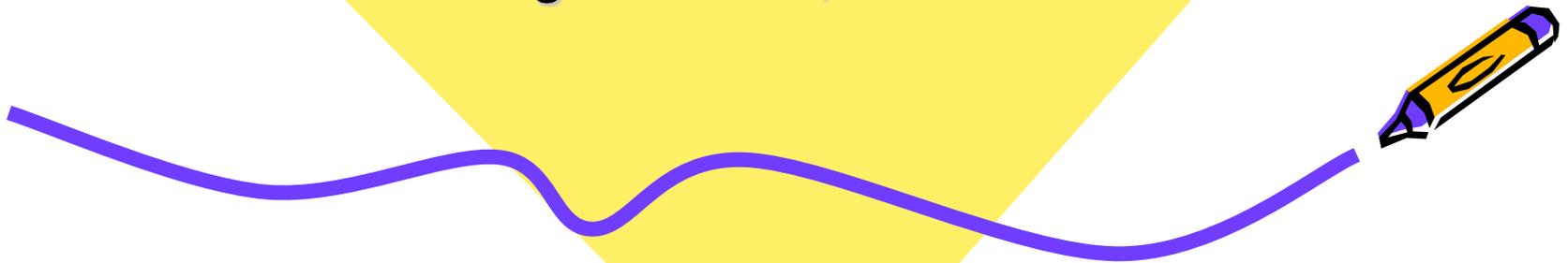


Making Best Interest Decisions

Nebraska – Through the Eyes of a Child
August 27-29, 2012



Outline for Presentation

- Overview of Best Interest Decisionmaking
 - Fostering Connections
 - McKinney-Vento Act
 - State Implementation Considerations

 - Case Scenarios

 - Tools and Resources
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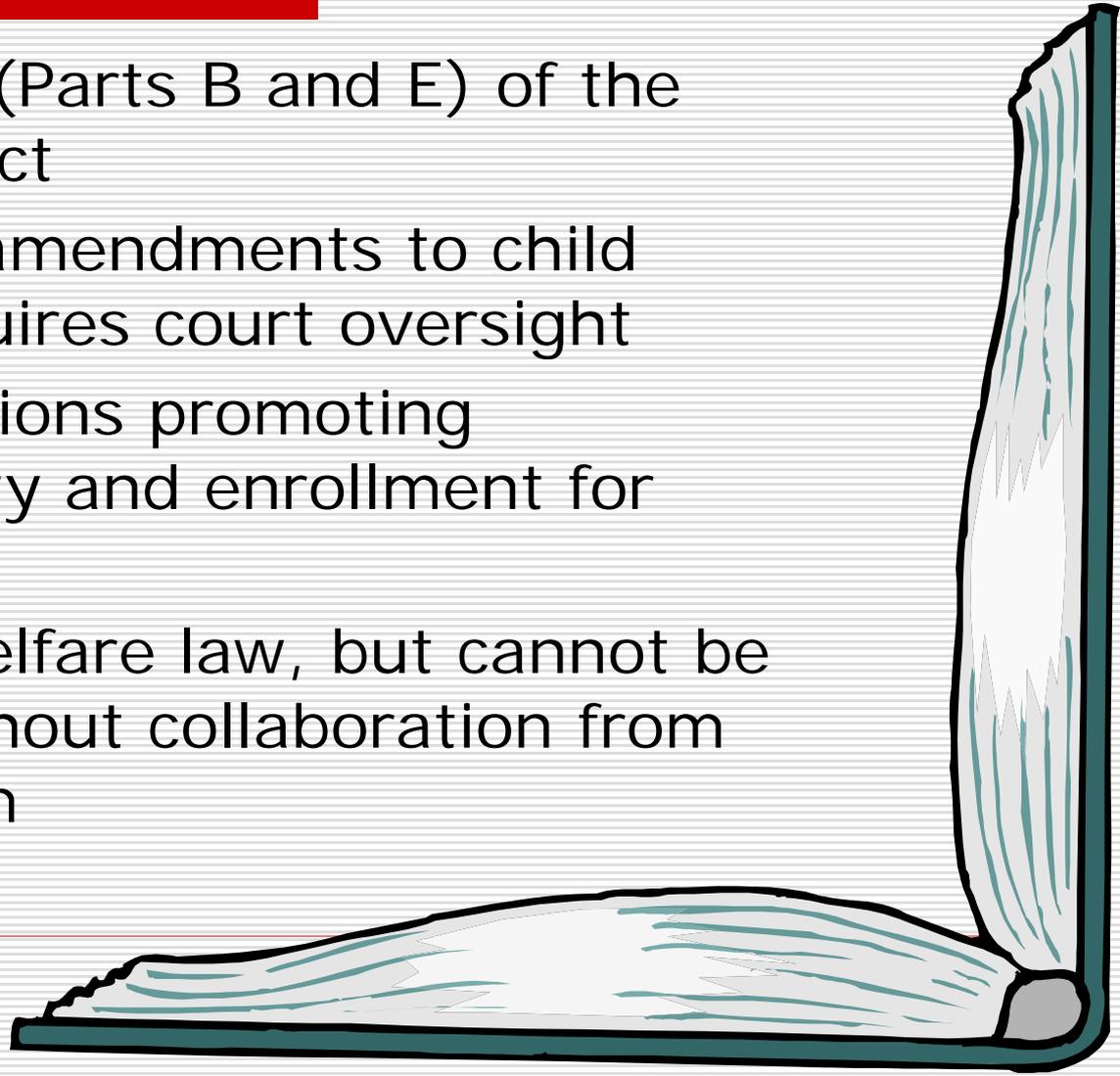
LEGAL CENTER FOR

