months.¹⁸ Indeed, reunification is the most common means for foster children to leave foster care for the first two years following removal.¹⁹ Therefore, it is critically important to respect the legal rights of parents and avoid any unnecessary school disruptions that will complicate reunification. School stability can increase the likelihood of successful reunification by making parent-child visitation easier and easing a child’s transition back home. Moreover, the bill as introduced only applies to case plans²⁰ – documents which need not be created for sixty days after a child is removed,²¹ which is after the school stability decision is made. Our amendment will apply school stability factors to all foster children, at every stage of a neglect case, from the initial hearing through case closure.²²

I thank the Committees for their work on the important issue of school stability, and I urge them to take this opportunity to enact legislation that will lead to strong and durable reform. I have attached our detailed proposal and a section by section analysis of the proposal.

Thank you and I look forward to your questions.

¹⁷ “Shelter care” describes the legal status of a child separated from his or her parents pending a trial on neglect adjudications. D.C. Code § 16-2301(14); § 16-2312. “Foster care” describes a child whose parents have been adjudicated unfit and whose legal custody has been shifted from those unfit parents to CFSA. D.C. Code § 16-2320(a)(3)(A).

¹⁸ In FY 2009, 221 children left foster care in less than four months, and 123 in less than one month – compared with only 661 children who entered foster care. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2009 Annual Report at 30, 34 (2010), <http://cfsa.dc.gov/DC/CFSA/About+CFSA/Who+We+Are/Publications/Annual+Report+2009>.

¹⁹ *Id.* at 36.

²⁰ The bill would alter the definition of “case plan” in D.C. Code § 4-1301.02(3).

²¹ 45 C.F.R. § 1356.21(g); *see also* ACYF-CB-PI-10-11, at 20, http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.pdf.

²² Proposed § 4(b), *to be codified at* D.C. Code § 16-2312b; Proposed § 4(c), *to be codified at* D.C. Code § 16-2320.02(b).

**Appendix A: Children's Law Center's proposed amendment
with section-by-section analysis**

Section 3: CFSA School Stability Plan

Within 60 days of the effective date of this Act, the Child and Family Services Agency (“the Agency”) shall submit to the Council and post on its website a plan to respect each foster child’s right to attend their school of origin at all stages of an abuse and neglect case, unless doing so is contrary to a child’s best interests, and utilize all available federal funding. The plan shall be developed with community partners and shall:

- (a) Apply to children of all ages who are enrolled in an early childhood education program, pre-kindergarten, or kindergarten through 12th grade;
- (b) Detail how the Agency will determine if it is in a child’s best interest to attend the child’s school of origin, and how this determination will involve the child’s parents, other family members, foster parents, guardian *ad litem* and others as appropriate;
- (c) Detail how the Agency will provide transportation to foster children to attend their school of origin;
- (d) Include how many foster children the Agency expects it will need to transport to their school of origin;
- (e) Detail the process by which social workers, parents, attorneys for parents, guardians *ad litem*, school officials, and others involved in a case can seek transportation assistance;
- (f) Estimate how much revenue the Agency expects to receive through Title IV-E of the Social Security Act for transporting foster children to school and detail how the Agency will maximize such revenue including (1) both foster care maintenance costs and administrative costs; and (2) transportation provided by the Agency, the Agency’s transportation contractors, private foster care agencies, and congregate care facilities;
- (g) Detail how much the Agency expects to spend to transport foster children to school (including all local Agency funds, any local funds from any other District agency, and all federal funds), and comparing the Agency’s cost estimate in local dollars to the cost to the District of Columbia government of enrolling affected children in new schools, including schools outside of the District of Columbia;
- (h) Detail how the Agency will ensure that the child will be immediately enrolled in a new school when it is determined to be contrary to a child’s best interests to continue to attend the child’s school of origin; and
- (i) Include any other factors the Agency considers important to implementing its plan.

