



Advocates for Children of New York

Protecting every child's right to learn

March 6, 2020

Administration for Children's Services (ACS) Policy Unit
150 William Street, 17th Floor
New York, NY 10038
Via email: draft.policy.comments@acs.nyc.gov

Re: Comments Regarding the Draft Policy “School Continuity and Stability for Children in Child Welfare Foster Care Placements”

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Advocates for Children of New York (AFC) appreciates the opportunity to submit comments to the draft policy, “School Continuity and Stability for Children in Child Welfare Foster Care Placements.” For nearly 50 years, AFC has worked to ensure a high-quality education for New York City students who face barriers to academic success, focusing on students from low-income backgrounds. Since 2001, AFC’s Project Achieve has advocated for educational opportunities for students involved with the child welfare system, and each year, we collaborate closely with provider agencies and birth and foster parents to advocate on behalf of hundreds of students in or at-risk for placement in foster care. Since the passage of the Fostering Connections to Success and Increasing Adoptions Act in 2008, we have worked diligently with ACS, foster care agencies, attorneys for the child, and attorneys for parents to improve school stability for students in foster care; trained foster care agencies and Department of Education (DOE) staff on the school continuity provisions of Fostering Connections and the Every Student Succeeds Act (ESSA); and worked on policy efforts to promote school stability on a systemic level. As such, we are well positioned to comment on the draft policy and welcome the chance to do so.

We appreciate that ACS included AFC and other stakeholders in discussions of this draft policy and that we were able to work collaboratively with ACS to help develop aspects of the policy and attachments. In general, we are pleased with the policy and the guidance it provides to foster care agencies and ACS staff to make timely best interest determinations, request transportation, and prioritize school stability for students in foster care.

In our comments below, we are recommending some small but important changes to further strengthen the policy and attachments. We would also like to suggest a few minor revisions to the document as a whole to reflect changes that have taken place since the policy was initially drafted in 2018. First, because of the recently launched Fair Futures initiative, most provider foster care agencies now employ Coaches and other support staff to coordinate education services for youth in foster care. Therefore,



wherever this policy refers to agency education specialists, we recommend using a broader term that encompasses all agency staff who work on education-related issues, such as “education staff.” Second, it is our understanding that the Office of Education Support and Policy Planning (OESPP) is now called the Office of Education and Employment Initiatives. This name change should be reflected throughout the policy.

We provide additional comments in more detail below. Suggested deletions are noted by ~~striketrough~~; additions are noted by underlining.

Section I.C. Introduction

This section states that this guidance and procedures apply to children in out-of-home care, including those placed in a contiguous county or state. Contiguous means “sharing a common border” or “touching;” however, students are entitled to school stability, and agencies should be making best interest determinations, in circumstances where the child was not placed in a neighboring or strictly contiguous county. For example, this policy still applies if the child resided in the Bronx but was placed in a foster home in Brooklyn, or if the child was attending school in Manhattan but placed in a foster home in Nassau County.

Additionally, this section refers to students in residential foster care generally. While the category of residential foster care is broad, it would be helpful to specify types of residential settings that are included within the purview of this policy. Explicitly noting that the policy includes Residential Treatment Centers (RTCs) and Rapid Intervention Centers (RICs) would help ensure that students placed in these settings receive the benefits of this policy and are allowed to remain in their schools of origin after placement. In our experience, students placed in RTCs or RICs are often told they must attend the campus or on-site school, in violation of federal and state law, even when doing so may not be in their best interests.

Therefore, we recommend the following changes to this section:

This practice applies to all staff with case planning responsibility working with school-age children placed in out-of-home care, including those placed in residential foster care, such as Residential Treatment Centers (RTCs) and Rapid Intervention Centers (RICs), and those placed ~~in a contiguous county or state~~ outside of New York City.

Section II.D Obtaining Education Information During an Investigation

This section details a list of documents CPS staff are encouraged to gather during a child welfare investigation. The list includes report cards and transcripts on the same line, with a qualifier in parentheses that transcripts are only for high school students.



