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THE MEDICAID EXPANSION

OF 2014

Screening for Medicaid Eligibility | Health Care Law's Requirements for Nonprofit Hospitals

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Sargent Shriver National Center on Poverty Law

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The court's measurements of success show that of the participants who have signed up, a healthy 35–40 percent have completed their obligations and had their fines discharged. Another 30 percent are completing their obligations—and the rate of completion is increasing. The rest have failed to appear either for their scheduled dates or completion dates. When one contrasts that figure with the rate of appearance and completion for this target group in traditional court settings (all were either failures to appear or failure to pay), then their rate of completion is even more impressive. But another aspect of the court's success is something more elusive but no less important than numbers. Community court participants are responding in ways I would never have imagined. They are completing their obligations, usually on time and often returning with more than I ordered. Their rate of accomplishment and attitude is superior to that of individuals in traditional court who have many fewer challenges than do community court participants. It is a pleasure to work with them.

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An Education: Virginia's Implementation of the Fostering Connections to Success and Increasing Adoptions Act

Advocacy often starts with grassroots organizing campaigns and ends with legislative victories. Our story, however, began with a legislative achievement and culminated in organizing. The Fostering Connections to Success and Increasing Adoptions Act, a federal law effective October 2008, would offer educational stability to children in foster care through mandates and funding incentives for departments of social services in the states (Fostering Connections to Success and Increasing Adoptions Act, Pub. L. No. 110-351, 122 Stat. 3949 (2008), amending, *inter alia*, 42 U.S.C. § 673, <http://bit.ly/rC8w7v>). The Act's educational provisions would eliminate school progress barriers that children in foster care encounter as they move into and between home placements. Such barriers delay and derail children as they work toward graduation. Departments of social services are primarily responsible for implementing certain portions of the law, such as placing students in care in homes near their schools (*id.*, tit. II, § 204(a)(1)(B)). However, departments of social services must also collaborate closely with—and sometimes depend entirely upon—local education agencies to satisfy other portions of the Act, as when students might need to transfer between schools because of a new home placement (*id.*).

The Fostering Connections to Success and Increasing Adoptions Act challenged the states: How does one state agency implement a federal law that explicitly requires the close cooperation of another state agency? In Virginia legal advocacy groups and child welfare policy organizations, such as Just-Children (where I was an education attorney) and Voices for Virginia's Children (where I am now a senior policy attorney), have worked diligently for the past three years to answer that question. Our goal was not to even out the educational playing field for children in foster care but to improve it. Joined

by stakeholders from Virginia's departments of education and social services and participants from the court system, we built a task force to craft comprehensive, workable policy initiatives at the intersection of foster care and education.

This overview of the task force comes from the perspective of JustChildren—a child advocacy organization within a legal aid practice that represents low-income clients directly, conducts community and legal education services, and coordinates policy initiatives related to our practice areas at the state level. As the task force learned from other states implementing the Fostering Connections to Success and Increasing Adoptions Act, participation of advocacy groups outside related state agencies and courts ensures that the perspective of children in the foster care system infuses and informs policies and practices.

The Foster Care Landscape in Virginia

In Virginia we have approximately 5,500 children in foster care. There are more boys than girls, by a slight margin, and more teenagers than preteens and toddlers by a very large margin (Virginia Department of Social Services, Snapshot of Children in Foster Care in Virginia (Oct. 1, 2011), <http://1.usa.gov/uEIVSW>). Most of these children are placed in nonrelative foster homes, and most come into the system because of a neglect allegation. In Virginia a child can enter the foster care system through court commitment on an abuse or neglect petition or a child-in-need-of-services petition, among other avenues. A neglect petition can be filed for reasons relating to the child's physical or mental health or the quality of the home environment, for example. We know quite a bit of information about foster homes through Virginia's Department of Social Services; the department tracks how children come into care, how they leave care, and where they are placed.