Analysis:

CFSA has taken important steps to improve foster children’s school stability, but has not developed a detailed plan to implement the practice change. By requiring CFSA to develop such a plan, this section will transform recent tentative improvements into strong and durable change. This section will also require the Agency to detail essential elements for ongoing reform, including the means of providing transportation services to all children who will need them, and other details lacking from existing Agency documents.

This section gives CFSA more than 100 days – the congressional review period plus the 60 days noted in the text – to develop with community partners a detailed plan to improve school stability of foster children.

Section 4: CFSA’s obligation to ensure individual foster children’s rights to school stability, delineate criteria for determining when it is in a foster child’s best interests to be enrolled in other schools, and ensure a collaborative process subject to Family Court oversight

(a) Definitions

For purposes of this section, “school” means any early childhood education program, pre-school, pre-kindergarten, District of Columbia Public School, District of Columbia Public Charter School, or private educational entity serving children from birth through age 21. “School” does not mean any institution of higher education.

Analysis

This definition of “school” ensures that this statute applies to all children attending any early childhood, primary, or secondary school. This definition recognizes that school stability is important for young children as well as older children, and is important regardless of whether children attend public, public charter, or private schools. This definition excludes higher education from the scope of this bill.

(b) School stability for children in shelter care. A new section 16-2312b shall read:

Analysis

Section 4(b) applies to children in shelter care – a legal status which applies while a petition alleging abuse or neglect is pending in the D.C. Family Court. Children in shelter care are in CFSA’s temporary care, but legal custody remains with the children’s parent unless and until the Family Court rules that the parents have neglected the child and commits the child to the custody of CFSA or another individual. Because parents may exercise their legal authority to choose where their children attend school, this section provides that parents’ decisions may only be overridden by explicit findings of the Family Court.

When a child alleged to be neglected is placed in shelter care pursuant to Section 2312(d) of Title 16, the Child and Family Services Agency shall ensure the continuity of the child’s education for the duration of shelter care.

Analysis

This provision applies only when the Family Court orders CFSA to provide a child with temporary care. Such care includes the obligation to ensure continuity of the child’s education for as long as such care lasts.

- (a) If the child has a disability as defined in D.C. Code § 38-2561.01 (14), nothing in this section shall be interpreted to contradict any otherwise applicable provision of the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1401 *et seq.*, District of Columbia special education law, D.C. Code § 38-2501 *et seq.*, or federal or District regulations implementing those statutes.

Analysis

This provision clarifies that this bill does not affect educational decision making regarding children with disabilities who are subject to federal and District special education laws. Those special education laws provide standards for who can make decisions for a child receiving special education services, including when individuals other than parents such as foster parents are involved in the child’s life. This bill does nothing to alter those special education laws.

- (b) The Agency shall ensure that the child continues to attend the school in which the child had been enrolled or would have been enrolled but for the child’s entry into shelter care unless the Family Court issues a written order that attending such school would be contrary to the child’s best interest, the child’s parent determines that the child should attend another school that the child is otherwise eligible to attend, or the Agency

determines that continued placement in the child's school will jeopardize the child's immediate physical safety. If the Agency so determines, it may immediately remove the child from the school. If it does so, the Agency must provide notice to all parties and the Court within one business day of the removal. Any party may move the Family Court to override the Agency's decision and the Family Court shall rule on such a motion expeditiously.

Analysis

This provision sets the default presumption that children in shelter care will continue to attend the same school, and that it is CFSA's job to ensure that the child does so. The phrase "or would have been enrolled" ensures that this default presumption applies when children enter shelter care during summer vacations or any other time when they are not formally enrolled in a school. For instance, a child who enters shelter care in early August who was planning to attend his neighborhood school beginning in late August shall generally be able to do so.

This section also sets out the three means by which the presumption of school stability may be rebutted for children in shelter care. First, the Family Court may so order by following later provisions of this bill. Second, the parent exercising legal custody may decide that the child should attend another school. A parent may so decide on his/her own, through a process such as a Family Team Meeting, or any other voluntary means. Third, in emergency situations, CFSA may remove a child from school. The third option is a narrow one, reserved for true emergency situations in which a child faces immediate physical danger if s/he remains in a school. As with other exercises of emergency authority to protect children from immediate danger, the government must notify all parties of such action and any objecting party may file appropriate motions to the Family Court. The Family Court is required to rule on such motions expeditiously so children's education does not remain in limbo for long.

