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# The Connection Between Permanency and Education in Child Welfare Policy

KELE STEWART\*

## Introduction

This article explores the relationship between permanency, the dominant child welfare policy, and the educational needs of children in out-of-home care.<sup>1</sup> The child welfare system has traditionally focused on finding children a permanent home.<sup>2</sup> Education and other aspects of a child's well-being receive less attention.<sup>3</sup> The failure to address children's educational needs is alarming given their poor academic performance.<sup>4</sup> Studies show that compared to their peers from similar backgrounds, children in out-of-home care perform below grade level, have lower test scores and high school completion rates, and have more disciplinary problems.<sup>5</sup> These educational deficits contribute to challenges faced by former foster youth as adults. Former foster youth experience disproportionately high rates of unemployment, homelessness, and incarceration.<sup>6</sup>

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\* Professor of Clinical Education, University of Miami School of Law. I am grateful to Annette Appell and Osamudia James for their comments, and to Andrea Moore for her advocacy on behalf of Florida's children in foster care. I would like to thank research assistants Alyssa Barton, Michael Delsontro and Catherine Hedglon.

1. The term "out-of-home care" is used to refer to supervision by the state when children are removed from their natural families due to allegations of abuse and neglect. Throughout this article, the terms "out-of-home care" and "foster care" are used interchangeably despite the fact that children removed from their homes may live in a variety of settings including a foster home licensed by the state, a relative's home (that may be licensed or unlicensed), group homes or other institutionalized settings.

2. Sacha Coupet, *Swimming Upstream Against the Great Adoption Tide: Making the Case for Impermanence*, 34 CAP. U. L. REV. 405, 405 (2005).

3. Sarah H. Ramsey, *Child Well-Being: A Beneficial Advocacy Framework for Improving the Child Welfare System?* 41 U. MICH. J. L. REFORM 9, 10 (2007).

4. Cheryl Smithgall et al., *Educational Experiences of Children in Out-Of-Home Care*, CHAPLIN HALL CTR. FOR CHILDREN AT THE UNIV. OF CHI. 16-17 (2004), [http://www.chapinhall.org/sites/default/files/old\\_reports/156.pdf](http://www.chapinhall.org/sites/default/files/old_reports/156.pdf).

5. *Id.*

6. Robert M. Goerge et al., *Employment Outcomes for Youth Aging Out of Foster Care*,

Permanency is the goal of placing each child with an enduring family. Research shows children must have a relationship with at least one caring adult for healthy psychological development.<sup>7</sup> Permanency was first identified as a federal legislation goal in 1980. Since then permanency has been the driving force in child welfare policy and practice.<sup>8</sup> Although there has been scholarly debate and policy shifts regarding how to best achieve permanency, permanency itself has appropriately remained a priority in child welfare.<sup>9</sup> In contrast, only recently has the child welfare system begun to consider the educational needs of children in care. Well-being encompasses education and other indicators like physical and mental health. Well-being was added as a child welfare goal in 1997 with the passage of the Adoption and Safe Families Act.<sup>10</sup> However, well-being is often a secondary consideration in legislation and funding, child welfare agency practice and court decisions.

Many challenges lead to the neglect of a child's educational needs while in out-of-home care.<sup>11</sup> Generally, dealing with the child's immediate crisis and the search for a permanent home leaves overburdened agency caseworkers and judges with little time to prioritize education. Frequent placement and school changes are often accompanied by delays in enrollment and the transfer of school records. This hinders academic progress. In addition, children in foster care often do not have a consistent adult managing all aspects of their academic life. It may be unclear which of the

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CHAPIN HALL CTR. FOR CHILDREN AT THE UNIV. OF CHI. (2002), <http://aspe.hhs.gov/hsp/fostercare%2Dagingout02>. See also Mark E. Courtney & Amy Dworsky, *Early Outcomes for Young Adults Transitioning from Out-of-Home Care in the USA*, 11 CHILD & FAM. SOC. WORK 209 (2006).

7. Lorrie L. Lutz, *Achieving Permanency for Children in the Child Welfare System: Pioneering Possibilities Amidst Daunting Challenges*, NAT'L RES.CTR. FOR FOSTER CARE & PERMANENCY PLANNING 3 (2003), <http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/achievingpermanence.pdf>.

8. Deborah L. Sanders, *Toward Creating a Policy of Permanence for America's Disposable Children*, 29 J. LEGIS. 51, 52 (2002).

9. Dorothy Roberts, *The Challenge of Substance Abuse for Family Preservation Policy*, 3 J. HEALTH CARE L. & POLICY 72, 72 (1999) (despite shifts in policy about how to achieve permanency, permanency has remained a constant goal); Coupet, *supra* note 3 (arguing that federal and state policy appropriately orients the child welfare system in this direction, but with a particularly narrow vision of permanency that preferences adoption above other beneficial alternatives in cases where children are not able to be reunited with biological parents).

10. *Id.*

11. LEGAL CTR FOR FOSTER CARE & EDUC., *Blueprint for Change: Education Success for Children in Foster Care* at I (2nd ed. 2008), available at [http://www.americanbar.org/content/dam/aba/publications/center\\_on\\_children\\_and\\_the\\_law/education/blueprint\\_second\\_edition\\_final.pdf](http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/education/blueprint_second_edition_final.pdf).

many players in the foster care system is responsible for education issues, particularly for children with disabilities, as well as who can legally make educational decisions. There is also lack of collaboration and information sharing between the child welfare, school, and court systems. Because of these factors, children in foster care do not get appropriate academic services. This keeps them from making informed choices about classes and schools, receiving appropriate support to address truancy and delinquency, or participating in the range of extracurricular activities necessary for socialization and a competitive school record.

There is a reciprocal relationship between education and permanency. Studies show that school mobility, often the result of placement changes, hinders academic progress.<sup>12</sup> Delays in enrollment and transfer of school records exacerbate the impact of the move, causing the child to miss school and fall behind academically. Permanency limits the disruptions that cause academic delays. Permanency also provides someone who is invested in the child's education with an opportunity to advocate for appropriate school services. School performance may also influence permanency planning. Where reunification is the goal, the failure to address school issues may undermine reunification efforts. In contrast, a parent who remains engaged with their child's school or is provided support to navigate the school system may have a smoother transition after reunification. A prospective adoptive parent or guardian may be more willing to commit when the child is doing well in school or the child's educational needs are being met. Conversely, a caregiver may be overwhelmed if the child has significant academic delays or problems in school. This mutually dependent relationship suggests that we should not only place more emphasis on education, but also reconsider our approach to permanency planning.

Tina, a teenager in the child welfare system illustrates how permanency and education intersect.<sup>13</sup> Tina qualified for special education services because she had an emotional disability. Tina's grades were above average during the year-and-a-half she remained in one group home she liked. However, Tina's academic performance and behavior in school deteriorated around the time

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12. Melissa J. Sullivan *et al.*, *School Change, Academic Progress, and Behavior Problems in a Sample of Foster Youth*, CHILD & YOUTH SERVS. REV. 32, 164, 165 (2010) (summarizing studies showing the residential mobility with an accompanying change in schools has an adverse effect on the academic achievement of foster youth).

13. Pseudonym has been given for protection.

the child welfare agency sought to reunify Tina with out-of-state relatives. This was a move Tina strongly opposed. Around that time, the foster care agency removed Tina from the group home because of an incident with another resident. Tina attended two different schools during the remainder of the school year. She was placed in a foster home where the parents initially said she could remain until age 18. After some disciplinary problems in school that resulted in placement in an alternative school, the foster mother asked for Tina to be removed from the home. The foster mother commented, "all of my children graduated from high school and made something of themselves, and she cannot remain in this house if she isn't doing the right thing." With some educational advocacy, Tina made up lost ground at the alternative school and returned to a regular high school where she did well and experienced another period of stability at a different foster home.

Tina fared better than many of my other clients because she was able to rely on her natural ability to do well at times. Tina provides a useful example because her school performance mirrored her home environment. Her story suggests that her problems at school were a challenge for her caregiver, and engaging the caregiver to effectively address the school issues, might have preserved the home placement.

This article argues that education should receive higher priority while children are in out-of-home care. Given the interdependent relationship between education and permanency, educational planning should be an integral part of permanency planning. Although the system seeks to move children quickly out of foster care, the reality is many children spend years in out-of-home care experiencing educational neglect. If child welfare policymakers and professionals invest in the education of children in out-of-home care, we can improve their well-being during childhood and lay the foundation for a successful transition to adulthood. Focusing on education can potentially improve the chances of finding permanency for children in foster care.

Part I of this article documents the poor educational outcomes faced by children in foster care and highlights some barriers to school success that characterize the foster care experience. Part II discusses permanency and the child welfare legal framework, explaining the evolution of policies regarding permanency and their dominance in child welfare law and practice. As context for the later claim that permanency planning and educational planning are interdependent, this section also describes the mechanics and philosophy of permanency planning. Emerging concepts of

permanency suggest a focus not just on reunification and adoption, but on guardianships, strong connections with family and other caring adults, placement stability throughout foster care, and enduring relationships after a permanency goal has been achieved. Part III addresses education and the child welfare legal framework. It posits that while recent federal legislation seeks to address one important education issue, school mobility, children's educational needs generally receive low priority in policy and practice. Part IV analyzes the connection between permanency and education. In this section, the article argues that there is a fluid and reinforcing relationship between education and permanency. Providing placement stability and permanency can lead to better school outcomes for children, and focusing on children's educational needs can strengthen caregivers' capacity to provide a permanent home.

Part V proposes a model of permanency planning that integrates educational planning, and proposes policy changes to make education a priority.

## I. The Poor Educational Outcomes for Children in Foster Care

### A. Data on Academic Performance of Children in Foster Care

Children in foster care perform worse in school than other school-age children.<sup>14</sup> Maltreatment and various socio-demographic factors increase the likelihood that children enter foster care already showing educational deficits.<sup>15</sup> The traumatic experiences that trigger involvement by child welfare such as prenatal drug exposure, abandonment, neglect, and abuse place children at risk for physical, emotional, and behavioral problems that interfere with learning.<sup>16</sup> Socio-demographic factors, like parents' low educational attainment and concentration in the nation's most under-resourced schools, place children who enter foster care at higher risk for poor educational achievement.<sup>17</sup> However, the poor educational

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14. Steve Christian, *The National Conference of State Legislators, EDUCATING CHILDREN IN FOSTER CARE 1* (2003). [http://apps.americanbar.org/abanet/child/education/open\\_file.cfm?id=49](http://apps.americanbar.org/abanet/child/education/open_file.cfm?id=49); See also pp. 6-2, *infra*.

15. Christian, *supra* note 13, at 1.

16. Katherine Kortenkamp & Jennifer Ehrle, *The Well-Being Of Children Involved With The Child Welfare System: A National Overview*, THE URBAN INST. 1-2 (2002), available at [http://www.urban.org/UploadedPDF/310413\\_anf\\_b43.pdf](http://www.urban.org/UploadedPDF/310413_anf_b43.pdf).

17. Susan Stone, *Child Maltreatment, Out of Home Placement, and Academic Vulnerability: A Fifteen-Year Review of Evidence and Future Directions*, 29 CHILD. & YOUTH SERVS, REV. 139, 142, 150 (2007).

outcomes of children in out-of-home care cannot be explained solely by their home experience.<sup>18</sup> Controlling for differences in academic achievement due to race and socioeconomic factors, there remains an educational gap between children in out-of-home care and other students from similar backgrounds.<sup>19</sup>

Children in out-of-home care obtain lower test scores and grades<sup>20</sup> and are more likely to fail a course<sup>21</sup> or perform below grade level than other students.<sup>22</sup> A study commissioned by the Washington state legislature found that foster youth score on average 15 to 20 percentile points below their peers on statewide achievement tests administered at grades three, six, and nine.<sup>23</sup> Grade retention, an important predictor of low achievement and eventual dropout, is also common among children in out-of-home care.<sup>24</sup> Several studies have found that youth in foster care are almost twice as likely to repeat a grade as youth not in care.<sup>25</sup>

Children in out-of-home care also disproportionately experience absenteeism, truancy and disciplinary problems that negatively

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18. Stone, *supra* note 17, at 145. Studies show that families earning incomes below \$15,000 per year are twenty-two times more likely to be involved in the child protective system than families with incomes above \$30,000. Mark E. Courtney, *The Costs of Child Protection in the Context of Welfare Reform*, 8 THE FUTURE OF CHILD. 1, 88, 95 (1988). There is also a well-known nexus between poverty and race. Leroy H. Pelton, FOR REASONS OF POVERTY: A CRITICAL ANALYSIS OF THE PUBLIC CHILD WELFARE SYSTEM IN THE UNITED STATES (stating that the child welfare population began to grow faster as the system included black children and arguing that this inclusion coincided with a time when black families began to compose a larger portion of the impoverished population).

