

111TH CONGRESS  
1ST SESSION

# S. 2801

To provide children in foster care with school stability and equal access  
to educational opportunities.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2009

Mr. FRANKEN (for himself and Mrs. MURRAY) introduced the following bill;  
which was read twice and referred to the Committee on Health, Edu-  
cation, Labor, and Pensions

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## A BILL

To provide children in foster care with school stability and  
equal access to educational opportunities.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Fostering Success in Education Act”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is the following:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; sense of Congress.
- Sec. 3. Purpose.
- Sec. 4. Definitions.
- Sec. 5. Regulations.
- Sec. 6. Effective date.

TITLE I—EDUCATIONAL RIGHTS FOR CHILDREN IN FOSTER  
CARE

Subtitle A—Required Educational Rights, Protections, and Services for  
Children in Foster Care

Sec. 101. Required educational rights, protections, and services for children in foster care.

Sec. 102. Remedies; rule of construction.

Sec. 103. Conforming amendments.

Subtitle B—State Foster Care and Education Plan Grants

Sec. 111. State foster care and education plan requirements and grants.

Sec. 112. Subgrants.

Sec. 113. Responsibilities of the Secretary.

Sec. 114. Authorization of appropriations.

TITLE II—SOCIAL SECURITY ACT AMENDMENTS

Sec. 201. Social Security Act amendments.

**1 SEC. 2. FINDINGS; SENSE OF CONGRESS.**

2 (a) FINDINGS.—Congress makes the following find-  
3 ings:

4 (1) Educational success is vital to every young  
5 person’s well being, successful transition to adult-  
6 hood, and economic stability.

7 (2) At the end of fiscal year 2007, approxi-  
8 mately 500,000 children were in foster care in the  
9 United States, with nearly 800,000 children having  
10 spent at least some time in foster care in the United  
11 States during the year.

12 (3) Numerous studies have demonstrated that  
13 children in foster care fall behind the general stu-  
14 dent population with respect to test scores, gradua-  
15 tion rates, and successful transitions to postsec-  
16 ondary education.

1           (4) Only one-third of high school students in  
2 foster care graduate on time and only 3 percent of  
3 such students graduate from college.

4           (5) On average, children in foster care move to  
5 new foster care placements 2 times per year, and  
6 often change schools when they move.

7           (6) Studies indicate that with each school move,  
8 children, on average, fall 4 to 6 months behind their  
9 classmates. Because foster children often change  
10 schools multiple times, it is difficult for them to  
11 make significant educational progress.

12           (7) Children in foster care are frequently denied  
13 the ability to remain in the same school as a result  
14 of changes in their living situations.

15           (8) In addition, children in foster care who are  
16 required to change schools are frequently denied im-  
17 mediate enrollment in a new school, which results in  
18 detrimental disruptions to their education.

19           (9) Moreover, the enrolling school frequently  
20 does not have access to the child's complete and ac-  
21 curate education records, which often results in the  
22 child's placement in inappropriate classes and edu-  
23 cational settings.

24           (10) When foster children change schools, they  
25 often have difficulties transferring credits from pre-

1       vious schools and meeting the new set of graduation  
2       requirements in their new school.

3           (11) In 2008, Congress enacted the Fostering  
4       Connections to Success and Increasing Adoptions  
5       Act of 2008 (Public Law 110–351), which requires,  
6       among other things, child welfare agencies to ensure  
7       that a child in foster care remains in the same  
8       school after moving to a new placement or, when re-  
9       maining in the same school is not in the child’s best  
10      interest, is enrolled in a new school immediately, and  
11      that the child’s education records are transferred  
12      promptly. While the Fostering Connections to Suc-  
13      cess and Increasing Adoptions Act of 2008 requires  
14      child welfare agencies to coordinate with local edu-  
15      cational agencies, the local educational agencies  
16      must play a critical role in the process. Otherwise,  
17      the education provisions of the Act cannot be fully  
18      implemented.

19      (b) SENSE OF CONGRESS.—It is the sense of Con-  
20      gress that—

21           (1) in order to successfully meet the needs of  
22      the 500,000 children in foster care in the United  
23      States, State educational agencies, local educational  
24      agencies, State child welfare agencies, and local child

1 welfare agencies must work together at the Federal,  
2 State, and local level to—

3 (A) address the unique needs of this popu-  
4 lation; and

5 (B) ensure school stability, immediate en-  
6 rollment, and access to appropriate services;  
7 and

8 (2) such efforts will significantly increase the  
9 secondary school graduation rates and improve edu-  
10 cational outcomes for children in foster care.

11 **SEC. 3. PURPOSE.**

12 The purpose of this Act is to ensure that the edu-  
13 cational needs of children in foster care are addressed in  
14 a seamless and complete manner by—

15 (1) requiring the State educational agency of a  
16 recipient State to work together with the State child  
17 welfare agency to ensure that the educational needs  
18 of each child in foster care in the State are being  
19 met;

20 (2) requiring local child welfare agencies and  
21 local educational agencies of a recipient State to  
22 work together to ensure that the educational needs  
23 of each child in foster care in the State are being  
24 met;

1           (3) ensuring that issues related to stability in  
2           education, school attendance, and the proper han-  
3           dling of information, including education records  
4           and health records, are coordinated between schools  
5           and child welfare agencies; and

6           (4) ensuring that a coordinated process is uti-  
7           lized to address the best interest and needs of the  
8           child with regard to school placements, school at-  
9           tendance, access to appropriate education services,  
10          and required supports, including the provision of  
11          transportation services to ensure school stability.

12 **SEC. 4. DEFINITIONS.**

13       In this Act:

14           (1) **CHILD IN FOSTER CARE.**—The term “child  
15           in foster care” means a child whose care and place-  
16           ment is the responsibility of the State or Tribal  
17           agency that administers a State plan under part B  
18           or E of title IV of the Social Security Act (42  
19           U.S.C. 621 et seq.; 670 et seq.), without regard to  
20           whether foster care maintenance payments are made  
21           under section 472 of the Social Security Act (42  
22           U.S.C. 672) on behalf of the child.

23           (2) **COURT REPRESENTATIVE.**—The term  
24           “court representative” means an individual ap-

1 pointed by a court to represent a child in a juvenile  
2 court dependency proceeding.

3 (3) EDUCATION DECISIONMAKER.—The term  
4 “education decisionmaker” means—

5 (A) a parent of a child in foster care; or

6 (B) a person identified by the dependency  
7 court to make education decisions for a child in  
8 foster care who is someone other than the  
9 child’s parent.

10 (4) EDUCATION RECORDS.—The term “edu-  
11 cation records” means documents and other mate-  
12 rials relating to a child’s enrollment and education,  
13 including transcripts, reports, plans, evaluations,  
14 and assessments maintained by a local educational  
15 agency.

16 (5) ELEMENTARY SCHOOL.—The term “elemen-  
17 tary school” has the meaning given the term in sec-  
18 tion 9101 of the Elementary and Secondary Edu-  
19 cation Act of 1965 (20 U.S.C. 7801).

20 (6) ENROLLMENT.—The term “enrollment”  
21 means attending classes in a public preschool pro-  
22 gram, an elementary school, or secondary school and  
23 participating fully in the activities of such school or  
24 program.

1           (7) LOCAL CHILD WELFARE AGENCY.—The  
 2           term “local child welfare agency” means, with re-  
 3           spect to a child in foster care, the public agency in  
 4           the local political subdivision where the child resides,  
 5           or the Indian tribe or tribal organization, that is re-  
 6           sponsible for the placement and care of the child.

7           (8) LOCAL EDUCATIONAL AGENCY.—The term  
 8           “local educational agency” has the meaning given  
 9           the term in section 9101 of the Elementary and Sec-  
 10          ondary Education Act of 1965 (20 U.S.C. 7801).

11          (9) PARENT.—The term “parent” means a bio-  
 12          logical or adoptive parent or a legal guardian of a  
 13          child, as determined under applicable State law.

14          (10) PLACEMENT.—The term “placement”  
 15          means the current or proposed living situation for a  
 16          child in foster care, which can include a group home  
 17          or other congregate care setting.

18          (11) PUBLIC AGENCY.—The term “public agen-  
 19          cy” means any State or local government entity.

20          (12) PUBLIC PRESCHOOL PROGRAM.—The term  
 21          “public preschool program” means a preschool pro-  
 22          gram funded, administered, or overseen by a State  
 23          educational agency, local educational agency, or  
 24          other State agency.



1           (13) RECIPIENT STATE.—The term “recipient  
2       State” means a State that receives funds under part  
3       A of title I of the Elementary and Secondary Edu-  
4       cation Act of 1965 (20 U.S.C. 6311 et seq.).

5           (14) SCHOOL OF ORIGIN.—The term “school of  
6       origin” means, with respect to a child in foster care,  
7       any of the following:

8                 (A) The school in which the child was en-  
9       rolled prior to entry into foster care.

10                (B) The school in which the child is en-  
11       rolled when a change in foster care placement  
12       occurs or is proposed.

13                (C) The school the child attended when  
14       last permanently housed, as such term is used  
15       in section 722(g)(3)(G) of the McKinney-Vento  
16       Homeless Assistance Act (42 U.S.C.  
17       11432(g)(3)(G)).