- (c) Any decision by the Family Court that attending the school in which the child had been enrolled or would have been enrolled but for the child's entry into shelter care is or is not in the child's best interests shall be made after considering the factors listed in section 16-2320.02(a)(2)(A).

Analysis

Before ordering that a child in shelter care must experience a school disruption contrary to wishes of the child's parent, the Family Court must consider the factors outlined in section 16-2320.02(a)(2)(A). This provision does not require an elevated standard by which such a decision must be proven. Although a parent retains legal custody at this pre-trial stage of a neglect case, any limitations on that custody (including a decision to enroll a child in a new school contrary to the parent's wishes) are only temporary. If a parent wins a trial, that event will close the neglect case and end any temporary pre-trial orders. If the government wins a trial, temporary pre-trial orders will be replaced by longer-term dispositional orders.

- (d) When a child is alleged to be neglected and placed in shelter care pursuant to Section 2312(d) of Title 16, then the Child and Family Services Agency shall consider continuity of education in making foster placement decisions and shall document this consideration in the child's case plan.

Analysis

When the Family Court places a child in shelter care, CFSA must determine where the child should live, and will choose among various placements located across the District of Columbia metropolitan region. This section requires CFSA to consider continuity of education in such placements so that a child whose best interests are served by continuing to attend a school in the District is not placed in a foster home located scores of miles away from that school. This section clarifies and strengthens federal law, which requires

CFSA to develop a case plan which considers “proximity to the school.” 42 U.S.C. § 675(1)(G)(i). That federal law focuses on CFSA’s “case plan,” a document which CFSA need not create until the child has been in shelter care for 60 days – far too long to make the placement and school stability decisions relevant. 45 C.F.R. § 1356.21(g)(2). This section applies the requirement to the time the actual placement and school stability decisions are made.

- (e)
- (1) When it is determined pursuant to paragraphs (a) and (b) that a child will attend a school other the school in which the child is then enrolled or would have been enrolled, the child shall have the right to immediate enrollment in the District of Columbia Public School for the attendance area in which the child is then living or another District of Columbia Public School (subject to generally applicable out-of-boundary enrollment procedures) or a public charter school (subject to that school’s generally applicable enrollment procedures), even if the child lacks records normally required for enrollment, such as previous academic records, immunization or other medical records, proof of residency, or other documentation. No school may discriminate against the child on the basis of any details relating to the child’s Family Court case.

Analysis

This provision ensures that children whose school enrollment will change have the right to immediate enrollment in any DC public school (including public charter schools). Such children have the absolute right to enrollment in the neighborhood DCPS school (as determined by the location of the child’s shelter care placement). That right is provided through language that tracks existing District of Columbia Municipal regulations. 5E D.C.M.R. § 2010.1(b). This provision also ensures the ability to consider enrollment in out-of-boundary DCPS school or any charter school, as may be appropriate for individual children. Discrimination based on the child’s legal status or any detail regarding the child’s Family Court case is expressly prohibited.

Under this provision, the right to “immediate enrollment” means the right to immediately begin attending the new school even if the child lacks normal documentation. Children in shelter care often lack such documentation and the absence of such documentation can lead to children missing school days. This provision’s language providing a right to immediate enrollment for children lacking normal documentation tracks federal law. 42 U.S.C. § 11432(g)(3)(C)(i).

- (2) When a child alleged to be neglected and placed in shelter care pursuant to Section 2312(d) of Title 16 continues to attend the school in which the child is attending or would have been enrolled in but for the child’s placement in shelter care, the child shall have the right to continue attending the school at issue. The school may not deny entrance to the school, apply an out-of-boundary procedure, or otherwise discriminate against the child based on the child’s placement in shelter care. CFSA shall be responsible for providing any transportation necessary to ensure the child’s attendance at this school.