As currently written, a reader might assume that the qualifier “for high school students” applies to report cards as well, and that CPS staff should only gather report cards for high school students. Therefore, we recommend that report cards and transcripts go on separate lines in the list, so there is no confusion that report cards should be gathered for all students, not just high school students. There is also a typo at the end of the list that needs to be corrected. This section should be revised as follows:

1. ATS data pertaining to absences/lateness, credits attempted and earned, and/or test scores;
2. Most recent report card ~~and transcript (for high school students);~~
3. Current transcript (for high school students);
4. Contact information for such school personnel as guidance counselors, teachers, social workers, and principal;
5. Disciplinary records, if any;
6. Information regarding known or suspected developmental delays and any completed assessments or testing results;
7. Individualized Education Program (IEP) or 504 plan and supporting documents (social history, psychoeducational evaluation, and/or other appropriate assessments);
~~and/or~~

Section III. Preliminary Educational Assessment and Planning

Section III.B.

This section describes what education information participants at the Initial Child Safety Conference (ICSC) must consider when making a preliminary best interest determination after a recommendation for an out-of-home placement. As written, the policy requires that the ICSC team review all available educational information and discuss the appropriateness of the child’s existing school by considering a list of factors. However, the factors listed in the policy do not include many of the factors outlined by the Office of Children and Family Services (OCFS) in the Best Interest Determination (BID) Form (Attachment A of the draft policy). Only 6 of the 22 factors are included in the policy currently. We recommend referencing the full list of factors outlined in the BID form itself; otherwise, conference participants could conclude that the other factors are less important or need not be considered. Section III.B. should be revised to read:

In accordance with *ACS Initial Child Safety Conference Policy*, if the recommendation is for out-of-home placement, the ICSC participants must review all available educational information and discuss the appropriateness of the child’s existing school setting guided by the factors outlined ~~below:~~ in the Best Interest Determination Form (Attachment A).



- ~~1. Preferences of the child and the parent/caregiver;~~
- ~~2. Child's age, grade level and maturity level;~~
- ~~3. Availability and quality of services at the child's current school and capacity of current school to meet the child's needs (including special education and other interests)~~
- ~~4. Safety concerns, which could include negative relationships or concerns about bullying;~~
- ~~5. The strength of the child's ties to peers and staff members at the current school and the impact of changing schools on the child's emotional well-being; and~~
- ~~6. Number of school disruptions the child has already experienced.~~

Section III.D.

This section describes how participants at the ICSC should make a preliminary recommendation about school placement in the event the child(ren) are placed in foster care and document that recommendation in the conference summary notes. Our suggestion is that conference facilitators should only be required to enter an explanation for the recommendation if the decision is that the child(ren) should change schools. These meetings can involve contentious, emotionally difficult conversations, and by the time the team gets around to reviewing the school placement, participants may have limited attention or energy left to engage in a full discussion. In the vast majority of cases, the recommendation should be for the student(s) to remain in their current school, unless facts come to light that point to another conclusion. If we direct conference facilitators that an explanation is only needed when the team recommends a change in schools, this will incentivize decisions to keep children in their schools of origin, and avoid situations when facilitators are forced to come up with a rationale for keeping the child(ren) in their school of origin, when that should simply be the default decision. Therefore, we recommend changing Section III.D. to read:

At the close of the conference, the facilitator shall document the preliminary school stability recommendation in the conference summary and enter the information in CNNX Progress Notes for review at the foster care Transition Meeting. If the recommendation is that the child(ren) should not continue to attend the school in which they are currently enrolled, the facilitator must explain the rationale behind the participants' decision. When an FCLS attorney is assigned to the case, the CPS shall convey the outcome of the conference to the FCLS attorney, including the recommendation regarding the school setting, who shall notify counsel for the child and parent(s)/caregiver(s).



Section III.F. Changes in Foster Care Placement

This section describes how participants at the Placement Preservation Conference should make a preliminary recommendation about school placement, should a decision be made that a child must change foster homes. The same comments and reasoning outlined above apply to this section as well. Therefore, we recommend that section III.F.3 of the policy be changed to read as follows:

At the close of the conference, the facilitator shall document the preliminary school stability recommendation in the conference summary and enter the information in CNNX Progress Notes for review at the foster care Transition Meeting. If the recommendation is that the child(ren) should not continue to attend the school in which they are currently enrolled, the facilitator must explain the rationale behind the participants' decision. If attorneys were not in attendance, the case planner shall convey the outcome of the conference to the FCLS attorney, who shall notify counsel for the child and parent(s)/caregiver(s).