18           (15) SCHOOL ATTENDANCE AREA.—The term  
19       “school attendance area” has the meaning given the  
20       term in section 1113(a)(2)(A) of the Elementary  
21       and Secondary Education Act of 1965 (20 U.S.C.  
22       6313(a)(2)(A)).

23           (16) SCHOOL SELECTION DECISION.—The term  
24       “school selection decision” means a school selection  
25       decision as described in section 101(b)(4).

1           (17) SECONDARY SCHOOL.—The term “sec-  
2       ondary school” has the meaning given the term in  
3       section 9101 of the Elementary and Secondary Edu-  
4       cation Act of 1965 (20 U.S.C. 7801 et seq.).

5           (18) SECRETARY.—The term “Secretary”  
6       means the Secretary of Education.

7           (19) SPECIAL EDUCATION AND RELATED SERV-  
8       ICES.—The terms “special education” and “related  
9       services” have the meaning given such terms in sec-  
10      tion 602 of the Individuals with Disabilities Edu-  
11      cation Act (20 U.S.C. 1401).

12          (20) STATE.—The term “State” means each of  
13      the 50 States, the District of Columbia, and the  
14      Commonwealth of Puerto Rico.

15          (21) STATE CHILD WELFARE AGENCY.—The  
16      term “State child welfare agency” means the State  
17      agency responsible for administering the programs  
18      authorized under subpart 1 of part B and part E of  
19      title IV of the Social Security Act (42 U.S.C. 621  
20      et seq.; 670 et seq.).

21          (22) STATE EDUCATIONAL AGENCY.—The term  
22      “State educational agency” has the meaning given  
23      the term in section 9101 of the Elementary and Sec-  
24      ondary Education Act of 1965 (20 U.S.C. 7801).

1   **SEC. 5. REGULATIONS.**

2           Not later than 60 days after the date of enactment  
3 of this Act, the Secretary shall develop, issue, and publish  
4 in the Federal Register a notice of proposed rulemaking  
5 to implement the provisions of this title. The issuance,  
6 amendment, and repeal of any regulations promulgated  
7 under this title shall comply with section 553 of title 5,  
8 United States Code.

9   **SEC. 6. EFFECTIVE DATE.**

10          Except as otherwise provided, this Act and the  
11 amendments made by this Act shall take effect on the date  
12 of enactment of this Act, except that subtitle A, and the  
13 amendments made by such subtitle, shall apply with re-  
14 spect to recipient States that receive funds under part A  
15 of title I of the Elementary and Secondary Education Act  
16 of 1965 (20 U.S.C. 6311 et seq.) on or after the date  
17 of enactment of this Act.

1 **TITLE I—EDUCATIONAL RIGHTS**  
 2 **FOR CHILDREN IN FOSTER CARE**  
 3 **Subtitle A—Required Educational**  
 4 **Rights, Protections, and Serv-**  
 5 **ices for Children in Foster Care**

6 **SEC. 101. REQUIRED EDUCATIONAL RIGHTS, PROTECTIONS,**  
 7 **AND SERVICES FOR CHILDREN IN FOSTER**  
 8 **CARE.**

9 (a) RIGHTS OF CHILDREN IN FOSTER CARE.—Each  
 10 recipient State shall ensure that each child in foster care  
 11 in the State has the following rights:

12 (1) SCHOOL ATTENDANCE.—

13 (A) SCHOOL OF ORIGIN.—A child in foster  
 14 care shall have the right to enroll in, or con-  
 15 tinue to enroll in, any of the child’s schools of  
 16 origin when the child is placed in foster care  
 17 and during all subsequent changes in placement  
 18 (including when the child returns home, as re-  
 19 quired under subparagraph (B)), unless it is de-  
 20 termined through the school selection decision  
 21 process that it is in the child’s best interest to  
 22 be immediately enrolled in a different school.

23 (B) SCHOOL UPON PERMANENT PLACE-  
 24 MENT.—In the case of a child in foster care for  
 25 whom the child welfare case is closed as a re-

1           sult of the child returning home or achieving  
2           another permanency outcome during a school  
3           year—

4                   (i) the child shall be entitled to com-  
5                   plete the school year in the school that the  
6                   child is attending unless the entity making  
7                   the school selection decision determines  
8                   that a change in schools is in the child's  
9                   best interest; and

10                   (ii) necessary transportation to the  
11                   current school shall be arranged and fund-  
12                   ed by the local educational agency in which  
13                   the current school is located.

14           (2) TREATMENT AS RESIDENT.—A child in fos-  
15           ter care who remains in a school of origin shall be  
16           treated by the local educational agency serving such  
17           school as if the child resides in the school district  
18           and is entitled to all school privileges.

19           (3) IMMEDIATE ENROLLMENT.—If it is deter-  
20           mined through the school selection process that it is  
21           not in the best interest of a child in foster care to  
22           attend a school of origin, or if a school selection de-  
23           cision is not sought for the child, the child shall have  
24           the right to be immediately enrolled in a new school  
25           in the child's school attendance area, regardless of

1 the status of records normally required for enroll-  
2 ment such as previous academic records, medical or  
3 immunization records, proof of residency, or other  
4 documentation or requirements.

5 (4) RECORDS.—

6 (A) IN GENERAL.—The education records  
7 of a child in foster care shall be—

8 (i) maintained so that the records are  
9 available, in a timely fashion, when a child  
10 enters a new school or school district;

11 (ii) immediately sent to the enrolling  
12 school as complete as possible, even if the  
13 student owes fees or fines or was not with-  
14 drawn from the previous school in con-  
15 formance with local withdrawal procedures;  
16 and

17 (iii) maintained in a manner con-  
18 sistent with section 444 of the General  
19 Education Provisions Act (commonly re-  
20 ferred to as the “Family” (20 U.S.C.  
21 1232g).

22 (B) RECORDS FOR ACADEMIC DECISIONS.—The education records needed for aca-  
23 demic placement decisions and decisions regard-  
24 ing the transfer of school course credits for a  
25

1 child in foster care shall be released imme-  
2 diately to an enrolling school by facsimile or  
3 other available electronic means.

4 (5) EQUAL ACCESS.—Each child in foster care  
5 shall have equal access to the same education and  
6 opportunities as other students attending the school  
7 or school district, including—

8 (A) having the same opportunities, access,  
9 and services needed to meet the challenging  
10 State student academic achievement standards  
11 under section 1111(b)(1) of the Elementary  
12 and Secondary Education Act of 1965 (20  
13 U.S.C. 6311(b)(1)) that are provided to other  
14 students;

15 (B) receiving educational services and  
16 transportation services that are comparable to  
17 the services offered other children in the child's  
18 school;

19 (C) having—

20 (i) equal access to the full range of  
21 educational offerings, including—

22 (I) services under title I of such  
23 Act (20 U.S.C. 6311 et seq.);

1 (II) publicly funded early child-  
2 hood programs and public preschool  
3 programs;

4 (III) Early Head Start or Head  
5 Start programs under the Head Start  
6 Act (42 U.S.C. 9801 et seq.);

7 (IV) public charter and magnet  
8 schools;

9 (V) Advanced Placement courses  
10 and dual enrollment higher education  
11 courses;

12 (VI) career and technical edu-  
13 cation programs;

14 (VII) summer school; and

15 (VIII) extracurricular activities;

16 and

17 (ii) as appropriate, prioritization in  
18 the educational offerings described in  
19 clause (i) in accordance with Federal and  
20 State law;

21 (D) being integrated with other students in  
22 all schools or programs within a school that are  
23 operated, licensed, or funded by a public entity;



1 (E) attending the elementary school or sec-  
2 ondary school that serves the child's school at-  
3 tendance area unless—

4 (i) the student has an individualized  
5 education program under section 614 of  
6 the Individuals with Disabilities Education  
7 Act (20 U.S.C. 1414) requiring placement  
8 in an alternative setting, in another public  
9 school in the same or another local edu-  
10 cational agency, or in a private school;

11 (ii) it is in the child's best interest to  
12 enroll in a school of origin that is not the  
13 school that serves the child's school attend-  
14 ance area, based on the school selection de-  
15 cision for the child; or

16 (iii) the education decisionmaker con-  
17 sents to another appropriate school place-  
18 ment.

19 (6) TRANSPORTATION.—

20 (A) IN GENERAL.—A child in foster care  
21 shall be provided with free transportation to  
22 and from the child's school of origin or other  
23 school in which the child is enrolled, in accord-  
24 ance with this subsection, paragraphs (4)(H)  
25 and (5)(D) of subsection (b), and section

1           475(1)(G)(ii)(II) of the Social Security Act (42  
2           U.S.C. 675(1)(G)(ii)(II)).

3           (B) CHILDREN WITH DISABILITIES.—In  
4           the case of a child in foster care that receives  
5           services under part A or C of the Individuals  
6           with Disabilities Education Act (20 U.S.C.  
7           1400 et seq., 1431 et seq.), nothing in this Act  
8           or section 475(G)(ii)(II) of the Social Security  
9           Act (42 U.S.C. 675(1)(G)(ii)(II)) shall relieve a  
10          local educational agency of the agency’s respon-  
11          sibility to provide the child with transportation  
12          as part of such services.