19. Smithgall et al., *supra* note 5.

20. Mason Burley & Mina Halpern, Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care, WASH. STATE INST. FOR PUB. POLICY, 1, 16, 23, (2001), <http://www.wsipp.wa.gov/rptfiles/FCEDReport.pdf>; Stone, *supra* note 14, at 142-143, 146; Smithgall et al., *supra* note 5, at 14-17 (finding that children in the sample averaged D+ grades and averaged 23% and 28% lower than their peers in standardized reading and math tests, respectively).

21. Burley & Halpern, *supra* note 20, at 5 (40% of foster parents reported that their foster children were performing below grade level); Smithgall et al., *supra* note 5, at 26.

22. Burley & Halpern, *supra* note 20, at 5; Stone, *supra* note 17, at 146.

23. Burley & Halpern, *supra* note 20, at 13. While standardized test scores are not a definitive measure of a child's academic ability, they provide a better comparison between schools than grade point average, which varies depending on individual school policies. See *id.* at 11.

24. Stone, *supra* note 17, at 153.

25. Noel Bost et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Conditions of Youth Preparing to Leave State Care in Illinois*, CHAPIN HALL CTR. FOR CHILDREN AT THE UNIV. OF CHI. 42 (2004), [http://www.chapinhall.org/sites/default/files/ChapinHallDocument\\_9.pdf](http://www.chapinhall.org/sites/default/files/ChapinHallDocument_9.pdf); Burley & Halpern, *supra* note 20, at 1; Smithgall et al., *supra* note 5, at 22.

impact their learning experience.<sup>26</sup> One study found that thirty-two percent of twelve to seventeen year olds in the child welfare system have been suspended or expelled from school, compared to twenty-six percent of children living with high-risk parents, and thirteen percent of those living with their parents.<sup>27</sup> Children in out-of-home care are also less likely to be engaged in school and involved in extracurricular activities when compared with children living with their parents.<sup>28</sup> Of six to seventeen year olds, thirty-nine percent had low levels of engagement in school as measured by the child's attitude towards school work and doing well in school.<sup>29</sup> Twenty-eight percent were not involved in any activities outside of school, such as sports, clubs, or lessons.<sup>30</sup> Compared with children in high-risk parent care, children in child welfare are less likely to be engaged in school, but appear to be equally uninvolved in extracurricular activities.<sup>31</sup>

A disproportionate number of children in foster care receive special education services.<sup>32</sup> Data from several studies suggests that approximately thirty to fifty percent of children in out-of-home care receive special education services versus about fifteen percent of students not in care.<sup>33</sup> A study conducted in Chicago public schools found that twenty percent of a sample of foster children were learning disabled, compared to only twelve percent of the non-foster children attending the same schools.<sup>34</sup> Children in out-of-home care tend to fall into different eligibility categories than the general population. They are more likely to be emotionally disturbed or

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26. Steve Christian, *Educating Children in Foster Care*, NAT'L CONFERENCE OF STATE LEGIS. 1 (2003), <http://www.ncsl.org/Portals/1/documents/cyf/cpieducate/pdf>; Thomas Wolanin, *Higher Education Opportunities for Foster Youth: a Primer for Policy Makers*, THE INST. FOR HIGHER EDUC. POL'Y 27 (2005), available at <http://www.ihep.org/assets/files/publications/m-r/OpportunitiesFosterYouth.pdf>.

27. Kortenkamp & Ehrle, *supra* note 16, at 2.

28. *Id.* at 3.

29. *Id.*

30. *Id.*

31. *Id.*

32. Compare CASEY FAMILY SERVS., *The Road to Independence: Transitioning Youth in Foster Care to Independence*, 2 (1999), available at <http://www.aecf.org/upload/publicationfiles/road%20to%20independence.pdf> (finding that 61 % of foster alumni from Connecticut, Maine and Vermont met criteria for special education services and that 41% had low or below average IQ), with NAT'L CTR. FOR EDUC. STATISTICS, *Digest of Education Statistics, 2005, Table 52* (2005), available at [http://nces.ed.gov/programs/digest/d05/tables/dt05\\_052.asp](http://nces.ed.gov/programs/digest/d05/tables/dt05_052.asp). (finding that only 13.7% of children between the ages of 3 and 21 receive special education services through IDEA).

33. Stone, *supra* note 14, at 150; Zetlin et al., *Improving Educational Prospects for Foster Youth* (2003), <http://www.mhasla.org/improvingEducFosterYouth/pdf>.

34. Smithgall et al., *supra* note 5, at 60-61.



mentally retarded than learning disabled or physically disabled.<sup>35</sup>

With such poor school experiences in their earlier years, it is not surprising that high school graduation rates for foster children are low.<sup>36</sup> The average high school graduation rate for foster youth is approximately fifty percent.<sup>37</sup> This is a discouraging statistic given the United States Census Bureau's findings that "in 2006, eighty-six percent of all adults [age] twenty-five and older reported they had completed at least high school."<sup>38</sup> Even when foster youth graduate high school, they are less likely to graduate on time due to grade retention, residential mobility, special education needs, and other factors.<sup>39</sup> Foster youth are also six times more likely than the general population to earn a General Educational Development diploma ("GED") as opposed to obtaining a high school diploma.<sup>40</sup> Unfortunately, in today's economy a GED does not translate into the same future success.<sup>41</sup>

Former foster youth are also less likely to attend or complete post-secondary programs than the average American. For example, a Florida report found that only twenty-one percent of former foster youth sought post-secondary education after high school, as compared to more than fifty percent of the general population.<sup>42</sup> A

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35. Stone, *supra* note 16, at 150.

36. Smithgall et al., *supra* note 5, at 27 (finding that over 50% of children in out-of-home care dropped out of high school, far exceeding the dropout rate for other students); Stone, *supra* note 16, at 147 (retrospective studies of young adults generally find that those with a history of foster placements are less likely to complete high school or an equivalent than the general population, but had high school completion rates comparable to those living below the poverty level). *But see* P.J. Pecora et al., *Educational and Employment Outcomes of Adults Formerly Placed in Foster Care: Results from the Northwest Foster Care Alumni Study*, 28 CHILD. & YOUTH SERVS. REV., 1472, 1472 (2006) (finding 84.8% of foster alumni from Washington and Oregon had graduated high school and/or received a GED).

37. Wolanin, *supra* note 26, at 7-9.

38. Press Release, U.S. Census Bureau, Earnings Gap Highlighted by Census Bureau Data on Educational Attainment (March 15, 2007), available at <http://www.census.gov/newsroom/releases/archives/cb07-40.html> (based on an annual study of 100,000 households nationwide).

39. Smithgall et al., *supra* note 5, at 28 (children in out-of-home care are also more likely than their peers to leave school due to incarceration).

40. Pecora, et al., *supra* note 35, at 1476. *But see* Peter J. Pecora, *Assessing the Educational Achievements of Adults Who Were Formerly Placed in Family Foster Care*, 11 CHILD & FAMILY SOC. WORK, 220, 225 (2006) (finding "Casey Alumni obtained a GED instead of a high school diploma, 18.6% of the time," three times the 5% rate of the general population).

41. Pecora et al., *supra* note 35 at 1476 (research indicates that people who obtain diplomas instead of GEDs are more successful as adults).

42. Fla. Legislature Office Of Program Analysis & Gov't Accountability, *Improvements in Independent Living Services Will Better Assist State's Struggling Youth*, No.

California study showed more promising enrollment rates. It indicated that fifty-four percent of the 11,407 youth aging out of the foster care system enrolled in a community college.<sup>43</sup> While a seemingly high percentage, a look beyond enrollment tells a different story. Of those who attended a community college, forty percent did not earn a single credit.<sup>44</sup> Only two percent actually earned a degree at the community college level. One percent earned a certificate, and two percent transferred to a 4-year college.<sup>45</sup> These statistics are dismal when compared to data showing that of those in the general population who attend community college nationally, thirty-seven percent earn a degree at a post-secondary institution and nineteen percent transfer to a four-year college.<sup>46</sup> The rates at which former foster youth complete four-year college and vocational programs nationally are also very low.<sup>47</sup>

Youth who age out of the foster care system are also ill equipped for adulthood and suffer tragic outcomes. They have higher unemployment rates than the national average, and even when they find work, earn wages at the poverty level.<sup>48</sup> As a result,

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05-61, 2005, available at <http://www.op.paga.state.fl.us/reports/pdf/0561rpt.pdf> (last visited March 27, 2012).

43. Needell et al., *Youth Emancipating from Foster Care in California: Findings Using Linked Administrative Data* (2002) at 59, available at [cssr.berkeley.edu/childwelfare/pdfs/youth/ffy\\_report.pdf](http://cssr.berkeley.edu/childwelfare/pdfs/youth/ffy_report.pdf).

44. *Id.* at 59.

45. *Id.*

46. *Id.* at 60.

47. Various studies have found the college completion rates for former foster youths to be very low. One such study on the effects of family foster care on adult functioning found that of the 479 former foster adults studied "only 1 in 50 completed a Bachelor's or higher degree. For alumni ages 25-33, the Bachelor's completion rate (2.7%) was much lower than for the general population in a similar age range of 25 to 34 years (24.4%)." Additionally, various studies have found that as adults, four to five times fewer foster children attain a Bachelor's degree as other non-foster college students, finding that 2.7% of former foster students graduating versus 24.4% of similarly aged non-foster students. Even completion of vocational programs is a rare occurrence among former foster youths as one study found that only 1 of every 6 completed a vocational/technical degree. Pecora et al., *supra* note 35 at 1470; see also Wolanin, *supra* note 26, at vii (finding 20% college graduation completion rate for the nation as compared with less than 5% completion rate for former foster college students).

48. Various studies have found that 32% to 80% of former foster youth were unemployed after leaving care. According to the U.S. Census Bureau, "adults with a bachelor's degree earned an average of \$54,689 in 2005, while those with only a high school diploma earned \$29,448." Casey Family Servs., *supra* note 31 (finding 32% unemployment rate); Pecora et al., *supra* note 35 at 1471-1475 (finding an unemployment rate of 80.1%); Lauren Eyster & Sarah Looney Oldmixon, NGA Ctr. for Best Practices, *State Policies to Help Youth Transition Out of Foster Care*, 2007, available at <http://www.nga.org/files/live/sites/NGA/files/pdf/0701YOUTH.PDF;jsessionid=381>

many former foster youth do not have enough money to cover basic living expenses.<sup>49</sup> They have increased reliance on government assistance such as food stamps and public housing.<sup>50</sup> An alarming proportion of former foster youth end up homeless or incarcerated after leaving state care.<sup>51</sup>

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08D52FD92995EE58AC1EC38939F44 (stating unemployment rate of more than 45%); Ronna Cook et al., Dep't of Health & Human Servs., Administration for Children, Youth, and Families, *A National Evaluation of Title IV-E Foster Care Independent Living Programs for Youth: Phase 2 Final Report*, 1991 (finding 51% unemployment rate). Another recent report by the Chapin Hall Center for Children provides a comprehensive study of the employment experience of over 3,000 youth who aged out of foster care in California, Illinois, and South Carolina during the mid-1990s. Courtney et al., *supra* note 3, at 711. The study found that "no more than 45% of the aging out youth [had] earnings during any one of the 13 quarters of the study." Robert M. Goerge et al., Chapin Hall Ctr. for Child. at the Univ. of Chi., *Employment Outcomes for Youth Aging Out of Foster Care* (2002), available at <http://aspe.hhs.gov/hsp/fostercare%2Dagingout02>. See also Mark E. Courtney & Amy Dworsky, *Early Outcomes for Young Adults Transitioning from Out-of-Home Care in the USA*, 11 Child & Fam. Soc. Work 209 (2006) (finding 40% of the youths studied were employed after they had been emancipated from foster care). See Goerge et al., *supra* note 48; Mark E. Courtney & Amy Dworsky, *supra* note 48; Courtney et al., *supra* note 41. The Chapin Hall Center for Children Study revealed that the former foster youths "averaged less than \$6,000 a year in wages, well below the 1997 poverty level of \$7,890 for a single individual." Martha Shirk & Gary Stangler, *On Their Own: What Happens to Kids When They Age out of the Foster Care System* 252 (Westview Press 2004). See also Mark E. Courtney & Amy Dworsky, 11 Child & Fam. Soc. Work 209, at 213 (finding that that more than 75% of the youths studied "earned less than \$5,000, and 90% earned less than \$10,000"); Courtney et al., *supra* note 3, at 711 (finding that average weekly wage earnings for those former foster youths with jobs ranged from \$54 to \$613).

49. From the Midwest Study, foster care alumni were "twice as likely as the 19-year-olds in the Add Health [National] sample to report not having enough money to pay their rent or mortgage" and to report being unable to pay a utility bill. Moreover, more than one-fourth of these young graduates of foster care were categorized by researchers as "food insecure," meaning they were not able to or were insecure in their ability to purchase food due to lack of money. Mark E. Courtney & Amy Dworsky, *supra* note 6 at 213.

