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**FOSTER CARE & EDUCATION**

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*Role for Judges and Lawyers in Improving  
Education Outcomes for Children in Foster  
Care: Federal and National Perspective*

*Kathleen McNaught*

*Iowa Training*

*September 28 2016*



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AMERICAN BAR ASSOCIATION

**Center on  
Children and the Law**

**Access to Justice for Children & Families**

**Juvenile  
Law** advancing the rights and  
Center well-being of children in jeopardy

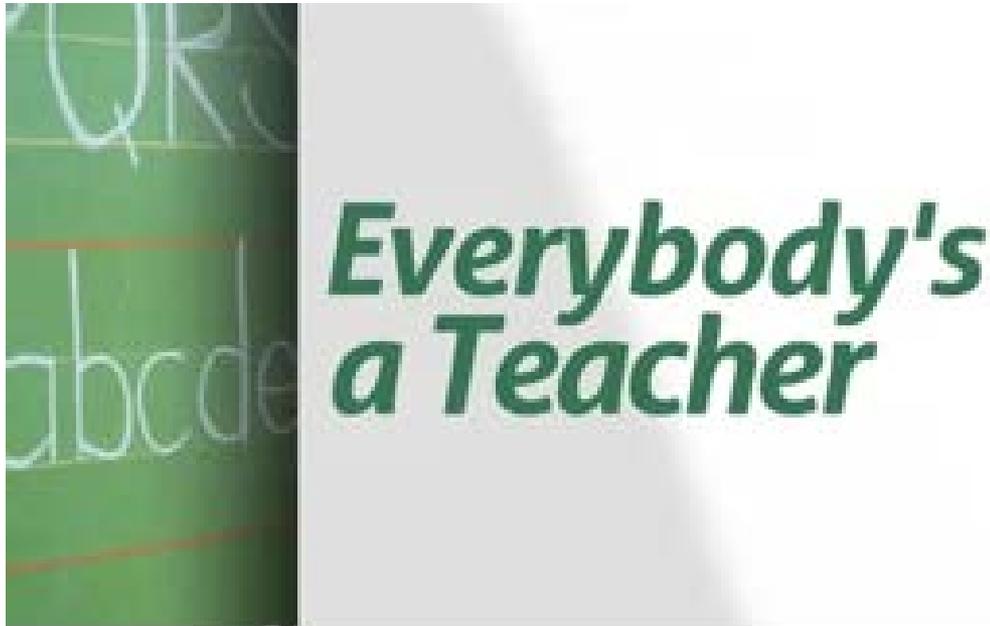
The logo for the Education Law Center, featuring a blue rectangular background with yellow horizontal bars above and below it. The text 'EDUCATION' is in yellow and 'LAW CENTER' is in white.

**EDUCATION  
LAW CENTER**

## Video

Everybody's A Teacher

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<https://www.youtube.com/watch?v=KK598gpzVm0>

# Education Barriers Experienced by Children in Foster Care

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- ❑ Lack of placement stability = school instability
- ❑ Delayed enrollment
- ❑ Credit transfer issues & graduation requirements
- ❑ Children with special education needs are not identified or fail to receive services
- ❑ Disproportionate rates of suspension and expulsion
- ❑ Over-representation in alternative education programs
- ❑ Inferior on-site educational programs

# What the Research Shows

## Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care

January 2014

### Why Education Matters to Children in Foster Care

When supported by strong practices and policies, positive school experiences can counteract the negative effects of abuse, neglect, separation, and lack of permanency experienced by the nearly 400,000 U.S. children and youth in foster care. Education provides opportunities for improved well-being in physical, intellectual, and social domains during critical developmental periods and supports economic success in adult life. A concerted effort by child welfare agencies, education agencies, and the courts could lead to significant progress in changing the consistent and disheartening picture about educational outcomes for children in foster care the research portrays. The promising programs and interventions highlighted below represent innovative efforts to address a wide range of factors influencing the disparities in education outcomes. With cross-system collaboration, we are positioned to build on what is being learned, bring about change, and promote success for all children and youth in foster care.

### Fast facts from national and multi-state studies\*

Number of children and youth in foster care on September 30, 2012	399,546
Average number of living arrangements during first foster care stay	2.8
Number of foster children of school age	249,107
Likelihood of being absent from school	2x that of other students
Percent of foster youth who change schools when first entering care	56%-75%
Percent of 17-18 year olds in care who have experienced 5+ school changes	34%
Likelihood of 17-18 year old foster youth having an out-of-school suspension	2x that of other students
Likelihood of 17-18 year old foster youth being expelled	3x that of other students
Average reading level of 17-18 year olds in foster care	7th grade
Likelihood of foster youth receiving special education	2.5 - 3.5x that of others
Percent of foster youth who complete high school by 18	50%
Percent of 17-18 year old foster youth who want to go to college	84%
Percent of foster youth who graduated from high school who attend college	20%
Percent of former foster youth who attain a bachelor's degree	2 - 9%

\* All Fast Facts are referenced elsewhere in this document. These facts were compiled based on findings from multiple studies where a consistent picture is emerging that points to widespread deficits on a number of markers of educational progress or success. Data points represented here are either from national studies or multiple studies conducted in different states (in which case a range is provided for the data point).