13          (b) REQUIREMENTS OF EDUCATION SYSTEM FOR  
14          CHILDREN IN FOSTER CARE.—In order to provide each  
15          child in foster care with the rights described in subsection  
16          (a), each recipient State shall meet the following require-  
17          ments:

18               (1) POLICY REVIEW AND REVISION.—

19               (A) IN GENERAL.—Not more than 120  
20               days after the effective date of this Act, any  
21               State or local educational agency in the State  
22               that has a school attendance law or other law,  
23               regulation, practice, or policy that may prohibit  
24               enrollment in, or attendance at, a school of ori-  
25               gin for a child in foster care or that may pro-

hibit implementation of any other requirement of this title, shall undertake steps to revise such law, regulation, practice, or policy to ensure that children in foster care—

(i) are afforded the same free, appropriate public education as is provided to other children; and

(ii) receive the protections of this subtitle.

(B) NO DELAY.—Nothing in this subsection shall be construed to permit a State or local educational agency to delay implementation of this Act until such review and revision is completed.

(2) COORDINATOR.—

(A) IN GENERAL.—The State shall designate a coordinator within the State educational agency to be the lead staff member to implement this title.

(B) COLLABORATION.—The coordinator shall collaborate with representatives from the State child welfare agency, the State’s program supported under subtitle B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.), when appropriate, and with all

1 other State and local agencies necessary to im-  
2 plement the requirements of this title and the  
3 provisions of parts B and E of title IV of the  
4 Social Security Act (42 U.S.C. 621 et seq., 42  
5 U.S.C. 670 et seq.) relating to the educational  
6 needs of children in foster care.

7 (C) SPECIAL RULE.—In the case of a  
8 State that receives a grant under section 111 in  
9 an amount that is more than the minimum al-  
10 lotment described in section 111(b)(1)(B), the  
11 coordinator under this paragraph for the State  
12 shall not be the same individual who is assigned  
13 the role of State Coordinator for purposes of  
14 the State’s program supported under subtitle B  
15 of the McKinney-Vento Homeless Assistance  
16 Act (42 U.S.C. 11432 et seq.).

17 (D) RESPONSIBILITIES.—The responsibil-  
18 ities of a coordinator described in subparagraph  
19 (A) shall include, at minimum—

- 20 (i) ensuring that the requirements of  
21 this title and clauses (ii)(II), (iii), and (iv)  
22 of section 475(1)(G) of the Social Security  
23 Act (42 U.S.C. 675(1)(G)) are carried out;  
24 (ii) gathering and making public in-  
25 formation on the problems children in fos-

1           ter care have in gaining access to public  
2           preschool programs and schools;

3           (iii) monitoring the progress of the  
4           State and local educational agencies in ad-  
5           dressing any problems or difficulties in  
6           meeting the requirements of this title;

7           (iv) ensuring the success of the pro-  
8           grams under this title;

9           (v) providing technical assistance to  
10          local educational agencies and local child  
11          welfare agencies on how to comply with  
12          this title;

13          (vi) collecting data related to the im-  
14          plementation of this title and the edu-  
15          cational outcomes of children in foster care  
16          and reporting such information to the ap-  
17          propriate State officials and to the Sec-  
18          retary; and

19          (vii) ensuring effective implementation  
20          of a dispute resolution procedure, as de-  
21          scribed in paragraph (5), and a complaint  
22          management system, as described in para-  
23          graph (6).

24          (3) FOSTER CARE LIAISON.—

1 (A) IN GENERAL.—The State educational  
2 agency shall ensure that each local educational  
3 agency in the State designates a foster care liai-  
4 son with sufficient capacity, resources, and time  
5 to fulfill the requirements of this title effec-  
6 tively.

7 (B) RESPONSIBILITIES.—The foster care  
8 liaison shall ensure, at minimum, that—

9 (i) each child in foster care served by  
10 the local educational agency is—

11 (I) identified for purposes of this  
12 title;

13 (II) enrolled in the appropriate  
14 public preschool program or elemen-  
15 tary or secondary school, in accord-  
16 ance with any school selection decision  
17 made for the child; and

18 (III) has a full and equal oppor-  
19 tunity to succeed in the child's school  
20 program and receive educational serv-  
21 ices for which the child is eligible, in-  
22 cluding—

23 (aa) special education and  
24 related services and protections  
25 under the Individuals with Dis-

1 abilities Education Act (20  
2 U.S.C. 1400 et seq.);

3 (bb) programs under title I  
4 of the Elementary and Secondary  
5 Education Act of 1965 (20  
6 U.S.C. 6301 et seq.);

7 (cc) English as a Second  
8 Language programs, including  
9 programs under title III of such  
10 Act (20 U.S.C. 6801 et seq.);  
11 and

12 (dd) early childhood and  
13 preschool programs;

14 (ii) the parents and education deci-  
15 sionmaker of the child in foster care, and  
16 the child welfare agency representative, are  
17 informed of the opportunities available to  
18 the child under this title;

19 (iii) school personnel are adequately  
20 prepared to implement this title; and

21 (iv) the local educational agency serv-  
22 ing the child works collaboratively with in-  
23 dividuals designated by the local child wel-  
24 fare agency to ensure—

1 (I) that child welfare agency per-  
2 sonnel are informed of the rights of  
3 children in foster care and responsibil-  
4 ities of the State and local agencies  
5 under this title;

6 (II) that a child in foster care in  
7 a school served by the local edu-  
8 cational agency has school stability  
9 and is promptly enrolled in a school in  
10 accordance with any school selection  
11 decision made for the child;

12 (III) that the child is provided  
13 with special education evaluations and  
14 services, as needed, and if the child is  
15 a child with a disability, as defined in  
16 section 602 of the Individuals with  
17 Disabilities Education Act (20 U.S.C.  
18 1401), the arrangement for, and pro-  
19 vision of, the transportation, records  
20 transfers, and special education and  
21 related services as required under  
22 such Act, including—

23 (aa) the timely conduct of  
24 evaluations as required by section



1 614(a) of such Act (20 U.S.C.  
2 1414(a));

3 (bb) the prompt transmittal  
4 of records under section  
5 614(d)(2)(C)(ii) of such Act (20  
6 U.S.C. 1414(d)(2)(C)(ii)); and

7 (cc) when appropriate, the  
8 appointment of a surrogate par-  
9 ent for a child required under  
10 section 615(b)(2) or 639(a)(5) of  
11 such Act (20 U.S.C. 1415(b)(2),  
12 1439(a)(5)); and

13 (IV) the appointment by the ap-  
14 propriate court of an education deci-  
15 sionmaker for the child for purposes  
16 of this title, as needed.

17 (4) SCHOOL SELECTION DECISION.—

18 (A) IN GENERAL.—Upon a request made  
19 in accordance with subparagraph (C), the ap-  
20 propriate entity described in subparagraph (B)  
21 shall make an individualized school selection de-  
22 cision on an expedited basis for a child in foster  
23 care regarding whether it is in the child's best  
24 interest to attend a school of origin or to be im-

1           mediately enrolled in the appropriate school  
2           where the child resides.

3                   (B) ENTITIES MAKING SCHOOL SELECTION  
4           DECISIONS.—The school selection decision shall  
5           be made by the local educational agency that  
6           serves the school of origin in which enrollment  
7           is sought for a child in foster care, unless the  
8           State determines the school selection decision  
9           shall be made solely by—

10                   (i) the dependency court;

11                   (ii) the State child welfare agency; or

12                   (iii) the local child welfare agency.

13                   (C) INITIATING A SCHOOL SELECTION DE-  
14           CISION.—

15                   (i) IN GENERAL.—The local child wel-  
16           fare agency responsible for a child in foster  
17           care shall, after consultation with the child  
18           and with the education decisionmaker and  
19           parent of the child, initiate the school se-  
20           lection decision process under this para-  
21           graph if the agency believes that a child  
22           should remain or enroll in a school of ori-  
23           gin.

24                   (ii) TIMING.—A school selection deci-  
25           sion may be requested for a child in foster

1 care each time the child's placement is  
 2 changed or a placement change for the  
 3 child is proposed.

4 (iii) NOTIFICATION OF FOSTER CARE  
 5 LIAISON.—The local child welfare agency  
 6 shall notify the foster care liaison described  
 7 in paragraph (3) for the local educational  
 8 agency serving the school in which the  
 9 agency wants the child to remain or enroll  
 10 to initiate the school selection decision  
 11 process.

12 (iv) EXCEPTION.—If the local child  
 13 welfare agency has not initiated the school  
 14 selection process, the child's education de-  
 15 cisionmaker may do so by contacting the  
 16 appropriate foster care liaison described in  
 17 clause (iii).

18 (D) DEPENDENCY COURT DECISION.—Not-  
 19 withstanding any other provision of this sub-  
 20 section, if the court with dependency jurisdic-  
 21 tion over a child in foster care initiates or  
 22 makes a school selection decision for such child,  
 23 or appoints another person to initiate or make  
 24 a school selection decision, the court's deter-  
 25 mination shall be binding on all parties, the

State educational agency, and the appropriate local educational agency.

(E) SOURCES OF INFORMATION; FACTORS.—

(i) SOURCES OF INFORMATION.—The entity making the school selection decision for a child in foster care shall consider information and factors provided by—

(I) the State child welfare agency, local child welfare agency, State educational agency, local educational agency, or other public agency; and

(II) individuals who have knowledge about the child's education, including the child and the parent, educational decisionmaker, foster parent, court representative, and teachers of the child.