FOSTER CARE & EDUCATION

- Collaboration between American Bar Association, Education Law Center, and Juvenile Law Center, in collaboration with Annie E. Casey Foundation, Casey Family Programs, and Stuart Foundation.
 - A national technical assistance resource and information clearinghouse on legal and policy matters affecting the education of children and youth in out-of-home care.
 - Website: www.ambar.org/LegalCenter
 - Listserv, Conference Calls, Publications, Searchable Database
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Fostering Connections to Success and Increasing Adoptions Act of 2008

- ❑ Amends Title IV (Parts B and E) of the Social Security Act
- ❑ Broad-reaching amendments to child welfare law; requires court oversight
- ❑ Important provisions promoting education stability and enrollment for youth in care
- ❑ Changes child welfare law, but cannot be fully realized without collaboration from education system



Presumption: Same School

- The child's case plan must include
 - "(I) an assurance that the state [or local child welfare agency] has coordinated with appropriate local education agencies ... to ensure that the child remains enrolled in the school in which the child was enrolled at the time of placement"

42 U.S.C.A. 675(1)(G)(ii).

Presumption: Same School

- If remaining in the same school is not in the best interest of the child, the child's case plan must include
 - "(II) ... assurances by the State agency and the local education agencies to provide immediate and appropriate enrollment in a new school, with all of the education records of the child provided to the school." 42 U.S.C.A. 675(1)(G)(ii).
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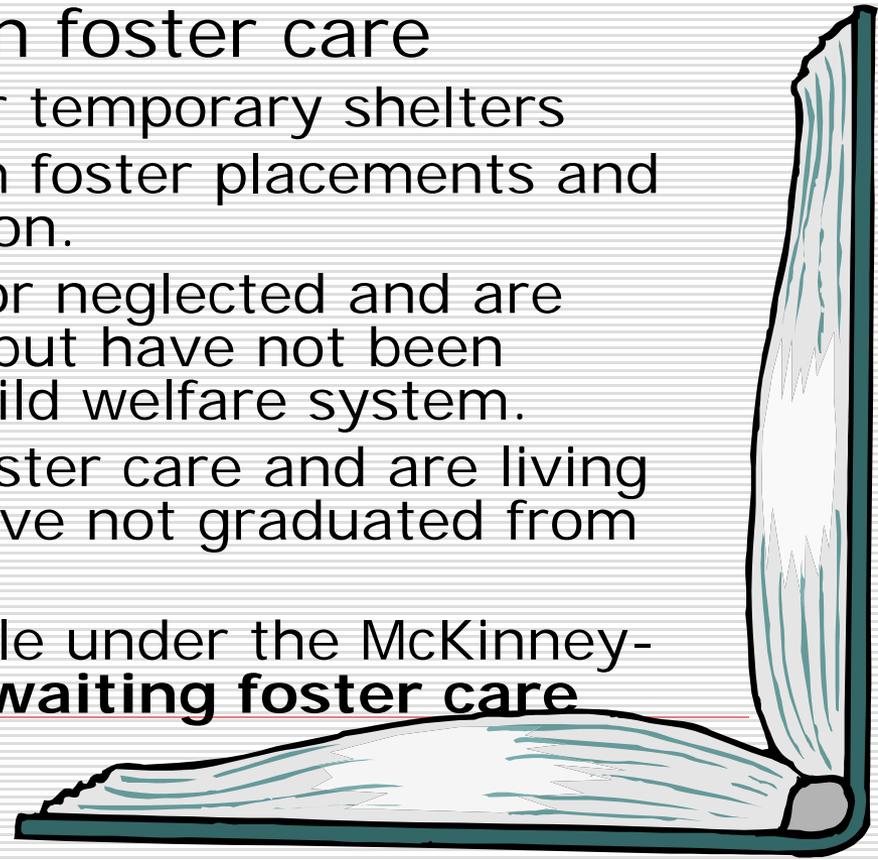
July 9, 2010 – Program Instruction

- ❑ Education Stability Plan must be a written part of the case plan, reviewed every 6 months.
 - ❑ Agency could invite school personnel, agency attorneys, guardians ad litem, youth, etc. to discussions about the education stability plan.
 - ❑ Agency is encouraged to develop standard and deliberate process for determining best interest and properly documenting the steps taken to make the determination.
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McKinney-Vento Homeless Assistance Act

42 U.S.C. §11431 et. seq.