## 2014 National Working Group on Foster Care and Education

[http://www.fostercare  
andeducation.org/Data  
base.aspx?EntryId=193  
7&Command=Core\\_Do  
wnload&method=inlin  
e](http://www.fostercareandeducation.org/Database.aspx?EntryId=1937&Command=Core_Download&method=inlin<br/>e)

# Fast Facts from National Datasheet

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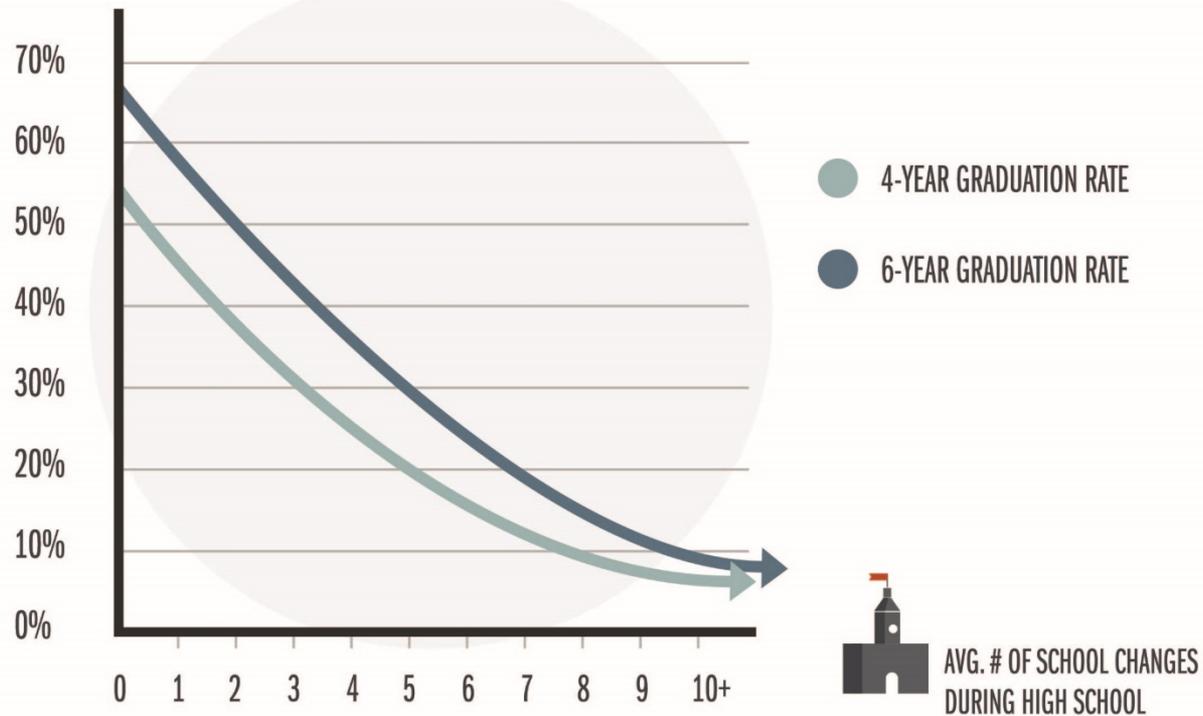
Fast Facts from national and multi-state studies	
Number of school aged foster children (Sept 30, 2012)	249,107
Average number of living arrangements during first foster care stay	2.8
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Average reading level of 17-18 year olds in foster care	7 <sup>th</sup> grade
<b>Likelihood of youth receiving special education</b>	<b>2.5-3.5x higher</b>

# Research Shows Poorer Outcomes Than Other Vulnerable Students

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- A recent California statewide study showed students in foster care:
  - Performed worse than their low-SES (socioeconomic status) peers, special education students, English Language Learners.
  - Were consistently more likely than the general student body to attend the lowest-performing schools.
  - Were more likely to be enrolled in a nontraditional school.
  - Were nearly four times more likely to attend a nontraditional school than both the low-SES and general student population.

# Colorado Research Shows Link Between Mobility and Graduation



# Blueprint for Change: Education Success for Children in Foster Care

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- ❑ **8 Goals** for Youth
- ❑ **Benchmarks** for each goal indicating progress toward achieving education success
- ❑ National, State, and Local **Examples**

[www.fostercareandeducation.org/  
AreaofFocus/BlueprintforChange  
.aspx](http://www.fostercareandeducation.org/AreaofFocus/BlueprintforChange.aspx)

# Blueprint for Change: Goals for Youth

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**Goal 1: Remain in the Same School**

