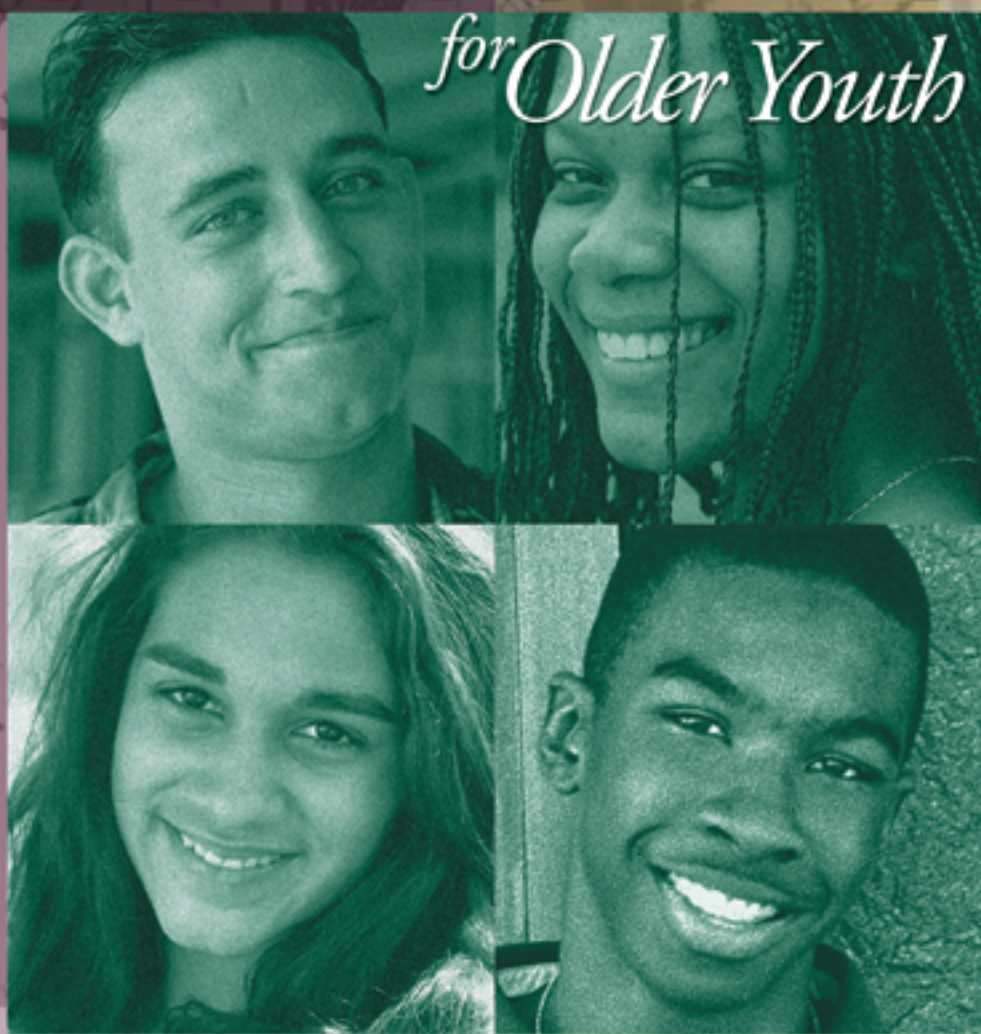




Improving **OUTCOMES**

for Older Youth

*What judges
and attorneys
need to know*



*The University of Oklahoma OUTREACH National Resource Center for Youth Development
United States Department of Health and Human Services
American Bar Association Center on Children and the Law*

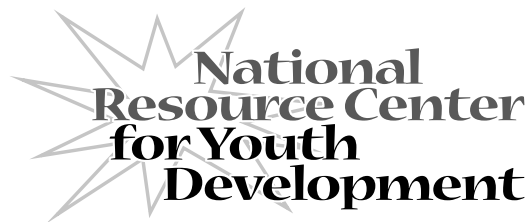
Improving **OUTCOMES** *for Older Youth*

What judges and attorneys need to know

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INTRODUCTION

Need for Practitioner's Guide

Special Needs of Youth Aging Out of Foster Care

Youth aging out of foster care are in a unique and often difficult position. Some of these youth have been in foster care for a number of years and have had numerous foster placements during their time in the child welfare system. They may be struggling with the internal and external aftermath of having survived abuse and neglect while facing the daily challenges of adolescences. Once these youth turn 18 (or anywhere from 19 to 23 in some states), they find themselves alone, without the supports provided by the child welfare system. These emancipated youth are expected to live on their own, go to school, hold down jobs, pay rent and bills, find medical care, and attend to all of their other needs at a time when most young people not in the state's care are still under the protective care of parents and guardians.

Youth in care lose much when they are emancipated from the child welfare system, and some find it difficult to regain their footing after their case is closed. In the years leading up to emancipation from foster care and in those years immediately following emancipation, each youth will need assistance from adults in the child welfare system with specialized services and particularized care in order to insure a successful transfer to living and thriving independently.

Statistics on Youth Aging Out of Foster Care

- In 2001, there were 100,056 youth ages 16 and older in foster care.¹
- In 1999 – 18,554 foster children aged out of the foster care system.²
- A Department of Health and Human Services report in 1999 based on States' self-reporting on independent living services found that 37% of youth who qualified for these services (in the 30 reporting states) did not receive them.³

Table continued on next page

¹ See, ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, CHILDREN'S BUREAU, US DEPARTMENT OF HEALTH AND HUMAN SERVICES, THE ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) REPORT, PRELIMINARY FY 2001 DATA AS OF MARCH, 2003 (2003). Also available at <http://www.acf.dhhs.gov/programs/cb/publications/afcars/report8.htm> (last visited June 22, 2004).

The AFCARS Report indicated that the number of youth in foster care age 16 to 18 was 89,632 and those age 19 and older numbered 10,424.

² RICHARD WERTHEIMER, CHILD TRENDS RESEARCH BRIEF, YOUTH WHO "AGE OUT" OF FOSTER CARE: TROUBLED LIVES, TROUBLING PROSPECTS (December 2002). Also available at <http://www.childtrends.org/files/FosterCareRB.pdf>.

³ ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, CHILDREN'S BUREAU, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, TITLE IV-E INDEPENDENT LIVING PROGRAMS: A DECADE IN REVIEW (1999). Also available at <http://nccanch.acf.hhs.gov/pubs/otherpubs/il/ILPrept.pdf> (last visited on June 22, 2004).

Examples of what kids aging out of foster care lose:

Youth, once they have left the child welfare system, lose a number of institutional and personal supports. Throughout this guide, these losses are outlined and programs that assist youth in transitioning are provided. Below are just a few broad examples of what children aging out of foster care lose:

- Access to the courts for enforcement of orders and legal advocates fighting for their right to access services.
- Consistent adults who are working for their best interest (i.e., foster parent, CASA, lawyer, or judge).
- A sense of security that may have been provided by their child welfare system involvement. Even though youth may have resisted or disliked their environment while in foster care, many experience a loss of some security when they are left alone in an adult world with no supports.
- Medical Coverage: in most states, medical coverage will end between the ages of 18 and 19.
- Housing: While in care the state must guarantee a youth's housing needs are addressed, but after leaving, a youth is left to find housing on their own or through a supportive housing program.

Practitioner's Role

Legal practitioners can help provide stability to older youth while they are in foster care. Traditional legal advocacy is paramount, and can often mean the difference between a youth's successful transition into adulthood and a youth struggling to provide for him or herself with little outside support. Although adolescence can be a difficult time, legal practitioners who understand the process can provide these youth with the resources they need to succeed through both traditional and unique forms of advocacy.

Judges and attorneys have legally prescribed responsibilities to their charges and clients. While the youth remains under the court's jurisdiction, judges and attorneys advocate to ensure that a youth's needs are being met and that appropriate services are provided. However, practitioners often find youth in need of additional support persons: a confidant, mentor, disciplinarian, or counselor. Older youth who are aging out of foster care need these types of adult supports because often they lack strong, permanent adult influences in their lives. Lawyers and judges must ensure youth are linked to adults that can provide these supports.

It is important to remember that at times, lawyers and judges may find themselves in the unique situation of playing these less traditional (albeit necessary and supportive) roles, in an adolescent's life. If this is the case, the closing of an adolescent's case means more than just losing a lawyer and judge. It can also mean losing their confidant, mentor, disciplinarian or counselor.

Goals and Scope of Practitioner's Guide

Improve Outcomes for Youth Aging out of Foster Care

The main goal in producing this guide is to ensure that youth aging out of foster care are provided with the best resources available to have a real chance for a successful transition to independence. This guide has been developed with the understanding that judges and lawyers are crucial in securing these resources for youth throughout their time in the child welfare system.

This guide provides judges and attorneys with a basic knowledge of the federal programs that are available to youth aging out of care, and tools to advocate for the best interest of all youth in foster care. All too often, the legal community's involvement in the specific services and transition needs of youth aging out of foster care is limited. Generic advocacy and orders for "independent living services or classes" can not replace substantive knowledge of what youth in care need, what they are legally entitled to, and what services are available to them.

Additionally, judges and attorneys may often ask child welfare caseworkers to provide services that they themselves do not know about or understand. When the legal community comprehends the services and programs available to adolescents in foster care as well as to those youth exiting care, the needs of these youth will be met with effective intervention.

Provide Methods for Judges and Advocates to take a more proactive role in the lives of Older Youth in Foster Care

This guide has been written with the understanding that judges and attorneys working in the child welfare system typically handle large caseloads with limited time to provide effective advocacy. The goal is to provide useful information in an easy to access format. By including useful practice tips, sample questions, and court orders, the guidance and tools offered in this manual will help the legal community be proactive in addressing the needs of older youth in foster care.

Provide the framework for effective advocacy

In this guide, the major well-being issue areas to consider when planning for an older youth's emancipation are highlighted. However, as each youth's needs are unique, it is not possible to include every issue to be considered. This guide should be used as a starting point and must be supplemented with each legal practitioner's knowledge of an individual youth's personality, situation, interests, and needs.

Hopefully, this guide also provides incentive for judges and attorney's to examine state laws and programs that serve older youth to obtain a more complete and accurate picture of these well-being issues and how they are addressed in each community. For this guide to be most useful, it should be supplemented with state and jurisdiction specific material, when available.

How to Use and Personalize Practitioner's Guide

This user-friendly guide is divided into subsections, and is tabbed for easy reference. The guide provides general federal information and a chance for each judge and attorney to personalize the guidebook with state-specific information.

Materials Provided

I. Youth Development Issues

This section contains a brief summary of adolescent development issues of which all legal practitioners should be aware, and a checklist of tips for communicating with older youth.

II. Federal Law Overview

This section reviews key federal laws, including Title IV-E of the Social Security Act, the Adoption Safe Families Act (ASFA), and the Foster Care Independence Act (Chafee), including how these laws apply to older youth in foster care and those who have exited care.

III, IV & V. Well-Being, Special Considerations, Special Issues

These three sections highlight the major well-being concerns for older youth as well as unique concerns of particular populations. The major well-being issues addressed are:

- Education
- Health
- Employment
- Housing

The special consideration section highlights additional issues, programs and services for the following populations:

- Youth with Disabilities
- Tribal/ICWA Youth
- Undocumented Youth
- Teen Parents

For all of the above sections, the topics are organized as follows:

Need – Each topic includes a brief summary of the current state of affairs for youth aging out of foster care. Often these summaries paint a grim picture for the future success of these youth. However, it is important to understand the needs of and issues facing these youth before being able to help them overcome barriers to success.

Key issues – While these substantive sections are organized around major well-being issues, often there are sub-issues or subtle obstacles related to these issues that need to be addressed. This section reminds practitioners of all the facets that exist among these broad topics.

Federal Laws and Programs – For each of our topic areas, there is a summary of the important laws and programs likely to exist in each state. While additional state-specific laws and programs need to be collected to do thorough advocacy in each jurisdiction, this collection of federal laws and programs is an important starting point.

Practitioner Tips – At the end of each substantive well-being section a summary of the material presented in the form of “Practitioner Tips” is provided. These tips are useful reminders for both attorneys and/or judges. While these tips are intended to be for legal professionals, they are often applicable to other advocates for older youth in care, such as foster parents and caseworkers.