Analysis

This provision prohibits any school from discriminating against a child who was or would have been attending that school prior to the child’s placement in shelter care. Shelter care may not under any circumstances be used by a school to push a student out of one school and into another. DCPS Chancellor Rhee circulated a memorandum to all principals stating a similar rule. This provision codifies that rule, ensuring its legal force under any future Chancellor and ensuring its application to public charter schools.

This provision also codifies existing CFSA policies holding that Agency responsible for providing necessary transportation to children to ensure their school stability. CFSA's policy states that transportation services shall be in place within three school days and that individual social workers are responsible for transporting children to school until such services are in place. CFSA Administrative Issuance 10-2, at 2-3, http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_EducationalStabilityChildrenYOUTHEnterFosterCare.pdf.

- (3) When it is determined pursuant to paragraphs (a) and (b) that a child will attend a school other than the school in which the child is then enrolled or would have been enrolled, the child's former school shall (A) immediately inform the child's new school orally or in writing of the grade level in which the child was last enrolled; (B) immediately inform the child's new school orally or in writing of the status of the child under the federal Rehabilitation Act of 1973 (29 U.S.C. § 794) or under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1401 *et seq.*); (C) within 3 school days of learning that the child is or will attend a new school, shall by mail or electronic means transmit to the child's new school a copy of a the child's complete academic records, immunization records and, in applicable, the most recent individualized education plan, section 504 plan, and/or assessment of the child.

Analysis

To aid a child's transition to a new school, this provision requires a child's former school to promptly share essential information about the child's educational status with the child's new school, thus enabling that school to teach the child as effectively as possible. This provision is modeled after Maryland Education Code § 8-504(b).

- (f) When a child alleged to be neglected is placed in shelter care pursuant to Section 2312(d) of Title 16 or conditionally released to an individual other than a parent, then the individual to whom the child was released or the Child and Family Services Agency (if shelter care is ordered) shall have the right to obtain the child's educational records.

Analysis

This provision ensures that CFSA can obtain educational records regarding a child in shelter care. This provision does not change existing laws governing obligation of CFSA and the Family Court to maintain the confidentiality of their files.

(c) School stability at disposition and post-disposition. A new section 16-2320.02 shall read:

Analysis

Section 4(c) applies when the D.C. Family Court finds a parent unfit and changes legal custody of the children the parent to CFSA or another individual. This section reflects the diminishment of parental rights that such decisions represent; while parents maintain a voice in decisions regarding children's education, CFSA, the Family Court, and others have increased authority.

- (a) If the child has a disability as defined in D.C. Code § 38-2561.01 (14), nothing in this section shall be interpreted to contradict any otherwise applicable provision of the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1401 *et seq.*, District of

Columbia special education law, D.C. Code § 38-2501 *et seq.*, or federal or District regulations implementing those statutes.

Analysis

This provision clarifies that this bill does not affect educational decision making regarding children with disabilities who are subject to federal and District special education laws. Those special education laws provide standards for who can make decisions for a child receiving special education services, including when individuals other than parents such as foster parents are involved in the child's life. This bill does nothing to alter those special education laws.

- (b) When a child has been adjudicated neglected and legal custody of the child has been transferred pursuant to Section 2320(a)(3)(A) of Title 16, the Child and Family Services Agency shall ensure the continuity of the child's education so that the child:

Analysis

This provision applies only when the Family Court transfers legal custody of an abused or neglect child away from that child's parents to CFSA. If the Family Court orders that legal custody remain with the parent through an order of protective supervision under D.C. Code § 16-2320(a)(2), then the parent retains the right to make school enrollment decisions.

- (1) Shall whenever possible continue to attend the school in which the child is currently enrolled or would have been enrolled but for the transfer of custody or foster care placement change once custody has been transferred;

Analysis

This provision sets the default presumption that children in foster care will continue to attend the same school, and that it is CFSA's job to ensure that the child does so. The phrase "or would have been enrolled" ensures that this default presumption applies when children enter foster care or experience a foster placement change during summer vacations or any other time when they are not formally enrolled in a school. For instance, a child whose foster placement disrupts in early August who was planning to attend the same school he had attended the previous school year shall generally be able to do so.