Section IV. Foster Care Placement Decisions

The above comments related to RTCs and RICs, and to the phrase “contiguous county or state” apply to this section as well. We therefore recommend that section IV.A. be amended to read:

This practice applies to all school-age children placed in out-of-home care, including those placed in residential foster care, such as Residential Treatment Centers (RTCs) and Rapid Intervention Centers (RICs), and those placed ~~in a contiguous county or state~~ outside of New York City.

Section IV.B.

Because of the newly funded Fair Futures initiative, most foster care agencies now employ Coaches, in addition to or in lieu of Education Specialists, to coordinate education services and provide educational planning and advocacy to youth in foster care. Other agencies might employ Education Navigators, Education Coordinators, or Education Advocates to do similar work, as well as Tutors, Supervisors, Assistant Directors, or Directors of Education. Therefore, wherever this policy refers to agency education specialists, we recommend using a broader term that encompasses all agency employees who work on education-related issues, such as “education staff.” For example, this section would be amended as follows:

Upon receiving an initial placement referral from OPA, foster care provider agencies may not reject a referral based on school transportation needs. Provider agency home-finding staff shall consult, whenever if possible, with



~~the~~ agency education ~~staff-specialist(s)~~ when making a foster care placement and shall direct all foster parents to maintain the child's existing school setting unless a determination is made that a transfer would be in the child's best interest.

Section V.B. School Notification and Input

With regard to children and youth awaiting placement at the Children's Center or Youth Reception Centers (YRCs), we suggest that ACS and the Office of Pre-Placement reconsider their practice, if not the official policy, for arranging school transportation for these students. We understand that ACS currently provides transportation for students in pre-placement settings. However, for students who remain at the Children's Center or YRCs for one week or more, ACS should consider requesting transportation for those students from the DOE, particularly when students have Individualized Education Programs (IEPs) that mandate specialized transportation. We understand that some students may remain at the Children's Center for several weeks or even months, and in those situations, it makes sense to utilize mandated DOE transportation. This would free up ACS transportation, which has been overwhelmed with requests in recent years, to support other students who need short-term transport to ensure school continuity while longer-term transportation arrangements are being arranged. As such, we recommend amending Section V.B. to read:

If a child or youth is awaiting placement at the Children's Center, a Youth Reception Center, or another pre-placement facility, the assigned ACS caseworker shall notify the school of the child's entry into foster care, and the Office of Pre-Placement shall request school transportation from the ACS Office of Transportation Services. Once the child or youth has been awaiting placement for one week or more, the assigned ACS caseworker shall coordinate with the school and the ACS Office of Education Support and Policy Planning (OESPP) to request transportation from the Department of Education (see **Transportation** below) for the duration of the child or youth's time at the Children's Center, YRC, or other pre-placement facility.

Section VI. Best Interest Determination

This section outlines how foster care agency staff should make a best interest determination about a student's school placement whenever they enter foster care or change foster care placements. Sub-section VI.C.3. requires that case planners consult with the agency education specialist as part of this process. For the reasons described above, we recommend amending this section of the policy to read:

Prior to the Meeting, the case planner shall contact the Designated Liaison at the school of origin to solicit the opinion of relevant school personnel on



whether it is in the child's best interest to remain there (see **School Notification and Input** above). The case planner shall also consult with ~~the~~ education staff specialist assigned to the case.

Sections VI.C.6.c. and VI.C.7.b.

These sections outline best interest determination notice requirements. The policy requires the ACS Office of Education Support and Policy Planning (OESPP) to notify the Family Court Legal Services (FCLS) attorney of the best interest determination, who in turn must inform the attorneys for the child and parent(s)/caregiver(s). The policy does not require that a copy of the Best Interest Determination (BID) Transmittal Form be provided to FCLS, attorneys for the child, and parent attorneys. We recommend amending the policy so that ACS must share a copy of the BID Transmittal Form, which includes the rationale supporting the best interest determination, with all parties to the child welfare proceeding. Keeping all parties informed of the rationale will ensure that parents' and children's attorneys can make a well-reasoned decision to dispute a BID determination, if they so choose, and that the Court has the information it needs to make a ruling. Therefore, we recommend changing Section VI.C.6.c. to read:

The ACS Office of Education Support and Policy Planning shall notify the FCLS attorney, who shall subsequently inform the attorneys for the child and parent(s)/caregiver(s) of the best interest determination and provide the FCLS attorney with a copy of the BID Transmittal Form. The FCLS attorney shall subsequently inform the attorneys for the child and parent(s)/caregiver(s) of the best interest determination and provide them with a copy of the BID Transmittal Form.