**Goal 2: Seamless Transitions Between Schools**

**Goal 3: Young Children Are Ready to Learn**

**Goal 4: Equal Access to the School Experience**

**Goal 5: School Dropout, Truancy, and  
Disciplinary Actions Addressed**

**Goal 6: Involving and Empowering Youth**

**Goal 7: Supportive Adults as Advocates and  
Decisionmakers**

**Goal 8: Obtaining Postsecondary Education**

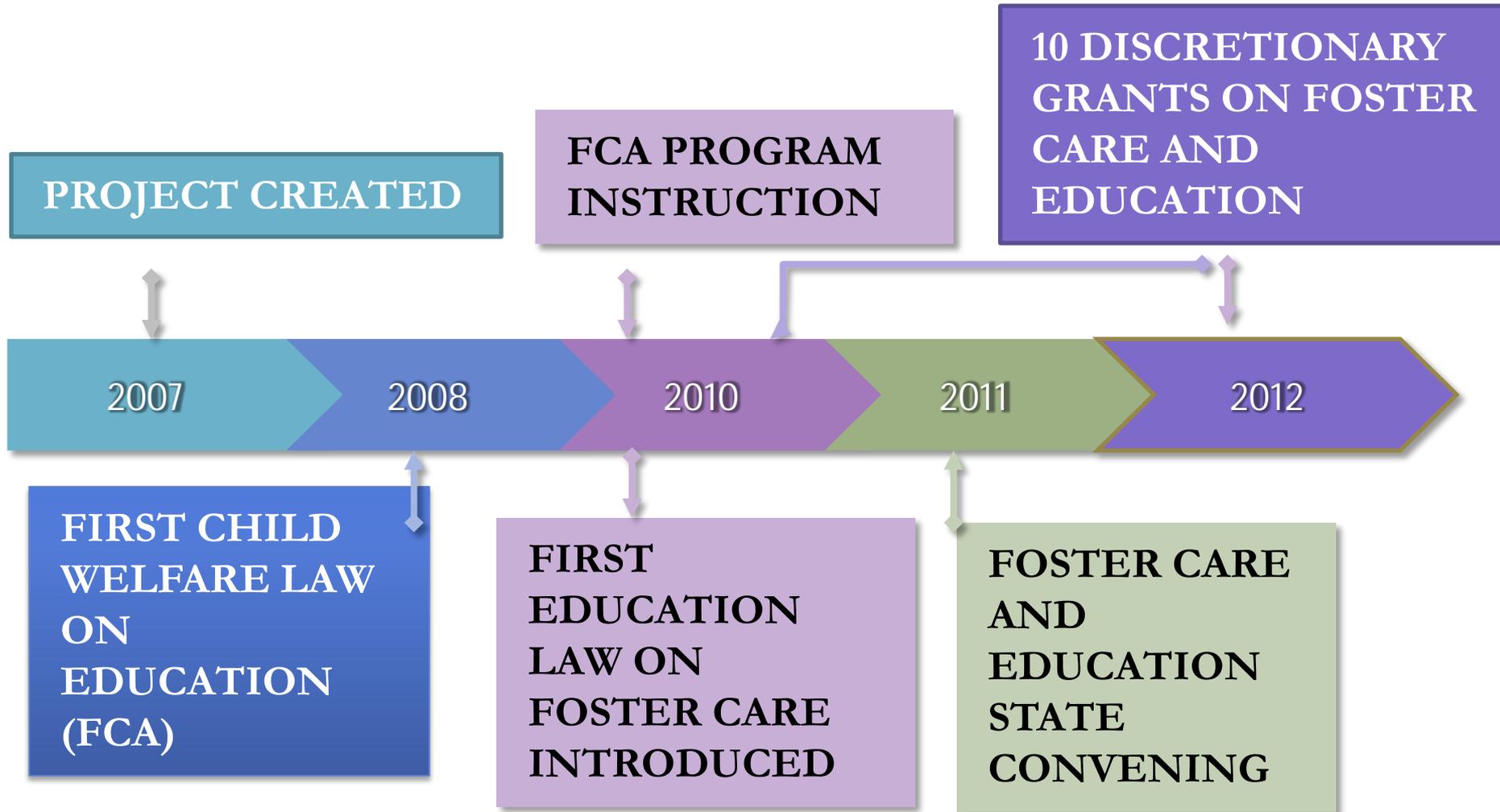
# Legal Center for Foster Care and Education: Our Theory of Change

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## Improve Well-Being through a Focus on Education

- ❑ **Work at all levels (federal, state and local)**
- ❑ **Facilitate multisystem conversations and collaboration to align policy and practices across systems**
- ❑ **Focus on Courtroom attention to education; judicial leadership**
- ❑ **Create timely tools and resources, and provide technical assistance.**
- ❑ **Support needed law and policy**
- ❑ **Support data collection, sharing and use**