(ii) INFORMATION AND FACTORS.—The information and factors described in clause (i) shall include—

(I) the harmful impact of school mobility on the child's academic progress, achievement, and social and emotional well-being;

1 (II) the age of the child;

2 (III) the impact the commute to  
3 school may have on the child's edu-  
4 cation or well-being;

5 (IV) personal safety issues, in-  
6 cluding safety as it relates to family  
7 violence;

8 (V) the child's need for special  
9 instruction, including special edu-  
10 cation and related services, and where  
11 those needs can best be met;

12 (VI) the length of stay in foster  
13 care, placement type, and permanency  
14 plan for the child;

15 (VII) the time remaining in the  
16 school year;

17 (VIII) the school placement of  
18 family members;

19 (IX) the number of previous  
20 school changes;

21 (X) the child's connection to the  
22 school of origin under consideration;

23 (XI) the extent to which the edu-  
24 cational program of the school of ori-  
25 gin is appropriate, meets the child's

1 needs and interests, and nurtures the  
 2 child's talents; and

3 (XII) the availability of special  
 4 programs, academically rigorous  
 5 courses, and extra-curricular activities  
 6 that are appropriate for the child.

7 (F) CONSIDERATIONS.—An entity making  
 8 a school selection decision under this paragraph  
 9 shall consider the wishes of the child.

10 (G) EXCLUDED FACTORS.—The cost of  
 11 transportation to or from a school shall not be  
 12 a consideration when making a school selection  
 13 decision.

14 (H) TRANSPORTATION.—

15 (i) IN GENERAL.—The local edu-  
 16 cational agency serving the school of origin  
 17 in which a child in foster care shall remain  
 18 or enroll, based on the school selection de-  
 19 cision for the child, shall collaborate with  
 20 the local child welfare agency to ensure  
 21 that the child is provided transportation to  
 22 the school of origin in a cost effective man-  
 23 ner and in accordance with section  
 24 475(1)(G)(ii)(II) of the Social Security Act  
 25 (42 U.S.C. 675(1)(G)(ii)(II)).

1 (ii) COST OF TRANSPORTATION.—In  
 2 carrying out clause (i), a local educational  
 3 agency shall provide the transportation de-  
 4 scribed in such clause for a child in foster  
 5 care if—

6 (I) the local child welfare agency  
 7 reimburses the local educational agen-  
 8 cy for the cost of such transportation,  
 9 in accordance with section  
 10 475(1)(G)(ii)(II) of the Social Secu-  
 11 rity Act (42 U.S.C. 675(1)(G)(ii)(II));

12 (II) the local educational agency  
 13 agrees to pay for the cost of such  
 14 transportation; or

15 (III) the local educational agency  
 16 and the local child welfare agency  
 17 agree to share the cost of such trans-  
 18 portation.

19 (5) SCHOOL SELECTION DECISION DISPUTE  
 20 RESOLUTION.—

21 (A) IN GENERAL.—The State educational  
 22 agency, or another State agency designated by  
 23 the State, shall develop and oversee a fair and  
 24 impartial dispute resolution procedure to  
 25 promptly resolve school selection decision dis-

1            putes, except that such procedure shall not be  
 2            applied to disputes regarding school selection  
 3            decisions made by a court.

4            (B) COMPONENTS OF DISPUTE RESOLU-  
 5            TION.—The dispute resolution procedure de-  
 6            scribed in subparagraph (A) shall include, at a  
 7            minimum—

8                    (i) a procedural safeguard system to  
 9                    resolve disputes and render prompt school  
 10                   selection decisions;

11                   (ii) written notice of the school selec-  
 12                   tion decision and basis for the decision to  
 13                   the—

14                            (I) parent, education decision-  
 15                            maker, and court representative of the  
 16                            child; and

17                            (II) local child welfare agency  
 18                            serving the child;

19                            (iii) a right to appeal a school selec-  
 20                            tion decision, an impartial and prompt re-  
 21                            view of such decision, and a written deter-  
 22                            mination of the administrative appeal; and

23                            (iv) a right to initiate a dispute under  
 24                            this paragraph that is provided to—



1 (I) the parent, education deci-  
2 sionmaker, and court representative of  
3 the child; and

4 (II) a representative from the  
5 local child welfare agency or local edu-  
6 cational agency serving the child.

7 (C) SCHOOL PLACEMENT DURING DIS-  
8 PUTE.—If a dispute arises over the school selec-  
9 tion decision, the child shall remain in the  
10 child's current school until full resolution of the  
11 dispute, unless—

12 (i) the dependency court determines  
13 otherwise and selects a different school for  
14 the child; or

15 (ii) the State child welfare agency or  
16 local child welfare agency with responsi-  
17 bility for the child determines that the  
18 child's health or safety would be at risk if  
19 the child remained in such school prior to  
20 a determination made under subparagraph  
21 (A) and selects a different school for the  
22 child.

23 (D) TRANSPORTATION.—In the case of a  
24 dispute under this paragraph regarding a child  
25 in foster care, the local educational agency

1 where the child is attending school pending the  
 2 resolution of the dispute, as determined under  
 3 subparagraph (C), shall collaborate with the  
 4 local child welfare agency to ensure transpor-  
 5 tation is provided, as required under section  
 6 101(a)(6), for the child to such school, until the  
 7 full resolution of the dispute in accordance with  
 8 this paragraph.

9 (6) COMPLAINT MANAGEMENT SYSTEM.—Each  
 10 State shall maintain a complaint management sys-  
 11 tem by which individuals and organizations acting  
 12 on behalf of a child in foster care can request that  
 13 the State investigate and correct violations of this  
 14 subtitle in a timely manner on behalf of a child in  
 15 foster care or a group of children in foster care.

16 (7) SCHOOL READINESS FOR CHILDREN IN FOS-  
 17 TER CARE.—

18 (A) STATE AND LOCAL EDUCATIONAL  
 19 AGENCIES.—Each State educational agency and  
 20 local educational agency shall ensure that public  
 21 preschool programs funded, administered, or  
 22 overseen by such agency—

23 (i) provide preschool-aged children in  
 24 foster care with the rights described in  
 25 subsection (a), and comply with the re-

1           quirements of this subsection with respect  
2           to such children, except that such pro-  
3           grams shall not be required to enroll a  
4           child in foster care immediately in a public  
5           preschool program that is operating at full  
6           capacity when enrollment for the child is  
7           sought, unless otherwise required by State  
8           law;

9           (ii) identify and prioritize preschool-  
10          aged children in foster care for enrollment  
11          and increase such children's enrollment  
12          and attendance in the public preschool pro-  
13          gram, through activities such as—

14               (I) reserving spaces in public pre-  
15               school programs for children in foster  
16               care;

17               (II) conducting targeted outreach  
18               to local child welfare agencies and fos-  
19               ter care providers;

20               (III) waiving application dead-  
21               lines;

22               (IV) providing ongoing profes-  
23               sional development for staff regarding  
24               the needs of children in foster care

1 and their families and strategies to  
 2 serve such children and families; and

3 (V) developing capacity to serve  
 4 all children in foster care in the area  
 5 served by such agency; and

6 (iii) review the educational and related  
 7 needs of children in foster care and their  
 8 families in such agencies' service areas, in  
 9 coordination with the State child welfare  
 10 agency, the local child welfare agency, and  
 11 the foster care liaison designated under  
 12 paragraph (3), and develop policies and  
 13 practices to meet identified needs.

14 (B) OTHER STATE AGENCIES.—In the case  
 15 of public preschool programs that are not fund-  
 16 ed, administered, or overseen by the State edu-  
 17 cational agency or a local educational agency,  
 18 the State agency that funds such public pre-  
 19 school programs shall—

20 (i) develop, review, and revise its poli-  
 21 cies and practices to remove barriers to the  
 22 enrollment, attendance, retention, and suc-  
 23 cess of children in foster care in public  
 24 preschool programs funded, administered,  
 25 or overseen by the agency;

1           (ii) provide preschool-aged children in  
2           foster care with the rights described in  
3           subsection (a), and comply with the re-  
4           quirements of this subsection with respect  
5           to such children, except that such pro-  
6           grams—

7                   (I) shall not be required to enroll  
8           a child in foster care immediately in a  
9           public preschool program that is oper-  
10          ating at full capacity when enrollment  
11          is sought for the child, unless other-  
12          wise required by State law;

13                  (II) shall not be subject to the  
14          dispute resolution procedures of the  
15          State educational agency or local edu-  
16          cational agencies, but shall—

17                   (aa) ensure that all of the  
18          dispute resolution procedures  
19          available through such programs  
20          and the State agency that funds,  
21          administers, or oversees such  
22          programs are accessible to the  
23          education decisionmaker, court  
24          representative of a child in foster  
25          care, and a representative from

1 the local child welfare agency;  
2 and

3 (bb) provide such individuals  
4 with a written explanation of  
5 their dispute and appeal rights;  
6 and

7 (III) shall not be subject to the  
8 transportation requirements of para-  
9 graph (5)(D) and subsection (a)(6),  
10 but shall remove barriers to existing  
11 transportation services for children in  
12 foster care and shall, to the maximum  
13 extent practicable, arrange or provide  
14 transportation for children in foster  
15 care to attend public preschool pro-  
16 grams, including the children's school  
17 of origin;

18 (iii) identify and prioritize children in  
19 foster care for enrollment and increase  
20 such children's enrollment and attendance  
21 in public preschool programs, including  
22 through activities described in subclauses  
23 (I) through (V) of subparagraph (A)(ii);  
24 and

1 (iv) review the educational and related  
2 needs of children in foster care and the  
3 children's families in the State, in coordi-  
4 nation with the coordinator described in  
5 paragraph (2), and develop policies and  
6 practices to meet identified needs.