50. Studies have found a range from about 24% to 40% of former foster youth that utilize public assistance or welfare. See Casey Family Servs., *supra* note 31 at 27 (finding that 24% of foster care alumni were enrolled in public assistance programs); Mark E. Courtney & Amy Dworsky, *supra* note 7 at 214 (finding that 48.5 of female foster youth and 24.5% male foster youth had received one or more government benefits since their first interview); Cook et al., *supra* note 47 (finding that 40% of former foster youth received some form of public assistance four years after leaving foster care). *But see*, the Administration for Children and Families reported that "in September 2000, the government gave temporary assistance to approximately 2% of the population." U.S. Dep't of Health and Human Servs., Administration for Children and Families, *Temporary Assistance for Needy Families Total Number of Recipients*, 2001, available at <http://www.acf.dhhs.gov/news/recipients.htm>.

51. Compare Pecora et al., *supra* note 35 at 1471 (citing 2 studies as well as their own, with homelessness rates ranging from 11- 20%) with Indep. Living Program Pol'y Unit Child and Youth Permanency Branch, *Report on the Survey of the Housing Needs of Emancipated Foster/Probation Youth*, 2002, available at <http://www.dss.cahwnet.gov/cfsweb/res/PDF/RptontheHousingNeeds.pdf> (finding 65% of former foster youths

## B. Factors that Contribute to Poor Academic Performance

Many factors contribute to the poor school performance of foster youth. Because of the abuse, neglect and trauma suffered at home, many children come into care already suffering educational deficits. Rather than provide intensive remedial supports, the foster care system has unique characteristics that exacerbate these problems, making it difficult for these children to even rebound in school.

Frequent placement changes, which often means a change in school, negatively impact a child's education. When the state first intervenes to address a report of abuse or neglect, the child may be removed from the family home if he or she is in imminent danger.<sup>52</sup> Some children are returned home after only a brief removal, but many children remain in foster care for an extended period of time<sup>53</sup> and experience multiple changes in home placement.<sup>54</sup> According to national estimates, almost two-thirds of children who are in foster care for more than a year experience three or more placements.<sup>55</sup>

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from California were in need of safe and affordable housing in 2000-2001). To look at the issue from another angle, in a study conducted of homeless individuals by the National Survey of Homeless Assistance Service and Providers, approximately 27% of the respondents reported that they had been in out-of-home foster care during their childhood. M. Burt et al., *Nat'l Survey of Homeless Assistance Providers and Clients, Homelessness: Programs and the People They Serve: Findings of the National Survey of Homeless Assistance and Clients, 1999*, available at <http://www.urban.org/UploadedPDF/homelessness.pdf>. In another study conducted by the Chicago Coalition for the Homeless in 1991 found that of the homeless youth in Chicago that were studied 45% had been wards of the Department of Children and Family Services during their childhood. Nan P. Roman & Phyllis Wolfe, *Nat'l Alliance to End Homelessness, Web of Failure: The Relationship Between Foster Care and Homelessness, 1995*, available at [http://www.naeh.org/files/1285\\_file\\_Web\\_of\\_Failure.pdf](http://www.naeh.org/files/1285_file_Web_of_Failure.pdf). Other similar studies of the homeless populations of New York and Los Angeles revealed consistent findings. Between 30% and 40% had been in foster care as a youth. Richard P. Barth, *On Their Own: The Experiences of Youth After Foster Care, 7 Child & Adolescent Soc. Work, 419, 420 (1990)*.

52. Amy Sinden, "Why won't Mom Cooperate?": A Critique of Informality in Child Welfare Proceedings, 11 *YALE J. L. & FEMINISM* 339, 345-346 (1999) (listing state statutes authorizing removal).

53. US Department of Health and Human Services, *The AFCARS Report: Preliminary FY 2006, 2008* (nearly half of all children in care have been there for more than a year) available at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/tar/report14htm#](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report14htm#).

54. See e.g., Carol Brandford & Diana English, Washington Dep't of Soc. and Health Servs., Office of Child. Admin. Research, *Foster youth transition to independence study, 2004* at 13, available at <http://www1.dshs.wa.gov/pdf/ca/FYfinal2004.pdf> (finding that one third of foster alumni from Washington state self-reported having ten or more placements); Pecora et al., *supra* note 35 at 1469 (finding that foster care alumni from three social services organizations operating in Oregon and Washington state had an average of 6.5 placement changes); Wolanin, *supra* note 26 (stating that nationally, foster children move to an average of three different placements).

55. Noonan et al., *Securing Child Safety, Well-Being and Permanency Through Placement*

One study of three hundred and two children in out-of-home placement in California found that twenty-eight percent had lived in five or more out-of-home placements during their time in foster care.<sup>56</sup> When children change homes, they are often transferred to a new school near to the new placement.<sup>57</sup>

Studies have linked the high rates of school mobility among foster youth with poor academic performance<sup>58</sup> including, grade retention,<sup>59</sup> loss of educational growth,<sup>60</sup> and decreased high school graduation rates.<sup>61</sup> Estimates indicate that each time a child moves to a new school, the child loses up to six months of academic progress.<sup>62</sup> Different schools may have a different curriculum, or even the same course taught at different schools may use a different lesson plan. If the child starts a class in the middle of a school term, he or she has to catch up on missed work or learn a new topic that was not taught at the previous school. Graduation requirements vary among schools. Students may need additional courses for graduation, or may find that some of their previous work does not count towards graduation.<sup>63</sup>

There is often a delay or incorrect transfer of student school records after every school change.<sup>64</sup> The child may miss several weeks of school while waiting for immunization records, enrollment

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*Stability in Foster Care*, Center to Bridge Research, Practice and Policy, Evidence to Action No. 1, 2009, available at [http://policylab.us/images/pdf/evidencetoactionbrief1\\_csaw\\_final.pdf](http://policylab.us/images/pdf/evidencetoactionbrief1_csaw_final.pdf)

56. Lois A. Weinberg et al., *Understanding the plight of foster youth and improving their educational opportunities*, 28 CHILD ABUSE & NEGLECT 917, 919 (2004).

57. The Office of Program Policy Analysis and Government Accountability (OPPAGA) collected statewide data on the educational performance of teenagers in out-of-home care in Florida and found that in the 2003-2004 school year, 38% of foster youth changed schools at least once, compared to only 7% of the general population. Fla. Legislature Office Of Program Analysis & Gov't Accountability, *supra* note 41.

58. Melissa J. Sullivan et al., *School Change, Academic Progress, and Behavior Problems in a Sample of Foster Youth*, CHILDREN AND YOUTH SERVICES REVIEW 32, 164, 165 (2010) (summarizing studies showing the residential mobility with an accompanying change in schools has an adverse effect on the academic achievement of foster youth).

59. Casey Family Programs, *Education Issue Brief: Improving Special Education for Children with Disabilities in Foster Care*, 2 (2005), available at [http://64.78.47.133/training/upload/fosterclub\\_219.pdf](http://64.78.47.133/training/upload/fosterclub_219.pdf).

60. Casey Family Programs, *supra* note 58, at 2.

61. *Id.*

62. Cara Chambers & Erika Palmer, *Educational Stability for Children in Foster Care*, 26 TOURO L. REV. 1103, 1103 (2011).

63. Sullivan, *supra* note 58, at 165.

64. Cheryl Smithgall et al., *Educational Experiences of Children in Out-of-Home Care*, Chapin Hall Center for Children at the University of Chicago (2004).

forms or school records to be provided to the new school.<sup>65</sup> Researchers estimate that missing one month of school requires up to six months to academically compensate for lost time.<sup>66</sup> Even short delays, however, may result in significant deficits in a child's achievement if the child changes schools repeatedly. When school records are delayed or lost, transfer students may be placed in the wrong classes, and even held back, while the new school waits for their records.<sup>67</sup> Students who are eligible for special education services may not be evaluated or receive the appropriate services.<sup>68</sup>

Frequent school and placement changes not only hinder academic progress, but also impact a child's social and emotional development.<sup>69</sup> Social relationships contribute to a child's self-identity, social skills and ability to navigate the world. Each time a child moves, he or she must adjust to a new environment and build relationships with friends and teachers. Not only is this difficult, but it may undermine the child's ability to learn skills for future social interactions. Teachers also provide mentorship and guidance, which

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65. Advocates For Child. of N.Y., Inc., *Educational Neglect: The Delivery of Educational Services to Children in New York City's Foster Care System* (2000) at 14, available at <http://www.advocatesforchildren.org/pubs/2005/fostercare.pdf> (In a study of the educational services provided to foster youth in New York City, researchers found that of the 42% of foster youth who did not begin school immediately upon entering foster care, half reported being kept out of school because of lost or misplaced school records); Bost et al., *supra* at 41 (finding that 27.4% of foster children had missed at least one month of school due to such foster care changes); Choice, P. et al., Univ. of Cal., Berkeley, Sch. of Soc. Welfare, *Education for foster children: Removing barriers to academic success*, 2001, available at <http://cssr.berkeley.edu/pdfs/educf27.pdf> (finding that almost 12% of school-age youth in foster care experienced enrollment delays of two weeks or longer).

66. Pamela Day et al., Child Welfare League of Am., *Improving Educational Outcomes for Youth in Care: A National Collaboration* (2003). See also Am. Inst. for Res., *Educating California's Foster Youth: The Policies, Procedures, and Practices Affecting the Education of Youth Residing in Foster Homes* (2003) at 9, available at <http://www.cde.ca.gov/fg/fr/se/documents/grouphomes.pdf> (finding that group homes in California report enrollment delays or even weeks for their records to arrive).

67. Asher, C., U.S. Dep't of Educ., ERIC/CUE Digest, Number 73, *Highly mobile students: Educational problems and possible solutions: ERIC Clearinghouse on Urban Education* (1991); See Kai A. Schafft, Ne. U.S. Rural Poverty Conference, *Poverty, Residential Mobility and Student Transiency Within a Rural New York School District*, 2005, available at [http://www.nercrd.psu.edu/Regional\\_Poverty\\_Wksp/reg.povPaperSchafft.pdf](http://www.nercrd.psu.edu/Regional_Poverty_Wksp/reg.povPaperSchafft.pdf); Thomas Parrish, et al., Cal. Dep't of Educ., *Education of Foster Group Home Children, Whose Responsibility Is It? Study of the Educational Placement of Children Residing in Group Homes*, 2001, available at [http://csef.air.org/publications/related/LCI\\_final.pdf](http://csef.air.org/publications/related/LCI_final.pdf) (68% of group home operators reported "that educational placement decisions were 'frequently' or 'almost always' compromised by a lack of educational information."

68. *Id.*

69. Elizabeth Fernandez, *Unveiling Emotional, Behavioral and Educational Outcomes in a Longitudinal Study of Children in Foster Care*, 38 BRITISH JOURNAL OF SOCIAL WORK 1283, 1284 (2007).

can be one source of social capital that allows children to be academically successful. School can sometimes be the only source of stability in a child's life, providing much-needed continuity and buffering problems in the child's personal life.<sup>70</sup> In addition, children who change schools frequently are unable to participate in various extracurricular activities or interscholastic sports, which are also important for social development and building a record for college.

Another challenge that prevents children's educational needs from being addressed is the lack of a clearly identified decision-maker and advocate for the child in school. The education system is driven by parental advocacy and involvement. There are many individuals involved with children in foster care system. These include: parents, attorneys, guardians *ad litem*, Court Appointed Special Advocates ("CASAs"), caseworkers, foster parents, and other professionals. Often it is unclear what each professional's role is with respect to the child's education.<sup>71</sup> One study indicated that both foster parents and caseworkers thought someone else was responsible for the child's educational needs.<sup>72</sup> Although it is clear that a biological parents' rights over a child's education are terminated when there is a complete termination of parental rights, it is far less clear what are the appropriate rights and responsibilities of the child's parent prior to termination.<sup>73</sup>

The issue is further complicated for children with disabilities. The Individuals with Disabilities in Education Act ("IDEA") requires parental consent for evaluations and special education services,<sup>74</sup> as well as parental participation in developing a child's educational plan.<sup>75</sup> IDEA specifies that only certain individuals, including biological parents and foster parents, can be considered a parent for children in the special education process.<sup>76</sup> It specifically excludes child welfare caseworkers as parental decision-makers.<sup>77</sup> Thus, a

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70. Sullivan et al., *supra* note 51, at 165; Cara Chambers & Erika Palmer, *Educational Stability for Children in Foster Care*, 26 *TOURO L. REV.* 1103, 1107 (2011).

71. Kathleen McNaught, *How Education Issues Impact Permanency for Adolescents in Foster Care* in *ACHIEVING PERMANENCY FOR ADOLESCENTS IN FOSTER CARE: A GUIDE FOR LEGAL PROFESSIONALS* 151,163 (2006).

72. Brandy Miller, *Falling Between the Cracks: Why Foster Children are Not Receiving Appropriate Special Education Services*, 5 *WHITTIER J. CHILD & FAM. ADVOC.* 547, 554 (2006).

73. Margaret Ryznar & Chai Park, *The Proper Guardians of Foster Children's Educational Interests*, 42 *LOY. U. CHI. L. J.* 147, 151 (2010).

74. 20 U.S.C.A. § 1414(a)(1)(D)(i)(I); 20 U.S.C.A. § 1436(e).

75. *See generally* 20 U.S.C.A. § 1414.