# Federal Policy Highlights



# Federal Policy Highlights

UNINTERRUPTED  
SCHOLARS ACT  
(USA) AMENDS  
FERPA

HILL BRIEFINGS  
ON FOSTER  
CARE AND  
EDUCATION

JOINT HHS / ED  
LETTER ON  
FOSTERING  
CONNECTIONS

2013

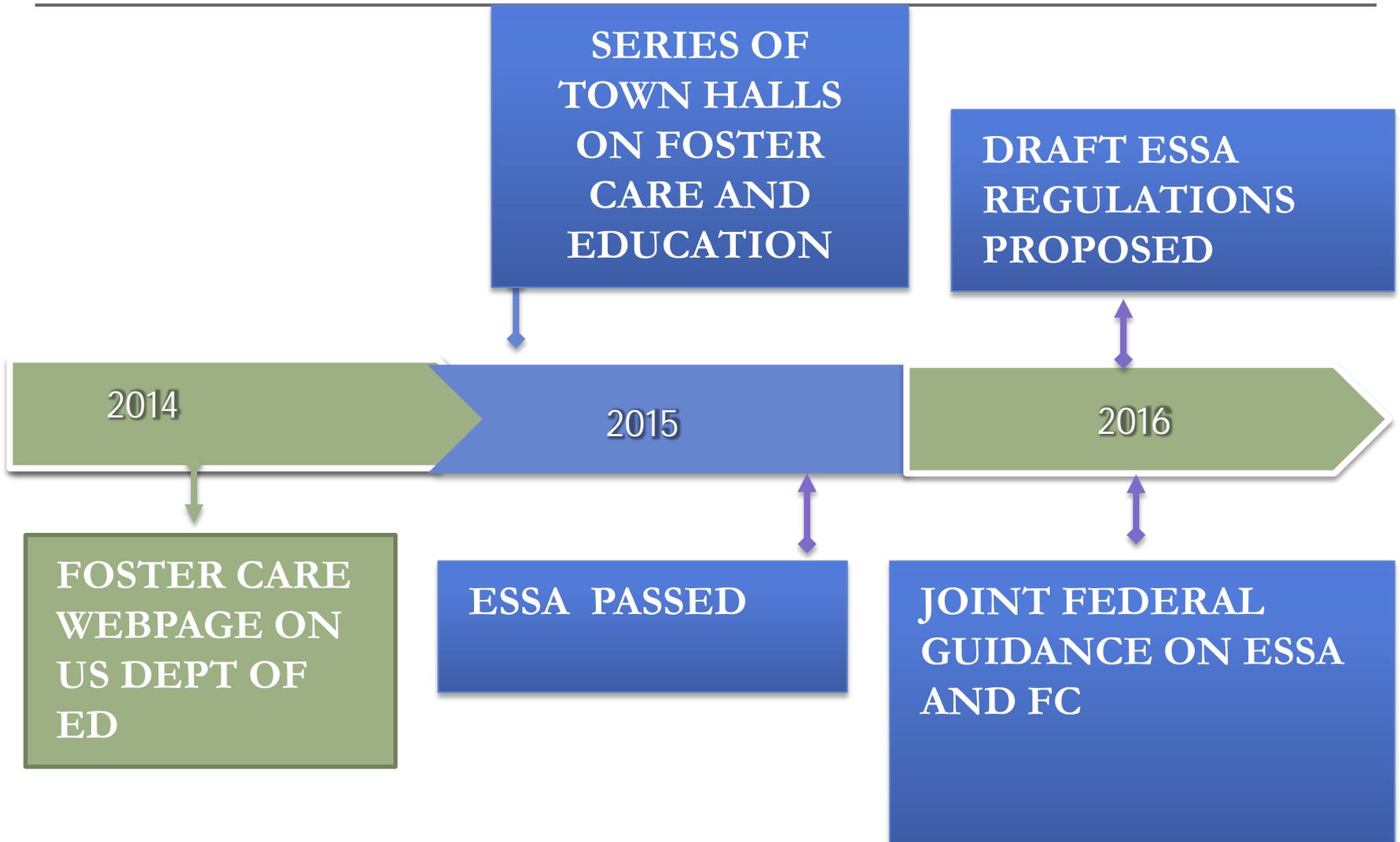
2014

FOSTER CARE  
AMENDMENT  
TO ESEA  
INTRODUCED  
(HELP)

ED GUIDANCE  
ON USA

TRI-AGENCY  
LETTER ON  
SCHOOL  
LUNCH  
ELIGIBILITY

# Federal Policy Highlights



# Three Federal Laws To Know

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- ❑ Family Educational Rights and Privacy Act
- ❑ Fostering Connections to Success and Increasing Adoptions Act
- ❑ Every Student Succeeds Act

# Family Educational Right and Privacy Act

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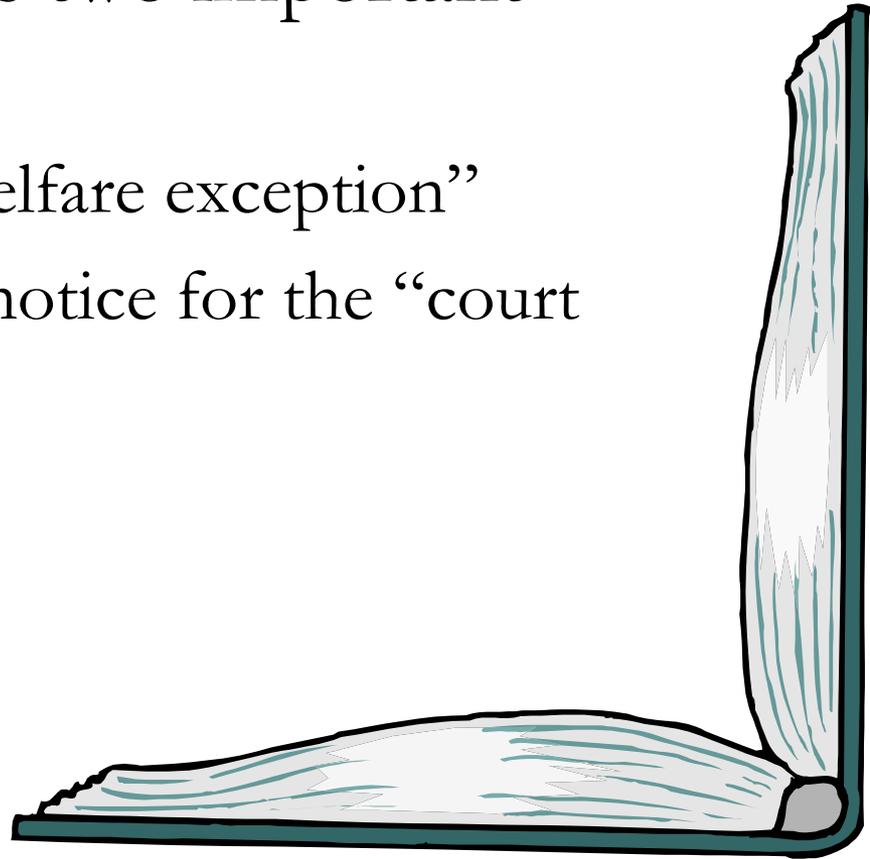
- ❑ **Protect privacy interests of students' education records.**
- ❑ Prohibits schools from disclosing **personally identifiable information** from students' education records **without the written consent of a parent** or eligible student, unless an exception to general consent rule applies.

