




STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: March 5, 2014

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell,  Chairperson
State Council for Persons with Disabilities

RE: H.B. 228 (Child Placement Review Act)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 228 which attempts to make adjustments to the existing Child Placement Review Act to be consistent with current practices, clarify ambiguities, and eliminate sections that no longer apply. Unfortunately, instead of promoting a more robust review system, the legislation weakens the review process. SCPD has the following observations.

First, the existing State law mirrors the Federal Act by focusing on promoting permanency, health, safety, on-going care to meet physical, mental and emotional needs, and best interests:

§3801. Purpose

Establishing an independent voluntary, citizen organization whose mission is to advocate on behalf of Delaware's children in out of home placement and to identify and periodically review children in the care and custody of a placement agency is in the best interests of the health and welfare of all citizens of Delaware. The purposes of this chapter are to provide a citizen based independent monitoring of Delaware children in the care and custody of a placement agency to ensure that they receive continuing efforts to obtain permanent homes, adequate provision for their stability, health, and safety; and ongoing care addressing their physical, mental, and emotional needs; and to advocate as necessary for the paramount concerns of best interest and safety for the children.

[emphasis supplied]

H.B. No. 228 strikes this section in its entirety and truncates the focus to a single domain -

permanency (lines 12-15). This is inconsistent with both the Federal Act and the balance of the Chapter. Compare 42 U.S.C. §675(5) and Title 31 Del.C. §§3813, 3814, and 3809(7).

Second, the current law requires panel members to have community service or professional expertise so panels will possess ample background in assessing case plans, special needs, and placement options. Panel members are derived from a board with the following credentials:

§3804 Qualifications of Board members.

(a) A board member must be a citizen of Delaware who has demonstrated an interest in children and their welfare through community service or professional experience or who possesses a background in law, sociology, psychology, psychiatry, education, theology, social work, medicine or related fields.

See also Title 31 Del.C. §3803(b).

H.B. No. 228 strikes this language in its entirety as well. It substitutes an anemic background standard:

Members shall include persons who have demonstrated interest in children (lines 79-80).

The effect is to dilute the expertise and knowledge base of panelists. In turn, this will result in superficial, perfunctory reviews since panelists lack the background to assess special needs, placement options, etc. A high percentage of children in foster care have disabilities. Indeed, an estimated 30-45% are special education students. See National Council on Disabilities, “Youth with Disabilities in the Foster Care System: Barriers to Services and Proposed Policy Solutions” (February 26, 2008)

[http://aypf.org/publications/documents/ncd96_FosterYouth_w_cover.pdf]; and attached NASDSE, “Foster Care and Children with Disabilities” (February, 2005)].

The complexity of the needs of foster children, and alarming statistics on outcomes of the foster care system, were highlighted in H.B. 163 which was signed by the Governor on September 18 2013. The findings reflected in that bill underscore the need for robust reviews of service plans and services.

Finally, the panel reports are not “placed on a shelf”. The reports, with findings and recommendations, are filed with the Family Court (lines 23-25). In turn, the Court is required to review the report and consider the recommendations. See Title 31 Del.C. § 3815(e). If the quality of the reports is weak, this adversely affects the Court’s ability to act on behalf of the child in an informed manner.

Apart from the above substantive concerns, the legislation may benefit from correction of several errors.

A. In line 40, the term “chapter” should be “section”.

B. In line 52, the term “they are” should be “the member is” to avoid use of a plural pronoun (“they”) with a singular antecedent (“member”).

C. Lines 83-84 contain a bar on “discrimination” which deletes the list of prohibited bases (e.g. race, sex, disability). This creates unnecessary ambiguity. For example, is discrimination based on “familial status” barred by this provision? Compare Title 6 Del.C. §4603(b) [includes term] with Title 19 Del.C. §711(a) [omits term]. The current statute bars discrimination based on “socioeconomic status” (line 84). This basis does not generally appear in other Delaware anti-discrimination laws. What is the effect of striking it from this section?