76. 20 U.S.C.A. § 1401(23)

77. 20 U.S.C.A. § 1401(23)(B)

caseworker may be able to advocate for the child in school, but may not be able to make special education decisions.

The lack of coordination and information sharing between the child welfare system and schools make it difficult for children to have their educational needs met. When the various school systems, child welfare agencies, and courts do not share information, no single system has the complete picture necessary to assess and meet the child's needs.<sup>78</sup> School districts may not know which children are in out-of-home care, and may not understand the child's problems or the role of the child welfare system. Without this information, administrators, guidance counselors, and teachers are unable to offer appropriate support in school.<sup>79</sup> At the same time, child welfare officials may have insufficient, outdated, or inaccurate school records which prevent them from making informed decisions about a child's education.<sup>80</sup> It is often unclear who, in either system, should be contacted about a child's education. The lack of collaboration between the systems results in duplicative and inconsistent efforts, and a lack of accountability.<sup>81</sup>

## II. Permanency and the Child Welfare Legal Framework

The three primary goals reflected in federal child welfare legislation are (1) safety, (2) permanency, and (3) well-being.<sup>82</sup> Safety—keeping children free from physical and emotional abuse—was the original justification for federal legislation to fund state intervention. It remains the underlying reason for the child welfare system. Permanency seeks to provide children with a long-term, nurturing family. This quest for permanence has been the driving force behind major child welfare legislation since it was first identified as a federal goal in 1980. While it is critical that child welfare agencies find a permanent family relationship for every child in out-of-home care, the reality is that many children languish in foster care for long periods.<sup>83</sup> Some never achieve legally-defined

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78. National Council on Disability, *Youth with Disabilities in the Foster Care System: Barriers to Success and Proposed Policy Solutions*, 2008, available at [http://www.ncd.gov/newsroom/publications/2008/pdf/FosterCareSystem\\_Report.pdf](http://www.ncd.gov/newsroom/publications/2008/pdf/FosterCareSystem_Report.pdf).

79. John Emerson & Thomas Lovitt, *The Educational Plight of Foster Children in Schools and What Can Be Done About It*, 24 REMEDIAL AND SPECIAL EDUC. 199, 200 (2003).

80. *Id.*

81. Weinberg et al., *supra* note 49, at 921.

82. US Dep't of Health & Human Serv., Admin. For Children & Families, Program Instruction ACYF-CB-PI-98-01, 1998, available at [http://www.acf.hhs.gov/programs/cb/laws\\_policies/policy/pi/2001/pi0107.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2001/pi0107.htm).

83. Of the 276, 266 children who left care in 2009, 13% were in care for less than 1



permanency.<sup>84</sup> Well-being, which has historically received less attention from policymakers, provides a holistic picture of how a child is doing in areas such as mental and physical health and education.

This section explains what permanency is and how it is reflected in policy, practice, and scholarly debate. Part IV will explain the inextricable link between permanency and education, and suggest ways in which a focus on education may actually improve permanency. Part V offers proposals to prioritize education, and suggests that it is both beneficial and feasible to integrate educational planning into permanency planning. To provide context for these later discussions, this section makes three points. First, permanency has dominated child welfare policy over the last thirty years. Second, this section describes the mechanics of the permanency planning process, both to provide background understanding and to suggest that there are critical junctures in that process where educational issues, while relevant, are not currently raised. Finally, there is an emerging view that permanency should encompass a broader range of acceptable caregivers than birth and adoptive parents, and promote stability while the child is in foster care, after reunification, adoption, and guardianship. In thinking about education, it is important to look at how school issues impact diverse caregivers and their capacity to address school issues, as well as stability both within and beyond foster care.

### **A. The Role of Permanency in Child Welfare Policy**

Under federal law, permanency is achieved through reunification with a birth parent, adoption, legal guardianship, or another planned permanent living arrangement.<sup>85</sup> A “permanent placement” is one that: (1) is legally intended to be permanent (both to last throughout the child’s minority and to establish family relationships that will last for a lifetime); (2) is legally secure from modification; (3) a permanent caregiver has the same responsibilities

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month, 33 percent were in care for 1 to 11 months, 24% were in care for 12 to 23 months, and 29% were in care for more than 24 months. Children’s Bureau, Child Welfare Information Gateway, available at [www.childwelfare.gov/pubs/factsheets/foster.cfm](http://www.childwelfare.gov/pubs/factsheets/foster.cfm).

84. In 2009, the last year with available data, there were approximately 423,773 children in foster care. Of the 276, 266 children who exited foster care, 51% were reunited with parents or primary caregivers, 20% were adopted, 11 % were emancipated, 8% went to live with another relative and 7% went to live with a guardian. Children’s Bureau, Child Welfare Information Gateway, available at [www.childwelfare.gov/pubs/factsheets/foster.cfm](http://www.childwelfare.gov/pubs/factsheets/foster.cfm).

85. 42 U.S.C. § (5)(c) (2011).

for the child as the birth parent; and (4) the state no longer has legal custody of the child and the permanent caregiver is not subject to continuing state supervision.<sup>86</sup>

Permanency has been the overarching goal driving federal child welfare law for the last thirty years.<sup>87</sup> The focus on permanency reflects the general consensus that foster care is detrimental to children and is therefore a temporary setting rather than an appropriate long-term option.<sup>88</sup> Some psychological studies that came to prominence during the early 1970s influenced the legislative focus on permanency. The “psychological parent” theory posits that children form their primary attachment with the person who provides day-to-day care for the child whether or not that person is the biological parent.<sup>89</sup> According to these theorists, continuity in the child’s relationship with the primary caregiver is essential for normal psychological development.<sup>90</sup> Attachment to a permanent caregiver gives the child a sense of security and “belonging rooted in cultural norms.”<sup>91</sup> This theory has had an enduring influence on child welfare policy even today.<sup>92</sup> Although aspects of the psychological parent theory have been criticized, more recent research confirms the idea that children need a strong attachment to at least one caring adult for healthy social and emotional

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86. This definition was developed by an interdisciplinary Expert Work Group, convened by The United States Department of Health and Human Services’ Children’s Bureau and the Department of Justice, to establish model guidelines for state legislation to advance the goal of providing children with safe and permanent homes. Donald N. Duquette & Mark Hardin, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Adoption 2002: The President’s Initiative on Adoption and Foster Care: Guidelines for Public Policy and State Legislation Governing Permanence for Children*, available at <http://webarchive.org/web/20030224035115/www.acf.dhhs.gov/programs/cb/publications/adopt02/>.

87. Dorothy Roberts, *The Challenge of Substance Abuse for Family Preservation Policy*, 3 J. HEALTH CARE L. & POLICY 72, 72 (1999) (stating that despite shifts in policy about how to achieve policy, permanency has remained a constant goal); Coupet, *supra* note 3, at 405 (arguing that federal and state policy appropriately orients the child welfare system in this direction, but with a particularly narrow vision of permanency that preferences adoption above other beneficial alternatives in cases where children are not able to be reunited with biological parents).

88. Sarah Ramsey, *Fixing Foster Care or Reducing Child Poverty: The Pew Commission Recommendations and the Transracial Adoption Debate*, 66 MONT. L. REV. 21, 24 (Winter 2005); Eliza Patten, *The Subordination of Subsidized Guardianship in Child Welfare Proceedings*, 29 N.Y.U. REV. L. & SOC. CHANGE 237, 238 (2004).

89. Peggy Cooper Davis, *The Good Mother: A New Look at Psychological Parent Theory*, 22 N.Y.U. REV. L. & SOC. CHANGE 347, 347-353 (1996).

90. Libby S. Adler, *The Meanings of Permanency: A Critical Analysis of the Adoption and Safe Families Act of 1997*, 38 HARV. J. ON LEGIS. 1 (2001).

91. Coupet, *supra* note 3, at 405.

92. Patten, *supra* note, 89, at 240-44.

functioning.<sup>93</sup>

While there have been major policy shifts concerning how permanency should be achieved, the goal of finding children permanent homes in a family setting has remained constant.<sup>94</sup> Federal law has shifted between preserving natural families and aggressively moving children through foster care towards adoption.<sup>95</sup> States must implement the prevailing permanency policy as a condition for accepting federal funding.<sup>96</sup> Permanency was first articulated as a child welfare goal in the Adoption Assistance and Child Welfare Act of 1980 ("AACWA").<sup>97</sup> AACWA's primary aim was to use preventive services to keep children safely in their home or, when removal was necessary, make efforts to reunify them with their natural families. While AACWA also provided for termination of parental rights and adoption, it emphasized services that would promote stability of the birth family as the means of achieving permanence.<sup>98</sup>

Permanency drove the next major change in federal child welfare policy. This time the pendulum shifted away from reunification to increasing the number of adoptions.<sup>99</sup> In response to concern that a growing number of children were languishing in

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93. Madelyn Freundlich et al., *The Meaning of Permanency in Child Welfare: Multiple Stakeholder Perspectives*, 28 CHILD AND YOUTH SERVICES REV., 741, 743 (2006).

94. Deborah L. Sanders, *Toward Creating a Policy of Permanence for America's Disposable Children*, 29 J. LEGIS. 51, 52 (2002).

95. *Id.* at 84.

96. Title IV-B and Title IV-E of the Social Security Act authorizes federal funding and contains many of the statutory requirements for the child welfare system. Title IV-B, through the Child Welfare Services Program and the Promoting Safe and Stable Families program, provides for block grants to states for a variety of child welfare related services. 45 C.F.R. §357. The Foster Care and Adoption Assistance Program found in Title IV-E provides reimbursement for eligible foster care and adoption expenses based on a funding formula for room and board, administration and training. 45 CFR §1356.60. Title IV-E also provides funding for independent living services for adolescents who are transitioning out of foster care.

97. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 96 Stat. 500 (codified as amended in scattered sections of 42 U.S.C.A.) (1980). Prior federal legislation gave states funding for: foster care expenses of children in the Aid to Families with Dependent Children program; the establishment of systems for the prevention, reporting and treatment of abuse and neglect; and child welfare agencies when servicing Native American children. Act of May 8, 1961, Pub. L. No. 87-31, 75 Stat. 75 (codified as amended at 42 U.S.C.A. § 607 *et seq.*) (1961) (amendment to Title IV-A of the Social Security Act); Pub. L. No. 93-247 (Child Abuse Prevention and Treatment Act)(codified as amended at 42 U.S.C.A. § 5101 *et seq.*)(1974); Pub. L. 95-608 (Indian Child Welfare Act) (codified as amended at 25 U.S.C.A. § 1901 *et seq.*) (1978).

98. Sanders, *supra* note 82, at 66, 67 (family preservation and reunification were the primary focus of the AACWA).

99. Patten, *supra* note 89; Sanders, *supra* note 82.

foster care, Congress passed the Adoptions and Safe Families Act (“ASFA”) in 1997.<sup>100</sup> Supporters of ASFA believed it would keep children safer, move them to permanency more quickly, and ensure more effective provision of services to children and families.<sup>101</sup> While states were still required to make reasonable efforts to preserve and reunify families, the statute emphasized expeditious termination of parental rights to legally free children for adoption.<sup>102</sup>

The most recent major child welfare legislation is the Fostering Connections to Success and Increasing Adoptions Act of 2008 (“Fostering Connections”). As with previous child welfare reforms, Congress sought to ensure greater permanence for children in foster care, as well as improve their well-being and better support the transition of teenagers in care to independent living.<sup>103</sup> The Act continues to promote adoptions by extending the adoption incentive programs and increasing incentives paid to states, expanding eligibility for adoption assistance for certain categories of children, and promoting the adoption tax credit among foster parents who are adopting children in their care. The law also provides states with the option of providing subsidized guardianships. While legal guardianships had previously been an acceptable permanency option, the lack of financial support given to caregivers who became legal guardians—as well as the simultaneous emphasis on adoptions—caused some scholars to argue that guardianships were a second-class permanency option. Fostering Connections also authorizes a new program, Family Connections Grants, designed to connect children in foster care with family.

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100. Adler, *supra* note 78, at 9.

101. Sanders, *supra* note 82.

102. ASFA achieved this in several ways. First, it shortened the deadlines for states to hold a “permanency hearing” and to file a petition for termination of parental rights. 42 U.S.C.S. § 671(a)(15)(D) (2008). ASFA changed the name of a previously required dispositional hearing to permanency hearing, emphasizing that the point of the hearing was to come to some decision about the long-term plan for the child. Second, in certain cases such as those involving “aggravated circumstances” or serious bodily injury to the child or a sibling, the state did not have to use reasonable efforts to reunify the child with the parent before seeking termination of parental rights. 42 U.S.C.S. § 675(5)(C) (2008) (requiring states to hold a permanency hearing for each child no later than 12 months (as opposed to 18 months under prior law) after the child enters foster care; 42 U.S.C.S. § 675(5)(E) (2008) (requiring a state to initiate proceedings to free a child for adoption if the child had been in foster care for at least 15 of the last 22 months, unless there was an exception). Third, the state was to use “reasonable efforts” to obtain other permanency goals when the child could not return home. 42 U.S.C.S. § 671(15)(C) (2008). Finally, Congress changed its adoption funding scheme to provide financial incentives to move children into adoptive homes.