What we do not know, however, on a state level, is how children in care fare educationally—either once they come into the system or after they leave it. Virginia does not collect education-related data on children in foster care. We know that children in foster care nationwide have a much higher dropout

rate and a much lower graduation rate than their peers who are not in care. We know that children in foster care are more likely to be behind grade level in core subjects, and more likely to require special education services, than children not in foster care. We know that each new home placement for children in care can translate into weeks, months, and even years of educational loss (National Working Group on Foster Care and Education, Educational Outcomes for Children and Youth in Foster and Out-of-Home Care, (Oct. 18, 2006), <http://bit.ly/usb1EI>).

Education and Virginia's Children in Care

Virginia was already somewhat ahead of the game before 2008 because the state protected school stability for children in foster care. A 2005 law within the state's education code outlined a new school enrollment for children in foster care (VA. CODE ANN. § 22.1-3.4 (2011), <http://bit.ly/uauAW8> ("Enrollment of certain children placed in foster care")). The new law was based primarily upon two foundations: the federal McKinney-Vento Homeless Education Act and a similar Virginia statute to smooth the educational path of children moving from Department of Juvenile Justice facilities back into their local school systems upon release from custody (McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431 *et seq.* (2011); Regulations Governing the Re-enrollment of Students Committed to the Department of Juvenile Justice, 8 VA. ADMIN. CODE §§ 20-660-10–40 (2011)).

The need for such statutory intervention had become crystal clear, even just anecdotally. Many children in foster care, like many in the juvenile justice system, were not receiving adequate educational planning upon entering the system and were languishing in limbo while their school placements were being determined. In essence, children in foster care were criminalized when they attempted to enroll in a new school in much the same manner as their juvenile justice counterparts. Children in care were sometimes sent home for days and even weeks at a time, while administrators determined whether and in which classes to enroll them. They were often rejected outright at school registration desks for presenting incomplete paperwork or missing files. In some localities children in care were forced to attend panel hearings, in which they were discussed by a group of school personnel in the same manner as a suspended or expelled student might be reviewed. Sometimes the children were allowed in these meetings; sometimes they were asked to wait outside in the hallway. Before they even set foot in a classroom, these children perceived themselves as different. Moreover, they often felt unwanted by the schools that were receiving them—schools they were legally obligated to attend. In the worst cases, the only recourse left to social workers attempting to enroll these children was to change their home placements yet again, to placements in school divisions that would accept and register the children.

Enter the new Virginia statute (VA. CODE ANN. § 22.1-3.4). First, the statute allowed children in foster care to be enrolled in a new school even if the child's social worker did not have the required documentation, such as vaccination records or proof of residency (*id.* § 22.1-3.4(A)). Instead the agency representative could submit to the registrar a written statement that gave the child's age, status with regard to any current expulsion or long-term suspension, and a reasonable assertion that the

child was in good health. Schools still required proper registration paperwork to be submitted, but the provision offered social workers a thirty-day window to produce it—a time frame in which the child otherwise might be sitting idle in the child's new foster home or group home with no educational services whatsoever.

Second, the child could continue attending the same school that the child was attending before the child's latest foster care placement if the local social services agency and school division agreed, and if attending the same school is determined (mainly by the school administrators) to be in the child's best interest (*id.* § 22.1-3.4(B)). This section recognized that some students in care might be better served by allowing them to stay in the same schools, despite their change in home placement. In Virginia a child must be a bona fide resident of a school division in order to attend a state public school tuition-free (with some limited exceptions). If a student in foster care were placed in a foster home outside of the student's school division, the student would no longer be considered a bona fide resident of that division and would thus be ineligible to attend school there. This portion of the statute allows schools to make residency exceptions on a case-by-case basis but does not require that this option be considered.

A related section of the Virginia Code charged schools with expediting the transfer of educational records for students who are in foster care and forced to enroll in a new school due to a change in home placement (VA. CODE ANN. § 22.1-289(E) (2011), <http://bit.ly/rIVhi2> ("Transfer and management of scholastic records; disclosure of information in court notices; penalty")). Too often these records lagged behind the student, by weeks and even months, preventing a proper assessment of the student's strengths and weaknesses, standardized test scores, grade level, and credits earned. In JustChildren's legal aid practice, attorneys came across students who were forced to repeat classes and standards testing because of incomplete school records.

