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Educational Well-Being: Court Outcome Measures for Children in Foster Care

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EDUCATIONAL WELL-BEING: COURT OUTCOME MEASURES FOR CHILDREN IN FOSTER CARE

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Although safety and permanency performance measures for cases involving children in foster care have been established, tested, and implemented, court-related well-being measures have yet to be developed. This article describes the initial effort to establish a set of educational well-being measures to track success in improving educational outcomes for children in foster care.

Although they each have different roles to play, courts, child welfare agencies, and schools are all important to the achievement of safety, permanency, and well-being for children in foster care. Outcome measures help all participants by identifying which practices are most effective and where improvement is needed.

The Adoption and Safe Families Act of 1997 (ASFA) identifies well-being as a dimension of performance measurement. Building on the mandates of ASFA, the federal government is working with state child welfare agencies to assess outcomes for foster children through Child and Family Services Reviews (CFSR).

Although well-being measures have been an accepted part of the CFSR process, court-related well-being measures have yet to be established. Given that courts have the responsibility to make sure the state is providing proper care to children in its custody, they must inquire whether those children are receiving a quality education and are physically and emotionally healthy.

In partnership with Casey Family Programs, the National Center for State Courts (NCSC) convened a focus group in October 2010 to develop dependency-court performance measures specific to education—one of the components of well-being for children and youth. Focus group members were distinguished representatives from child welfare agencies, educational and research institutions, the advocacy community, and the courts.[1] Its mission was threefold: to identify (1) potential education performance measures; (2) the data elements needed to produce those measures; and (3) strategies to overcome obstacles to sharing data among courts, child welfare agencies, and education. The result was a set of proposed education performance measures for tracking well-being and ultimately improving educational outcomes for children in foster care.

> *The disjointed governmental "parenting" of foster youth creates a failure to share information and a lack of coordinated decision making. The results for too many former foster youth may be unattended health and emotional needs; poor educational attainment; and an adult life of homelessness, unemployment, and despair.*
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> *William Vickrey, California's State Court Administrator (Administrative Office of the Courts, 2005)*

Well-Being: The Fifth Dimension of Court Performance Measurement in Child Abuse and Neglect Cases

Under ASFA, a child's well-being refers to factors other than safety and permanency that relate to a child's current and future welfare—most notably, the child's educational achievement and mental and physical health. ASFA well-being outcome goals are:

1. Families have enhanced capacity to provide for their children's needs
2. Children receive appropriate services to meet their educational needs
3. Children receive adequate services to meet their physical and mental health needs

To the extent that courts have the responsibility to make sure that the state is providing proper care to children in its custody, it may be helpful for courts to use child well-being measures to evaluate their own performance. Courts need to know whether those children are receiving a good education and are physically and emotionally healthy. If a local court learns, for example, that children in court-supervised foster care are substantially behind educationally, the court may decide to ask more penetrating questions about children's educational attainment. The court may decide to demand more documentation about the child's education, may instruct guardians ad litem to check into the child's educational progress, and may even encourage collaboration among school officials, child welfare workers, and attorneys to discuss the educational needs of children in foster care and how best to address them.

At the time court performance measures were being developed for safety, permanency, due process, and timeliness, staff of the then child welfare collaborative of the American Bar Association (ABA), National Center for State Courts (NCSC), and National Council of Juvenile and Family Court Judges (NCJFCJ), now partners in the National Child Welfare Resource Center on Legal and Judicial Issues, decided to postpone working on court well-being measures.[2] The time to address well-being measures has now not only arrived but is past due.

Measures of educational well-being are a good place to start because some of the best predictors of success for children in foster care are related to education (Casey Family Programs, 2007a). Judges who inquire about the educational progress of children and youth in foster care set expectations and standards for practice, which may have "a significant impact on how social workers, educators, and other service providers respond to young people in the future" (Gatowski, Medina, and Warren, 2008). The focus group recognized that the courts may not be able to impact student performance directly, but nevertheless should set high expectations for educational success by monitoring student educational stability, progress, and outcomes.