20 U.S.C. § 1233g; 34 CFR Part 99

# FERPA Amendment

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- Effective January 14, 2013, the Uninterrupted Scholars Act (USA) includes two important changes:
  - USA creates a new “child welfare exception”
  - USA eliminates duplicative notice for the “court order exception”



# FERPA – child welfare exception

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- Information can be released without parental consent to:
  - “an **agency caseworker or other representative** of a State or local child welfare agency, or tribal organization... who has the **right to access a student's case plan**
  - when such agency or organization is **legally responsible**, in accordance with State or tribal law, for the **care and protection** of the student
  - provided that the education records, or the personally identifiable information contained in such records, of the student will **not be disclosed ... except to an individual or entity engaged in addressing the student's education needs....**

# How others access Education records

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CASAs, Child attorneys, other advocates:

- Parental Consent

- Court order

- Remember- now under USA no need for education agencies to renotify parents of that court order (because parent was a party to the case where the order originated).

# Resources on USA and FERPA

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- <http://www.fostercareandeducation.org/AreasofFocus/Datainformationsharing.aspx>

Check this link for the following resources:

- Two Q and A factsheets: one on USA and one on FERPA generally
- Federal joint agency letter supporting information sharing and the new Uninterrupted Scholars Act
- Sample state letters and memos (i.e. PA and Florida) showing joint agency collaboration.

# Fostering Connections Act

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- Fostering Connections to Success and Increasing Adoptions Act
- (P.L. 110-351) signed into law on October 7, 2008 Amends Title IV-E and Title IV-B of the Social Security Act
- Most significant federal reform for abused and neglected children in more than a decade
- Addresses issues of guardianship and kinship care, tribal provisions, health, older youth **and education**

# School Stability in Fostering Connections

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Must include an **Education Stability Plan** as part of each child's case plan including assurances that:

- Each placement takes into account the **appropriateness of the current education setting** and the **proximity to the school** in which the child is enrolled at the time of placement
- Child welfare agency has **coordinated with appropriate local education agencies ... to ensure** that the **child remains enrolled in the school** in which the child was enrolled at the time of placement.
- **If not in best interest to remain**, child welfare agency must ensure **immediate and appropriate enrollment** in a new school, **with all of the education records** of the child provided to the school.

# Every Student Succeeds Act

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- ❑ Enacted December 10, 2015
- ❑ Reauthorized the Elementary and Secondary Education Act (ESEA) (Originally enacted in 1965 and last reauthorized as the No Child Left Behind Act in 2002)
- ❑ For the first time, it contains key protections for students in foster care to promote school stability and success, and required collaboration with child welfare partners.

# Key Themes for Implementation

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- ❑ This law, paired with the **2008 Fostering Connections to Success and Increasing Adoptions Act**, envisions *dual-agency* responsibility for supporting educational stability success for students in foster care.
- ❑ There are **short timelines for implementation**, so advocacy from child welfare and education communities is needed immediately.
- ❑ This law presents an **important step forward**, but **state and local action is essential to ensure adequate protections** for students in foster care.

# Overview of the Foster Care Provisions

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- ❑ **School Stability Protections** (remaining in same school; best interest determinations; immediate enrollment; transportation when needed)
- ❑ **Staff resources** at state and local education agencies (and child welfare agencies)
- ❑ **Removal of “awaiting foster care placement”** from the McKinney Vento Act.
- ❑ **Required disaggregate data collection and reporting** by SEAs
- ❑ **Other**
  - **Charter school** grantees
  - **Family Engagement** grantees

# State Title I Plan Requirements: school stability

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- State Title I Plans must describe the steps the State Education Agency (SEA) will take to **ensure collaboration** with the State child welfare agency to **ensure the educational stability** of children or youth in foster care.
- Federal child welfare law already requires child welfare agencies to collaborate with education agencies to ensure school stability; this law **creates reciprocal obligations on education agencies**.