7 (C) SCHOOL OF ORIGIN.—For the pur-  
8 poses of applying this paragraph, a reference to  
9 a school shall be deemed to include a public  
10 preschool program.

11 (8) SHARING INFORMATION.—

12 (A) IN GENERAL.—The State educational  
13 agency and local educational agency shall re-  
14 view and eliminate any barriers to information-  
15 sharing with State child welfare agencies and  
16 local child welfare agencies, while continuing to  
17 protect the privacy interests of children and  
18 families, as required by Federal or State law.

19 (B) IMMEDIATE AVAILABILITY.—To ensure  
20 a child in foster care's immediate enrollment in  
21 a new school (including a preschool program),  
22 all education records of the child shall be made  
23 available in accordance with subsection (a)(4).  
24 A school sending education records shall ensure

that the records are as complete and accurate as possible.

(C) COMPLIANCE WITH FERPA.—Education records of a child in foster care shall be—

(i) maintained and provided to other schools in a manner consistent with section 444 of the General Education Provisions Act (commonly referred to as the “Family Educational Rights and Privacy Act of 1974”) (20 U.S.C. 1232g); and

(ii) provided to the child welfare agency or other child welfare system advocates in a manner that complies with such section.

(D) EXPEDITED TRANSFER.—Each foster care liaison described in paragraph (3) and coordinator described in paragraph (2) within a State shall work to expedite the transfer of education records of children in foster care.

(9) TRANSFER OF CREDITS; DIPLOMA.—

(A) TRANSFER OF CREDITS.—The State shall have a system for ensuring that—

(i) a child in foster care who is changing schools can transfer school credits and



1 receive partial credits for coursework satis-  
2 factorily completed while attending a prior  
3 school or educational program; and

4 (ii) a child in foster care is afforded  
5 opportunities to recover school credits lost  
6 due to placement instability while in foster  
7 care.

8 (B) ELIMINATING BARRIERS.—The State  
9 shall undertake steps to eliminate barriers to al-  
10 lowing a child in foster care who has experi-  
11 enced multiple school placements to receive a  
12 secondary school diploma either from one of the  
13 school districts in which the student was en-  
14 rolled or through a State-issued secondary  
15 school diploma system.

16 (10) EQUAL ACCESS.—

17 (A) IN GENERAL.—The State and each  
18 local educational agency of the State shall take  
19 steps to eliminate barriers to access for children  
20 in foster care to academic, nonacademic, or ex-  
21 tracurricular programs that are created by ap-  
22 plication or entrance deadlines and other admis-  
23 sions requirements that children in foster care  
24 cannot meet because of frequent school  
25 changes.

1 (B) NO FORCED PRIVATE PLACEMENT.—

2 The State shall ensure that each group home or  
 3 placement facility in the State in which a child  
 4 in foster care may be placed does not explicitly  
 5 or implicitly condition such placement on at-  
 6 tendance at a private school owned or operated  
 7 by an agency associated with the facility.

8 (C) NO SCHOOL SEGREGATION.—The  
 9 State shall ensure that a child in foster care,  
 10 including a child residing in a group home or  
 11 placement facility—

12 (i) shall not be educated in a seg-  
 13 regated setting due to the child's status as  
 14 a child in foster care; and

15 (ii) shall have access to—

16 (I) a public elementary school or  
 17 secondary school; or

18 (II) in the case of a child with an  
 19 individualized education program  
 20 under section 614 of the Individuals  
 21 with Disabilities Education Act (20  
 22 U.S.C. 1414), an alternative setting,  
 23 if required under such plan.

24 (11) COLLABORATION IN DEVELOPING CHILD-  
 25 SPECIFIC CASE PLANS.—

1           (A) IN GENERAL.—Each local educational  
2           agency of the State shall collaborate, at the  
3           local child welfare agency’s request, with the  
4           local child welfare agency with respect to the  
5           following to ensure that educational issues for  
6           children in foster care are appropriately identi-  
7           fied and addressed:

8                   (i) The development of the following  
9                   components of the case plan required for  
10                  children in foster care:

11                           (I) The written description of the  
12                           programs and services which will help  
13                           the child prepare for the transition  
14                           from foster care to independent living  
15                           required under subparagraph (D) of  
16                           section 475(1) of the Social Security  
17                           Act (42 U.S.C. 675(1)).

18                           (II) The plan for ensuring the  
19                           educational stability of the child while  
20                           in foster care required under subpara-  
21                           graph (G) of section 475(1) of the So-  
22                           cial Security Act (42 U.S.C. 675(1)).

23                   (ii) The requirement under subpara-  
24                   graph (H) of section 475(5) of the Social  
25                   Security Act (42 U.S.C. 675(5)) to provide

1 a child in foster care with assistance and  
2 support in developing a transition plan for  
3 aging out of foster care to independent liv-  
4 ing.

5 (iii) The programs and activities, in-  
6 cluding vouchers for education and train-  
7 ing, including postsecondary training and  
8 education, for youths who have aged out of  
9 foster care, carried out under the John H.  
10 Chafee Foster Care Independence Program  
11 established under section 477 of the Social  
12 Security Act (42 U.S.C. 677).

13 (iv) All other child welfare agency-  
14 based planning that relate to educational  
15 issues for a child in foster care or a child  
16 transitioning out of foster care to inde-  
17 pendent living.

18 (B) CONTENTS.—The local child welfare  
19 agency shall specify in the case plan required  
20 for children in foster care under parts B and E  
21 of title IV of the Social Security Act the local  
22 educational agency's role in providing guidance,  
23 information, and support to implement the edu-  
24 cation-related provisions of the plan.

(C) LOCAL EDUCATIONAL AGENCY ROLE.—

Each local educational agency of the State shall—

(i) cooperate with the implementation of programs, activities, services, and vouchers described in subparagraph (A); and

(ii) ensure that such programs, activities, services, and vouchers are coordinated with any education plans developed by the local educational agency, including, when appropriate, any plan for transition services for a child in foster care that is included in the child's individualized education program, as required under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)).

(12) COLLECTING INFORMATION.—

(A) IN GENERAL.—The State shall collect valid and reliable information as needed to report annually to the Secretary on the State's progress in meeting the requirements of this title. Such report shall include, at a minimum—

(i) the number of children in foster care enrolled in school and in public pre-school programs;

1 (ii) the number of such children who  
 2 remained in the child's school of origin;

3 (iii) the number of such children who  
 4 experienced enrollment delays;

5 (iv) State assessment scores  
 6 disaggregated for children in foster care;

7 (v) secondary school graduation rates,  
 8 including on-time graduation rates, for  
 9 such children;

10 (vi) the number of such children who  
 11 repeated grades; and

12 (vii) the number of such children  
 13 who—

14 (I) are eligible for special edu-  
 15 cation and related services; or

16 (II) receive services under title I  
 17 of the Elementary and Secondary  
 18 Education Act of 1965 (20 U.S.C.  
 19 6301 et seq.).

20 (B) INFORMATION SHARING.—The State  
 21 educational agency and local educational agen-  
 22 cies shall collaborate with the State child wel-  
 23 fare agency and local child welfare agencies to  
 24 collect and share necessary information in order  
 25 to generate such reports.

1 (c) COLLABORATION.—To carry out this section, each  
 2 State educational agency and the local educational agen-  
 3 cies of a recipient State shall collaborate with the State  
 4 child welfare agency and local child welfare agencies of  
 5 such State.

6 **SEC. 102. REMEDIES; RULE OF CONSTRUCTION.**

7 (a) JUDICIAL REMEDIES.—

8 (1) IN GENERAL.—Any party aggrieved by a  
 9 finding or decision made under paragraph (5) or (6)  
 10 of section 101(b), or who otherwise claims that a  
 11 right provided under this Act has been violated, may  
 12 bring a civil action in an appropriate district court  
 13 of the United States.

14 (2) JURISDICTION.—The district courts of the  
 15 United States shall have jurisdiction of actions  
 16 brought under this title without regard to the  
 17 amount in controversy.

18 (3) ATTORNEY'S FEES.—In any action or pro-  
 19 ceeding brought under paragraph (1), the court, in  
 20 its discretion, may award reasonable attorney's fees  
 21 and expert witness fees as part of costs to a pre-  
 22 vailing party who is acting on behalf of a child in  
 23 foster care.

24 (4) STATE SOVEREIGN IMMUNITY.—

1 (A) IN GENERAL.—A recipient State’s re-  
 2 ceipt or use of funds under title I of the Ele-  
 3 mentary and Secondary Education Act of 1965  
 4 (20 U.S.C. 6301 et seq.) shall constitute a  
 5 waiver of sovereign immunity, under the 11th  
 6 amendment to the Constitution or otherwise, to  
 7 a civil action brought under paragraph (1).