D. Although Title 1 Del.C. §109(d)(1) contemplates including the entire section of a statute being amended in legislation, H.B. No. 228 is “oddly” formatted. Lines 120-129 contain 3 of 8 subparts to §3809. Lines 130-136 contain 2 of 8 subparts to §3810. Lines 153-166 contain 5 of 8 subparts to §3814. This approach makes it difficult to follow changes.

E. Lines 168-169, read literally, require submission of a panel report to either placement agencies, parents, and guardian ad litem/CASA. The word “or” at the end of line 169 should be deleted and the word “and” substituted.

F. In line 177, the term “the person’s” should be substituted for “their” to avoid use of a plural pronoun (“their”) with a singular antecedent (“person”).

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Ms. Tania Culley, Office of Child Advocate
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 230 child placement 3-5-14

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42 U.S. CODE § 675 - DEFINITIONS

US Code Notes Updates Authorities (CFR)

As used in this part or part-B of this subchapter:

(1) The term "case plan" means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section [672 \(a\)\(1\)](#) ⁽¹⁾ of this title.

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) The health and education records of the child, including the most recent information available regarding—

- (i) the names and addresses of the child's health and educational providers;
- (ii) the child's grade level performance;
- (iii) the child's school record;
- (iv) a record of the child's immunizations;
- (v) the child's known medical problems;
- (vi) the child's medications; and
- (vii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-State and interstate placements.

(F) In the case of a child with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under section [673 \(d\)](#) of this title, a description of—

- (i) the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted;
- (ii) the reasons for any separation of siblings during placement;

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(iii) the reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interests;

(iv) the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;

(v) the efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefor; and

(vi) the efforts made by the State agency to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made.

(C) A plan for ensuring the educational stability of the child while in foster care, including—

(i) assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and

(ii)

(I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 7801 of title 20) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or

(II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum

(A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and

(B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)

(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where—

(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be

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necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

(5) The term "case review system" means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, which—

(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 6 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, of the State in which the child has been placed, or of a private agency under contract with either such State, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship,

(C) with respect to each such child,

(i) procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement, in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options, and, in the case of a child described in subparagraph (A)(ii), the hearing shall determine whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living;

(ii) procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and

(iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or

administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child; ⁽²⁾

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and a copy of the record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care, and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under State law; ⁽²⁾

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 671 (a)(15)(B)(ii) of this title are required to be made with respect to the child; ⁽²⁾

(F) a child shall be considered to have entered foster care on the earlier of—

(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(ii) the date that is 60 days after the date on which the child is removed from the home; ⁽²⁾

(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a proceeding solely on the basis of such notice and right to be heard; ⁽²⁾

(H) during the 90-day period immediately prior to the date on which the child will attain 18 years of age, or such greater age as the State may elect under paragraph (8)(B)(iii), whether during that period foster care maintenance payments are being made on the child's behalf or the child is receiving benefits or services under section 677 of this title, 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, includes information about the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in such decisions and the child does not have, or does not want, a relative who would otherwise be authorized under State law to make such decisions, and provides the child with the option to execute a health care power of attorney,

health care proxy, or other similar document recognized under State law, and is as detailed as the child may elect; ^[2] and

(l) each child in foster care under the responsibility of the State who has attained 16 years of age receives without cost a copy of any consumer report (as defined in section 1681a (d) of title 15) pertaining to the child each year until the child is discharged from care, and receives assistance (including, when feasible, from any court-appointed advocate for the child) in interpreting and resolving any inaccuracies in the report.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(7) The term "legal guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term "legal guardian" means the caretaker in such a relationship.

(8)

(A) Subject to subparagraph (B), the term "child" means an individual who has not attained 18 years of age.

(B) At the option of a State, the term shall include an individual---

(i)

(I) who is in foster care under the responsibility of the State;

(II) with respect to whom an adoption assistance agreement is in effect under section 673 of this title if the child had attained 16 years of age before the agreement became effective; or

(III) with respect to whom a kinship guardianship assistance agreement is in effect under section 673 (d) of this title if the child had attained 16 years of age before the agreement became effective;

(ii) who has attained 18 years of age;

(iii) who has not attained 19, 20, or 21 years of age, as the State may elect; and

(iv) who is---

(I) completing secondary education or a program leading to an equivalent credential;

(II) enrolled in an institution which provides post-secondary or vocational education;

(III) participating in a program or activity designed to promote, or remove barriers to, employment;

(IV) employed for at least 80 hours per month; or

(V) incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

[1] See References in Text note below.