# State Title I Plan Requirements: school of origin & best interest decisions

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The plan must include assurances that:

- ❑ Youth in foster care are **enrolled or remain in their school of origin, unless a determination is made that it is not in their best interest.**
- ❑ The **best interest determination** will be based on factors, including consideration of:
  - the appropriateness of the current educational setting, and
  - the proximity to the school in which the child is enrolled at the time of placement

# State Title I Plan Requirements: Immediate Enrollment

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- When a determination is made that it is not in the child's best interest to remain in the school of origin, the child will be **immediately enrolled in a new school**, even without normally required records.
- The enrolling school must contact the previous school to obtain academic and other records.

# State Title I Plan Requirements: point of contact at SEA

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- The State Education Agency (SEA) must designate a **point of contact** within their agency to work with child welfare agencies, who will oversee implementation of the SEA responsibilities.
  - The SEA point of contact **may not** be the same person as the State Coordinator for homeless children and youth under the McKinney-Vento Act.

# Local Title I Plan Requirements: LEA points of contact

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- Local Education Agencies (i.e. school districts; charter schools) must designate a point of contact for children in foster care, **if the child welfare agency notifies the LEA, in writing, that it has designated a point of contact within the child welfare agency for the LEA.**

# Local Title I Plan Requirements: transportation

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- **By December 10, 2016**, Local Title I plans must contain an assurance that Local Education Agencies (LEAs) will collaborate with the state or local child welfare agency to:
  - **develop and implement clear written procedures for how transportation** to maintain youth in foster care in their schools of origin, when in their best interest, will be **provided, arranged and funded** for the duration of the time in foster care.
  - Ensure that children in foster care needing transportation to the school of origin **promptly receive transportation.**

# Local Title I Plan Requirements: transportation

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These procedures must:

- ❑ Ensure that youth in foster care who need transportation to the school of origin **promptly receive it in a cost-effective manner**, and in accordance with the child welfare agency's authority to use child welfare funding available under section 475(4)(A) of Title IV-E of the Social Security Act to provide transportation.
- ❑ Ensure that if there are additional costs incurred in providing transportation to the school of origin, LEAs will provide it if:
  - ❑ They are reimbursed by the child welfare agency;
  - ❑ The LEA agrees to pay the costs; or
  - ❑ The LEA and the child welfare agency agree to share the costs.

# McKinney-Vento Program

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- ❑ One year after enactment (December 10, 2016), the phrase **“awaiting foster care placement”** will be **deleted from the definition of “homeless child or youth”** in the **McKinney-Vento Homeless Assistance Act**.
- ❑ In states that define or describe “awaiting foster care placement” in statute, the phrase will be deleted in two years (December 10, 2017).

# Data and Reporting: State Report Card

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- SEAs must annually include the following disaggregate information on children and youth in foster care in their State report cards:
  - **Student achievement on academic assessments**
  - **Performance on other academic indicators**
  - **High school graduation rates**

# Charter Schools

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- SEAs or entities receiving charter school grants under Title IV Part C of the ESSA must work with charter schools on **recruitment and enrollment practices to promote inclusion of all students**, including by **eliminating any barriers to enrollment** for youth in foster care and unaccompanied homeless youth.

# Family Engagement Grants

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- Any statewide organization...that is applying for a Family Engagement in Education Program grant must include in their application “a **description of the applicant’s demonstrated experience in providing training, information, and support** to State educational agencies, local educational agencies, schools, educators, parents, and organizations **on family engagement** in education policies and practices that are effective for ...children and youth in foster care, ...
- provide assurances that they will “use not less than 65 percent of the funds received [ ] to serve local educational agencies, schools, and community-based organizations that **serve high concentrations of disadvantages students**, including...children and youth in foster care.”

# New Joint Federal Guidance

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June 2016: New guidance from the U.S. Departments of Education and Health and Human Services about implementation of the foster care provisions of the Every Student Succeeds Act (ESSA).

<http://www2.ed.gov/policy/elsec/leg/essa/index.html>.

# What Needs to Happen Now?

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- ✓ Help **raise the visibility of the ESSA** foster care provisions.
  - ✓ raise ESSA with your state and local child welfare contacts
  - ✓ Prioritize foster care provisions with education partners
- ✓ **Create a sense of urgency** given the quick timelines for implementation of key provisions (Dec. 2016).
  - ✓ Development of local transportation plans by Dec. 2016
  - ✓ Ending the use of “awaiting foster care placement”
- ✓ Encourage the **quick identification of points of contact** within local and/or state child welfare & education agencies.
- ✓ Determine **need for further assistance** in their collaborative implementation efforts across agencies.

# Local Level Collaboration

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## **POINTS OF CONTACT (both LEA and CW):**

- ❑ Get them identified ASAP
- ❑ Have clear roles and responsibilities (memorialize in writing)
- ❑ Build relationship and mechanism for ongoing conversations with POCs from other agencies and even neighboring LEAs.
  - LEA POCs- know who the students are in care (and through which CW agencies)
  - CW POCs- know which LEAs you need to connect with

# Local Level Collaboration cont...

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- **Training** on requirements in ESSA and FC
- Clarify across systems **process for best interest determinations** and immediate enrollment procedures
- **Written Transportation Procedures** (by Dec 2016):
  - MUST happen promptly for those students who need it, and in a cost-effective manner
  - MUST detail how arranged, provided, and funded
    - This has to include addressing how “additional costs” will be addressed by both agencies (either one or other agrees to pay or they share costs).