- (2) Shall attend a school other than that delineated in paragraph (b)(1) only pursuant to a determination that attending such a school is not in the child's best interest and consistent with subparagraphs (A) through (F). Such a determination shall:
- (A) consider
- i. the continuity of instruction;
 - ii. the age of the child;
 - iii. the safety of the child;
 - iv. the child's need, if any, for special instructional programs;
 - v. the impact of any commute to and from school on the child;
 - vi. the impact of a change in schools on the child's mental health;
 - vii. the school placement of the child's siblings, if any;
 - viii. the time remaining in the school year; and
 - ix. the child's permanency plan and expected length of stay in the child's current placement;

- x. any rights held under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 *et seq.* and applicable District of Columbia regulations and state plans implementing that Act

Analysis

This provision provides a non-exhaustive list of factors that must be considered before the presumption that a child's school stability shall be maintained may be rebutted. Factors (i) through (viii) track existing DCPS regulations regarding school stability for homeless students (a category defined to include foster children). 5E D.C.M.R. § 2010.1(c). Factor (ix) requires consideration of individual factors in a child's neglect case, especially the child's permanency goal and expected length of stay in a particular foster placement. School stability will generally be appropriate when a foster placement is expected to be short and the child reunified with his/her parent. On the other hand, a school enrollment change is more likely appropriate when the child's permanency goal is adoption and the child is expected to remain permanently in his/her new foster placement. Factor (x) requires the consideration of any rights that may be held under federal and District laws regarding homeless students.

This list of factors is not exhaustive and does not preclude CFSA or the Family Court from considering any other factors, such as any listed in CFSA's policy statement regarding school stability. CFSA Administrative Issuance 10-2, at 2, http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_EducationalStabilityChildrenYOUTHEnterFosterCare.pdf. The factors listed in the statutory provision are similar to the factors listed in CFSA's policy statement, which include the child's safety, the child's permanency plan, the length of a commute to school, the school attended by any siblings or others close to children. The statutory provision provides more protective to foster children's school stability than CFSA's policy statement by including two factors not explicitly listed by CFSA – “the continuity of instruction” and the possible “impact of a change in schools on the child's mental health.”

- (B) be made by the Child and Family Services Agency after age-appropriate consultation with the child and consultation with the child's parent or parents, the child's foster parents, the child's guardian *ad litem*, and other significantly involved individuals, as appropriate;

Analysis

This section provides that CFSA shall in the first instance make school stability decisions regarding a child committed to its custody, but only after appropriate consultation with the child, the child's lawyer, the child's parents, the child's foster parents, and other appropriate parties, such as involved kin. It codifies existing provisions of CFSA policy. CFSA Administrative Issuance 10-2, at 2, http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_EducationalStabilityChildrenYOUTHEnterFosterCare.pdf.

- (C) be made in writing and shall include a discussion of the factors listed in paragraph (b)(2)(A) and the opinions of individuals consulted pursuant to paragraph (b)(2)(B);

Analysis

This section requires CFSA to document that how and why it made a decision that it should not maintain a child's school stability. The documentation requirement will help ensure such decisions are made properly. It is consistent with federal law, which requires CFSA to document in case plans its consideration of foster children's school stability. 42 U.S.C. § 675(1)(G). It also codifies CFSA's existing policy of documenting its school stability decision. CFSA Administrative Issuance 10-2, at 3,

http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_EducationalStabilityChildrenYOUTHEnterFosterCare.pdf.

- (D) be shared with all parties within three business days after the date on which the determination is made;

Analysis

This section requires CFSA to share its written school stability decision with all parties promptly. Current CFSA policy requires the documentation but not dissemination of these decisions. CFSA Administrative Issuance 10-2, at 3,

http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_EducationalStabilityChildrenYOUTHEnterFosterCare.pdf.