Questions to Ask Youth in Foster Care – At the end of each section, a number of sample questions are provided that practitioners should know the answers to when evaluating the case status of a youth in foster care. Many of the questions from various sections overlap, reflecting the fact that these issues are intertwined and cannot be evaluated in a vacuum. The questions are suggestions for ways judges and attorneys can engage youth to help identify areas where additional assistance is needed prior to terminating the court’s jurisdiction. These may also be appropriate questions to ask caseworkers and other treatment providers working with a specific youth, particularly when the youth is unable to supply the information.

VI. State Specific Resources

Since the main focus of this guide is on federal programs available to all states, there is no comprehensive listing regarding each state’s specific program information and availability. However, included are detailed instructions and a list of references so that practitioners can retrieve their own state’s information and insert it into their guide.

Please note: supplementing this guide with detail regarding your state and local policies and programs is critical to increasing its utility. Much of the information on programs such as independent living services, housing programs, and health care, vary widely from state to state. For example, some states have opted out of receiving federal funding for certain programs; therefore, each program is not available in every state. It is for this reason that this guide includes a section where practitioners can insert their own state information for referral.

Appendix. Courtroom Guides for Easy Referral

Timeline

Various requirements, eligibility standards, and timing issues make it essential that a number of issues are addressed at specific times in a youth’s progression through the foster care system and in the years after emancipation. The timeline provided is meant to give practitioners a sense of timing for federal program requirements.

Judicial and Attorney Checklists

The end of each well-being section contains practitioner’s tips, outlining certain programs or procedural issues that are important to address within each well-being sub-topic. In order to make these lists useful in the courtroom, these tips have been compiled and streamlined into two separate courtroom guides, one for judges and one for attorneys. However, it is important to note that the checklists provided are more effective after having reviewed the particular well-being chapter to which they pertain.

Questions To Ask Youth in Foster Care

A list of questions to ask youth has been compiled and is contained at the end of each well-being section so that, in a courtroom setting, they can be looked to for easy reference.

Final Note to Judges and Attorneys

Keep in mind these key themes:

Aging out of care – Throughout this guide references are made to age 18 as the point when youth age out of care. While this is true in some states, other states keep the court’s jurisdiction open (and attorneys appointed) beyond 18, sometimes until a youth turns 21. Best practice dictates that this later termination of the courts authority is preferable, as it provides continued advocacy and oversight at a very critical period in a young adult’s life. However, all states, regardless of the court and legal advocate involvement, have the ability to provide services to youth from ages 18 to 21

(through their Chafee programs, see Chapter II, “Current Federal Laws”) even after a court case has been closed.

The 18th Birthday – Federal law requires that certain resources are only available to youth aging out of foster care who were in foster care on their 18th birthday (housing, for example), while state law dictates what other services require emancipation after a youth turns 18 for eligibility. Emancipating a child on the day before his or her 18th birthday can result in denial of a number of the most important programs available to these youth.

Preplanning – Regardless of the age at which court involvement ends, preplanning for services is crucial for this population of youth since they will not always have the court or legal advocates available to require services, enforce orders, etc. If a youth is already aware of what resources are available, and practitioners and judges have worked together to ensure that those services and supports are in place before termination of the court’s jurisdiction (or empowered the youth to access resources themselves after exiting care), emancipation may not result in homelessness, ill health, and poverty.

Knowledge of Programs and Services – Too often, lawyers and judges defer to caseworkers and agency staff regarding the programs and services that exist in their community to help older youth. If judges and lawyers do not have independent knowledge of these services, their ability to provide for the youth’s needs is limited. When judges and lawyers are educated about the programs and services available and how the youth may access these services, a successful connection to needed and appropriate supports is more likely to occur.

CHAPTER I

HOW TO DETERMINE THE NEEDS OF A YOUTH IN FOSTER CARE

The normal teen-aged angst, indecision, impulsiveness, and rebelliousness that most teens grow out of and are unaffected by later in life can be devastating to youth aging out of foster care. These youth's impetuous decisions, both in and out of the courtroom, can have long-lasting, detrimental effects on the amount of assistance they receive both while in the state's care and after emancipation.

Understanding general adolescent motivation helps judges and attorneys become more adept at asking questions of youth that result in answers needed to formulate a helpful, and ultimately successful independent living plan. This knowledge also assists in avoiding unnecessary discharges from care due to "noncompliance" that may actually result from a youth's normal, developmentally appropriate, behavior.

To effectively advocate for an older youth, a basic understanding of general adolescent behavior patterns is essential. Without this understanding, an attorney or judge's relationship with youth in care can become adversarial as practitioners take a youth's outbursts and behavior as personal attacks rather than growing pains or cries for help.

Adolescent Development⁴

Development of A Youth's Moral and Emotional Compass

All young people learn moral behavior through various types of relationships – parental, peer, educational, and extracurricular. Consistent parenting, educational exposure, relationship development with peers, and exposure to varied and complex cultural stimuli can all have positive effects on the moral development of an adolescent. These interactions lay the groundwork for a child entering and traveling through adolescence, a time when youth begin to grapple with real world applications of the various facets of their moral development.

This period is tumultuous for all adolescents, but youth in care have additional struggles because of the added instability inherent in being involved in the child welfare system.

⁴ Much of the information for this chapter has been adapted from, AMERICAN PSYCHOLOGICAL ASSOCIATION, DEVELOPING ADOLESCENTS: A REFERENCE FOR PROFESSIONALS (2002).

Internal Struggles

Adolescence is a time where youth fluctuate between their need for stability and security and their desire for independence from the very people and/or institutions that have provided that security. These fluctuations make it a difficult time both for youth and those who work with them.

While establishing their independence and trying to find their own identity, many youth experience low self-esteem. Self-esteem issues can be compounded for youth in care because of unstable living conditions, un-addressed feelings of anger and abandonment, and the internalization of negative reinforcement through being labeled a “problem child” or an “at-risk youth.”