# Local Level Collaboration cont...

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- ❑ Charters- engage them around children in foster care
- ❑ Parent Engagement- how are grantees supporting families of foster youth (birth and foster families)?
- ❑ Data- state report card requirements can be a spring board

# Next Steps for Courts and Legal Advocates

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- ❑ Training on ESSA and Fostering Connections and how the laws work together
- ❑ Include school stability information in court reports; have courts inquire at hearings (are best interest decisions being made; appropriateness of current school and proximity of the living placement being considered during placement)
- ❑ Create tools (trainings, court rules, model orders, protocols) to support school stability and education success, including education decision making
- ❑ Court data systems- tracking data; accessing education information



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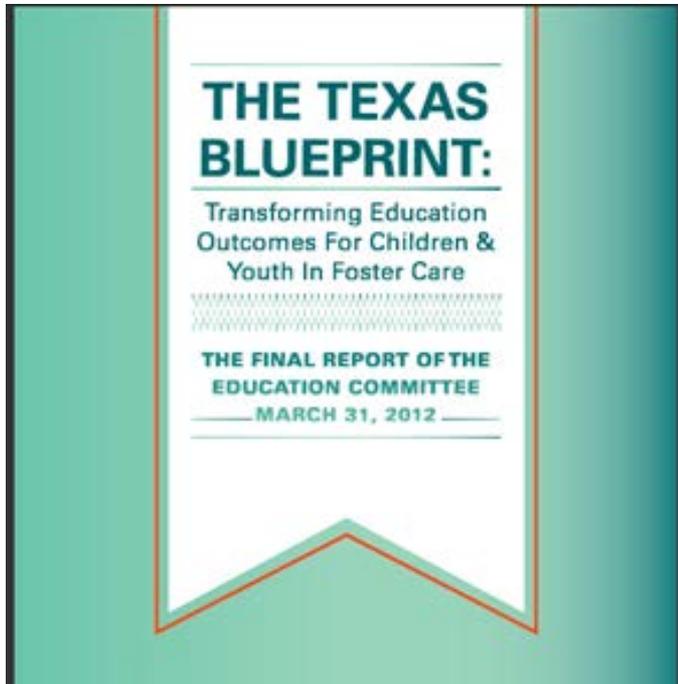
# State and Local Need for Tools and Resources

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- ❑ Training for Judges, Advocates, Caseworkers and Educators
- ❑ Screening Tools for Child Welfare and Education Agencies
- ❑ Step-by-Step Guides for Educators
- ❑ Education Checklists, Court Reports, and Benchcards
- ❑ Model Legally Compliant Data Sharing Agreements and Interagency Memoranda of Understanding

# Example: Texas Children's Commission- Education Committee

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- ❑ Judicial Practices
- ❑ Data and Information Sharing
- ❑ Multi-Disciplinary Training
- ❑ School Readiness
- ❑ School Stability and Transitions
- ❑ School Experience, Supports, and Advocacy
- ❑ Post-Secondary Education
- ❑ Future Collaboration

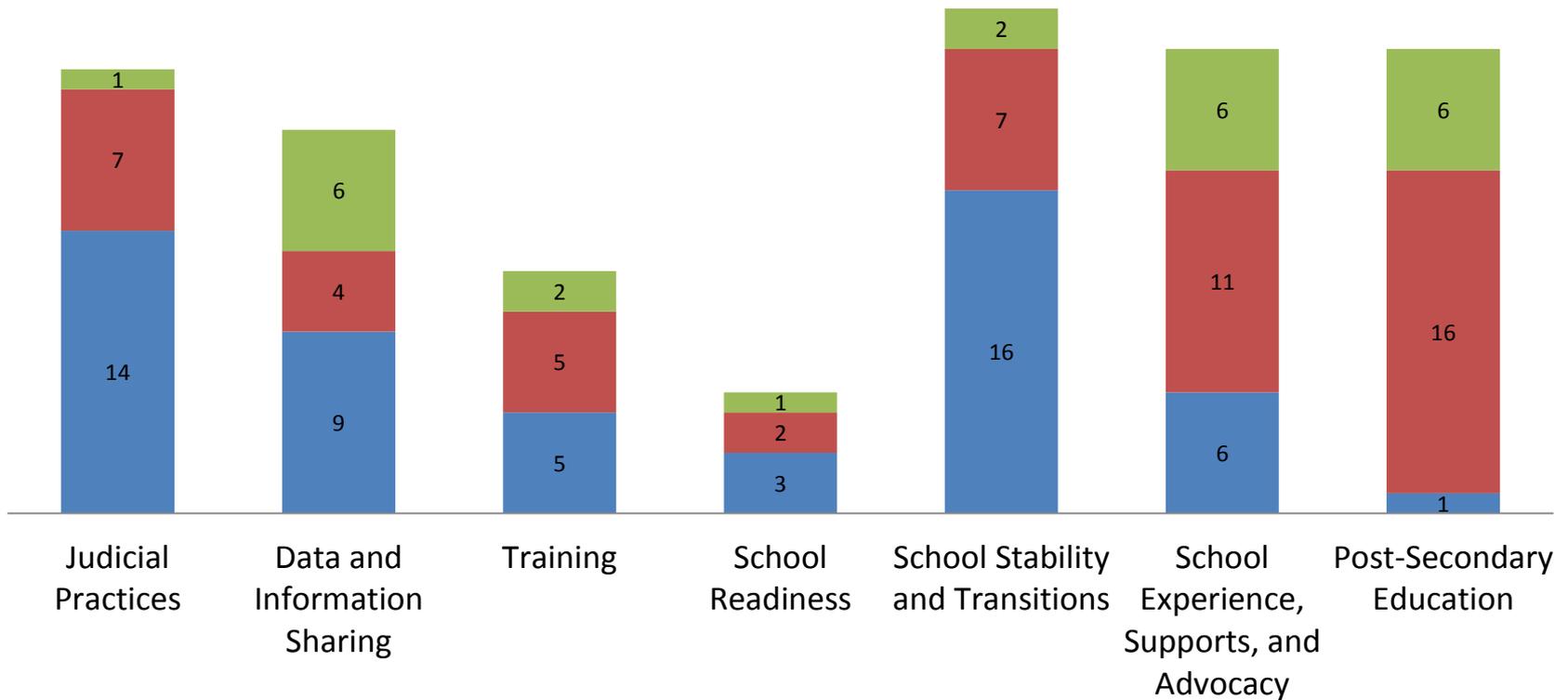
# Texas Children's Commission- Implementation Task Force