- (E) be subject to review and modification by the Family Court at the request of any party; and

Analysis

This section ensures that children, parents and any other party to a neglect case can enforce children's school stability rights through the Family Court. Family Court oversight is essential to effective implementation of school stability policies.

- (F) when the Agency determines that the child should attend a school other than that delineated in paragraph (b)(1), such a determination shall not take effect until after the Agency has provided the notice required by paragraph (2)(D) and parties have had at least three business days to file an appropriate motion with the Family Court. When a party files such an objection, the determination shall not take effect until the Family Court has ruled on the motion, unless the Agency determines that delaying implementation of its school placement determination will jeopardize the child's immediate physical safety. The Family Court shall rule on such motions expeditiously.

Analysis

This section ensures that any Family Court oversight occurs promptly so that final decisions may be implemented as quickly as possible. This provision requires that a CFSA may not act on its determination to disrupt a child's school until all parties have had at least three business days to review CFSA's determination. Parties may file a motion in that time before the Family Court to block CFSA from implementing its determination. Unless the child is in immediate physical danger, CFSA may not implement its determination until the Family Court rules on such motions. The Family Court must rule on such motions expeditiously.

(c)

- (1) When it is determined pursuant to paragraph (a)(2) that a child will attend a school other than the school in which the child is then enrolled or would have been enrolled, the child shall have the right to immediate enrollment in the District of Columbia Public School for the attendance area in which the child is then living or another District of Columbia Public School (subject to generally applicable out-of-boundary enrollment procedures) or a public charter school

(subject to that school's generally applicable enrollment procedures), even if the child lacks records normally required for enrollment, such as previous academic records, immunization or other medical records, proof of residency, or other documentation. No school may discriminate against the child on the basis of the existence of or any details relating to the child's Family Court case.

Analysis

This provision ensures that foster children whose school enrollment will change have the right to immediate enrollment in any DC public school (including public charter schools). Such children have the absolute right to enrollment in the neighborhood DCPS school (as determined by the location of the child's foster care placement). That right is provided through language that tracks existing District of Columbia Municipal regulations. 5E D.C.M.R. § 2010.1(b). This provision also ensures the ability to consider enrollment in out-of-boundary DCPS school or any charter school, as may be appropriate for individual children. Discrimination based on the child's legal status or any detail regarding the child's Family Court case is expressly prohibited.

Under this provision, the right to "immediate enrollment" means the right to immediately begin attending the new school even if the child lacks normal documentation. Children in foster care often lack such documentation and the absence of such documentation can lead to children missing school days – something that should never happen.

This provision's language providing a right to immediate enrollment for children lacking normal documentation tracks federal law. 42 U.S.C. § 11432(g)(3)(C)(i).

- (2) When a neglected child committed to the legal custody of the Child and Family Services Agency pursuant to Section 2320(a)(3)(A) of Title 16 continues to attend the school in which the child is attending or would have been enrolled in but for the transfer of the child's custody to the Child and Family Services Agency or the child's foster care placement change once custody has been transferred placement in foster care, the child shall have the right to continue attending the school at issue. The school may not deny entrance to the school, apply an out-of-boundary procedure, or otherwise discriminate against the child based on the child's placement in foster care. CFSA shall be responsible for providing any transportation necessary to ensure the child's attendance at this school.

Analysis

This provision prohibits any school from discriminating against a child who was or would have been attending that school prior to the child's placement in foster care or a foster care placement change. Neither foster care nor a foster care placement change may under any circumstances be used by a school to push a student out of one school and into another. DCPS Chancellor Rhee circulated a memorandum to all principals stating a similar rule. This provision codifies that rule, ensuring its legal force under any future Chancellor and ensuring its application to public charter schools.

This provision also codifies existing CFSA policies holding that Agency responsible for providing necessary transportation to children to ensure their school stability. CFSA's policy states that transportation services shall be in place within three school days and that individual social workers are responsible for transporting children to school until such services are in place. CFSA Administrative Issuance 10-2, at 2-3, http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_EducationalStabilityChildrenYOUTHEnterFosterCare.pdf.