103. 42 U.S.C.S. § 675(1)(D) (2011).

## B. The Mechanics of Permanency Planning in the Child Welfare System

Consistent with federal policy, child welfare agencies spend a significant amount of time and resources on permanency planning.<sup>104</sup> Permanency planning begins at the outset when caseworkers must identify the problems that put the child at risk, refer the parent to appropriate services to prevent removal from the home or allow safe reunification, and monitor the parents' progress. At the same time, child welfare agencies facilitate visitation and try to maintain the bond between parent and child. Child welfare agencies develop court approved caseplans, that identify goals for parents and agencies, specific tasks and timeframes for completion.<sup>105</sup> If parents do not make substantial improvements within the prescribed time, permanency planning efforts shift to identify permanent caregivers, terminate parental rights, and initiate proceedings for adoption, guardianship or other permanent arrangements.<sup>106</sup>

At every stage of the court process, judges make decisions about permanency and seek to ensure that the child does not remain in foster care for too long. Courts are typically required to hold an emergency placement hearing within a few days after a child is removed from home. The main function of that hearing is to safeguard parents' due process rights and assess whether removal from the home is necessary. The hearing also serves to make some initial assessments related to permanency like whether there are safe alternatives to removal and whether children can be placed with relatives.<sup>107</sup> The next major stage is where the court makes a factual determination whether the child has been abused, abandoned, or neglected. The court also determines who is to have legal and physical custody of the child and the plan to rehabilitate the parents.<sup>108</sup> The case plan is reviewed by the court or an administrative body once every six months.<sup>109</sup> A permanency hearing, designed to be the decision point by which there is a final decision about the goal for the case, must be held after the child has been in care for 12 months.<sup>110</sup> If there is no reunification by the time

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104. Mark Hardin, *Child Protection Cases in a Unified Family Court*, 32 FAM. L. Q. 147, 152 (1998).

105. 42 U.S.C. § 675(1) (2011); 42 U.S.C § 671(a)(15)-(16)(2010).

106. 42 U.S.C § 675(1)(E) & (5)(2011).

107. Hardin, *supra* note 105, at 156.

108. 42 U.S.C. § 675(5)(A).

109. 42 U.S.C § 675(5)(B)(2011).

110. 42 U.S.C. § 675(5)(C)(2011).

of the permanency hearing and return home remains unsafe, a new goal must be determined at the hearing. If the goal is adoption, the state must file a petition for termination of parental rights unless certain exceptions are met.<sup>111</sup>

There are financial incentives and enforcement mechanisms to promote permanency. Title IV-E of the Social Security Act requires states to make reasonable efforts to place foster children in a timely manner in accordance with a permanency plan and to take whatever steps are necessary to finalize a permanent placement when children cannot return home. If the state fails to meet this requirement in an individual case, the state is ineligible for federal funds for that case.<sup>112</sup> Further sanctions can be imposed if the state fails to make this requirement in a number of different cases.<sup>113</sup> In addition, the federal Child and Family Service Reviews (“CFSRs”) measure the state’s ability to achieve child welfare goals, including those related to permanency. States that fail to meet federal standards must develop program improvement plans and can suffer fiscal penalties if their plans do not result in improvement.

The educational status of children in care is viewed as entirely divorced from permanency planning and given relatively low priority by child welfare agencies and courts. When working to reunite children with birth parents, caseworkers seldom focus on engaging parents in school or strengthening the parents’ ability to meet the child’s educational needs. Although the case plan must include information about the child’s education and other aspects of the child’s life,<sup>114</sup> case plans often provide cursory or inaccurate information, and exclude actual school records; many judges do not talk specifically about education during case plan reviews. Similarly, education is typically not raised at the subsequent hearings, case plan reviews or permanency hearings, even though it may be important to consider whether the proposed caregiver can meet the child’s educational needs, or what support might be necessary to help them do so. Each of these hearings provides an opportunity to focus on the child’s educational needs. Finally, the type of funding incentives and enforcement mechanisms used to achieve permanency are not used for education.

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111. *Id.*

112. 42 U.S.C. § 671(a)(15)(2010); 45 C.F.R. 1356.21(b)(2)(2012).

113. 45 C.F.R.1356.21(b)(2) (2012) ; 45 C.F.R. 1356.71 (2012).

114. Emily Buss, *Failing Juvenile Courts, and What Lawyers and Judges Can Do About It*, 6 NW J. L. & SOC. POL’Y 318, 322 (2011).

### C. An Emerging Broader View of Permanency

In discussing the relationship between education and permanency, this article suggests that we adopt a broader view of permanency rather than simply focusing on reunification or adoption. Instead, permanency should include a range of caregivers, not only birth and adoptive parents, but relatives and legal guardians. Permanency planning should ensure that families have the capacity to care for the child long after legal permanence is achieved. While children are still in care, particularly for older youth, permanency planning should ensure that children remain in the same home throughout their time in foster care and that there is a connection with a nurturing adult even if that adult never becomes a legal caregiver. By adopting this broader view of permanency, children get the benefits associated with stability and adult connections, and there is an increased likelihood they will do better in school. The child welfare system should direct its efforts at strengthening relationships with a range of caregivers, and thinking about how each of those caregivers promotes educational success or can be provided support to meet the child's educational needs.

Whereas federal law and policy focuses on the legal status of the relationship, traditionally preferring reunification and adoption, there is support for the idea that permanency is richer and more nuanced. Some scholars and organizations working with children in foster care advocate a view of permanency that, while encouraging a definitive legal relationship, does not define permanency solely by legal status. The ABA Center on Children and the Law and the California Permanency for Youth Project, for example, provide the following characteristics associated with permanency: a safe, nurturing and stable home environment; a set of relationships with consistent and supportive adults that is intended to last indefinitely; individuals to whom a child can return for support even as an adult; a commitment to continuity for the child; a sense of belonging; and a definitive legal and social status.<sup>115</sup> Similarly, when asked what permanency means to them, "young adults were far less focused on the legal meaning of permanency and emphasized instead the long-term emotional and relational connections with family members and others in their lives."<sup>116</sup>

Permanency planning should consider and support guardianships if they are in the child's best interests, rather than blindly favoring adoption where reunification with the birth family

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115. Freundlich, *supra* note 81, at 743.

116. *Id.* at 757.

is impossible. According to critics, adoption became synonymous with permanence, even though it was not the ideal option for all children.<sup>117</sup> Adoption is sometimes viewed as a more desirable option than legal guardianships and other forms of permanency<sup>118</sup> because guardianship orders are easier to vacate by the caregiver or challenge by birth parents.<sup>119</sup> This preference for adoption was reflected in the hierarchy included in state laws, as well as greater funding to states and adoptive parents for pursuing adoptions. Scholars have argued that this emphasis on adoption created negative consequences for children.<sup>120</sup> Because adoption requires legal termination of birth parents' rights, it severs the biological parent-child relationship despite the fact that there may be significant emotional and psychological benefits to that relationship even when the child does not live with the parent.<sup>121</sup> Furthermore, federal law encourages speedy termination of parental rights even when there is no current prospect of adoption for a child, leaving many children in legal limbo.<sup>122</sup>

Critics argued that legal guardianship should be encouraged and subsidized in the same way as adoption. Children living with relatives provide a classic example of when guardianship might better serve a child's interests than adoption. As one scholar notes,

While kinship caregivers are willing and able to provide permanent and loving homes to the relative minors in their care, they may still be rightfully hesitant to adopt due to the radical reconfiguration of familial relationships that accompany adoption; they may also have other valid reasons that neither diminish their capacity to provide ongoing care nor suggest a "lesser" commitment to the child. Kinship caregivers are already related in meaningful ways, and they should not be forced to alter these relationships in

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117. Coupet, *supra* note 3, at 406.

118. Patten, *supra* note 89, at 238-240.

119. *Id.* at 264.

120. Roberts, *supra* note 75 (arguing that enforcing permanence with mechanical timetables increases the level of instability in the child's life, does not properly account for the nature of substance abuse and tpr does not necessarily lead to adoption).

121. Patten, *supra* note 89; Marsha Garrison, *Parents' Rights v. Children's Interest: The Case of the Foster Child*, 22 N.Y.U. REV. L & SOC. CHANGE 371, 380 (1996); Jean Koh Peters, *The Roles and Content of Best Interest in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 FORDHAM L. REV. 1505, 1547 (1996).

122. 42 U.S.C. § 675(5)(C)(2011)(requiring the state to hold a permanency hearing for each child no later than 12 months after the child enters foster care); 42 U.S.C. § 675(E)(2011) (requiring a state to initiate proceedings to free a child for adoption if the child has been in foster care for at least 22 months, unless there is an exception).



exchange for much needed and deserved benefits.<sup>123</sup>

There is support for the importance of these relationships from recent psychological studies that have called into question the “psychological parent” theory. These studies suggest that the biological parent-child relationship is important in determining the child’s personality, resilience and relationships regardless of whether the child lives with that parent. Studies also show that children can have multiple attachments, and that the child’s security comes not from an exclusive relationship with one continuous psychological parent but from a familiar network of attachments formed with adults in the child’s environment.<sup>124</sup> Based on these broader notions of acceptable permanence, critics for many years called on Congress to provide greater support for guardianships and relative caregivers. The Fostering Connections Act took a positive step in this direction by providing states the option of providing subsidized guardianships.

Permanency planning should also recognize the importance of connections to caring adults, regardless of the legal relationship, particularly for teenagers in foster care. Recent studies suggest that children aging out of foster care benefit from a consistent, caring relationship with an adult.<sup>125</sup> These relationships contribute to the youth’s resilience, a predictor of success for at-risk youth, and serve as a source of emotional and other support. Although these adults could be the children’s parents, legal guardians, or adoptive parents, research suggests that “permanency” can include non-legal relationships as well.<sup>126</sup> Former foster youth often seek out relatives and remain connected to foster parents, and these emotional connections help them navigate adulthood.

Promoting stable foster care placements should be another important aspect of permanency planning. Frequent placement changes compounds the loss and trauma these children experienced through abuse and subsequent removal from their homes. It undermines the development of attachment to primary caregivers,

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123. Coupet, *supra* note 3, at 411 (2005).

124. Eliza Patten, *supra* note 89 at 242 (2004) (citing Peggy Cooper Davis, *The Good Mother: A New Look at Psychological Parent Theory*, 22 N.Y.U. Rev. L. & Soc. Change 347, 360-363 (1996) (collecting studies showing that children may have similar attachment relationships with several different adults).

125. Kristi Charles & Jennifer Nelson, National Resource Center for Youth Development, *Permanency Planning: Creating Lifelong Connections: What Does It Mean for Adolescents?* 15 (2000) available at [www.nrcyd.ou.edu/publication-db/.../permanency-planning.pdf](http://www.nrcyd.ou.edu/publication-db/.../permanency-planning.pdf).

126. Freundlich, *supra* note 81, at 743.

which in turn impacts the ability to develop in different areas. "The more stability a child has, the more likely it is that a child will be able to establish a stronger and more varied network of social support and enduring relationships with adults who care about him or her."<sup>127</sup>

### III. Education and the Child Welfare Legal Framework

While there has been some recent attention to the educational needs of children in foster care, educational issues are generally not prioritized within the child welfare system. From a federal policy perspective, education is one factor within the overall goal of ensuring the well-being of children in out-of-home care. As already suggested, safety and permanence is more consistently addressed than well-being.<sup>128</sup> Well-being became a clearly articulated goal with the passage of ASFA in 1997, and has received more attention in recent years, but remains subordinate in child welfare policy and practice.

#### A. The Role of Well-Being in Child Welfare Policy

The concept of well-being has long been used to describe a composite of social indicators of how a child is doing and the child's environment. For example, the federal government publishes *America's Children: Key National Indicators of Well-Being* annually.<sup>129</sup> The indicators measured are: health, behavior, education, health care, economic circumstances, family and social environment, and physical environment and safety. The education indicators include family reading to young children, mathematics and reading achievement, advanced high school courses, school enrollment, and college enrollment.<sup>130</sup> Social scientists and national organizations have developed other composites of well-being.<sup>131</sup>

With the passage of ASFA in 1997, rather than focusing

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127. Pecora, *Why Should the Child Welfare Field Focus on Minimizing Placement Change as Part of Permanency Planning for Children?*, available at <http://www.casey.org/resources/publications/MinimizingPlacements.htm>.

128. Ramsey, *supra* note 76; Fred Wulczyn et al., *BEYOND COMMON SENSE: CHILD WELFARE, CHILD WELL-BEING AND THE EVIDENCE FOR POLICY REFORM* (2005).

129. Fed. Interagency Forum on Child & Family Statistics, *America's Children in Brief: National Indicators of Well-Being 2011*, available at <http://www.childstats.gov/americaschildren/index>.