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- ▶ Also created by a Supreme Court order
- ▶ 2-year duration
- ▶ Task Force plus 3 workgroups:
  - Data
  - School Stability
  - Training and Resources
- ▶ Charged with monitoring how the *Texas Blueprint* recommendations implemented
- ▶ <http://education.texaschildrenscommission.gov/blueprint-implementation-task-force.aspx>

# Texas Blueprint recommendations Status by issue area

■ Completed ■ In Progress ■ Outstanding



# PA Juvenile Court Rules: Education

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## Rules available at:

<http://www.pacourts.us/courts/supreme-court/committees/rules-committees/juvenile-court-procedural-rules-committee/juvenile-court-committee-rules-and-forms>

- Consider educational needs of the child at *every stage* of adjudicatory process
- Ask the right questions to identify the real problems
- Ensure each child is staying in the same school when in his best interest
- Ensure child is on track to graduate
- Every child must have an active education decision maker
- Detailed transition plan

# KISR!- Kids in School Rule!

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- ❑ Hamilton County, Ohio collaboration with Cincinnati Public Schools
- ❑ Court magistrates part of Leadership Team; commitment of Court leaders to project
- ❑ Improved “education court report” to ensure agency presenting necessary education information
- ❑ Court tool - used as aid for judges to process education information being shared (or not shared)
- ❑ Commitment to training – magistrates and attorneys who practice before the Court

# Judicial Tool: Does the child have...

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1. Current Education Status Documented?
2. School Stability Since Last Hearing?
3. Educational History Documented?
4. School Records Being Accessed as Needed?
5. Regular Attendance?
6. Good School Performance?
7. Meaningful School Participation?
8. Needs Addressed for Special Education/504 Evaluation, Identification, and Supports, if applicable?

cont...

# Judicial Tool: Does the child have...

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9. Clean Disciplinary Record?
10. Post High School Education Plans (Beginning at Age 14)?
11. A Voice in Education Decisions and Planning?
12. Adult(s) Involved as an Education Advocate?
13. A Clearly Defined Education Decision Maker?
14. Clear Recommendations by the Parties, and Findings by the Court?

# What We Have Learned

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- ❑ **Interagency collaboration is critical**
  - requires ongoing facilitation/resources/support
- ❑ **Data-collection and information sharing drives reform**
  - State Level: Arkansas, California, Colorado, Florida, Delaware, New York, Nebraska, Texas, Washington
- ❑ **Investment in students in foster care improves strategies for *all* students**
- ❑ **Court's role in improved education outcomes is key**
- ❑ **Even small investment can have a large impact**

# Our Current Work

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## [WWW.FOSTERCAREANDEDUCATION.ORG](http://WWW.FOSTERCAREANDEDUCATION.ORG)

- Listserv, Training Materials, Conference Calls and Webinars, Factsheets and Issue Briefs
- Searchable Database (includes state laws & policies)
- Facilitate National Network: National Working Group/Education Advisory Group
- Provide state and local technical assistance and support

# Resources:



*Transforming systems and improving law and practice to create better outcomes for children in foster care.*



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Search... 



## FRAMEWORK FOR EDUCATIONAL SUCCESS

Blueprint for Change: Education Success for Children in Foster Care is a tool for change.

[Learn More](#)



## RESEARCH & STATISTICS

Download National factsheet on the educational outcomes of children in foster care

[Download the factsheet](#)



## SEARCHABLE DATABASE

Do a keyword search or simply search by the 8 goals from the "Blueprint for Change."

[Learn More](#)

# Conclusion

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Success



what people think  
it looks like

Success



what it really  
looks like

NS

# Contact

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