[2] So in original. The semicolon probably should be a comma.

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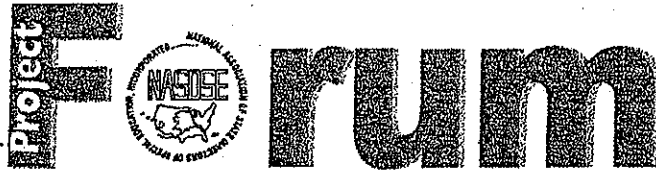
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QTA – A brief analysis of a critical issue in special education

Foster Care and Children with Disabilities

February 2005

by Terry L. Jackson and Eve Müller

Overview

Children and youth in foster care are a vulnerable population. They are at a higher risk for abuse, neglect and permanent separation from birth parents and have a greater incidence of emotional and behavioral disturbances than their peers who are not in foster care (van Wingerden, Emerson & Ichikawa, 2002). Educationally, this group has a higher rate of absenteeism and tardiness and is more likely to repeat a grade and to be in special education (Smucket & Kauffman, 1996). Although several federal laws address the needs of children and youth in foster care (e.g., the Adoption Assistance and Child Welfare Act, Adoption and Safe Families Act and Child Abuse Prevention and Treatment Act) none specifically address the needs of children and youth with disabilities in foster care.

The purpose of this document is to:

- provide data on the prevalence of children in foster care who are also receiving special education services;
- summarize federal legislation that addresses the foster care system and children who are in foster care;
- describe how states are beginning to address the Child Abuse Prevention and Treatment Act (CAPTA);
- identify some of the barriers to providing appropriate educational services to school-aged children with disabilities in foster care; and
- suggest some next steps for meeting the educational needs of this population.

For the purposes of this document, Project Forum has adopted the following definition of foster care provided by the U.S. Department of Health and Human Services (HHS): “Twenty-four-hour care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, family foster homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes regardless of whether the facility is licensed and whether payments are made by the State or local agency for the care of the child, or whether there is Federal matching of any payments made.”¹

¹ Information retrieved on November 10, 2004 from www.acf.hhs.gov/programs/cb/dis/ncands98/glossary/glossary.htm.

This document was prepared by Project Forum at the National Association of State Directors of Special Education (NASDSE) as part of its cooperative agreement with the U.S. Department of Education's Office of Special Education Programs (OSEP).

Prevalence and Other Pertinent Data

HHS collects information on children and youth in foster care through the Adoption and Foster Care Analysis and Reporting System (AFCARS) and tracks the following: number of children entering and exiting foster care; type of placement (e.g., non-relative foster family homes and group homes); permanency goals; outcomes (e.g., reunification and adoption); length of stay; and descriptive information such as age, race/ethnicity and gender of children. States submit data to AFCARS every six months. The estimated number of children in foster care in 2001 was 542,000 (National Clearinghouse on Child Abuse and Neglect Information - NCCANCH, 2003). Between 1998 and 2001, the number of children and youth entering foster care remained relatively stable, whereas the number exiting increased somewhat, leading to a slight drop in total numbers. The median age of children and youth in foster care in 2001 was 10.6 years (NCCANCH, 2003). In a similar period, thirty percent of all foster children were under the age of five (Dicker, Gordon, & Knitzer, 2002) and babies under three months of age were the most likely to enter care (Dicker & Gordon, 2004). Foster children were slightly more likely to be male (52 percent) than female (48 percent) (NCCANCH, 2003). Black children (38 percent of all foster children) received foster care in significantly disproportionate numbers (NCCANCH, 2003), as they comprise only 17 percent of the school-aged population (Office for Civil Rights, 2000). The breakdown for other groups was as follows: 37 percent of all foster children were white; 17 percent were Hispanic; and eight percent were other races/ethnicities (NCCANCH, 2003).²

In terms of academic outcomes, children and youth in foster care do not perform as well on standardized tests (Burley & Halpern, 2001; Smithgall, Gladden, Howard, Goerge & Courtney, 2004), have higher absentee and tardy rates (Altshuler, 1997), suffer from higher drop-out rates (Choice et al., 2001; Smithgall et al., 2004), have higher rates of suspension and expulsion (Smithgall et al., 2004) and are more likely to be retained in grade (Smithgall et al., 2004) than children and youth who are not in foster care.