> *"For every child, a consistent, appropriate education can clear the path to adult independence and opportunity. For children in foster care, appropriate schooling and educational services can additionally strengthen prospects for a stable, permanent home."*
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> *- Hon. Judith S. Kaye, ret.(New York State Permanent Judicial Commission on Justice for Children, n.d.)*

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110-351) requires states to create education-stability plans for all children in foster care. These plans must include assurances that (1) foster-care placements take into account the appropriateness of a child's educational setting and proximity to the school in which the child is enrolled at time of placement; (2) children remain in the school they were attending at the time of placement (unless not in their best interest) even if they move away from that school's boundaries; and (3) when it is not in the best interest to remain, children are immediately enrolled in a new school with all education records to follow. Judges are beginning to recognize their role in ensuring the well-being of children in child protection cases as well, and some courts are becoming interested in tracking well-being indicators. For example, California's 2009 *Implementation Guide to Juvenile Dependency Court Performance Measures* includes well-being measures (Administrative Office of the Courts, 2009). Educational well-being is also one of the indicators of family self-sufficiency, an index of family strength developed and used in Oregon. Additionally, in a *Toolkit* performance-measurement survey of Court Improvement Program directors conducted in 2010 by NCSC on behalf of the National Child Welfare Resource Center on Legal and Judicial Issues (2010), many respondents indicated the desire for assistance in the development of well-being measures.

One of the historical reasons for excluding well-being performance measures is that court well-being measures typically require an exchange of data between the courts and child welfare agencies. While exchanging data with child welfare agencies was a significant barrier in the past, technological advances have been responsible for much of the recent progress. Many state and local jurisdictions currently exchange data between the courts and local child welfare agencies (Flango, 2009). Another substantial hurdle to the adoption of well-being measures has been concerns about maintaining privacy and confidentiality. Again, recent developments in both policy and technology have lessened the extent of these concerns.[3]

The Importance to Foster Children of Measuring Educational Outcomes

For many of the almost 800,000 children and youth housed in foster care each year in the United States, "the educational outcomes are dismal" (National Working Group on Foster Care and Education, 2008). The long-term outcomes for those with poor educational experiences include difficulty in the transition to adulthood, poverty, homelessness, and incarceration. A variety of factors explain this educational crisis, including the following: (1) children in the dependency system, including those in foster care, are subjected to a variety of risk factors; (2) these children have poor experiences in the education system; and (3) foster households are at a disadvantage when compared to all households with children. Risk factors that children in the dependency system face include their history of abuse and neglect, poverty, emotional disorders, learning disabilities and developmental delays, poor physical health, exposure to antisocial peers, and poor family relationships (Leone and Weinberg, 2009). They also face many educational challenges, including problems with enrollment; difficult transfer of credits and school records; frequent mobility between school placements; disciplinary problems; lack of necessary early education and special education services; and inability to participate in extracurricular activities. As a result of such challenges, these children are more likely to suffer academically; less likely to finish high school; less likely to attend college; less likely to make lasting friendships among peers; and more likely to be ill-prepared for adulthood.

To begin its work and discussion, the focus group was presented with a draft set of preliminary education performance measures from six outcome areas.[4]

School Placement Stability

According to 2002 AFCARS data, children have an average of one-to-two living placement changes per year while in care (Casey Family Programs, 2007b, citing AFCARS data, 2002). Changes in living arrangements can often result in a change in school placement. Frequent school moves have an extremely negative impact on the educational outcomes for children and youth with multiple school placements, in part due to enrollment delays and credit transfer problems. Furthermore, children and youth who experience frequent school transfers are unable to make lasting relationships with friends and teachers and experience difficulty participating in extracurricular activities.

Only 1.8 % of foster-care alumni completed a bachelor's degree. This compares to 24 % in the general population of individuals the same age.

Academic Performance

Overwhelming research has shown that the academic performance and educational outcomes for children and youth in foster care is considerably lower than for other demographically similar students. For example, a 2001 Washington State study found that twice as many youth in foster care at both the elementary and secondary levels repeated a grade compared to youth not in care (Casey Family Programs, 2007b).

Early Education

Research has established the importance of the early years of a child's life in terms of their social and emotional development and educational success. A 2005 national study of 2,813 children in the child welfare system found that approximately 40 percent of toddlers and 50 percent of preschoolers have high developmental and behavioral needs. However, the study also found that only 23 percent of children are receiving services for these issues (National Working Group on Foster Care and Education, 2008: 9).

Special Education

Many studies indicate that somewhere between 23 and 47 percent of children and youth in foster care receive special-education services compared to the national average of about 12 percent for all school-aged children. A 1990 Oregon study found that children who had multiple foster placements and who needed special education services were less likely to receive those services than children in more stable placements (National Working Group, 2008).

Social Behavior

Children and youth in foster care are at risk for behavioral problems in school. "Several studies have found that children and youth in foster care are significantly more likely to have school behavior problems and that they have higher rates of suspensions and expulsions from school" (National Working Group, 2008).

Postsecondary Entrance Rates

Foster youth should be supported in their preparation, pursuit, and success in postsecondary education. However, according to the Northwest Alumni Study, only 1.8 percent of foster-care alumni in the study completed a bachelor's degree. This compares to 24 percent in the general population of individuals the same age (Casey Family Programs, 2007b). Further, "75% of students in foster care said that they wanted to go to college but few had taken the necessary coursework" (Casey Family Programs, 2006).