Similarly, Section VI.C.7.b. should be changed to read:

Upon approving a change in school placement, OSEPP shall notify the case planner and the FCLS attorney and provide them each with a copy of the BID Transmittal Form. The FCLS attorney ~~who~~ shall subsequently inform the attorneys for the child and parent(s)/caregiver(s) and provide them with a copy of the BID Transmittal Form.

Section VI.D.

In light of our comments above related to agency education specialists and Fair Futures staff, we recommend changing footnote 7 in Section VI.D to read in part:



Please see <https://www.schools.nyc.gov/enrollment/enrollment-help/transfers> or consult with an agency education ~~staff specialist~~ or OESPP for additional information and guidance.

Section VII. Discharge from Foster Care

There is a typo in sub-section VII.B.1, which should be revised to read:

The right of students who change residence within New York City to remain in their current school until completion of the terminal grade;[FN]~~(per)~~; and

Attachments

Best Interest Determination form and transmittal form – Attachment A

We have a few changes to recommend to the Best Interest Determination and transmittal form. A revised version is attached. On the first page of the Best Interest Determination form, the parenthetical requesting the “dates of attendance, if known” should come after the School of Origin, not the School District of Origin. For students in ACS custody, the School District of Origin will almost always be New York City, and the dates of attendance within the City school district are much less relevant than the time period during which the student has been attending their current school.

On page two of the form, we recommend changing “Birth Parent(s)” to “Parent(s),” since the term “parent” is more inclusive of adoptive parents, step-parents and others who are not the child’s biological parents but are nevertheless parents to the child. We also recommend leaving space to record the names of two people for the categories ~~Birth Parent(s)/~~Legal Guardian(s) and Foster Parent(s), and adding (s) to the “Other” category, so that multiple other stakeholders can be consulted. Finally, we recommend changing “Agency education specialist” to “Agency education staff,” for the reasons enumerated in Section IV.B above.

On page 4 of the form, the note about NYC DOE school placements being subject to available seats should be preceded by a phrase indicating that availability only applies to students who are changing schools. Otherwise, the team completing the form might think that the student’s right to remain in their school of origin is subject to seat availability. That section of the form should be amended to read as follows:

School and School District Child is to Attend (NOTE: For students who are changing schools, NYC DOE school placement is subject to seat availability. Please specify preferences with respect to school, program type, and neighborhood or district.)



The directions at the top of the transmittal form are confusing and conflict with the instructions in the body of the draft School Continuity policy. Instead of returning the form to the ACS Office of Education Support and Policy Planning (OESPP), as is required by the draft policy, the directions on the transmittal form state that the case planner should send it to the school district point of contact. So that the form matches the directions laid out in the draft policy, the directions should be revised to read:

The case planner-LDSS must indicate the best interest determination below and provide this transmittal document to the school and the ACS Office of Education Support and Policy Planning (OESPP). ~~appropriate LEA point of contact at the district of origin, and i~~ If a change of school is recommended, the case planner shall forward the Transmittal Form to OESPP for review and approval. ~~to the LEA point of contact at the school determined to be in the child's best interest (school of attendance).~~ Prompt notification is crucial for purposes of arranging any necessary transportation, as well as facilitating immediate and appropriate enrollment and transfer of school records when a change in school placement is required.

We also recommend adding a section under option 1, when the determination is that the student shall remain in their school of origin, to describe the long-term transportation plan. As with option 2, if a student will be changing schools, the agency will need to secure interim and long-term transportation for the student.

Finally, we recommend revising the sentence at the bottom of the form indicating that the student can enroll in the new school immediately. While we believe this statement is meant to indicate to the school that the student has the right to immediate enrollment, anyone completing the form would think that it means the child can enroll in a new school right away. That sentiment would conflict with the draft policy, which clearly states that ACS must approve school transfers when the best interest determination is that the child should change schools, and which allows for a three-day grace period in case the attorney for the child or parent wants to challenge the school placement decision. Therefore, we recommend changing the bottom of the transmittal form to read:

~~(The student can enroll immediately in the new school. Once a transfer is approved, students in foster care have the right to immediate enrollment, even without the records typically required.~~ Transfer of school records **MUST** be completed **within five business days of the school change.**

Once all of the changes have been made to the Best Interest Determination and transmittal form, it should be converted into a fillable pdf. In its current format, the



person completing the document cannot check the boxes or type in responses without affecting the formatting.