130. Fed. Interagency Forum on Child & Family Statistics, *supra* note 129.

131. For example, Annie E. Casey Foundation provides benchmarks on children's well-being in its publication, *Kids Count*, available at [http://www.datacenter.kidscount.org/databook/2011/OnlineBooks/2011KCDB\\_FINAL.pdf](http://www.datacenter.kidscount.org/databook/2011/OnlineBooks/2011KCDB_FINAL.pdf)

exclusively on safety and permanency, well-being was added as a child welfare goal.<sup>132</sup> Although ASFA does not explicitly list well-being as a goal, the United States Department of Health and Human Services (“HHS”) in federal regulations implementing ASFA makes clear that ASFA’s three goals are permanency, safety, and well-being. As required by ASFA, HHS developed outcome measures, known as Child and Family Safety Reviews (“CFSRs”), to assess the performance of state child welfare programs.<sup>133</sup> The permanency, safety, and well-being goals provide the framework for the CFSRs and the federal regulations. ASFA also provides that states must “develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children.”<sup>134</sup>

Although ASFA seeks to elevate well-being as a primary goal, policy and practice have focused more on safety and permanence than on the well-being of children in foster care.<sup>135</sup> In assessing the impact of ASFA on state law, agency practice and actual outcomes, the Center for the Study of Social Policy found only limited data on well-being and concluded that “practice and policy do not adequately focus on the well-being of children in the child welfare system.”<sup>136</sup>

Scholars have identified several reasons for the lack of attention on well-being. First, well-being is difficult to measure and there is lack of consensus about the appropriate well-being indicators for the child welfare population.<sup>137</sup> Second, child welfare agencies and courts may be reluctant to assess their own performance using well-being indicators because well-being is influenced by factors outside agency and court control, such as the quality of health care providers and schools.<sup>138</sup> Third, it is difficult to design service interventions

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132. 42 U.S.C.S. § 621(4) (2006); Sarah H. Ramsey, *Child Well-Being: A Beneficial Advocacy Framework for Improving the Child Welfare System?* 41 U. MICH. J. L. REFORM 9, (2007).

133. Pub. L. 105-89 s. 203 (1997). CFSRs were required by the Social Security Act Amendments of 1994, but ASFA changed the focus from case file documentation requirements to efforts to measure outcomes. Social Security Act Amendments of 1994, Pub. L. No. 103-432, s. 203 (1994); 45 C.F.R. s. 1355.31-37 (2003).

134. See 42 U.S.C.S. § 671(a)(22) (West 2008).

135. Intentions and Results: A Look Back at the Adoptions and Safe Families Act, Center for the Study of Social Policy, 133, available at [http://www.urban.org/uploadedpdf/1001351\\_safe\\_families\\_act.pdf](http://www.urban.org/uploadedpdf/1001351_safe_families_act.pdf).

136. Intentions and Results, *supra* note 134, at 30.

137. Ramsey, *supra* note 111, at 23.

138. Ramsey, *Fixing Foster Care or Reducing Child Poverty: The Pew Commission Recommendations and the Transracial Adoption Debate*, 66 MONT. L. REV. 21, 36 (2005).

that have been proven to promote well-being.<sup>139</sup> The framework for providing federal funding to states focuses on a narrow set of questions relating primarily to safety and permanency.<sup>140</sup>

Even when CFSRs focus on well-being, they consider process rather than children's actual well-being. For example, the education outcome measures "whether children are receiving appropriate services to meet their educational needs."<sup>141</sup> In assessing this measure, states are asked to discuss factors such as policy requirements, caseworker practices, any available data measuring effectiveness, key collaborators, strengths, and barriers.<sup>142</sup> The CSFR does not, however, look at how children actually perform in school on the achievement measures discussed in Part I of this article, such as graduation rates, grade level, attendance, and discipline. While it is useful to assess whether agencies have appropriate policies and practices with respect to education, this cannot be the only indicator of whether an agency is ensuring children's well-being. It makes no sense to credit an agency for doing a good job on education if we do not know how children are actually doing in school, or if it turns out that the children in its care are failing in school. Because of this focus on services provided rather than actual well-being, the Pew Commission on Foster Care and other experts on child welfare reform suggest using better measures of education and health.<sup>143</sup>

## B. Education Provisions in Child Welfare Law

Federal child welfare legislation has increasingly included provisions relating to education. Other than specifying that states could be reimbursed for the cost of school supplies, AACWA made no specific reference to education.<sup>144</sup> In 1989, federal law added a requirement that the case plan include the name and address of the child's school, the child's grade level performance, the child's school record and any other education information the child welfare agency considers relevant.<sup>145</sup> The 1997 ASFA amendments required that

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139. Fred Wulczyn et al., *BEYOND COMMON SENSE: CHILD WELFARE, CHILD WELL-BEING AND THE EVIDENCE FOR POLICY REFORM* (2005).

140. *Id.* at 9.

141. U.S. Department of Health and Human Services, Child and Family Services Reviews: Statewide Assessment Instrument (2006), [http://www.acf.hhs.gov/programs/cb/cwmonitoring/tools\\_guide/statewidethree.htm#Toc140565128](http://www.acf.hhs.gov/programs/cb/cwmonitoring/tools_guide/statewidethree.htm#Toc140565128).

142. *Id.*

143. Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*, [http://www.pewtrusts.org/our\\_work\\_detail.aspx?id=8](http://www.pewtrusts.org/our_work_detail.aspx?id=8).

144. 42 U.S.C. § 674 (1980). Pub. L. No. 96-272, 94 Stat 500 (1980).

145. Pub. L. 101-239 (1989), § 8007(a)(1) (adding 42 U.S.C.A § 675 (1)(C)).

child welfare officials assure that a child's foster care placement takes into account the appropriateness of the child's educational setting and the proximity of the foster home to the child's school.<sup>146</sup> In addition, as previously discussed, the CFSTRs developed to assess state's child welfare performance included education as an outcome measure.

The recent Fostering Connections Act includes provisions on school enrollment and stability. To receive federal funds, states must ensure that every school-age child receiving federal foster care, adoption or guardianship assistance is enrolled full-time in elementary or secondary school or has completed secondary school.<sup>147</sup> The statute allows students to be home-schooled or in an independent study program administered by the school district.<sup>148</sup> It also excuses full-time attendance for students with a documented medical condition that prevents school attendance.

Child welfare agencies must also ensure that the child remains in the school in which he or she is enrolled at the time of foster care placement or, if this is not in the child's best interests, must ensure "immediate and appropriate enrollment in a new school" with all of the child's educational records.<sup>149</sup> The educational stability additions to the case plan requirements extend to all youth in out-of-home care, those eligible for IV-E and IV-B.<sup>150</sup> To help support this requirement, Foster Connections to Success allows federal matching dollars to be used for the cost of transporting children to their school of origin at the same reimbursement rate provided for foster care

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146. Adoption and Safe Families Act of 1997; Pub. L. 105-89, 111 Stat 2115 (1997).

147. Pub. L. 105-29, 111 Stat 246 (1997).

148. *Id.*

149. 42 U.S.C.S. § 675(1) (2008).

(G) A plan for ensuring the educational stability of the child while in foster care, including (i) assurances that the 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 the placement; and (ii) (I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the child remains in the school in which the child is enrolled at the time of 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.

150. Legal Ctr. for Foster Care and Educ., *Fostering Connections to Success and Increasing Adoptions Act of 2008*, available at [http://www.abanet.org/child/education/qa\\_fostering\\_connections\\_final.pdf](http://www.abanet.org/child/education/qa_fostering_connections_final.pdf)[http://www.abanet.org/child/education/qa\\_fostering\\_connections\\_final.pdf](http://www.abanet.org/child/education/qa_fostering_connections_final.pdf).

maintenance payments.<sup>151</sup> For youth aging out of foster care, Fostering Connections requires that the agency develop a specific plan for his or her transition to independent living, which must address education.<sup>152</sup> Fostering Connections also expands the population eligible for education and training vouchers. The vouchers are valued at \$5000 annually and may be used for the cost of attending college or an equivalent training program.<sup>153</sup>

### C. Education Does Not Receive High Priority in Practice

As established in Part I of this article, children in foster care do not get an appropriate education.<sup>154</sup> They lag behind their peers on a range of educational measures including grade level, achievement tests, graduation rates and college enrollment. This section argues that the educational needs of children in foster care receive relatively low priority in legislation, child welfare agency practice, and the dependency court system.

Federal and state laws do not comprehensively address educational issues. Prior to Fostering Connections, the primary education requirement in federal law was that child welfare agencies provide school information during judicial case plan reviews. Fostering Connections addresses the problem of school mobility by requiring that children remain in their school of origin unless changing schools is in their best interests. While this is an important improvement, it addresses only one of the barriers to school success. As explained in Part I, there are factors other than school mobility that hinder school progress for children in care. These include the lack of a consistent educational advocate and the lack of coordination and information sharing between school and child welfare officials. Without a comprehensive approach to address all of these issues, there is no way to ensure that children are actually receiving educational services and improving in school.

It is uncertain whether states will actually implement the school mobility provisions of Fostering Connections. Scholars identify several barriers to implementation.<sup>155</sup> First, federal and state law do

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151. 42 U.S.C.S. § 675(4)(A) (2008).

152. 42 U.S.C.S. § 675 (2008).

153. 42 U.S.C.S. § 677(a) and §677(i)(2) (2008) (expanding ETV vouchers to children who enter kinship guardianships after age 16; children who are adopted after their 16<sup>th</sup> birthday were eligible for these services prior to the amendments of the Fostering Connections to Success law).

154. Margaret Ryznar, *The Proper Guardians for Foster Children's Educational Interests*, 42 LOY. U. CHI. L. J. 147, 168 (2010).

155. Cara Chambers & Erika Palmer, *Educational Stability for Children in Foster Care*,

not provide guidance on who should determine whether it is in a child's best interest to change schools and what factors are relevant in making that decision. Second, Fostering Connections does not specify whether child welfare or the school district should provide and pay for transportation to school. Third, federal and state law does not establish a mechanism for dispute resolution and enforcement when there is disagreement about which school the child should attend. Fourth, local control of school districts in many states means that this issue is unlikely to be uniformly addressed without state or federal involvement. Fifth, local residency laws may not allow children from other areas to attend school in a particular district. Finally, there are entrenched child welfare practices that are at odds with the statutory provision. Federal policy has to be strengthened, and translated into action on the ground for improved school stability.

States do not perform well on federal assessments of whether services are provided to meet children's educational needs. As previously discussed, the CSFRs provide only limited outcome information because it is based on whether services are provided rather than how children are doing with regard to education. Even with that limitation, states have not performed well on outcome measures. During the most recent CSFR reviews completed in 2011, forty-two states were found not in substantial conformity with the education outcome.<sup>156</sup> Some common problems states had in meeting the standards for educational needs were: many children in foster care experienced multiple school changes as a result of placement changes; lack of school records in child welfare agency files; failure to adequately assess children's educational needs; no follow-up on recommended psychosocial and educational assessments; failure to provide appropriate services with respect to identified education-related problems; failure to address absenteeism, tardiness and truancy; and lack of adequate educational advocacy.<sup>157</sup>

Due to the crisis-driven nature of the child welfare system, educational issues are relegated low priority.<sup>158</sup> Caseworkers and

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26 *TOURO L. REV.* 1103, 1114-1115 (2011).

156. [http://basis.caliber.com/cwig/ws/cwmd/docs/cb\\_web/SearchForm](http://basis.caliber.com/cwig/ws/cwmd/docs/cb_web/SearchForm).

157. Questions and Answers, Child and Family Services Reviews and the Education Child Well-Being Outcome *available at* [apps.americanbar.org/child/rcfji/education/QA\\_7\\_CFSR\\_FINAL.pdf](https://apps.americanbar.org/child/rcfji/education/QA_7_CFSR_FINAL.pdf).

158. Sullivan, at 166; Choice et al., *Education of Foster Children: Removing Barriers to Academic Success* (2000); Brandy Miller, *Falling Between the Cracks: Why Foster Children are Not Receiving Appropriate Special Education Services*, 5 *WHITTIER J. CHILD*

guardians *ad litem* are frequently overburdened by a large caseload, leaving them with little time or resources to focus on the child's educational needs. One study found that caseworkers "had focused little attention on the educational process for children in foster care and that little is known of the educational progress or needs of children in the agency's care."<sup>159</sup> The study further concluded that caseworkers are unprepared to handle problems concerning the foster youth's education largely because they do not have adequate knowledge of school procedures. In another study, caseworkers said they preferred that other adults take responsibility for all but crisis situations in school. Caseworkers view their primary concern as child protection as opposed to education, and some are rarely involved in a child's education beyond enrollment, annual visits to the school, and crisis situations. Low grades themselves are generally not a pressing issue.<sup>160</sup>

In many states and local communities, it is common practice to place children in foster care with little or no regard for their school history or needs.<sup>161</sup> Despite federal requirements that some academic information be provided with case plans, in many places child welfare agencies do not obtain school records.<sup>162</sup> A caseworker's knowledge about the academic progress of specific children may be limited to situations where information is easily obtained, the child also has behavioral problems, or the child's performance was so poor it reached crisis level.<sup>163</sup> Since caseworkers often deal with children of all ages from multiple school districts and schools, they may find it difficult to visit every school and learn the protocol of the various schools and school districts. These challenges make it nearly impossible for caseworkers to effectively represent the child's needs.