Virginia's statute was an adequate foundation for protecting the educational interests of children in care, but it still left some holes that the Fostering Connections to Success and Increasing Adoptions Act would be able to fill.

Changing the Federal Landscape for Children in Care

The Fostering Connections to Success and Increasing Adoptions Act shares physiology with the McKinney-Vento Act and therefore with Section 22.1-3.4 of Virginia's Code, but it is positioned within the Social Security Act and has no reciprocal counterpart in federal education law. The Act gave social service workers the starring role in promoting the educational progress of children in care by giving them the responsibility for coordinating the actors.

The Act seemed to be, at first glance, a mirror image of what our Virginia education code had already put in place, and a welcome addition to our foster care policy. That the federal law offered more robust protections to children in care than our state code did, however, became apparent as we unpacked the particulars, and the law backed up some of those protections with an offer that schools could not refuse: additional funding.

To begin with, the Fostering Connections to Success and Increasing Adoptions Act did not simply allow for the possibility that students in foster care could stay in the same schools even if they moved to a new area: the law created a presumption that children would continue attending their current schools unless transferring to the school linked with their new home placement was in their best interest (Pub. L. No. 110-351, tit. II, § 204(a)(1)(B)). As icing on the cake, the law enabled social service agencies to draw down federal funding (known as IV-E funds) to pay for necessary transportation costs (*id.*).

The Act also met the needs of those children who were in care and would, in fact, need to transfer to a new school based on a new home placement. Much like the Virginia statute, the Act requires those children to be immediately enrolled in their new school, even if the necessary registration paperwork was missing or unavailable (*id.*). And the Act likewise requires social service agencies to expedite the transfer of records between relevant schools.

Implementation

Child welfare advocates welcomed the federal punch that the Fostering Connections to Success and Increasing Adoptions Act packed. Children were languishing too long out of school, losing educational progress, and losing any incentive to stick with their studies. By the summer of 2009, Virginia still seemed stalled in implementing the Act. No new guidance had been issued to local agencies or schools, either from the state or federal level, and many localities remained unaware of the new law, much less how to use it.

Instead we tried to repair the holes in our state statute in order to bring Virginia's education code more in line with what the Act was asking of social service agencies. Our group of staffers from JustChildren (the child advocacy program of the Legal Aid Justice Center), Voices for Virginia's Children, and the Virginia Poverty Law Center met with Virginia Department of Education policymakers and attorneys to share our concerns and feedback on legislative fixes for Virginia Code Section 22.1-3.4. The Department of Education was sympathetic to our pitch but ultimately strongly opposed any statutory changes. The Department of Education proposed that we join a newly formed joint-agency task force on implementing the Fostering Connections to Success and Increasing Adoptions Act in Virginia.

As advocates all know, sometimes you choose your battles, and sometimes your battles choose you. We decided to table the legislative discussion for the short term, join the task force, and reassess our policy strategy based on the results (or lack thereof) achieved by this new task force. If, before the next year's legislative session, not enough progress would have been made, we would reconsider advancing the statutory changes we proposed to the Department of Education.

The Task Force

Jointly led by Virginia's social services department and education department, the task force for a Fostering Connections to Success and Increasing Adoptions Act implementation plan began as a large group of stakeholders. Local representatives

from both education and social services contributed a practical view on the more abstract policy discussions. Child advocacy organizations brought perspectives from their work with children and parents in the foster care system, and the Virginia state coordinator of the state's education program for homeless children and youth offered invaluable expertise garnered from McKinney-Vento implementation, many features of which mapped directly onto our foster care issues. The group boasted double-digit membership.

The large group met only a few times, mainly to prioritize issues into short-, medium- and long-term goals. This proved critical for child advocates in the group to stake out the territory that affected kids and families most strongly: kids in care staying in their schools, immediate enrollment if a school change became necessary, transportation funding, and expedited school records.