School Notification and Input letter – Attachment B

We have a few formatting suggestions that we believe will make the letter and form easier to complete for foster care agency staff and school personnel. A revised copy is included with our comments. In addition, we would like to point out that the notification letter asks for the Agency Caseworker Name and Agency Caseworker Supervisor, but then directs the school to return the input form to the “case planner” specified above. The letter should be internally consistent with respect to which term it uses. In addition, the letter should instruct the school to return the form to the caseworker and the supervisor, since email addresses for both will be included.

On the school input form, we recommend leaving a blank space where the agency or ACS staff member soliciting information (it may not be the case planner if a supervisor is covering the case, or if an education staff member is sending the form) can write in or type their name and email address or fax number. This will ensure that the person completing the form knows where to send the form, in case it gets separated from the notification letter. We also recommend deleting the reference to “six calendar days from the student’s placement in foster care,” since the school won’t know the date the student came into care.

We recommend altering the placement of the data fields in the box on the School Input Form. Since the foster care agency staff member seeking input from the school may not know the student’s ID number, the date the student enrolled in the school, or the school DBN, we recommend placing those after the field “*School representative completing this form,*” so the school representative understands that they should fill in those fields if they are blank. For similar reasons, we recommend adding a place for the foster care agency to write in the student’s date of birth. This will ensure the form is being completed for the correct student, if the foster care agency doesn’t have the student’s ID number and there happen to be two students in the school with the same or very similar names. Finally, we recommend changing “OSIS” to Student ID number and changing Current School DBN to Current School Name/DBN, since agencies may need to use this form for schools outside of New York City (in Westchester County or Long Island, for example), where these acronyms aren’t used.

Finally, we recommend developing a separate notification letter for situations where a student is changing foster care placements after they have been freed for adoption and there has been a termination or surrender of parental rights. The second letter, which we have also included, would be identical to the first, except that it would not include



names or contact information for the parents and it would not reference the parent's right to remain involved in educational decision-making for the child.

Foster Care Discharge Notification letters – Attachments C (trial discharge) and D (final discharge)

In both discharge notification letters, we recommend putting brackets around the word "Previous" for the data field, "Child's [Previous] school," since the letters are meant to be used whether or not the student is remaining in their school of origin or transferring schools. We also recommend adding a reference to the specific section of NYS Education Law, so that the second sentence of the second paragraph in both letters reads:

Additionally, students who exit foster care are entitled under NYS Education Law § 3244 to receive transportation to their current school either through the end of the academic year or, if the following year is a terminal grade, through the end of that year.

Finally, in Attachment C, the trial discharge notification letter, we recommend deleting the final sentence, about contacting the Senior Field Counsel assigned to the school for additional information about the parent's right to access educational information about their child. Since the student will be living with their parent(s) at that point, the school should not have questions about the parent's right to access that information, and including the line in the letter is more likely to raise doubts about their rights than saying nothing at all. If schools have questions about the parent's rights generally, they can contact the foster care agency caseworker or supervisor listed on the form. Therefore, the last paragraph of Attachment C should be revised to read:

The child's foster care status is strictly confidential and should only be revealed to school staff on a need-to-know basis. We appreciate your sensitivity to this issue on behalf of the student. ~~For additional questions regarding the release of information to birth parents, please contact the Senior Field Counsel assigned to your school.~~

Finally, we must note that we are disappointed that the City has not yet addressed longstanding gaps in transportation for students in foster care. Recognizing that transportation is critical for school stability, federal and state law require the City to transport students in foster care to their schools of origin. Yet, the City continues to deny bus service to some students in foster care who need it to stay in their schools of origin, providing them only with a MetroCard, resulting in students being forced to transfer schools or foster homes or to experience longer stays at the Children's Center.



We urge the City to abide by federal and state law and guarantee bus service or a comparable mode of transportation to students in foster care. ACS should also consider expanding its own transportation fleet to better support school stability for students in foster care, especially while students are waiting – sometimes for weeks or months – for DOE busing to go into effect. ACS and DOE should develop a cost-sharing agreement to address additional transportation costs, as contemplated by ESSA, and both agencies should fully explore all sources of potential state and federal reimbursements for transportation aid.

Thank you for considering our recommendations. Please feel free to contact Erika Palmer, Supervising Attorney at Advocates for Children of New York, at epalmer@advocatesforchildren.org or 212-822-9504 if you have any questions or would like additional information.