8 (B) EFFECTIVE DATE.—This paragraph  
 9 shall apply with respect to violations that occur  
 10 in whole or in part after the effective date of  
 11 this Act.

12 (C) REMEDIES.—In a civil action against a  
 13 State for a violation of this paragraph, remedies  
 14 (including remedies both at law and in equity)  
 15 are available for such a violation to the same  
 16 extent as those remedies are available for such  
 17 a violation in the civil action against any public  
 18 entity other than a State.

19 (b) RULE OF CONSTRUCTION.—Nothing in this title  
 20 shall be construed to restrict or limit the rights, proce-  
 21 dures, and remedies available under—

22 (1) the Constitution;

23 (2) the McKinney-Vento Homeless Assistance  
 24 Act (42 U.S.C. 11461 et seq.);



1           (3) the Fostering Connections to Success and  
2       Increasing Adoptions Act of 2008 (Public Law 110–  
3       315), or the amendments made by such Act;

4           (4) section 444 of the General Education Provi-  
5       sions Act (commonly referred to as the “Family  
6       Educational Rights and Privacy Act of 1974”) (20  
7       U.S.C. 1232g);

8           (5) the Individuals with Disabilities Education  
9       Act (20 U.S.C. 1400 et seq.); or

10          (6) any other Federal or State law protecting  
11       the rights of children in foster care.

12 **SEC. 103. CONFORMING AMENDMENTS.**

13       The Elementary and Secondary Education Act of  
14   1965 (20 U.S.C. 6301 et seq.) is amended—

15           (1) in section 1111 (20 U.S.C. 6311)—

16                   (A) in subsection (b)(2), by adding after  
17       subparagraph (K) the following:

18                   “(L) ACCOUNTABILITY FOR CHILDREN IN  
19       FOSTER CARE.—The accountability provisions  
20       under this Act shall ensure that children in fos-  
21       ter care, as defined in section 4 of the Fos-  
22       tering Success in Education Act, are included  
23       in academic assessment, reporting, and account-  
24       ability systems, in accordance with paragraph  
25       (3)(C)(xi).”; and

1 (B) in subsection (c)—

2 (i) in paragraph (13), by striking  
3 “and” at the end;

4 (ii) in paragraph (14), by striking the  
5 period at the end and inserting “; and”;  
6 and

7 (iii) by adding at the end the fol-  
8 lowing:

9 “(15) the State and State educational agency  
10 will ensure that the requirements of section 101 of  
11 the Fostering Success in Education Act will be satis-  
12 fied.”; and

13 (2) in section 1112(c)(1) (20 U.S.C.  
14 6312(c)(1))—

15 (A) in subparagraph (N), by striking  
16 “and” at the end;

17 (B) in subparagraph (O), by striking the  
18 period at the end and inserting “; and”; and

19 (C) by adding at the end the following:

20 “(P) comply with the requirements of sec-  
21 tion 101 of the Fostering Success in Education  
22 Act that relate to the local educational agen-  
23 cy.”.

1     **Subtitle B—State Foster Care and**  
2             **Education Plan Grants**

3     **SEC. 111. STATE FOSTER CARE AND EDUCATION PLAN RE-**  
4             **QUIREMENTS AND GRANTS.**

5             (a) GENERAL AUTHORITY.—From amounts appro-  
6     priated to carry out this subtitle and not reserved under  
7     subsection (b)(2), the Secretary shall make grants to  
8     States, from allotments under subsection (b)(1), to enable  
9     the States to carry out activities, and award subgrants,  
10    in accordance with subsection (d).

11            (b) ALLOTMENTS AND RESERVATION.—

12                (1) ALLOTMENTS.—

13                    (A) IN GENERAL.—Subject to subpara-  
14     graphs (B) and (C), the Secretary is authorized  
15     to make an allotment to each State with an ap-  
16     proved State foster care and education plan  
17     under subsection (c) for a fiscal year in an  
18     amount that bears the same relation to the  
19     total amount available under this paragraph for  
20     a fiscal year as the number of children in foster  
21     care who reside in the State bears to the total  
22     number of children in foster care who reside in  
23     all States with approved State foster care and  
24     education plans.

1 (B) MINIMUM ALLOTMENTS.—The amount  
 2 of a State’s allotment under this paragraph for  
 3 a fiscal year shall not be less than \$300,000.

4 (C) RATABLE REDUCTIONS.—In the case  
 5 of a fiscal year for which the amounts available  
 6 to carry out this subtitle are not sufficient to  
 7 award grants to States in the amounts de-  
 8 scribed in subparagraphs (A) and (B), the Sec-  
 9 retary shall ratably reduce the amount of all  
 10 such grants.

11 (2) RESERVATIONS.—

12 (A) RESERVATION FOR TECHNICAL ASSIST-  
 13 ANCE AND EVALUATION.—Of the funds made  
 14 available to carry out this section, the Secretary  
 15 shall reserve 1 percent of such funds to pro-  
 16 vide—

17 (i) technical assistance to States that  
 18 receive grants under this subtitle; and

19 (ii) rigorous evaluation of the activi-  
 20 ties funded with grants under this subtitle  
 21 in accordance with section 113.

22 (B) STUDENTS IN TERRITORIES.—Of the  
 23 funds made available to carry out this section,  
 24 the Secretary shall reserve 0.10 percent of such  
 25 funds to be allocated among the United States

1 Virgin Islands, Guam, American Samoa, and  
2 the Commonwealth of the Northern Mariana Is-  
3 lands, according to their respective need for as-  
4 sistance under this subtitle, as determined by  
5 the Secretary.

6 (C) INDIAN STUDENTS.—Of the funds  
7 made available to carry out this section, the  
8 Secretary shall reserve 1.0 percent to provide  
9 assistance to the Secretary of the Interior for  
10 programs that are for Indian children in foster  
11 care who are served by schools funded by the  
12 Department of Interior and that are consistent  
13 with the purposes of the activities described in  
14 this subtitle.

15 (c) STATE FOSTER CARE AND EDUCATION PLAN.—

16 (1) ELIGIBILITY REQUIREMENT.—No State  
17 shall receive a grant under this subtitle unless the  
18 State educational agency has submitted to the Sec-  
19 retary, and the Secretary has approved under sec-  
20 tion 113(a)(1), a State foster care and education  
21 plan (referred to in this section as the “plan”)  
22 that—

23 (A) includes the information described in  
24 paragraph (3); and

1 (B) describes the specific responsibilities  
 2 and procedures undertaken by each applicable  
 3 agency of the State to meet the requirements of  
 4 subsections (e) and (f) and subtitle A.

5 (2) APPROVAL, REVIEW, AND RESUBMISSION.—

6 (A) DEVELOPMENT AND APPROVAL.—The  
 7 plan for a State shall be—

8 (i) developed by the State educational  
 9 agency, in collaboration with the State  
 10 child welfare agency; and

11 (ii) approved by the chief executive of-  
 12 ficer of the State before submission to the  
 13 Secretary.

14 (B) ANNUAL REVIEW.—Each State receiv-  
 15 ing a grant under this subtitle shall review the  
 16 plan annually, in collaboration with the State  
 17 child welfare agency and the State educational  
 18 agency, to determine the State's compliance  
 19 with the plan, including a review of the—

20 (i) information collected under section  
 21 101(b)(12); and

22 (ii) the State's progress in eliminating  
 23 barriers identified under paragraph (3)(B).

24 (C) RESUBMISSION.—Each State receiving  
 25 a grant under this subtitle shall resubmit the

1 plan, with amendments as necessary, after col-  
2 laboration with the State child welfare agency  
3 and approval by the chief State official in  
4 charge of the State's child welfare system, every  
5 3 years for review and approval by the Sec-  
6 retary.