The most important fact to remember in working with teens is that their behavior, both positive and negative, is not about anyone but the teen him or herself. An adolescent is not acting out as a way to hurt his attorney or to waste her judge’s time. Often, a teen’s behavior is meant to test boundaries and establish independence and almost all teenagers exhibit this behavior. It is a part of normal adolescent development regardless of a youth’s background. Part of this behavioral process must include adult reinforcement that a teen’s often selfish behavior will not alienate those adults who care deeply for his or her well-being

Understanding Context

At a basic level, all teens need similar reinforcements – a stable environment, caring adults and a strong peer group. Each youth in care approaches his or her time in the child welfare system differently. There is no doubt that the experiences of youth in care set them apart from a number of their peers, helping to shape their view of the world. Legal practitioners need to be aware of each youth’s varying interpretations of their time in care to better understand each youth’s needs.

However, an adolescent who has been part of the child welfare system has also developed an understanding of the world incorporating many of the personal experiences he or she has had. Therefore, it is also important to be aware of other factors that shape a youth in care’s world view, such as his or her gender, race, religion, sexual orientation, disability and/or ethnicity. The validation of these experiences help in the creation of an adolescent’s healthy self-image, combining all segments of a youth’s experience and allowing a greater understanding of him or herself and others.

Interviewing Techniques: Getting the Truth Behind the Answer

The most important aspect of communicating with older youth in foster care is establishing and maintaining trust. There are times when asking important questions regarding the future elicits flip-pant or outright hostile responses. It is important to evaluate these responses in the light they were given, judges and attorneys must take into account their own circumstances as well as the youth’s. If a youth has just had a traumatic visit with a biological parent or has just been moved to another foster home, defensiveness, disinterest or disregard for a youth’s own well-being are intricately tied to his or her emotional state.

Talking to older youth takes patience and awareness, but there are simple ways that practitioners can maintain open lines of communication, helping youth to trust both their judge and attorney, and to assist in the formulation of a workable plan for exiting the state’s care.

Tips for Effective Communication With Older Youth in Foster Care:⁵

- **Do not take it personally:** Legal practitioners can become angered and frustrated when a youth with whom they have worked for a number of months or years does or says something disrespectful and/or directly against their advice. The key is to not let the adolescent’s behav-

⁵ List adapted from, AMERICAN PSYCHOLOGICAL ASSOCIATION, DEVELOPING ADOLESCENTS: A REFERENCE FOR PROFESSIONALS 16 (2002).

ior affect advocacy or result in discharge of the youth from care for “noncompliance.” Teens rebel, often as a way of testing both their own control over their situation and others’ commitment to them. This rebelliousness combined with the impulsiveness endemic to teen-agers and the emotional turmoil of being a youth in foster care can be painful and angering to both judges and lawyers. The key is to evaluate the behavior without condemning the adolescent.

- **Ask non-accusatory questions:** Asking a question with a veiled, or not-so-veiled, accusation only puts youth on the defensive, making it more difficult to convince them that practitioners are advocating for their best interests. Rather than asking a question assuming involvement in a particular event by asking, “what did you do this time,” use a less judgment-laden question, such as “what happened?”
- **Be careful with “why” questions:** “Why” questions (i.e. “why did you skip school”) may also put foster youth on the defensive. The key to advocacy is open lines of communication and trust. Rather than asking “why,” ask the question in a way that allows the teen to know they can trust you and that your underlying concern is their health and safety (i.e. “I heard that you were not in school yesterday. What happened?”).
- **Ask open-ended questions:** Ask questions that require more than a yes or no answer (i.e. “what do you think of your foster family” rather than “do you like your foster family”) and then listen closely to the answers. Ask follow-up questions to make sure you understand what the youth is trying to communicate and to let the youth know that you are paying attention and giving weight to his or her opinion.
- **Try to avoid making judgments:** Older youth involved in foster care feel as though they are constantly being judged, evaluated, and often criticized. Feeling attacked, these youth will protect themselves by withdrawing or by self-destructive behavior meant to push caring adults further and further away. Legal practitioners are taught to make evaluations and judgments on any number of situations, but special care must be taken to create a safe space for older foster youth to best address their needs.
- **Be careful about the language you use:** Practitioners should not assume to know more facts about the youth’s life than they actually do. For example, if the youth is a boy, do not ask, “So, do you have a girlfriend?” Rather, ask the question without assuming sexuality: “Are you dating anyone?” If the youth is a girl and is pregnant, do not ask questions that assume she consented to the sexual activity that led to her pregnancy, or that she and the father have not already worked out a plan for the future of their family.
- **Meet each foster youth half way:** Explain each step, and the process of emancipation to youth in foster care using language they understand. In addition, remember that youth often use words and phrases unfamiliar to adults. Legal practitioners should not assume they know what youth are talking about. Ask for clarification. This way, judges and attorneys can be sure they have the correct information, and youth are reassured that what they say is important.
- **Encourage open dialogue:** Judges and attorneys should make sure that youth in care understand that legal practitioners are available to answer any of their questions or concerns. Following the above steps will help, but judges and attorneys must remember that a youth’s silence does not always equal assent or understanding. Special efforts must be made to ensure that the youth understands and, therefore, has a stake in everything that is going on in his or her case.

CHAPTER II

CURRENT FEDERAL LAW REGARDING TRANSITIONING OLDER YOUTH OUT OF FOSTER CARE: *Overview*

State child welfare systems are funded through a combination of federal and state or local funding sources. The federal dollars states receive (known as Title IV-E dollars) are to be used to support all children while they are in foster care placements, and can be used to support programs aimed at providing services to older youth while they are still in foster care, typically until the youth turns 18.

The Adoption and Safe Families Act (ASFA) passed in 1997 and amended Title IV-E of the Social Security Act (Title IV-E).⁶ ASFA provides critical guidance to lawyers and judges handling child welfare cases for all children, including older adolescents, but did not provide an additional funding stream. Implementation of ASFA principles occurs through a state's use of IV-E dollars as well as state and local funding.

Federal recognition of the special hurdles faced by older youth in foster care continued in 1999, when the Independent Living Program created in the mid-1980s⁷ was replaced by the John H. Chafee Foster Care Independence Program, signed into law through the Foster Care Independence Act (Chafee). Under Chafee, all states can receive additional federal dollars specifically earmarked for programs addressing the needs of older youth who are likely to age out of foster care and those that have aged out of care. States can receive this funding by submitting a plan (known as a Chafee plan) outlining how the state will use the funds to address the needs of this specific population. Attorneys and judges are often not familiar with the specifics of their state Chafee plan; however, knowing its content may provide practitioners with the power to advocate for the provision of both required and elective services for older youth.