Children and youth in foster care also receive special education services in disproportionate numbers. Estimates of the percentage of school-age children who are receiving special education services range from 30 to 45 percent (Smithgall et al., 2004; van Wingerden, Emerson & Ichikawa, 2002). In comparison, only 11 percent of *all* children aged 6 to 17 received special education services under Part B of the Individuals with Disabilities Education Act (IDEA) in the 2003 school year.³ Furthermore, children in foster care are also approximately 15 times more likely to be identified with emotional disturbance (ED) than children who are not in foster care (George, Voorhis, Grant, Casey, Robinson, 1992). One study of students in the Chicago area found that nearly 20 percent of seventh and eighth graders in foster care were identified as

² In 2000, 62 percent of the total school-aged population was white, 17 percent Black, 16 percent Hispanic, 4 percent Asian Pacific Islander and 1 percent American Indian/Alaska Native (Office for Civil Rights, 2000).

³ Information retrieved on January 27, 2005 from www.ideadata.org.

having ED, whereas only one to two percent of the overall student population was identified as such (Smithgall et al., 2004). This same study found that approximately 20 percent of students in foster care were classified with a specific learning disability (SLD), compared to only 12 percent of the overall public school population in Chicago.

Babies less than 12 months of age in foster care are also disproportionately likely to have disabilities. According to a document published by Zero to Three, over half of infants placed in foster care have developmental delays or disabilities (Dicker & Gordon, 2004). In comparison, only 2.24 percent of children ages birth through two years received special education services under Part C of the IDEA in the 2003 school year.⁴

Federal Legislation

There are four federal laws that pertain to this population of children, two of which explicitly address state and local foster care systems – the Adoption Assistance and Child Welfare Act of 1980 (AACWA) and the Adoption and Safe Families Act of 1997 (ASFA).

AACWA is designed to correct or alleviate problems in the foster care system and to promote permanent rather than multiple foster placements. According to NCCANCH (2003b), the goals and objectives of AACWA are to:

- prevent unnecessary separation of children from families;
- protect the autonomy of the family;
- shift the support of the federal government away from foster care alone and towards placement, prevention and reunification;
- promote the return of children to their families when feasible;
- encourage adoption when it is in the child's best interest;
- improve the quality of care and services; and
- reduce the number of children in foster care.⁵

Robinson and colleagues note that ASFA focuses on three priorities in the delivery of child welfare services – safety, permanency and well-being (Robinson, Rosenberg, Teele, Stainback-Tracy, Swope, Conrad & Curry, undated). While safety and well-being are equally important to child welfare, the emphasis on permanent placement has had the greatest impact on how child welfare agencies respond to cases of neglect or abuse. ASFA's guidelines require permanent placement within a specified timeframe for children under six years of age. As a consequence of this law, an increasing number of children are being adopted by their foster families or being placed in the permanent custody of relatives (Robinson et al., undated).

According to NCCANCH (2003b), the goals and objectives of ASFA are to:

- promote permanency for children in foster care;
- ensure safety for abused and neglected children;

⁴ Information retrieved on February 1, 2005 from www.ideadata.org.

⁵ Full text of the AACWA (P.L. 96-272) can be found at <http://thomas.loc.gov/cgi-bin/bdquery/z?d096:HR03434:@@@DITOM:/bss/d096query.html>.