The number of voices within the task force was encouraging but frustrating at times, as too many cooks in the kitchen might be. The large work group quickly dwindled to a core membership of five or six "regulars," who took on the task of crafting the actual implementation policy and its ancillary documents. For the Fostering Connections to Success and Increasing Adoptions Act, this meant writing new material for the *Virginia Department of Social Services Child and Family Services Manual* and a new superintendent's memo for the local school divisions; developing "best interests" for determining a child's school placement; plotting out training materials and strategies for disseminating the new policy; and seeing that the Virginia Department of Social Services had a plan for transportation funds for children traveling back to their original schools from a new home placement.

The smaller, leaner work group had its advantages: scheduling meetings, though still a challenge, was much more feasible, and we could meet more often; opinions, though still plentiful, could be conveyed in more depth and with more focus; and the group could spend meeting time editing and refining our work product before reporting back to the larger task force for consensus. There were just enough cooks to achieve our goals.

Planning

As third-party advisers in policy negotiations mainly in the hands of other decision makers (namely, the agency representatives), child welfare advocates stuck to one simple strategy in advocating for our client communities: do as much of the work as possible beforehand; then bring it to the table and advocate it. For example, we wanted to make sure that schools were not demanding more documentation and information than legally required for children in foster care to be enrolled in school. Accordingly we created our own enrollment form to give to social workers. It was a simple, fill-in-the-blanks handout that, when completed, contained all the information a registrar would need to enroll a child. On the flip side of the page, we included the text of Virginia Code Section 22.1-3.4. We also offered contact information for the Virginia Department of Student Services in case the registrar had any questions. Attorneys at JustChildren originally created this tool for foster care social workers whom we encountered in our legal aid practice, either through training or client work. What we

found, however, was that the form fit seamlessly into the type of final product we wanted to create for use statewide. When we presented it to work group representatives from education and social services, they made a few nonsubstantive edits and readily adopted our form as the new standard enrollment form for children in foster care.

Similarly, when the coordinator of Project Hope—Virginia: Education for Homeless Children and Youth distributed a sample best-interests determination checklist that the state used for deciding school placement of children who were homeless, the work group made some relevant edits and adopted our methods. Such collaboration gave the group a field-tested structure on which to build our policy and reduced potential confusion during policy implementation since both school and child welfare professionals were already accustomed to our forms and methods.

Making the Grade

The tenacity of the small work group and the productivity due to its lean structure placed Virginia among a handful of states often touted as ahead of the game in implementing the Fostering Connections to Success and Increasing Adoptions Act. In the short term, we generated a comprehensive policy addition to the state's foster care manual and a substantive superintendent's memo to local school divisions; the memo detailed the following education protections for children in care:

- We crafted specific definitions of both “immediate” (no later than the next school day after registration) and “enrollment” (meaningful participation in academics and activities) as they are used in the Fostering Connections to Success and Increasing Adoptions Act context so that schools could no longer delay enrollment for children in care.
- We showed how to determine whether a child in foster care should change schools when the child's home placement changes to a location outside the child's school boundaries, and we allowed the child a strong voice in that determination by requiring that whoever conducts the best-interests determination talk to the child about what school the child would like to attend. Children are also permitted to designate a person—a family member, friend, social worker, or other child welfare professional—to advocate for them in the best-interests determination.
- We standardized relevant forms to eliminate inconsistencies within local practices.
- We devised a mechanism for releasing transportation funds for children who stay in their original schools but must travel from a new home placement.
- We produced training sessions and webinars on the new policy and archived them for school and child welfare professionals. We made all such materials available online through school and child welfare agency channels.
- We secured a few small code fixes in the subsequent legislative session (some of which we initially brought to state education policymakers and were dismissed). Once we could demonstrate that two agencies were cooperating and producing joint policy, lawmakers were much less reticent to pass revisions of the state code.