7 (3) PLAN CONTENTS.—The plan shall address  
8 how each right and requirement under section 101  
9 will be achieved, including—

10 (A) the method by which the State will  
11 monitor local educational agencies and other  
12 local agencies with responsibility under this title  
13 to ensure compliance with this title;

14 (B) an analysis of the State and local bar-  
15 riers to meeting the requirements of this title,  
16 including the barriers described in paragraphs  
17 (8), (9)(B), and (10) of section 101(b), and  
18 specific steps taken to eliminate those barriers;

19 (C) a description of, and protocol for, how  
20 State foster care coordinators described in sec-  
21 tion 101(b)(2) and foster care liaisons described  
22 in section 101(b)(3) will work collaboratively  
23 with State child welfare agencies and local child  
24 welfare agencies to implement the provisions of  
25 this title;

1 (D) detailed procedures for making the  
2 school selection decisions for children in foster  
3 care in the State in accordance with section  
4 101(b)(4);

5 (E) clear procedures regarding how trans-  
6 portation to maintain each child in foster care  
7 in the appropriate school will be provided, ar-  
8 ranged, and funded;

9 (F) an explanation of how the State will—  
10 (i) ensure transfers of school credits  
11 and partial credits for children in foster  
12 care who experience multiple school moves;  
13 and

14 (ii) eliminate barriers to allowing such  
15 children to obtain secondary school diplo-  
16 mas as required under section 101(b)(4);

17 (G) an explanation of how the State will  
18 put in place a procedural safeguard system that  
19 meets the requirements of section 101(b) and  
20 protects the rights of children in foster care, as  
21 described in section 101(a), and how such sys-  
22 tem will—

23 (i) operate;



1 (ii) resolve disputes about school sta-  
2 bility, immediate enrollment, and eligibility  
3 for services under the title;

4 (iii) provide notice to children in fos-  
5 ter care, and the parents, educational deci-  
6 sion makers, and court representatives, of  
7 the rights of children under section 101(a)  
8 and the processes for obtaining a school se-  
9 lection decision for the child and for resolv-  
10 ing disputes under section 101(b); and

11 (iv) protect the child's rights under  
12 section 101(a) during the resolution of any  
13 disputes;

14 (H) a description of how the State has in-  
15 volved, and will continue to involve, individuals  
16 representing all critical stakeholders involved  
17 with children in foster care, including children  
18 in foster care, parents, education decision-  
19 makers, foster parents and other caretakers,  
20 caseworkers, court representatives, and judges,  
21 in the development of the plan and when mak-  
22 ing decisions about policies and procedures to  
23 implement this title;

1 (I) a description of how training needs re-  
2 lating to children in foster care will be identi-  
3 fied and addressed for—

4 (i) critical stakeholders in the State  
5 educational agency, local educational agen-  
6 cies, the State child welfare agency, and  
7 local child welfare agencies; and

8 (ii) other necessary parties involved  
9 with children in foster care;

10 (J) a description of how local educational  
11 agencies in the State, in collaboration with local  
12 child welfare agencies, will meet the require-  
13 ments of subsection (f), section 101(b)(1), and  
14 other provisions in this title relating to local  
15 educational agencies;

16 (K) a description of services or policies  
17 needed for children in foster care to meet the  
18 same challenging student academic achievement  
19 standards under section 1111(b)(1) of the Ele-  
20 mentary and Secondary Education Act of 1965  
21 (20 U.S.C. 6311(b)(1)) to which other children  
22 are held, and a description of the steps that will  
23 be taken to create and implement those services  
24 or policies;

1 (L) a description of all efforts to promote  
2 efficient record maintenance and sharing to fur-  
3 ther the purposes of this title while protecting  
4 confidentiality rights under section 444 of the  
5 General Education Provisions Act (commonly  
6 referred to as the “Family Educational Rights  
7 and Privacy Act of 1974”) (20 U.S.C. 1232g)  
8 and other laws;

9 (M) a description of how immediate enroll-  
10 ment for children in foster care, as required  
11 under section 101(a)(3), will be achieved, in-  
12 cluding how any record requirements in effect  
13 as of the date of the plan will be addressed so  
14 as to not delay enrollment;

15 (N) a description of the system that will  
16 ensure the timely transfer of education and  
17 health records of children in foster care and an  
18 explanation of how any delay in such transfer  
19 will not interfere with immediate enrollment;  
20 and

21 (O) procedures for periodically monitoring  
22 local educational agency compliance with the re-  
23 quirements of this title and for maintaining a  
24 complaint management system as required  
25 under section 101(b)(12).

1 (d) USE OF FUNDS.—A State receiving an allotment  
2 under this subtitle shall use—

3 (1) not more than 25 percent of the State’s al-  
4 lotment to carry out the State plan under subsection  
5 (c), meet the requirements under subsections (e) and  
6 (f), and carry out activities, directly or through  
7 grants or contracts, to further the purposes of this  
8 title; and

9 (2) not less than 75 percent of the State’s allot-  
10 ment to award subgrants under section 112.

11 (e) STATE REQUIREMENTS.—

12 (1) STATE EDUCATIONAL AGENCY ROLE.—

13 (A) IN GENERAL.—The State educational  
14 agency of a State receiving a grant under this  
15 subtitle shall be responsible for—

16 (i) the general administration and su-  
17 pervision of programs and activities receiv-  
18 ing funds under this subtitle, including the  
19 activities described in paragraph (2) and  
20 subgrants awarded under section 112;

21 (ii) monitoring programs and activi-  
22 ties used by the State to carry out this  
23 title, whether or not such programs or ac-  
24 tivities are receiving assistance under this  
25 subtitle; and

1 (iii) ensuring that the State is in com-  
2 pliance with the requirements under this  
3 title.

4 (B) COLLABORATION.—A State edu-  
5 cational agency shall collaborate with the State  
6 child welfare agency in carrying out the respon-  
7 sibilities under this paragraph.

8 (2) ACTIVITIES.—Each State receiving a grant  
9 under this subtitle shall carry out the following ac-  
10 tivities:

11 (A) STAKEHOLDER COUNCIL.—

12 (i) IN GENERAL.—The State edu-  
13 cational agency shall establish a Stake-  
14 holder Council (referred to in this para-  
15 graph as the “Council”) that meets pub-  
16 licly on not less than a semiannual basis.

17 (ii) MEMBERSHIP.—The members of  
18 the Council shall include, at a minimum—

19 (I) a designee from the State  
20 educational agency;

21 (II) a designee from the State  
22 child welfare agency; and

23 (III) individuals representing  
24 local educational agencies, local child  
25 welfare agencies, juvenile courts, court

1 representatives, court appointed spe-  
2 cial advocates, children in foster care,  
3 foster parents, and parents.

4 (iii) DUTIES.—The Council shall—

5 (I) review the State’s policies,  
6 practices, data, and other information  
7 regarding the implementation of this  
8 title;

9 (II) review and advise the State  
10 on the plan before the plan’s submis-  
11 sion or resubmission;

12 (III) make recommendations re-  
13 garding procedures and policies for  
14 implementing this title;

15 (IV) assess progress towards  
16 eliminating identified barriers to com-  
17 pliance that are described in sub-  
18 section (c)(3)(B);

19 (V) prepare and submit an an-  
20 nual report to the State educational  
21 agency, the State child welfare agen-  
22 cy, any other applicable State agency,  
23 and the Secretary on the status of im-  
24 plementation efforts, including an  
25 analysis of data collected; and

1 (VI) make recommendations re-  
2 garding the next steps the State  
3 should take regarding implementation  
4 and submit such recommendations to  
5 the Secretary with each plan resub-  
6 mission under subsection (c)(2)(C).

7 (B) MONITORING.—The State educational  
8 agency, in collaboration with the State child  
9 welfare agency, shall periodically monitor local  
10 educational agencies and other local agencies  
11 with responsibilities under this title to ensure  
12 compliance.

13 (f) LOCAL EDUCATIONAL AGENCY REQUIRE-  
14 MENTS.—Each local educational agency in a State receiv-  
15 ing a grant under this subtitle shall meet the following  
16 requirements:

17 (1) IN GENERAL.—The local educational agency  
18 shall ensure, in coordination with the corresponding  
19 local child welfare agency, that children in foster  
20 care in the school district served by the local edu-  
21 cational agency receive all of the rights described in  
22 section 101(a) by carrying out, at a minimum, all of  
23 the following:

24 (A) Ensuring that each child in foster care  
25 in the school district served by the local edu-

1           cational agency remains in a school of origin or  
2           is immediately enrolled in a new school, in ac-  
3           cordance with the child's best interest as re-  
4           quired under section 101(a).

5           (B) Documenting that written notice has  
6           been provided to the parent, education decision-  
7           maker, and court representative of the child  
8           and the local child welfare agency representa-  
9           tive responsible for the child with regard to any  
10          decisions made by the local educational agency  
11          regarding the rights under this title of a child  
12          in foster care, including—

13               (i) an explanation of the basis for the  
14               decision;

15               (ii) the right to appeal the decision;  
16               and

17               (iii) the right of the child to remain in  
18               the child's current school while a dispute is  
19               pending.

20          (C) Ensuring compliance with this title by  
21          all schools served by the local educational agen-  
22          cy.

23          (D) Identifying and removing any barriers  
24          that exist in schools served by the local edu-  
25          cational agency, including—



1 (i) barriers identified in the plan  
2 under subsection (b)(3)(B);

3 (ii) barriers to remaining or enrolling  
4 in a school of origin, or to enrolling  
5 promptly in a new school for a child in fos-  
6 ter care if such enrollment is in the child's  
7 best interest; or

8 (iii) other barriers impeding the rights  
9 of a child in foster care under this title.

10 (E) Ensuring that the schools served by  
11 the local educational agency promptly transfer  
12 the school credits and partial school credits of  
13 children in foster care, and provide children in  
14 foster care with access to credit recovery pro-  
15 grams or services.

16 **SEC. 112. SUBGRANTS.**

17 (a) IN GENERAL.—The State educational agency  
18 shall, in accordance with section 111(b)(2), award sub-  
19 grants, on a competitive basis, to public agencies, includ-  
20 ing local educational agencies and local child welfare agen-  
21 cies, or partnerships comprised of public agencies, to carry  
22 out the requirements of this title or clause (ii)(II), (iii),  
23 or (iv) of section 475(1)(G) of the Social Security Act (42  
24 U.S.C. 675(1)(G)).

1 (b) APPLICATION.—A public agency, or a partnership  
2 of public agencies, desiring a subgrant under this section  
3 shall submit an application to the State educational agen-  
4 cy at such time, in such manner, and containing such in-  
5 formation as the State educational agency may require.