- (3) When it is determined pursuant to paragraph (a)(2) that a child will attend a school other than the school in which the child is then enrolled or would have

been enrolled, the child's former school shall (A) immediately inform the child's new school orally or in writing of the grade level in which the child was last enrolled; (B) immediately inform the child's new school orally or in writing of the status of the child under the federal Rehabilitation Act of 1973 (29 U.S.C. § 794) or under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1401 *et seq.*); (C) within 3 school days of learning that the child is or will attend a new school, shall by mail or electronic means transmit to the child's new school a copy of a the child's complete academic records, immunization records and, in applicable, the most recent individualized education plan, section 504 plan, and/or assessment of the child.

Analysis

To aid a child's transition to a new school, this provision requires a child's former school to promptly share essential information about the child's educational status with the child's new school, thus enabling that school to teach the child as effectively as possible. This provision is modeled after Maryland Education Code § 8-504(b).

- (d) When a child has been adjudicated neglected and legal custody of the child has been transferred pursuant to Section 2320(a)(3) of Title 16, then the individual who or agency which has legal custody of the child shall have the right to obtain the child's educational records.

Analysis

This provision ensures that CFSA can obtain educational records regarding a child in foster care. This provision does not change existing laws governing obligation of CFSA and the Family Court to maintain the confidentiality of their files.

**Appendix B: DCPS Chancellor's memo regarding school
stability**

Fostering Connections Act FAQ



Q. What is Fostering Connections?

A. The Fostering Connections Act requires child welfare agencies to partner with LEAs to ensure that children and youth in foster care have educational stability. Educational stability means:

- Keeping students in the school he/she attended prior to entering foster care or when there is a change in the student's foster care placement, unless it is not in the student's best interest to do so. A foster care placement may include students living with relatives, in foster homes or in group/congregate care settings.
- When it is in the best interest of the student to transfer to a new school, the child welfare agency and the LEA will work together to ensure immediate enrollment and transfer of educational records to the new school.

Q. Why is Fostering Connections important?

A. According to the U.S. Department of Education, it can take a student four to six months to recover academically after changing schools. Changing schools during high school also decreases the chance that the youth will graduate. New school placements require children and youth who are already experiencing uncertainty and disruption at home to also adjust to a new school environment, new teachers, new friends and a new curriculum. According to the National Working Group on Foster Care and Education, maintaining educational stability can not only improve educational outcomes but can also often provide "a measure of protection from the disruption and uncertainty associated with out-of-home placements."

Q. What is the role of the LEA in implementing Fostering Connections?

A. The LEA will provide the District's child welfare agency, which includes CFSA and its contracted providers, with educational information when presented with a current employee ID badge and proof of the student's legal status in foster care.

- ❖ Information requests may include a student's academic record, learning needs and other relevant information that may help the child welfare agency make a decision about school placement.
- ❖ In some instances, a representative of the school, such as a principal, teacher or counselor may be asked to participate in a team meeting to determine the best school placement for the student.

Students in foster care should be allowed to remain at his/her school of origin unless it is determined that it is not in their best interest to do so.

When it is determined that a school change is in the best interest of the student, the LEA will work collaboratively with the receiving school to ensure that the child or youth is ***immediately*** enrolled in the new school,

- ❖ The LEA will allow the student to enroll when the following items are provided:
 1. Court order from DC Superior Court with the student's name, date of birth and legal status.¹
 2. The name and address of the foster parent.
 3. Social workers enrolling a student must have a current employee ID.
 4. CFSA Student Information Form and CFSA Enrollment and Withdrawal Form

Records for students in foster care must be transferred immediately, but no later than two business days, to the student's new school.

Q. If I have questions who can I contact?

A. The Homeless Liaison at your school can offer guidance around Fostering Connections. If you have questions for CFSA, please contact Dr. Benjamin Dukes at 202-715-7789.

¹ According to 5 DCMR 5003.1(a)(6), a court order placing the child/youth in CFSA custody suffices to establish residency for DCPS local enrollment.