

**WRITTEN TESTIMONY OF
EDUCATION LAW CENTER OF PENNSYLVANIA
JUVENILE LAW CENTER
KIDSVOICE
SUPPORT CENTER FOR CHILD ADVOCATES
AND
LUCY JOHNSTON-WALSH OF PENN STATE DICKINSON
SCHOOL OF LAW, CHILDREN'S ADVOCACY CLINIC, CENTER
ON CHILDREN AND THE LAW**

**FOR PUBLIC HEARING OF THE
HOUSE COMMITTEE ON CHILDREN AND YOUTH
FOSTER CARE AND ADOPTION INITIATIVES
THURSDAY, AUGUST 27, 2009**

In October of 2008, the President signed into law the Fostering Connections to Success and Increasing Adoptions Act ("Fostering Connections Act" or "The Act"). The Act, which had bi-partisan support, is one of the most significant pieces of child welfare legislation in the last decade. As child advocacy agencies, we thank the Committee for this opportunity to inform you about some of the unprecedented opportunities that the Fostering Connections Act provides children and families in Pennsylvania. The Act provides the legislature an excellent vehicle for re-affirming its commitment to the children of the Commonwealth.

Moreover, in these tough fiscal times, it is critical for the General Assembly to ensure that Pennsylvania practice is in line with this new law so that we may take advantage of every opportunity to draw down federal child welfare funds. While our child welfare system is dependent on a combination of county, state, and federal funds, the Pennsylvania system could not function without drawing down Title IV-E funds. Pennsylvania receives a 54% reimbursement rate for the cost of placement and related administration costs. Taking full advantage of federal funding opportunities is essential to ensuring that Pennsylvania receives a significant portion of the funds it needs to serve abused and neglected children.

We address specific sections of the Fostering Connections Act that should be of interest to the Committee, with an emphasis on where changes in Pennsylvania law might be necessary.

Mandates and Options that Promote Permanency

➤ Relative Notification -- 42 U.S.C.A. § 671(a)(29)

○ The Requirement

The Act requires that the county agency exercise “due diligence to identify and provide notice to” the youth’s relatives within thirty days of the youth’s removal from his/her parent’s custody. The agency must inform these relatives of any programs, services, and subsidies for which they may be eligible that would enable them to care for the child. The aim of this provision is to quickly put in place family and child resources so as to avoid placement altogether or at least reduce time in placement. Ensuring timely and effective notification could greatly decrease state and county costs by reducing the number of children in placement.

○ The Needed Legislative Change

No provision in the Juvenile Act or state child welfare regulations speaks to relative notification and, thus, this requirement needs to be made clear in our law.

➤ Sibling Placement -- 42 U.S.C.A. § 671(a)(31)

○ The Requirement

The Act now requires that reasonable efforts be made to place siblings together unless it is contrary to the safety and well being of either sibling. Keeping siblings together after they have been removed from their parents’ home helps maintain continuity and stability for these youth and minimizes the trauma and dislocation of removal. Compelling testimony by current and former foster youth regarding the frequency and impact of their separation from their siblings was an impetus to this federal provision.

○ The Needed Legislative Change

Our state law and regulations do not mention the preference for placing siblings together. This new federal requirement needs to be embedded in our state law and regulations to be fully effective and enforceable.

➤ Federal Support of Kinship Guardianship -- 42 U.S.C.A. 673(d)

○ The Option to Draw Down Federal Funds

The Fostering Connections Act gives states the option to receive federal reimbursement for kinship guardianship payments made to relative caretakers when the agreement between the agency and the relative contains elements specified in the Act. Currently the state uses its own funds to provide subsidies to relative caregivers who take

guardianship of youth from foster care. Taking this option would allow Pennsylvania to save funds by sharing the cost with the federal government.

- *The Needed Legislative Change*

The Department of Public Welfare issued a Bulletin on Permanent Legal Custodianship and Subsidized Permanent Legal Custodianship in August 2003, with a further clarification issued in January of 2006. The Bulletin lays out the majority of the elements required for a subsidized relative guardianship agreement. These elements are almost identical to what would be required to create a reimbursable kinship guardianship agreement, except for the explicit requirement in the Act to consult with children who are age 14 or older. Since Pennsylvania has supported subsidized kinship guardianships through its bulletins, it should be a simple matter to embed current policy—along with the consultation requirement—in state law or regulations.