Similarly, the judicial system does not pay adequate attention to the educational needs of children in foster care. Courts play an essential role in making decisions about children in the foster care system.<sup>164</sup> Judges decide whether children will be removed from

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& FAM. ADVOC. 547, 554 (2006).

159. Zetlin, *supra* note 82.

160. Brandy Miller, *Falling Between the Cracks: Why Foster Children are Not Receiving Appropriate Special Education Services*, 5 WHITTIER J. CHILD & FAM. ADVOC. 547, 554 (2006).

161. Judith M. Gerber & Sheryl Dicker, *Children Adrift: Addressing the Educational Needs of New York's Foster Children*, 69 Alb. L. Rev. 1, 2 (2005).

162. Brandy Miller, *Falling Between the Cracks: Why Foster Children are Not Receiving Appropriate Special Education Services*, 5 WHITTIER J. CHILD & FAM. ADVOC. 547, 554 (2006).

163. Brandy Miller, *supra* note 138.

164. Building a Better Court: Measuring and Improving Court Performance and



home, the appropriateness of permanency goals and approve the child welfare agency's case plan for addressing the child's needs. Because of heavy dockets it is not uncommon for child protection hearings to last just a few minutes and cases to not be discussed in depth.<sup>165</sup> The little time devoted to each case is spent on the most pressing safety issues and enforcing the permanency plan.<sup>166</sup>

One report by the National Council of Juvenile and Family Court Judges suggests that education, and other well-being factors, are secondary to safety and permanence.<sup>167</sup> The Building a Better Court project suggests that the courts have direct responsibility for factors such as safety of children, appropriate removal of children from their homes, successful achievement of permanency, and length of time in foster care. Notably, the guide created for improvement of the court system does not include any measures for well-being. The reasons given for that omission are the lack of consensus on well-being measures, difficulty in court system obtaining information about well-being, and most tellingly, courts have direct control over a child's safety and permanency but only indirectly influence educational attainment and health.<sup>168</sup> In other words, courts do not view whether a child is failing in school as a useful way to measure performance because it not central to the role.

#### **IV. The Interconnected Relationship Between Permanency and Education**

##### **A. Permanency Can Create Better School Outcomes for Children in Care**

Permanency can lead to improved educational outcomes for children in foster care. In one study, based on reports from parents who had formed permanent relationships and those who had not, children who achieved permanency were less likely to miss school, have been suspended from school, to have dropped out of school or

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Judicial Workload in Child Abuse and Neglect Cases 1, available at <https://www.ncjrs.gov/pdffiles1/ojdp/223571.pdf>.

165. Mark Hardin, *Child Protection Cases in a Unified Family Court*, 32 FAM. L. Q. 147, 180 (Spring 1998).

166. Betsy Krebs & Paul Pitcoff, *Reversing the Failure of the Foster Care System*, 27 HARV. WOMEN'S L. J. 357 (2004).

167. *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases 1*, available at <https://www.ncjrs.gov/pdffiles1/ojdp/223571.pdf>.

168. *Id.*

to have changed schools during the previous two years.<sup>169</sup> The parents who achieved permanency were also more likely to have discussed grades, school work and other school-related activities with the child.<sup>170</sup> There needs to be more empirical research about the specific connection between permanency and education, the barriers to school success for children in foster care, the contributors to school success outside of the foster care context, as well as the anecdotal experience of those who work in child welfare to support the theory that a permanent home creates an environment where children have the potential to do better in school.

At the outset, it is helpful to remember how a stable home environment contributes to school engagement generally. A child who is not in foster care typically attends one elementary, middle and high school without interruption. The child develops relationships with teachers and friends and opportunities to participate in school activities. Over time, both child and parents become familiar with the curriculum and expectations of the school, as well as the services and programs available to children. The same parent attends parent-teacher meetings and reviews report cards each marking period. If there are concerns about the child's performance, the school knows exactly who to call and the parent has accumulated information about both the child and school to allow the parent to advocate for services to help the child improve. At home, the parent has the ability to influence school performance by, for example, ensuring that a child does homework, helping with school assignments and emphasizing the value of education. For children in foster care, creating the same level of stability and parental advocacy, not only as the end-goal of foster care but throughout the time in foster care, can lead to better outcomes in school.

Placement stability, especially when achieved shortly after foster care placement, leads to better educational and other well-being outcomes.<sup>171</sup> As discussed in Part I, studies show that high rates of school mobility among children in foster care contribute to their poor academic performance.<sup>172</sup> School disruptions, along with

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169. Gary L. Siegel et al., *Minnesota Permanency Demonstration Final Evaluation Report 105* (2011), available at [http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16\\_137480](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_137480).

170. *Id.*

171. Kathleen Noonan et al., *Securing Child Safety, Well-being, and Permanency Through Placement Stability in Foster Care*, EVIDENCE TO ACTION 1, 2 (Fall 2009).

172. Melissa J. Sullivan et al., *School Change, Academic Progress, and Behavior Problems*

delays in enrollment and transfer of records, can lead to slowed academic progress, grade retention, lost credits, and inappropriate educational services.<sup>173</sup> The benefits of placement stability, however, extend beyond simply minimizing the number of school moves. Placement disruptions have also been linked to poor social interactions with teachers and friends, which in turn hinder development of a child's self-identity and social skills, as well as contribute to school truancy and behavioral problems.<sup>174</sup> Frequent moves may also decrease a students' motivation level, because once students realize a pattern of instability, they may decide that it is not worth investing in improving at school because it is likely that they will move again.<sup>175</sup>

Placement stability can and should be addressed simultaneously with education. As Tina's story exemplifies, in child welfare practice there is a tendency to think placement changes cannot be avoided because they are a consequence of the behavioral problems children have upon entering care.<sup>176</sup> This is, however, a misconception. A child's risk for negative outcomes increases with multiple placement changes, regardless of the child's prior behavioral problems or history of abuse.<sup>177</sup> Instability alone increases the child's behavioral problems. Several factors have been identified to reduce placement instability. These include placing children with relatives, limiting the number of children in non-relative homes, and increasing the use of evidence-based therapeutic parenting models in the home. These very same factors may also impact school performance. Relatives may be more invested in a child's school success, fewer children in a non-relative home frees time for the caregiver to focus on school, and therapeutic interventions may improve a child's behavior, not just at home, but in school.

With permanency there is a consistent adult to monitor a child's progress, advocate in school and encourage the child to focus on their education. As discussed in Part III.C, children in out-of-home care often do not have a consistent adult advocating for educational services and supporting educational goals. A 2006 Oregon study

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in a *Sample of Foster Youth*, CHILD & YOUTH SERVS. REV. 32, 164, 165 (2010) (summarizing studies showing the residential mobility with an accompanying change in schools has an adverse effect on the academic achievement and behavior of foster youth).

173. *Id.*

174. *Id.*

175. Cara Chambers & Erika Palmer, *Educational Stability for Children in Foster Care*, 26 TOURO L. REV. 1103, 1103 (2011).

176. Noonan et al., *supra* at note 146.

177. *Id.*

revealed that only forty-two percent of children in foster care had an advocate at planning meetings compared to sixty-nine percent of children not in foster care.<sup>178</sup> Typically, natural parents or caregivers are outspoken advocates ensuring that children make academic progress, receive needed services, participate in extra-curricular activities, take advanced classes and take advantage of any choice options offered by the school district. A parent who stresses the value of education can provide a powerful motivator for children to do well in school.<sup>179</sup> Studies outside of the foster care context show that when “parents engage with their children in learning activities at home, provide for basic needs, and communicate with the school, their involvement can mitigate the negative impacts of poverty and prevent students from dropping out.”<sup>180</sup> In thinking about permanency, we should seek to provide a consistent adult who can play this role.

For children with disabilities, parental consent and participation are required under federal law, while strong parental advocacy is essential to ensure appropriate services.<sup>181</sup> There are children in care with academic delays who have not been evaluated for special education services, as well as children who have been formally identified as needing these services. Under the Individuals with Disabilities in Education Act (“IDEA”) parental consent is required before a child can be evaluated for special educational services, or have an Individualized Education Program (“IEP”) developed and implemented, and only a parent can pursue due process to challenge the provision of services. Determining the identity of the child’s legal educational decision maker, however, is often times difficult and disputed. It is not uncommon for children to live with a relative or foster parent, while simultaneously having biological parents who retain the legal right to participate in the child’s education planning.<sup>182</sup> When the child’s biological parents are not legally

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178. Blueprint for Change: Education Success of Children in Foster Care, Legal Center for Foster Care and Education, at 33, (2007).

179. Kathleen McNaught, *supra* note 70, at 162.

180. Janet H. Chrispeels & Elvia Rivero, *Engaging Latino Families for Student Success: How Parent Education Can Reshape Parents’ Sense of Place in the Education of Their Children*, PEABODY JOURNAL OF EDUCATION, 76:2, 119-169 (2001), [http://www.tandfonline.com/doi/pdf/10.1207/S15327930pje7602\\_7](http://www.tandfonline.com/doi/pdf/10.1207/S15327930pje7602_7).

181. Margaret Ryznar, *The Proper Guardians for Foster Children’s Educational Interests*, 42 LOY. U. CHI. L. J. 147, 168 (Fall 2010).

182. In such situations confusion may arise as to which party retains the legal rights to educational decisions on behalf of the child. The U.S Supreme Court in *Santosky v. Kramer* declared that “[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have

authorized or able to advocate for their child, there may be confusion about who can act as the child's educational decision maker. In some cases it might be appropriate for a foster parent or other caregiver to act as the educational decision maker, or if there is no person to assume that role, then federal and state law require the appointment of a surrogate parent. If we make these considerations as part of permanency planning, we can better ensure that there is someone with both the legal authority and knowledge to act as the child's decision-maker for special education.

The permanency planning process should incorporate the premise that permanency impacts a child's education. Proper permanency planning assures that a child does not unnecessarily change schools, there is a committed advocate in school, and there is no confusion over whose responsibility it is to sign permission slips, attend parent-teacher conferences, participate in IEP meetings, address disciplinary issues, or deal with the wide range of issues that come up in school. These responsibilities should be made clear to parents seeking reunification, caregivers seeking adoption or guardianship, relative caregivers, and foster parents. In evaluating potential permanency options, a caregivers' ability to meet the child's educational needs should be a relevant consideration. Furthermore, caregivers should be provided with training and other support to strengthen their capacity to meet the child's educational needs.

### **B. A Child's Educational Status and Needs Impacts Permanency**

Where a caregiver is able to meet the child's educational needs, or a child is doing well in school, there may be a greater chance of achieving placement stability and permanency. One recent study suggests that children who are doing better in school are more likely to be adopted.<sup>183</sup> The study found that "in nearly every case

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not been model parents or have lost temporary custody of their child to the State." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). As such, biological parents retain these rights unless they have been explicitly stripped by a court or relinquished by the parents themselves.

183. Gary L. Siegel et al., *Minnesota Permanency Demonstration Interim Report* (May 2008), at 86-87, available at [http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16\\_137480](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_137480). The purpose of the Minnesota Permanency Demonstration project was to study whether offering the same level of financial support to caregivers before and after legal permanency had been achieved increased the rates of permanency and shortened the time children stayed in foster care. Gary L. Siegel et al., *Minnesota Permanency Demonstration Final Evaluation Report*, at available at []. Traditionally, the rate paid to foster parents is higher than subsidies or public benefits available after

children who are doing better in school, making better grades and who are not enrolled in a special school are more likely to move from foster care to permanency," regardless of whether the caregiver was offered increased financial incentives to pursue adoption.<sup>184</sup> For example, among children reported as performing "excellent" or "good" in school, 55.8% of the group offered a higher adoption subsidy and 41.9% of a control group were adopted, compared to 45.5% and 33.3% of children performing "fair" or "poor" in school.<sup>185</sup> Similarly, among children with a GPA of A or B, 60.5% of the group offered a higher adoption subsidy and 43.6% of the control group were adopted, compared to 30.4% and 24.0% of the children with lower grades. This study suggests that, at least with adoption, better school performance makes permanency more attainable.

The decision to adopt or accept permanent legal custody of a child is a complex decision. Although it turns primarily on the personal bond with the child, caregivers also consider the feasibility of caring long-term for the child. Caregivers were also asked about the concerns they had when considering pursuing a permanent relationship with the child. A significant percentage expressed concerns about a child's behavior, the child's physical and mental health, and the child's special needs.<sup>186</sup> Caregivers also expressed concerns about the fear of losing services and other forms of support from the social worker.<sup>187</sup> Among those who chose to pursue a permanent relationship with a child, the primary reason was related to the bond they felt between themselves and the child.<sup>188</sup> For those who decided not to adopt or pursue legal custody, there were varying reasons, with a few citing the child's behavior problems or

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adoption or legal guardianship. The project targeted children who were traditionally more difficult to move into permanent living situations, such as children with psychological, physical and behavioral disabilities, teenagers, sibling groups, and African American and Native American children. *Id.* at i.