- accelerate permanent placements of children;
- increase accountability of the child welfare system; and
- reduce the duration of a child's stay in foster care.⁶

The third law pertinent to children in foster care is the Keeping Children and Families Safe Act of 2003, signed into law on June 25, 2003. This law reauthorized and amended the Child Abuse Prevention and Treatment Act (CAPTA) of 1974. Although children and youth impacted by CAPTA are not necessarily in foster care, they are likely to be. This law requires each state to develop "provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect to early intervention services funded under Part C of the Individuals with Disabilities Education Act" [P.L. 108-36 §106(b)(2)(A)(xxi)]. Infants and toddlers are currently one of the largest growing populations entering foster care (Dicker, Gordon, & Knitzer, 2002; Smucket & Kaufman, 1996). Over the past ten years, the number of children under five entering foster care has increased by 110 percent, in contrast to a 50 percent increase for all children (Dicker, Gordon, & Knitzer, 2002).

NCCANCH (2003b) identified the two primary goals and objectives of CAPTA as:

- increasing identification, reporting and investigation of child maltreatment, thereby protecting children from harm; and
- monitoring research and compiling and publishing materials for persons working in the field.

The 2004 reauthorization of the IDEA or the Individuals with Disabilities Education Improvement Act of 2004, signed into law on December 3, 2004, also includes language that is pertinent to this population. This law makes specific reference to children in foster care [P.L. 108-446 §631(a)(5)], foster parents [P.L.108-446 §602(23)] and reinforces the CAPTA language:

(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence...[P.L. 108-446 §635(c)(2)].

The [State] application shall contain...(6) a description of the State policies and procedures that require the referral of early intervention services under this part of a child under the age of 3 who – (A) is involved in a substantiated case of child abuse or neglect [P.L. 108-446 §637(a)].

The IDEA Conference Report language clarifies that the conferees intended that every child that fits the description above will be screened by a Part C provider or designee to determine whether a referral for evaluation for services under Part C is warranted and if warranted that a referral be made. The conferees did not intend to require that every such child receive an evaluation or Part C services (Congressional Record, 2004).

⁶ Full text of the ASFS (P.L. 105-89) can be found at www.acf.hhs.gov/programs/db/laws/index.htm.

Impact of CAPTA

It is too early to assess the impact of the reauthorized CAPTA and IDEA on states. However, there is concern that CAPTA may increase the rolls of Part C programs and thus increase the need for qualified staff in an already understaffed area and the need for interagency program support (Rosenberg & Robinson, 2003). It is likely that new policies and procedures will have to be developed for screening children involved in substantiated cases of abuse or neglect and for evaluating and providing early intervention services, if needed. Staff development will be necessary to equip staff with the skills to address the unique issues related to abuse and neglect, and programs will have to ensure that social work and family counseling services are available (Rosenberg & Robinson, 2003).

In an effort to determine states' capacity to address the new CAPTA requirements, the IDEA Infant and Toddler Coordinators' Association summarized information available from 21 states in September of 2004.⁷ At that time, nine of the 21 had existing procedures in place for referral of children involved in substantiated cases of abuse or neglect to Part C programs. Eight of the nine states were referring *all* such children to Part C programs, with screening being conducted by the Department of Social Services or Child Protective Services in two of the eight states. One additional state was referring *all* such children, although there were no agreed upon referral procedures in place. Discussions relating to policies and procedures were taking place in ten states and one additional state had discussions planned. Of the 21, two states had staff development planned and two states had data collection and/or tracking planned in place. There was no information available from 29 states.⁸ Clarification provided by the recent IDEA Conference Report may assist states in developing and implementing screening procedures.

Barriers to Educational Services for School-age Children

Van Wingerden and colleagues (van Wingerden, Emerson, & Ichikawa, 2002) identified a number of barriers to meeting the educational needs of school-age children with disabilities in foster care. The following section summarizes their findings.

Systems Coordination – A lack of coordination between schools and the child welfare system (e.g., coordinated service delivery and cost sharing) makes it difficult to identify children in foster care who are in need of special education services, develop and implement individualized education programs (IEPs) in a timely fashion, advocate for children's needs, conduct transition planning and adequately attend to children's physical and mental health needs. Poor coordination stems in part from the fact that most special educators know very little about the foster care system and most child welfare workers know very little about special education services.

Tracking Children and Transferring Records – Children in foster care are a highly mobile population. This mobility frequently contributes to under-identification of educational

⁷ Special thanks to Maureen Greer, consultant to the IDEA Infant and Toddler Coordinators Association, who provided Project Forum with this information.