Improving Educational Stability and Achievement

- **Promotion of School Stability and Immediate Enrollment -- 42 U.S.C.A. § 675 (1)(G)**

- *The Requirement*

Children in the foster care system often do not receive the educational stability and support they need. Many move frequently from school to school and experience enrollment delays. This results in a disproportionately high drop out rate for foster youth and barriers to self-sufficiency. To dismantle these barriers to educational achievement, the Fostering Connections Act requires the child welfare agency to coordinate with local education agencies to ensure that children remain in the school in which they are enrolled at the time of placement unless that would not be in the child's best interests. 42 U.S.C.A. 675 (1)(G). If it is not in the child's best interest, the state must ensure the child's immediate enrollment in a new school and that the child's educational records are promptly forwarded. 42 U.S.C.A. 675 (1)(G). The Act also increases the availability of federal funding that may be used to cover education-related transportation costs for children in foster care. 42 U.S.C.A. 675(4)(A).

- *The Need for Legislative Change*

This new federal requirement must have a state law correlate to ensure implementation. The Fostering Connections Act places a clear mandate on the child welfare agency, but is less clear about the requirements on school districts. Without state legislation, school districts may not be able to fulfill the Act's provisions. Additionally, clear legislation is needed to clarify how the child welfare agency will make the rights a reality, such as how the agency will ensure that children have the transportation needed to remain in the appropriate school.

Preparing Youth Aging Out of Care to be Self-Sufficient, Contributing Members of Society

➤ **Transition Plan—42 U.S.C.A. 675 (5)(H)**

○ *The Transition Plan Requirement*

The law requires that at least 90 days before the youth is to be discharged that:

a caseworker on the staff of the State agency, and, as appropriate, other representatives of the child provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and is as detailed as the child may elect.

This provision responds to concerns that far too many older youth are aging out of foster care to homelessness and poor outcomes. The aim is to ensure that a youth is not discharged from the child welfare system until a proper plan is put in place. This provision is in the public interest because it ensures accountability in the child welfare system, protects the investment of taxpayers in the child welfare system, and protects the welfare of children who have been parented by the child welfare system until adulthood.

○ *The Needed Legislative Change*

There is no state statutory or regulatory provision that requires that a plan be created or presented prior to a youth's discharge from foster care. Such a requirement is needed in state law to give force to this federal mandate.

➤ **Receiving Federal Funds for Youth until Age 21 -- 42 U.S.C.A. § 675 (8)(A)**

○ *The Option to Draw Down Federal Funds*

Current Pennsylvania law allows youth to stay in the child welfare system until age 21 if they are in a course of treatment or instruction. 42 Pa. C.S.A. § 6302. Before the enactment of the Fostering Connections Act, states could only obtain Title IV-E reimbursement for youth in care until age 18, or age 19 if the youth was still in high school. Consequently, Pennsylvania expended state and local funds to continue youth in care until 21.

Federal law now permits a state to draw down federal Title IV-E funds for youth until age 21 if the state amends its definition of a child to correspond with the language of the Act. This provision was enacted in response to the overwhelming data showing that youth greatly benefit from more time in foster care to complete their education and

master their independent living skills. Pennsylvania law is already ahead of that of many states because it acknowledges that allowing youth to remain in care until they are prepared for adulthood is the right thing to do. But Pennsylvania law must be amended to comply with the Act. The good news is that taking this option will result in *immediate* cost savings to the state, as the federal government will share the cost of care. The state will also realize long-term savings as these youth are less likely to rely on state assistance as adults.

Moreover, this option can expedite permanency for youth who may have otherwise remained in placement until adulthood, as it also allows adoption and relative care subsidies to continue until the youth turns 21. Before the Fostering Connections Act, the subsidies ended at 18, creating a disincentive for foster parents to adopt or become guardians of their foster children. By assuring continued support for the youth, it is more likely that foster parents will adopt or assume guardianship.

o *The Needed Legislative Change*

To draw down federal funds for these older youth, state law and regulation will have to be changed to track the Fostering Connections Act, which defines a “child” as follows:

An individual who is under age 21, was adjudicated dependent before reaching age 18, and is engaged in at least one of the following:

1. Completing secondary education or an equivalent credential.
2. Enrolled in an institution which provides post-secondary or vocational education.
3. Participating in a program actively designed to promote, or remove barriers to employment.
4. Employed for at least 80 hours per month.

OR

an individual who is under age 21, was adjudicated dependent before reaching age 18, and is incapable of doing the activities above due to a documented medical or behavioral health condition.

The undersigned child advocates once again thank the committee for this opportunity to share our legal analysis of the mandates and options created by Fostering Connections. If you have any questions or require additional information, please feel free

to contact Jenny Pokempner, Esq., at Juvenile Law Center, at 215-625-0551 or by email at jpokempner@jlc.org.