6 (c) AWARD BASIS.—

7 (1) IN GENERAL.—The State educational agen-  
8 cy shall award subgrants under this section based  
9 on—

10 (A) the established need for attention to  
11 the education of children in foster care in the  
12 area served by the public agency or partnership  
13 of public agencies; and

14 (B) the quality of activities proposed to ad-  
15 dress such need by the agency or partnership in  
16 the application described in subsection (b).

17 (2) PRIORITY.—In awarding subgrants under  
18 this section, the State educational agency shall give  
19 priority to the following applicants:

20 (A) Local child welfare agencies that have  
21 entered into agreements with local educational  
22 agencies to share responsibilities for providing,  
23 arranging, and paying for the transportation of  
24 children in foster care to the children's school  
25 of origin in a cost-effective manner.

1 (B) Local educational agencies that have  
2 entered into such agreements with local child  
3 welfare agencies.

4 (C) Partnerships that—

5 (i) include not less than 1 local child  
6 welfare agency and not less than 1 local  
7 educational agency; and

8 (ii) have entered into such agree-  
9 ments.

10 (d) USE OF FUNDS.—A public agency, or a partner-  
11 ship of public agencies, receiving a subgrant under this  
12 section shall use subgrant funds to assist the State edu-  
13 cational agency providing the subgrant in meeting the  
14 State’s responsibilities under this title or clause (ii)(II),  
15 (iii), or (iv) of section 475(1)(G) of the Social Security  
16 Act (42 U.S.C. 675(1)(G)), which assistance may in-  
17 clude—

18 (1) funding of foster care liaison positions, as  
19 described in section 101(b)(3), at the local edu-  
20 cational agency;

21 (2) coordinating activities that support the pur-  
22 poses of this title between local educational agencies,  
23 local child welfare agencies, and other relevant agen-  
24 cies;

25 (3) expenditures for transportation costs;

1           (4) tutoring or other educational support serv-  
2           ices specifically targeted to children in foster care;

3           (5) expediting special education evaluations for  
4           children in foster care;

5           (6) pupil activities and services needed to pro-  
6           mote school and preschool success for children in  
7           foster care;

8           (7) training for the staff of the State edu-  
9           cational agency, the local educational agencies, the  
10          State child welfare agency, and the local child wel-  
11          fare agencies, and for children in foster care, such  
12          children's families, and others involved with children  
13          in foster care, about—

14                (A) the unique educational needs of chil-  
15                dren in foster care;

16                (B) the benefits afforded under this title;  
17                and

18                (C) other issues that further the purposes  
19                of this title; and

20           (8) assisting in funding State-level education  
21           coordinators in the State child welfare agency and  
22           local education liaisons within the local child welfare  
23           agency to be specific points of contact on education  
24           issues.

1 **SEC. 113. RESPONSIBILITIES OF THE SECRETARY.**

2 (a) REVIEW OF STATE PLANS.—

3 (1) IN GENERAL.—The Secretary of Education,  
4 in collaboration with the Secretary of Health and  
5 Human Services, shall review the plan submitted or  
6 resubmitted by a State under section 111(c). If the  
7 plan meets the requirements of section 111 and is  
8 reasonably calculated to ensure that all children in  
9 foster care in the State receive all rights, benefits,  
10 and protections required by this title, the Secretary  
11 shall approve the plan.

12 (2) DISAPPROVAL.—

13 (A) IN GENERAL.—If a plan does not meet  
14 the requirements described in paragraph (1),  
15 the Secretary shall disapprove the plan and pro-  
16 vide the State educational agency with specific  
17 findings as to what needs to be corrected for  
18 approval.

19 (B) REVIEW PROCESS.—The Secretary  
20 shall promulgate regulations establishing a sys-  
21 tem by which States whose plans are dis-  
22 approved can appeal such disapproval.

23 (b) TECHNICAL ASSISTANCE.—The Secretary shall  
24 provide—

25 (1) training, support, and technical assistance  
26 to a State educational agency receiving a grant to

1 assist the State educational agency in carrying out  
2 its responsibilities under this title; and

3 (2) training, support, and technical assistance  
4 to a State that has had the State's plan described  
5 in section 111 disapproved.

6 (c) SUBMISSION AND DISTRIBUTION.—The Secretary  
7 shall—

8 (1) require applications for grants under this  
9 subtitle to be submitted to the Secretary not later  
10 than the expiration of the 60-day period beginning  
11 on the date that funds are available for purposes of  
12 making such grants; and

13 (2) award such grants not later than the expi-  
14 ration of the 120-day period beginning on such date.

15 (d) DETERMINATION BY SECRETARY.—The Sec-  
16 retary, based on the information received from the States  
17 and information gathered by the Secretary under this sub-  
18 title and under section 101(b)(11), shall determine the ex-  
19 tent to which State educational agencies are ensuring that  
20 each child in foster care has access to a free, appropriate  
21 public education.

22 (e) INFORMATION.—

23 (1) COORDINATION; ENFORCEMENT.—The Sec-  
24 retary shall coordinate and enforce the information

1 collection requirements under this subtitle and sec-  
2 tion 101(b)(12).

3 (2) DATA COLLECTION AND DISSEMINATION.—

4 The Secretary shall—

5 (A) directly or through grants, contracts,  
6 or cooperative agreements, periodically collect  
7 and disseminate data and information regard-  
8 ing the education of children in foster care; and

9 (B) require each State receiving a grant  
10 under this subtitle to annually provide—

11 (i) the information described in sec-  
12 tion 101(b)(12)(A); and

13 (ii) such other data and information  
14 as the Secretary determines to be nec-  
15 essary and relevant to carry out this sub-  
16 title.

17 (f) EVALUATION AND DISSEMINATION.—The Sec-  
18 retary shall conduct evaluation and dissemination activi-  
19 ties regarding programs designed to meet the educational  
20 needs of elementary and secondary school students who  
21 are children in foster care.

22 (g) REPORT.—Not later than 4 years after the date  
23 of enactment of this Act, the Secretary shall prepare and  
24 submit to the Committee on Education and Labor and the  
25 Committee on Ways and Means of the House of Rep-

1 representatives and the Committee on Health, Education,  
 2 Labor, and Pensions and the Committee on Finance of  
 3 the Senate a report on the status of the education of chil-  
 4 dren in foster care, which shall include information on—

5           (1) the educational outcomes of children in fos-  
 6       ter care; and

7           (2) the actions of the Secretary and the effec-  
 8       tiveness of the programs supported under this title.

9 **SEC. 114. AUTHORIZATION OF APPROPRIATIONS.**

10       There is authorized to be appropriated to carry out  
 11 the subtitle, \$150,000,000 for each of the fiscal years  
 12 2011 through 2015.

13 **TITLE II—SOCIAL SECURITY ACT**  
 14 **AMENDMENTS**

15 **SEC. 201. SOCIAL SECURITY ACT AMENDMENTS.**

16       (a) EDUCATIONAL STABILITY FOR FOSTER CARE  
 17 CHILDREN.—Section 475(1)(G) of the Social Security Act  
 18 (42 U.S.C. 675(1)(G)) is amended—

19           (1) in clause (ii)—

20                   (A) by striking “or” at the end of sub-  
 21       clause (I) and inserting “and”; and

22                   (B) by striking subclause (II), and insert-  
 23       ing the following:

24                           “(II) assurances that the State agency  
 25       has coordinated with the appropriate local



educational agency to ensure that the child remains in the school in which the child is enrolled at the time of placement including, when necessary, the State agency arranging for, providing, or paying the cost of the transportation necessary to enable the child to remain in the school;” and

(2) by adding at the end the following:

“(iii) assurances by the State agency and the local educational agencies, if remaining in such school is not in the best interests of the child, to provide immediate and appropriate enrollment in a new school, with all of the educational records provided to the school; and

“(iv) assurances by the State agency and local child welfare agencies that steps have been undertaken to collaborate with the State and local educational agencies to eliminate barriers to the educational stability, school enrollment, and educational success of the child.”.

(b) STATE PLAN REQUIREMENT.—Section 471 of the Social Security Act (42 U.S.C. 671(a)) is amended—

1           (1) in paragraph (32), by striking “and” after  
2     the semicolon;

3           (2) in paragraph (33), by striking the period at  
4     the end and inserting a semicolon; and

5           (3) by adding at the end the following:

6           “(34) provides that the State agency and local  
7     child welfare agencies will collaborate with the State  
8     and local educational agencies to collect the data  
9     and other information necessary to monitor imple-  
10    mentation of the requirements of clauses (ii)(II),  
11    (iii), and (iv) of subparagraph (G) of section 475(1)  
12    and the provisions of section 101 of the Fostering  
13    Success in Education Act; and

14          “(35) provides that the State agency and local  
15    child welfare agencies have identified staff within the  
16    agencies to be the point people with the State and  
17    local educational agencies related to educational  
18    issues, including the implementation of the require-  
19    ments of clauses (ii)(II), (iii), and (iv) of subpara-  
20    graph (G) of section 475(1), as well as to coordinate  
21    with educational agency liaisons and coordinators to  
22    implement the provisions of section 101 of the Fos-  
23    tering Success in Education Act.”.

○