- ❑ Rights: Right to Remain in School of Origin, Transportation, Right to Immediate Enrollment (w/o Records), Liaisons
- ❑ Eligibility: SOME children in foster care
 - Children living in emergency or temporary shelters
 - Youth who have run away from foster placements and are living in a homeless situation.
 - Youth who have been abused or neglected and are living in a homeless situation, but have not been placed in the custody of the child welfare system.
 - Youth who have aged out of foster care and are living in a homeless situation, but have not graduated from high school.
 - The definition of children eligible under the McKinney-Vento Act includes children **“awaiting foster care placement.”**



Comparing McKinney-Vento to Fostering Connections

- ❑ **McKinney-Vento Act** (Education Law: NCLB)
Best Interest Decision – SCHOOL BASED
- ❑ **Fostering Connections** (Child Welfare: Title IV-E)
Best Interest Decision – CHILD WELFARE-BASED

Outline of Elements of Fostering Connections Best Interest Decisionmaking Process

- 1) Seeking input from stakeholders

 - 2) Establishing the criteria for decision (not cost)
 - Sample Form:
www.ambar.org/LegalCenterTOOLKIT

 - 3) Resolving disputes
-

1) Seeking Input from Stakeholders

- Who should be included and when should decisions take place?

2) Establishing Criteria for Decisionmaking

- What factors should be considered when making decisions about best interest related to school stability?
-

Key Questions to Consider When Making a Best Interest Determination

- ❑ How long is the child's current placement expected to last?
 - ❑ What is the child's permanency plan?
 - ❑ Which school does the student prefer?
 - ❑ How many schools has the child attended over the past few years? How many schools has the child attended this year? How have the school transfers affected the child emotionally, academically and physically?
 - ❑ How strong is the child academically?
 - ❑ To what extent are the programs and activities at the potential new school comparable to or better than those at the current school?
 - ❑ Does one school have programs and activities that address the unique needs or interests of the student that the other school does not have?
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Key Questions to Consider When Making a BI determination cont....