184. Gary L. Siegel et al., Minnesota Permanency Demonstration Interim Report (May 2008), at 86-87, available at [http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16\\_137480](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_137480). Is the source this one, although it has a slightly different title and publication date? <http://www.iarstl.org/papers/MnPD%20Interim%20Report-July%202008.pdf>

185. *Id.* A control group maintained the previous payment structure, while an experimental group of children and caregivers were offered the new payment structure where payment would remain the same for foster parents and for those who adopted or became legal guardians.

186. Gary L. Siegel et al., Minnesota Permanency Demonstration Final Evaluation Report 54-55 (May 2011).

187. *Id.*

188. *Id.* at 58.

fears that the child's behavior would get worse. Other studies show that concerns about the child's behavior or special needs is often a reason that children change placements while in foster care.<sup>189</sup>

When a child is engaged in school and does not have discipline or academic problem, it may be easier for the non-relative caregiver to bond with the child and commit to provide long-term care.<sup>190</sup> For example, consider a teenager in foster care who is several grade levels behind and has little prospect of graduating with a high school diploma. An adult may be more willing to adopt, serve as a guardian, or be another kind of permanent adult connection for the teenager if the adult believes the youth is on the track towards graduation and post-secondary education. "In contrast, a youth struggling to obtain a GED, with no additional plans for their future, may overwhelm a prospective adult connection, who is concerned the youth will need more support, financially and emotionally, than they are able to provide."<sup>191</sup> Even with younger children, the prospect of having to deal with significant school issues may be daunting for a caregiver.

When children have significant academic delays or special needs, a caregiver may be overwhelmed by the effort required to obtain school services. The behavioral problems that manifest at home, often the symptom of a disability or trauma, also impede learning in school. There may be limited access to quality behavioral health services while in care, leaving the caregiver with little support to address the child's behavior.<sup>192</sup> Even when a caregiver has a strong emotional commitment to a child, the caregiver may not have the knowledge, skills or resources to deal with school issues. Caregivers must be proactive to get schools to acknowledge that their children need services for their learning or behavior problems, and to have schools provide more intensive supports.<sup>193</sup> A parent must understand the child's needs so that they can meaningfully participate in the educational planning process. They must also have strong advocacy skills and, in the case of children with recognized disabilities, it is a challenge to master the complexities of IDEA, and initiate a legal proceeding if necessary.<sup>194</sup>

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189. Noonan et al, *supra* note 146, at 5; Seigel et al., *supra* note 155, at iii.

190. McNaught, *supra* note 70.

191. *Id.* at 162.

192. Noonan et al., *supra* note 146, at 5.

193. A.G. Zeitlin & N.M. Shea, *Caregivers, School Liaisons and Agency Advocates Speak Out About the Educational Needs of Children and Youth in Foster Care*, 55(3) SOCIAL WORK 245, 248 (2010).

194. Gerber & Dicker, *supra* note 163, at 56.

Without the support to obtain these services, the child's needs remain unaddressed and their fate as an underperforming student becomes cemented, while at the same time stability and permanency is undermined. A foster parent or caregiver may decide that they cannot continue to care for the child because of their behavior or academic needs,<sup>195</sup> or may decide not to pursue adoption or legal guardianship. In a vicious cycle, placement instability itself increases behavioral problems, and behavioral problems are a primary cause of placement instability.<sup>196</sup> Equipping the caregiver to effectively address the child's needs both at home and in school may break the cycle.

The potential for disciplinary problems that begin in school to enter the juvenile delinquency system exacerbates the challenge of finding a permanent home. The school-to-jail phenomenon has been well documented.<sup>197</sup> Children are referred to the delinquency system, sometimes for minor school discipline issues that traditionally would not have resulted in criminal court involvement. Juvenile court involvement compounds the school disciplinary problem, making it even more difficult to find a permanent caregiver for the child who may be concerned that the youth's needs are too much to handle.<sup>198</sup> Strong advocacy by an adult may ensure that, where appropriate, these problems are dealt with at school and not in the criminal justice system.

Addressing school issues is important in ensuring that after legal permanence is achieved the placement will be lasting for the

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195. Andrew Zinn et al., *A Study in Placement Stability*, at 2, 42 (Chapin Hall 2006), available at [www.nrcyd.ou.edu/publication-db/permanency-planning.pdf](http://www.nrcyd.ou.edu/publication-db/permanency-planning.pdf). In one study that looked at the reasons for placement instability, over three-quarters of children's most recent moves were due to foster parent's inability or unwillingness to continue fostering. Among those, the most commonly cited reason was foster parent's inability to tolerate the child's behavioral or emotional problems.

196. Noonan et al., *supra* note 146, at 5; Elizabeth Fernandez, *Unraveling Emotional, Behavioral and Educational Outcomes in a Longitudinal Study of Children in Foster Care*, 38(7) BRITISH J. OF SOCIAL WORK 1283, 1284 (2007).

197. See, e.g., Catherine Y. Kim, Daniel J. Losen, & Damon T. Hewitt, *The School-to-Prison Pipeline: Structuring Legal Reform* (2010); Elizabeth E. Hall, *Criminalizing Our Youth: The School-to-Prison Pipeline v. the Constitution*, 4 S. REGIONAL BLACK L. STUDENTS ASS'N L.J. 75 (2010); Philip J. Cook, Denise C. Gottfredson, Chongmin Na, *School Crime Control and Prevention*, 39 CRIME & JUST. 313 (2010); Ronald C. Lewis, *A Multi-System Approach to Dismantling the "Cradle to Prison" Pipeline*, 47 HOUS. LAW 28, (Nov./Dec. 2009); Dean Hill Rivkin, *Legal Advocacy and Education Reform: Litigating School Exclusion*, 75 TENN. L. REV. 265, 267 (2008).

198. Andrea Khoury, *The Delinquency Factor in Permanency Planning for Adolescents in Achieving Permanency for Adolescents in Foster Care: A Guide for Legal Professionals* 63 (Am. Bar Assoc. 2006).



child and the child will not return to foster care. Where reunification may still be an option, keeping the parent engaged with the school system can assist with a smooth transition after reunification. If the parent continues to get educational records, participates in school meetings, and receives training and support in addressing the child's educational needs, the parent may be a more effective advocate when the child returns home. Similarly, providing adoptive parents and legal guardians with support to address school issues while the child is in care and after permanency increases the likelihood that the placement will remain stable. After adoption or guardianship, the level of services declines and parents must struggle even more to get services. Adoption and guardianship subsidies are typically less than the foster care payment rate and once permanency is achieved, families no longer have a case worker and other support previously provided by the child welfare agency.<sup>199</sup>

#### V. A Model for Integrating Education and Permanency Planning

This section suggests changes in child welfare law, policy and practice to elevate the attention paid to promoting educational success for children in foster care, and to make education considerations an integral part of permanency planning.

In making decisions about permanency, child welfare agencies should assess how a particular placement will impact the child's education and the caregivers' ability to effectively address the child's school needs. For example, allowing the child to live close to his or her current school may tip the scale in favor of one caregiver over another. Where reunification is the goal, courts and agencies should consider whether the parent is equipped to address the child's educational needs, and in some situations, it may be appropriate to engage the parent in school advocacy throughout the case plan period or provide them with training and other support to become an effective advocate. When considering the suitability of adoption or guardianship, the caseworker should work with the caregiver to ensure that they are capable of meeting the child's educational needs and, if necessary, providing appropriate support.<sup>200</sup> Throughout the child's time in out-of-home care the child welfare agency should operate with an understanding that unaddressed school issues can potentially undermine the home placement.

There must be rigorous court oversight of a child's educational progress. Permanency hearings should incorporate education

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199. Zeitlin, *supra* note 197 at 247-248.

200. McNaught, *supra* note 70.

issues, and where appropriate, courts can hold separate hearings on educational issues. As a routine practice, judges should ask questions about education at the permanency hearing.<sup>201</sup> For example, the judge should ask how a new living arrangement and potential school change will affect efforts at permanency. The judge should also issue and enforce orders that support a child's education, such as appointing a surrogate parent if there is no one else to make special education decisions for the child.<sup>202</sup> New York's Governor's Permanency Bill, passed in 2005, is one example of a statute that makes "the legal connection between education and permanency by making education a prime component of each child's permanency plan."<sup>203</sup> The law requires that the permanency report submitted at the permanency hearing include specific detailed information about the child's school progress,<sup>204</sup> and the child welfare agency must address the educational and vocational needs of children in foster care, ensuring proper enrollment in appropriate programs and referral for needed evaluations and services.<sup>205</sup> The law also requires schools to cooperate in facilitating the educational components of a child's permanency plan.

Several courts have developed pilots that serve as models for increased judicial focus on education. Miami-Dade County provides another model of a pilot program where courts hold educational hearings. Through a mutual collaboration, the court conducts hearings on education attended by a representative from the school system and child welfare. The child is physically at school but appears via Skype, to minimize the amount of school missed, as well as increase the likelihood that a teacher or other school person can appear.

Another model is Pima County Juvenile Court in Arizona. In addition to addressing barriers to education such as school mobility, delays in transfer of educational records and lack of collaboration, the court system employs strategies such as identifying judicial leadership, obtaining buy-in from the school district, involving all

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201. Gerber & Dicker, *supra* note 163, at 63.

202. McNaught, *supra* note 70.

203. Gerber & Dicker, *supra* note 163.

204. S. 5805, 2005-2006 Leg., Reg. Sess. Sec. 27 s. 1089 (N.Y. 2005).

205. The Permanency Hearing Report must document steps taken to: refer young children with developmental delays or disabilities to early intervention programs; promptly enroll eligible children in pre-kindergarten programs; refer school-age children for special education evaluations or services; enroll teenagers in appropriate high school programs; and assist children over 16 who do not intend to get a diploma to become employed or enroll in a vocational program. S. 5805, 2005-2006 Leg., Reg. Sess. Sec. 27 s. 1089 (N.Y. 2005).

key stakeholders, including youth voices in court, and addressing student suspensions and expulsions.<sup>206</sup>

Caregivers should have access to training, advocacy and other support while a child is in out-of-home care and, where appropriate, after legal permanency. Parents and other caregivers often do not have the knowledge and skills to effectively advocate for their children in school.

Providing training to parents and caregivers empowers them to be able to independently address a child's school issues. It also decreases the likelihood that a child will need to return to care because of problems that could have been resolved through the school system. Given the complexities of IDEA, there are also situations when a parent may need an education attorney or education specialist to attend IEP meetings and prepare more sophisticated advocacy on behalf of the child.<sup>207</sup>

There must be coordination and cooperation between child welfare officials and school officials. Because children in foster care can get lost in the school system, there should be officials in the school system who are specially trained on the unique needs of children in out-of-home care. One model is that of the Office of Juvenile Justice Support in Miami-Dade County, Florida. The office is a department within the local school agency that is dedicated to and physically located within the juvenile court. School staff within the office attend child welfare hearings, obtain school records for caseworkers, meet with caseworkers to assess whether it is a child's best interests to change schools; facilitate transportation requests for children to remain in their school of origin, provide training to child welfare agency staff and serve as a resource to the child welfare system. One study found that the presence of either an education specialist, an employee, or liaison from the local education agency who works in conjunction with the child welfare agency office can positively affect a foster child's school performance.<sup>208</sup>

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206. Casey Family Programs and National Council of Juvenile and Family Court Judges, *Court-Based Education Efforts for Children in Foster Care 11-14* (2007), available at <http://www.casey.org/resources/publications/CourtBasedEducationEfforts.htm>.

207. Gerber & Dicker, *supra* note 163.

208. Zetlin, *supra* note 75.

## Conclusion

Addressing the educational needs of children in foster care should be prioritized in child welfare law and practice. Improving children's educational outcomes is important for its own sake. Once the state removes a child from their parents, it has a duty to ensure that children in its care thrive at least as well as their peers, and provide a foundation for them to become self-sufficient.<sup>209</sup> Understanding the mutually dependent relationship between education and permanency provides further justification for focusing on children's academic progress and implications for the child welfare system's approach to permanency planning. Federal and state law and policies should take a comprehensive approach to addressing school issues, and funding should be allocated to reflect the importance of education. Similarly, child welfare agencies, caseworkers, judges, CASAs, attorneys and others in the child welfare system should focus more on a child's educational status in their day-day practice. There should also be more empirical research about the connection between permanency and education, as well about interventions that work. Those, like myself, who work on the front lines of the child welfare system have many anecdotal examples about the connection between the stability of the home and school issues. However, to make informed policy decisions and effectively allocate scarce resources, more research is needed on this topic.

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209. Fred Wulczyn et al., *BEYOND COMMON SENSE: CHILD WELFARE, CHILD WELL-BEING AND THE EVIDENCE FOR POLICY REFORM* (2005); Michele Benedetto, *An Ounce of Prevention: A Foster Youth's Substantive Due Process Right to Proper Preparation for Emancipation*, 9 U.C. DAVIS J. JUV. L. & POL'Y 381, 382 (arguing that the state has a duty to prepare foster youth for adulthood).