⁸ It is important to note that ITCA did not specifically request information from all states, but used information from extant sources. Therefore, it is possible that states are doing more than these data suggest.

disabilities, delays in evaluation for special education services, absenteeism, redundant assessments and services and lost or delayed transfer of records and IEPs.

Early Intervention Services – Although early intervention services are critical to helping children in foster care succeed academically, Part C services are vastly underused for children placed in foster settings.

Parental Role and Child Advocacy – Many children in foster care lack a knowledgeable, consistent and effective advocate for their special education needs. This results in part from confusion as to the roles of birth parents, foster parents, surrogate parents and social workers in the special education process. Social workers may also be left out of the IEP process, in spite of their access to pertinent background information about the child and family.

Young Adult Transition Services – Although both the education and child welfare systems provide services to assist young people transitioning to adult life, these services are rarely coordinated. This is an area of significant concern, since emancipation outcome data suggests that children who “age out” of the foster care system are more likely to drop out of high school, be unemployed and/or receive public assistance and experience homelessness.

Mental Health and Behavior Issues – As mentioned earlier, as a result of abuse, neglect and separation from birth families, children in foster care have a high incidence of emotional disturbance and social/behavioral problems. As many as two thirds of children in the foster care system are in critical need of mental health services. Failure to provide children in foster care with adequate mental health services may contribute to the high rate of suspension and expulsion noted above.

Participation in State Planning Efforts – Foster parents and representatives from the child welfare and judiciary systems rarely participate in state planning efforts to improve education results for all children, including those with disabilities, even though these are the people who know the most about how to meet the needs of children and youth in foster care.

Next Steps

In response to the barriers identified above, van Wingerden and colleagues (2002) generated a number of policy recommendations for improving educational services for children and youth with disabilities who are in foster care. The following recommendations for services and supports come from van Wingerden et al. (2002) and the authors of this document:

- include child welfare representatives and foster parents on state special education advisory panels;⁹

⁹ The 2004 reauthorization of IDEA specifies that there must be at least one representative from the state child welfare agency responsible for foster care on the state Part C interagency coordinating council [P.L. 108-446 §641(b)(L)].

- explicitly link state special education, mental health, child welfare agencies and state Part C lead agencies through coordinated service systems activities that include case management, shared financing and interagency personnel development;¹⁰
- provide early intervention providers, teachers and related services personnel with the information/preparation necessary to work effectively with foster care families;
- develop statewide electronic databases that cross systems (i.e., education, social services, child welfare, health care, mental health and juvenile justice) with shared unique common identifiers for children;
- invite child welfare or social workers to IFSP/IEP meetings, particularly if they are knowledgeable about the child's developmental and social history;
- ensure that state parent centers (e.g., community parent resource centers and parent training and information centers) develop outreach strategies for reaching foster parents who have children with disabilities; and
- require that young adult transition planning and service delivery be coordinated with the child welfare system for all students in foster care.

Closing Remarks

Providing appropriate services to children and youth with disabilities in foster care is a difficult challenge. Although service coordination is required under Part C of the IDEA and the 2004 reauthorization of the IDEA requires at least one representative from the state child welfare agency responsible for foster care to take part on the state Part C interagency coordinating council, no federal policies require collaboration between schools, social services and child welfare programs for school-age children and youth. Currently, groups such as the Mid-South Regional Resource Center (MSRRC), National Early Childhood Technical Assistance Center (NECTAC), IDEA Infant and Toddler Coordinators Association and the Child Find community of practice are working together to examine how states are beginning to implement the requirements in the reauthorized CAPTA and IDEA. Such examination is an important step towards understanding how to better coordinate services for infants and toddlers in foster care.

For school-age children in foster care, efforts also must be directed at streamlining the identification of disabilities and providing special education services in a more timely manner. Steps must be taken by social service agencies and educational systems on both the state and local levels to collaborate and prevent the duplication of services, including the design/revision of policies to allow information sharing across agencies. Until then, children and youth with disabilities in foster care will continue to be under-identified and underserved.

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¹⁰ Service coordination is already a required part of the Part C program.

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