Proposed Education Performance Measures

After serious deliberation, discussion, and revision, the focus group settled on 14 proposed measures of educational well-being.

The focus group consciously sought to balance the goal of obtaining all of the measures necessary to obtain a clear picture of the educational status of children in foster care with the practical considerations of cost and personnel time required to collect data elements necessary to support all of the measures. Proposing too many measures could discourage some courts, schools, and child welfare agencies from even attempting to obtain measures of educational well-being. Consequently, the focus group was asked to select a small number of key measures to join the nine key outcome measures of safety, permanency, due process, and timeliness. The focus group selected four priority performance measures.

5A: Percentage of Children Under Court Jurisdiction Who Did Not Have a School Change When They Had a Change in Living Placement

What is the goal? School Placement Stability

School placement stability is essential to successful educational outcomes for children and youth in foster care. When children and youth experience a change in living placement, the Fostering Connections to Success Act requires states to ensure

MEASURE	SHORT DEFINITION
5A	Percentage of Children Under Court Jurisdiction Who Did Not Have a School Change When They Had a Change in Living Placement
5B	Median Number of School Transfers While Under Court Jurisdiction
5C	Median Number of School Days Between the Last Day Attended at Old School to First Day Attended at New School
5D	Percentage of ASFA Hearings Where the Child's Education Was Addressed
5E	Percentage of Hearings Where the Child's Education Decision Maker Was Present
5F	Percentage of School-Aged Children Performing at or Above Grade Level at Case Closure
5G	Percentage of School-Aged Children Who Drop Out of School While Under Court Jurisdiction
5H	Percentage of Children Who Attended at Least 95% of School Days While Under Court Jurisdiction
5I	Percentage of Children Ages 0-3 Who Have Been Evaluated for Early Intervention Programs While Under Court Jurisdiction
5J	Percentage of Children Ages 3-5 Who Have Been Enrolled in an Enriched Early Education Childhood Program While Under Court Jurisdiction
5K	Time from Referral for Special Education Services to Assessment
5L	Time from Completion of Special Education Services Assessment to Delivery of Services
5M	Percentage of Children Under Court Jurisdiction Who Have Received School Disciplinary Actions
5N	Percentage of High School Graduates/GED Holders Under Court Jurisdiction Who Have Been Accepted into a Post-Secondary Education Program

that foster-care placements consider the appropriateness of a child's educational setting and proximity to the school in which the child is enrolled at time of placement. The goal is to place children in living situations that will not affect where they attend school, unless it is their best interest to change schools. The desired outcome is to minimize school transfers when living placement changes.

5D: Percentage of ASFA Hearings Where the Child's Education Was Addressed

What is the goal? Academic Performance

A child's education should be thoroughly addressed at every ASFA hearing to ensure educational success for children and youth under court jurisdiction. Further, when the judge asks questions about the child's education from the bench, it also serves to set expectations and standards for practice that will focus on the educational success for children in foster care. This measure provides the court with an indicator of how often education is addressed at ASFA hearings.

5J: Percentage of Children Ages 3-5 Who Have Been Enrolled in an Enriched Early Education Childhood Program While Under Court Jurisdiction

What is the goal? Academic Performance

Children ages three to five should be well-prepared to enter school. But unfortunately, many of these children in the foster-care system have developmental delays or other physical or mental conditions that put them at a disadvantage going into the educational system. The court should ensure that these children receive the early services and programs they need to succeed. Still other three-to-five-year olds without developmental delays or disabilities will also benefit from enriched education programs to ensure they are provided the right foundation to enter school ready to learn.

5N: Percentage of High School Graduates/GED Holders Under Court Jurisdiction Who Have Been Accepted into a Postsecondary Education Program

What is the goal? Educational Success—Postsecondary Education

Youth in foster care should be prepared and supported in their pursuit of postsecondary education. However, the percentage of foster children who actually pursue and complete postsecondary education is extremely low. This measure allows the court to see the percentage of high school graduates and GED holders under its jurisdiction who have been accepted into a postsecondary education program.

It may be a challenge to produce just these four priority measures of educational well-being, but it is here that the process should begin. The work of the focus group provides an excellent foundation for developing court-related education outcome measures in child abuse and neglect cases. These measures are currently being vetted to a larger audience as part of a discussion of how best to improve collaboration among education, child welfare, and the courts, including how to facilitate the exchange of data required to produce these education measures.