If a state receives funding under Title IV-E and Chafee, then it must comply with these laws and their regulations.⁸ Attorneys and judges well versed in the provisions of these laws can be more effective advocates for older youth, and help ensure they will have successful and promising futures.

⁶ 42 U.S.C.A. §670 et seq. (2004).

⁷ 42 U.S.C.A. §675 (1)(D) (2004).

⁸ For a discussion of whether or not there is the right for a private cause of action under ASFA, see AMERICAN BAR ASSOCIATION, MAKING SENSE OF THE ASFA REGULATIONS: A ROADMAP FOR EFFECTIVE IMPLEMENTATION 185 (2001).

Title IV-E and the Adoption and Safe Families Act (ASFA)⁹

What is a basic outline of the act's requirements?

ASFA amended current foster care law under Title IV-B and IV-E, to make the safety, permanency and well-being of children in foster care the primary focus of the child welfare system. While our emphasis in this guide is on well-being issues, it is important to not look at safety, permanency, and well-being as separate elements. When an older youth in foster care or aging out of care has their well-being needs addressed, the youth's permanency and even safety can be impacted. A youth who is in school, has their medical needs addressed, and has a plan for housing and employment when they leave care is more likely to achieve one of the permanency plans outlined in ASFA. Also, a successful reunification of the youth with their parents may be more likely, or the occurrence of maltreatment while in foster care may be less likely for a child receiving appropriate services and supports.¹⁰

Are Title IV-E and ASFA enforceable in state courts absent state law codifying its sections?

Yes. As long as a state is receiving federal IV-E funding, Title IV-E and ASFA's provisions are enforceable in state courts.

When are cases reviewed for older youth?

Once a child has entered the foster care system and the case has proceeded through disposition, ASFA requires states to hold review hearings every six months and permanency hearings at least every 12 months after entering care. States and courts are free to hold more periodic reviews and hearings, and best practice dictates that these hearings should be as frequent as necessary to achieve the best interest of the child. States, and even jurisdictions, vary on their policies for permitting youth to be present and part of these hearings. While best practice dictates that youth have a right to be present at all hearings, consult your state law, regulations, or administrative policies to determine when children have a right to be present at these hearings in your jurisdiction.

What happens at a six-month review?

At six-month reviews, progress being made under the family case plan must be reviewed. For older adolescents this includes the independent living plan if one is appropriate for the youth, which is part of the case plan.

Which older youth should have an independent living plan (ILP)?

A federal requirement in Title IV-E (that pre-dates ASFA) is that the family case plans include an independent living plan (ILP) "where appropriate for youth ages 16 and older."¹¹ Attorneys and judges should always advocate for older youth to have independent living plans, as it is difficult to envision a circumstance where it would not be appropriate for a 16-year-old to have a plan for independence, regardless of the permanency goal.

What should be included in an independent living plan (ILP)?

The ILP should be a "written description of the programs and services which will help such a youth prepare for the transition from foster care to independent living.

Therefore the ILP should include services and assistance to foster youth that address this transition such as:

⁹ Signed into law in 1997 as Pub. L. 103-89, ASFA amended Title IV-E of the Social Security Act codified at 42 U.S.C.A §§ 620-679 (2004).

¹⁰ This is not to imply that maltreatment only results in situations where parents, or foster parents, are frustrated by a youth needing special supports or services, but the cases where this is the cause of the maltreatment or repeat maltreatment could be decreased by better attention to the youth's well-being.

¹¹ 42 U.S.C. 675 (1)(D) (2004).

- Education
- Physical and Mental Health Care
- Housing
- Formation of Relationships with Caring Adults
- Understanding of Community Resources, Public Benefits, and Services
- Daily Living Skills.¹²

What happens at a permanency hearing?

At the permanency hearings, courts are required to document a determination of whether the child welfare agency has made reasonable efforts to finalize the permanency plan in place for the youth through a court order. This finding must be youth and case specific.

What are the permanency plan options for older youth?

Permanency plan options for youth in foster care, in order of most to least desirable are: reunification, adoption, guardianship, placement with a relative, or another planned permanent living arrangement (APPLA).¹³ An APPLA can be used only if the child welfare agency documents compelling reasons why this least desirable plan is appropriate.

Independent living is not a permanency plan. Independent living is a set of services that an older youth needs for a smooth transition into adulthood, regardless of which permanency plan is in place for the youth. APPLA is a permanency option open to older youth who do not have a plan of reunification, adoption, guardianship or placement with a relative. In addition to the documented compelling reasons, APPLA must also involve services and efforts to create a planned and permanent situation for the youth. While this planned situation can involve the youth living on their own, there must also be elements showing that a youth has permanent connections to adults and the community and has a plan for the future.

What happens if the agency has not been making reasonable efforts?

If the agency has not taken appropriate steps to achieve the permanency plan for the youth, then a court may make a finding that the agency has failed to make reasonable efforts. A negative finding will cause the agency to lose their ability to use Title IV-E dollars to pay for the youth's foster care placement until a positive finding can be made. Attorneys must argue for, and judges must make, no reasonable effort findings when appropriate, to ensure proper efforts are being made for older youth in foster care. For example, if a 17-year-old youth has a plan of APPLA, and yet no efforts have been made to create permanent connections for that youth as he or she enters adulthood or plan for that youth's future, a "no reasonable efforts" finding may be warranted.

What are permanent connections?

Permanent connections for older youth can be a variety of individuals and organizations that provide support to youth as they are entering adulthood. Examples of permanent connections are mentors, religious organizations, community groups, or relatives. Attorneys and judges working with older youth need to help identify permanent connections or make efforts to link youth to potential permanent connections. Making these important links should be discussed at each hearing as an important component of the youth's permanency plan. Legal practitioners should also be aware that a youth may define permanency and connections differently from those professionals around them. Youth should be asked about what their definition of permanent connections is so that goals set strive to meet the needs of the youth.