These achievements are even more impressive in that they were produced and approved by two state agencies that are often at odds with each other and have conflicts between their state and local offices.

Room for Improvement

With victory, came challenges and some work left incomplete. The Fostering Connections to Success and Increasing Adoptions Act is still a child welfare law that implicates education agencies but does not mandate their cooperation. So far, any initiative to introduce reciprocal legislation has stalled in Congress (Child Welfare League of America Fostering Success in Education Amendment to Title I of the Elementary and Secondary Education Act: Context and Summary, (Oct. 24, 2011), <http://bit.ly/ukcBNp>). Without such leverage, child welfare agencies are left with unequal bargaining power, which only complicates implementation efforts at the state level.

While we were able to produce several webinars and training sessions, we did not secure a strong, ongoing training plan for local practitioners; this ideally would involve dual training with school and child welfare professionals in the same session. Policy initiatives without practice are simply words on a page. Without a strategy for everyone from the foster care service worker to the part-time administrative assistant behind the school registration desk to know the ins and outs of what we crafted, there will still be students in foster care turned away at the schoolhouse door.

There are what some people might call the least interesting pieces of the puzzle but are truly the most valuable components: data. We began planning for the collection of state-level, school-related data on children in foster care; this still sits in limbo as both agencies unpack issues related to technology, information sharing, privacy, and collection methods. We are likely quite a distance away from collecting good data on the educational outcomes of children in foster care, and even further away from using any such data to improve and revise policies where needed.

Benefits for Virginia's Children in Care

We may not have the data yet, but here is what we already know.

We know that when 13-year-old Sarah, who is in foster care, comes to JustChildren after her school refuses to enroll her on the first day of classes because the school has no records for her, we have a good solution to offer. We can help her social worker fill out her immediate enrollment form and make sure she is attending classes by the next morning. We can contact the Virginia Department of Education and make sure that the local school has all the information it needs about the proper procedures for enrolling children such as Sarah. And we can use the law to help get her file expedited to her new school.

We know that when a school puts 15-year-old Justin in an evening, self-directed computer course instead of biology, Spanish, or government classes with his peers as he was in his last school, simply because he now lives in a group home, we know that Justin is not “enrolled” as defined in our new policy, because his access to education is not “meaningful,” and we know that we can use the law to help him.

We know that when 14-year-old Andrew might have to change foster placements to a new school division, he can maintain some semblance of stability in his life by continuing to attend his same school, even if he will not be living in the area, and we know that he will have reliable transportation to deliver him there and home each day.

We know we have created tools that can be used by social workers, school officials, foster parents, and students alike to help improve educational outcomes for children in foster care (National Resource Center for Permanency and Family Connections, Virginia: *Fostering Connections to Success Education Webinar* (Dec. 14, 2010), <http://bit.ly/ut05d7>). And, as much as we the advocates feel we achieved all this for Virginia's children in care, we also benefited from this work. Here are a few lessons we learned along the way:

Do Your Homework (and Do Other People's Homework for Them, if You Can). When we came to the table with documents already created, regulations already crafted, and policy already written, we found the work group to be quite receptive to our efforts. Revising and amending within the group setting was much easier, and we were able to reflect our client communities' interests.

Show Up. Attend meetings, hearings, webinars, conference calls—all of them. Full participation in a task-force setting is key: not only do you gain credibility for being present and reliable, but also you can be sure that nothing slips through the cracks or slides off course when you are not in the room. Just being there from start to finish will help keep the group on the right message.

Don't Be One of the Cooks in the Kitchen: Be the Dishwasher, the Waiter, and the Host as Well. Participate in a coalition not just during the interesting parts, such as crafting policy, but also in the more tedious parts, such as reviewing work and offering feedback, volunteering to conduct training on the new policies, and completing a thorough and accurate research. Committing to serving an integral role at each stage helped us build and maintain strong protections for our client communities and produced lasting results, notably an ongoing workforce training effort.

We still have quite a few assignments to complete on this project, but we are hopeful that Virginia, and our children in foster care, will graduate with honors.

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