After the measures have been vetted, the next step will be to work with selected jurisdictions to pilot-test some of the measures to see how they work in practice and what obstacles arise when educational well-being measurement is instituted. Only then can these measures be recommended for adoption by courts throughout the country.

ENDNOTES

[1] Focus group members are Ms. Kate Burdick, Zubrow Fellow, Juvenile Law Center, Philadelphia; Dr. Gretchen Cusick, Chapin Hall; Hon. Robert R. Hofmann, associate judge, Child Protection Court of the Hill Country, Mason County, Texas; Dr. Michelle L. Lustig, MSW, Ed.D., coordinator, San Diego County Office of Education, Student Services and Programs, Student Support Services, Foster Youth Services; Ms. Kathleen McNaught, assistant director, ABA Center on Children and the Law; Mr. Ronald M. Ozga, Governor's Office of Information Technology, agency IT director for CDHS, HCPF, CBMS, Colorado Department of Human Services; and Ms. Regina Schaefer, director, Education Unit, New York City Children's Service. Their invaluable contribution to this project is gratefully acknowledged.

[2] In the wake of federal dependency-court-reform efforts, including the Court Improvement Program (CIP) and the passage of ASFA, court performance measures in child abuse and neglect cases were developed by the ABA, NCJFCJ, and NCSC with support from the David and Lucille Packard Foundation. One result of this collaboration was the 2004 publication *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*, which proposed performance measures in the areas of safety, permanency, due process, and timeliness. These measures were field-tested in 11 states in 2009 and published as the *Toolkit for Court Performance Measurement in Child Abuse and Neglect Cases* (2009).

[3] For information on privacy and confidentiality issues, see Legal Center for Foster Care and Education (2008); see also Administrative Office of the Courts, Center (2010).

[4] These preliminary measures were derived from, with minor modifications, the educational outcomes identified by Casey Family Programs (2007b).

RESOURCES

Administrative Office of the Courts, Center for Families, Children and the Courts (2010). *AOC Briefing: Sharing Education Information for Children in Foster Care*. San Francisco: Judicial Council of California. www.chhs.ca.gov/Documents/AOCFosterCareEd.pdf

— (2009). *Implementation Guide to Juvenile Dependency Court Measures*. San Francisco: Judicial Council of California.

— (2005). *California Juvenile Dependency Court Improvement Program Reassessment*. San Francisco: Judicial Council of California.

American Bar Association, National Center for State Courts, and National Council of Juvenile and Family Court Judges (2004). *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*. Williamsburg, VA: National Center for State Courts.

Casey Family Programs (2007a). *Higher Education Reform: Incorporating the Needs of Foster Care Youth*. Seattle: Casey Family Programs.

— (2007b). *A Roadmap for Learning: Improving Educational Outcomes in Foster Care*. Seattle: Casey Family Programs.

— (2006). *It's My Life: Postsecondary Education and Training*. Seattle: Casey Family Programs.

Flango, V. E. (2009). "Can Data Exchange Between Courts and Child Welfare Agencies Improve Outcomes for Children?" *Issue Brief*, National Center for State Courts, Williamsburg, Va. http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/tech&CISOPTR=706

Gatowski, S. I., T. Medina, and M. Warren (2008). *Asking the Right Questions II: Judicial Checklists to Meet the Educational Needs of Children and Youth in Foster Care*. Reno, NV: National Council of Juvenile and Family Court Judges, Permanency Planning Department, and Casey Family Programs.

Legal Center for Foster Care and Education (2008). *Solving the Data Puzzle*. Seattle: Casey Family Programs. www.casey.org/Resources/Publications/pdf/SolvingDataPuzzle.pdf

Leone, P., and L. Weinberg (2009). "Addressing the Unmet Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems." Report, Georgetown University, Center for Juvenile Justice Reform, Washington, D.C.

National Child Welfare Resource Center on Legal and Judicial Issues (2010). "Current Use of Dependency Court Performance Measures." Unpublished paper, American Bar Association, Washington, D.C., September.

National Working Group on Foster Care and Education (2008). "Educational Outcomes for Children and Youth in Foster and Out-of-Home Care." Fact sheet, Casey Family Programs, Seattle, December.

New York State Permanent Judicial Commission on Justice for Children (n.d.). *Addressing the Education Needs of Children in Foster Care: A Guide for Judges, Advocates, and Child Welfare Professionals*. Albany: New York State Permanent Judicial Commission on Justice for Children.

Poister, T. (2003). *Measuring Performance in Public and Nonprofit Organizations*. San Francisco: Jossey-Bass.

Toolkit for Court Performance Measures in Child Abuse and Neglect Cases (2009). Washington, DC: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

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