¹² Adapted from, JENNIFER POKEMPNER AND LOURDES M. ROSADO, DEPENDENT YOUTH AGING OUT OF FOSTER CARE: A GUIDE FOR JUDGES (2003), available at <http://www.jlc.org/Resources/pdfs/agingoutjudgesguide.pdf> (last visited on June 22, 2004).

¹³ See, 42 U.S.C. §675(5)(C) (2004), and 45 C.F.R. §1356.21(h)(3) (2004).

How is permanency linked to well-being?

When trying to achieve permanency for older youth, attention must be paid to the youth's well-being. Issues involving education, health, housing, and employment, among others, can have a significant impact on achieving permanency for youth approaching adulthood. When these well-being issues are being addressed, permanency options may increase for the youth (i.e. a relative who was not willing to provide care for a 16-year-old who was failing school, non-compliant with needed medication, and getting into trouble with the police, may be willing to be a placement resource for a 16-year-old that is in school, participating in counseling, and has a solid plan for the future).

What are CFSRs?

The ASFA federal regulations, effective March 2000, require states to undergo Child and Family Service Reviews (CFSRs).¹⁴ These federal reviews examine seven general outcomes related to children's safety, permanency and well being to determine a state's overall performance in child protection cases.¹⁵ These case outcomes related to older youth are as follows:

- **Youth are protected from abuse and neglect** – Whether in the family home, foster home, or other foster care setting, older youth should not suffer further abuse and neglect while involved with the child welfare system. This means that particular scrutiny must be paid to decisions to return youth home (i.e. will the youth be subject to abuse and neglect if return to their family?) and to decisions to place youth in foster care (i.e. is this foster home or foster placement a safe place for the youth?)
- **Youth are safely maintained in their homes whenever possible** – States must examine whether all services were provided to the family to enable the youth to remain in the family home. In light of the difficulties older youth face once entering foster care, additional attention should be paid to whether the youth's removal from their family was necessary in the first place.
- **Permanency and stability in adolescents' living situations** – States struggle with having permanent family resources available for older youth. Even when older youth are not being placed with a family, they still need to have services in place to provide them with a permanent and stable living situation. Preservation of family relationships– Family relationships are incredibly important for all children, including older youth. These family relationships include parent and sibling relationships, as well as extended family relationships. Staying connected to relatives is critical regardless of the permanency plan for the older adolescent. For those youth who live successfully on their own, family members can provide an important support network as they navigate the difficult journey through adulthood. Many older youth who are not provided the needed services to find a stable living situation return to their family after aging out of care whether this environment is a healthy one for the youth or not. Even family members who may not be appropriate placement options can still play a role in the youth's life after leaving the child welfare agency's care. Therefore, in making reasonable efforts to finalize an older youth's permanency plan, re-establishing connections and providing services to family members that will be able to provide support for the youth in the future may be appropriate.
- **Families have enhanced capacity to provide for their children's own needs** – When older youth are placed in family settings, it is imperative that the family receive support and services that will enable that youth to thrive in the home. This applies equally to birth family reunification as it does to foster or adoptive family placements.

¹⁴ 34 C.F.R. § 1355.31 et. seq. (2004).

¹⁵ Id. at § 1355.34(b)(1).

- **Receipt of appropriate services to meet a youth’s educational needs** – See “Education” section in Chapter III for a full discussion.
- **Provision and receipt of adequate services to meet a youth’s physical and mental health needs** – See “Health” section in Chapter III for a full discussion.

States risk losing federal funds if they are not achieving all seven outcomes.

Foster Care Independence Act of 1999 (FCIA) and the John H. Chafee Foster Care Independence Program (Chafee Program)¹⁶

Purposes of Act¹⁷

The FCIA proposes to provide states with flexible funding, enabling them to design and conduct Chafee Independence Programs for both older youth in foster care and those who have aged out. The following are the stated purposes of the act:

- **To identify children and adolescents who are likely to remain in foster care until 18 years of age, and to help these children make the transition to self sufficiency** by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention).
- **To help children and adolescents who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment.**
- **To help children and adolescents who are likely to remain in foster care until 18 years of age prepare for and enter post-secondary training and education institutions.**
- **To provide personal and emotional support** to youth aging out of foster care through mentors and the promotion of interactions with dedicated adults.
- **To provide financial, housing, counseling, employment, education, and other appropriate support and services** to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood.
- **To make vouchers for education and training available**, including post-secondary training and education, to youth who have aged out of foster care.¹⁸ For a more in-depth discussion of the educational vouchers program, see the section on “Education” in Chapter III.

¹⁶ PL 106-169, 199 HR 3443 (approved, December 1999), codified at 42 U.S.C. §677 (2004). For a breakdown of the basic provisions and changes brought by the enactment of the FCIA, see, NICOLE CLEMENS, NATIONAL INDIAN CHILD WELFARE ASSOCIATION, IMPROVING ACCESS TO INDEPENDENT LIVING SERVICES FOR TRIBES AND AMERICAN INDIAN YOUTH (2000). Also available at http://www.nrcys.ou.edu/PDFs/NICWA_IL.pdf (last visited on June 22, 2004).

¹⁷ 42 U.S.C.A. §677(a)(2004).

¹⁸ This sixth purpose was added to the Foster Care Independence Act in 2001 by the passage of the Promoting Safe and Stable Families Act, H.R. 2873, Title II, §201(a)(3) (2001).site, available at www.nrcys.ou.edu/NRCYD/state_home.htm (last visited June 22, 2004).

Requirements for States Receiving FCIA Funding for Chafee Programs¹⁹

Must states make FCIA funds available to certain youth?

Yes. States who have accepted FCIA funds (often referred to as “Chafee dollars”) must have services available for young people who are “likely to remain in foster care until age 18 and for those who have aged out of foster care.” Education and Training Vouchers (ETVs) have slightly different requirements than other Chafee Programs, allowing youth who were in care at age 16, but left before turning 18, to receive vouchers once they reach age 18. In addition, youth receiving ETVs at 21 may be able to have their vouchers extended until they are 23. See the discussion of vouchers in the “Education” section in Chapter III. A portion of funds must be used to serve eligible young people ages 18 to 21 who left foster care because they reached age 18.