- ❑ How deep are the child's ties to his or her current school?
 - ❑ Would the timing of the school transfer coincide with a logical juncture such as after testing, after an event that is significant to the child, or at the end of the school year?
 - ❑ How would changing schools affect the student's ability to earn full credits, participate in sports or other extra-curricular activities, proceed to the next grade, or graduate on time?
 - ❑ How would the length of the commute to the school of origin impact the child?
 - ❑ How anxious is the child about having been removed from the home and/or any upcoming moves?
 - ❑ What school do the child's siblings attend?
 - ❑ Are there any safety issues to consider?
-

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July 9, 2010 Program Instruction

Examples of Best Interest Factors:

- ✓ Child's preference
 - ✓ Safety of the child
 - ✓ Appropriateness of current educational programs in current or other school and how the schools can serve the child's needs (including special education)
 - ✓ *COST SHOULD NOT BE A FACTOR!*
-

3) Resolving Disputes

How are disputes resolved?

Nebraska Considerations

- Right to remain in the same school

 - Ensuring “immediate and appropriate enrollment”
 - With records
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Residents

- **Students are residents of the district in which they reside**
- **Students are residents of any district where one of their biological parents reside**

79-215(1) and (2)

Kid who moves during year

- **“A school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year”**

79-215(4)

Kid who's been contracted to attend your district

- **By another district**
- **By parents of children who reside in a neighboring state**

79-215(5) and (8)

Option Students

- **Foster parents can't option**
- **Parents “eligible” for mileage if qualify for free lunch**
- **Option students placed out of district**

79-215(5) and (8)

79-241

State Wards who ARE Foster

- Remains resident of home dist.
- NOT resident of foster home district
- Should continue attending original school unless HHS determines otherwise
 - Must be in writing per NDE
- DO NOT enroll foster kids as a matter of course

79-215(9)

Case Scenarios

Case Example: RICKY

Fourteen-year-old Ricky and his 8-year-old sister Tracey have been in the custody of the Department of Human Services for several years, placed in the same foster home. Two weeks ago (August 5th), Ricky's foster family contacted his case worker to inform her they could no longer have Ricky in their home. With little time to find an alternate placement, the case worker has secured a space for Ricky in the Capital City Youth Center. It is unclear how long Ricky will remain at Capital City, although his permanency plan calls for adoption. A court hearing is scheduled for next month.

**Is Ricky covered by the
McKinney-Vento Act?**

**What school should Ricky
attend?**

**~~Is Ricky covered by the~~
Fostering Connections Act?**

**~~How should Ricky get to and
from his school of origin?~~**

**What can those working with
Ricky do to ensure his
success in school?**

Case Example: Tracey

Meanwhile, Tracey has not been doing well at her current school and her foster parents and case worker have been considering enrolling her in a local charter school with small classes and an art program that interests her. She is refusing to return to school and begging to be enrolled in the charter school immediately. Tracey's foster parents hope to adopt her and are worried about her current difficulties.

**~~Is Tracey covered by the
McKinney-Vento Act?~~**

**~~Is Tracey covered by the~~
Fostering Connections Act?**

What school should Tracey attend?

Mariana, Age 17

Mariana is also staying at Capital City. She is a 17 year old girl who ran away from her home in another state several months ago because her stepfather was abusing her. Mariana's mother believes it is better for the family if Mariana stays away from home. Mariana is not in the custody of the child welfare agency. She has been out of school and surviving on her own since leaving home, but hopes to enter Capital City's transitional housing program and return to school soon.

Is Mariana covered by the
McKinney-Vento Act?

Is Mariana covered by the
Fostering Connections Act?

What school should Mariana
attend?

Legal Center for Foster Care and Education Resources

www.ambar.org/LegalCenterMATERIALS

- Fostering Connections Toolkit**
 - McKinney-Vento and Fostering Connections Overlap Series**
 - Data and Information Sharing (Manual and Tools)**
 - Searchable Database**
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Contact Information