What are the states required to do once they have received FCIA funds?

- Involve youth in designing their own program.
- Allow youth up to \$10,000 in savings (as opposed to the previous cap of \$1000).
- Use federal dollars for training of foster and adoptive parents, group home employees, and case managers on issues related to adolescents and independent living.
- Provide services for youth with disabilities.
- Make benefits and services available to Native American youth in the same way they are available to other youth. States must consult and coordinate with each Native American tribe in the state to ensure that their programs address the needs of youth in foster care who are members of a tribe.
- Use this federal money to augment, but not supplant current state programs for youth aging out of foster care.
- Not declare that the provision of independent living services is a permanency option; independent living are services that must be provided in tandem with the permanency plan options under ASFA.

State Discretionary Actions

In what areas does the state have discretion?

States are given wide discretion in terms of what issues they tackle in their state FCIA plans. Therefore, although they must implement the services provided in their state plans as reported to the federal government, the services offered must be based on the best interest of the child standard. Much of a state’s program design and implementation is based on the state’s evaluation of its own needs.

¹⁹ See, POKEMPNER, JENNIFER & LOURDES M. ROSADO, DEPENDENT YOUTH AGING OUT OF FOSTER CARE IN PENNSYLVANIA: A JUDICIAL GUIDE 1-5 (2003); see also, NATIONAL FOSTER CARE AWARENESS PROJECT, FREQUENTLY ASKED QUESTIONS ABOUT THE FOSTER CARE INDEPENDENCE ACT OF 1999 AND THE JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM (February 2002), available at <http://www.nrcys.ou.edu/PDFs/Publications/faq.pdf> (last visited June 22, 2004).

For an up to date listing of the services each state offers through their Chafee plans, look to the National Resource Center on Youth Services website, available at www.nrcys.ou.edu/NRCYD/state_home.htm (last visited June 22, 2004) .

What kinds of parameters does the FCIA provide to states?

Within the wide discretion allowed to states, federal legislation does set some parameters. The FCIA allows states to use up to 30% of their Chafee money to provide room and board for youth who have aged out of foster care after turning 18 and are under 21. Some states elect to use the whole 30% for housing, while others use less. In addition, states have the option to extend the Medicaid coverage of youth in foster care until age 21. Only a few states have elected to use this particular Medicaid extension option, but a number of others provide alternative avenues for extending health care coverage. See the “Health” section in Chapter III for more information.

What kinds of services can a state provide under FCIA?

For a majority of programs, states must define their own eligibility requirements. The statute does provide a list of required services, but the list is not meant to be exhaustive. States have developed individualized programs that include services not listed here, based on the needs of their population of older youth in foster care and those who have aged out. Review the below examples as well as your state’s plan and other state plans for more ideas.

Examples of Services for Youth Likely to Remain In Care until 18 as Specified for Chafee Programs:

- Assistance in obtaining a high school diploma or GED
- Career exploration, vocational training, job placement and retention
- Training in daily living skills, training in budgeting and financial management skills
- Substance abuse prevention
- Preventive health activities (including smoking avoidance, nutritional education, and pregnancy prevention)
- Education
- Training and employment services
- Preparation for postsecondary training and education
- Mentors and interactions with adults

Examples of Service Areas for Youth Ages 18 to 21 Formerly in Foster Care as Specified for Chafee Programs:

- Financial
- Housing
- Counseling
- Employment
- Education, and
- Other appropriate supports and services

States have added their own requirements for who may receive various Chafee program benefits. For example, some state plans require that the youth **MUST** turn 18 while in foster care for the child to have access to all of these benefits, while others allow a little more leeway.

In addition, state laws vary regarding when the court jurisdiction over the child welfare case (and the appointment of attorneys) terminates for older youth. While some states permit the court and attorneys to remain involved with the youth through age 21, other states terminate the courts jurisdiction at age 18. Closing a case when a youth turns 18 makes legal and court oversight of Chafee services for youth ages 18 to 21 impossible in these jurisdictions.

For example, Idaho's legislature has recently changed the laws governing closing child welfare cases and youth may now elect to remain in care until age 21 in order to "promote ongoing support for the purpose of assisting youth make a successful transition to self-sufficiency." The youth's decision to keep their case open allows courts to have direct involvement with the youth until services under the state's Chafee plan terminate. Idaho requires that in order to be eligible for Chafee programs, that youth be between the ages of 15 and 21, be likely to remain in care until at least age 18 (defined as having been in care at least 90 consecutive days), and have resided in an eligible placement setting (foster care, group care, Indian boarding school, or other foster care placement, but not including placements meant mainly for delinquent youth). To be eligible for housing services specifically, a youth must have aged out of care after his or her 18th birthday.²⁰

Education and Training Vouchers (ETV)²¹

Education and Training Vouchers (ETVs)²² were added to the Chafee Program as a sixth purpose to the FCIA (see the "Current Federal Laws" section in Chapter II for more information on the FCIA). The funding for these vouchers, however, is kept separate from the funding of other Chafee Independent Living Program funds and some of their eligibility criteria are different than for other Chafee programs.

What are ETVs?

Education and Training Vouchers were created to assist youth connected with the foster care system with the high cost of post-high school education. Vouchers can be used for two and four-year universities, vocational training programs, and job training programs. States have wide discretion as to who receives an ETV voucher, how much that voucher is worth, and what costs qualify as educational expenses. Federal law allows the value of each voucher to be up to \$5000 per year or the cost of attendance, whichever is less.

States have similar latitude in plan design under the ETV program as the other Chafee programs and the eligibility standards are the same. States decide the best method and manner of distribution including application forms and criteria. The vouchers require a 20% match by the state government while the other 80% is covered by federal funds.

What youth are eligible for the ETVs?

Youth who meet their state's eligibility requirements for Chafee services will qualify for ETVs, with two notable exceptions. First, youth receiving ETVs can continue to qualify for the financial assistance through age 23 as long as they are still in some form of higher educational program at age 21 and are making satisfactory progress. All other Chafee programs are not allowed to be extended beyond age 21.

²⁰ See, Chafee Foster Care Independence Program State Plan, State of Idaho, FFYs 2001 – 2004, available at http://www.nrcys.ou.edu/NRCYD/State_Pages_f/state_id.htm (last visited June 22, 2004).

²¹ 42 U.S.C.A. §677 (i) (2004).

²² Passed in the Safe and Stable Families Act, H.R. 2873 (2001), incorporated into Title IV-B of the Social Security Act at 42 U.S.C.A. §1305 (2004). The text of the act is available at www.nrcys.ou.edu/PDFs/ETV/ETVdocs/HR2873.pdf (last visited June 22, 2004).

Additionally, older youth who were adopted out of foster care after they turned 16 may also receive ETV's even though they are not longer part of the child welfare system. In order to receive the assistance, they must be continuing on in a post-secondary educational program after turning 18. They, too, may receive funding until their 23rd birthday as long as they also continue to make satisfactory progress.

CHAPTER III

FOCUSING ON ADOLESCENT WELL-BEING:

What judges and attorneys need to know

In the following sections, the well-being of older youth in care and those youth who have aged out are discussed. While well-being of older youth can be comprised of numerous elements, this guide focuses on four major areas: **Education, Health, Employment and Housing**. Although these are not the only areas of concern judges and attorneys should focus their attention upon, they each have a major impact on an adolescent's success after leaving the state's care.

These well-being issues should be discussed at each and every hearing held for the youth. This includes dispositional hearings, as well as 6-month reviews and permanency planning hearings discussed in detail in Chapter II. Following each section, the tips for attorneys and judges provide guidance for preparing for these issues and addressing them at these court hearings.

Courts and legal advocates can also develop unique methods to further ensure that these issues get the necessary attention needed to prepare older youth for adulthood. For example, some jurisdictions have implemented a new form of hearing, called "benchmark hearings" which are set in addition to regular court reviews. They are typically held for older youth to have ample time for the youth and the court to discuss all necessary transition issues. Youth are often free to invite any supportive adults to attend this hearing with them, and the youth prepares a goal sheet that is reviewed by the court and discussed at the hearing.²³

Benchmark hearings are just one idea of many that could be put in place to give well-being issues of older youth the additional attention needed to set the youth up for success. Other ideas for providing this extra support are mediation and family group conferencing for older youth that start at least a year before the youth leaves care., These programs would bring together all of the youth's supports and help identify and rectify any gaps that should be addressed regarding the youth's future needs prior to emancipation.

²³ For more information about these hearings, see, KATHLEEN MCNAUGHT, AMERICAN BAR ASS'N., LEARNING CURVES: EDUCATION ADVOCACY FOR CHILDREN IN FOSTER CARE (expected publication October, 2004); and Kathleen McNaught, *Innovative Approaches*, 23 ABA CHILD L. PRACTICE 23 (April 2004).

EDUCATION

Need

Youth in foster care need a solid education to help ensure a successful future. Education is a critical building block to finding employment, affording adequate housing, and obtaining needed health care. However, too often youth in care are not completing high school or pursuing higher education goals.

Statistics:

- A national study from 1991 reported that only 48% of youth aging out of foster care had graduated high school.²⁴
- A 2003 study of youth in the foster care system being referred to independent living classes from one Midwestern county revealed that 73% had been suspended at least once since the seventh grade, 16% had been expelled; and 29% had physical fights with students. The study also revealed that 63% had experienced at least one midyear school change since seventh grade, and 58% had failed a class in the last year. However, this study also revealed that 70% wanted to attend college.²⁵
- As a result of the high incidence of behavioral problems reported for youth in foster care, these youth are often siphoned out of the mainstream school environment and placed into alternative programs where the goal is obtaining a GED and not graduating from high school. However, recent studies show that the life prospects of GED earners are similar to those of high school drop-outs.²⁶
- A 2002 national study revealed that of children between the ages of 6 and 17 involved in the child welfare system, 39% have low levels of school engagement and 28% are not involved in any extracurricular activities.²⁷

Major Issues:

Education issues for youth aging out of care fall into two categories: youth who have not yet completed high school and youth embarking on higher education or training endeavors. Planning for the completion of both high school and post-secondary education, in addition to efforts to promote a smooth transition from one educational setting to the other, should begin early.

Secondary Education

- **Mobility/Lack of School Stability** – By the time youth in care reach adolescence, they have often experienced multiple foster placements that have also lead to multiple school placements. This lack of continuity in school can result in academic delays, loss of credits, or even school drop-out (see below). In addition to the academic effects, the social effects on youth in care forced to acclimate to new teachers and peers, can be difficult.

²⁴ See, R. Cook, A National Evaluation of Title IV-E Foster Care Independent Living Programs for Youth: Phase 2 Final Report (1992).

²⁵ Curtis McMillen, et al., *Educational Experiences and Aspirations of Older Youth in Foster Care*, 82 CHILD WELFARE 475 (July/August 2003).

²⁶ Bill Graves, *One-third of Teens in State Don't Graduate*, The Oregonian, 1 (November 13, 2001).

²⁷ Katherine Kortenkamp and Jennifer Ehrle, The Urban Institute, *The Well-Being of Children Involved with The Child Welfare System: A National Overview, Assessing the New Federalism, Series B. No B-43 p. 3* (January 2002).

- **Lack of an advocate** – Although there are numerous people in the child welfare system that can play a role in advocating for a youth’s education needs, including attorneys and judges, too often education advocacy has not been taking place. This lack of advocacy can mean that the rights of the youth are being violated and the youth is not accessing the appropriate services and placements.
- **Determining Appropriate Education Decision-maker** – While focus on education decision-making often surrounds Individuals with Disabilities Education Act (IDEA) and youth with disabilities (see “Special Considerations for Youth With Disabilities” in Chapter IV), the determination of who is the education decision-maker is an issue for students in regular education, as well. For youth under 18, it must be resolved whether the parent, foster parent, child welfare agency, or other individual makes education decisions for the youth.
- **Quality schools and education services** – Even when youth in care are attending school, often these schools are providing less than adequate education and services.
- **Access to Records** – Confidentiality laws as well as school mobility (discussed above) can lead to issues with access to complete education records for a youth in foster care. The child welfare system, including judges and attorneys, may fail to overcome confidentiality restrictions to access this necessary information. Even when accessed, these education records may be incomplete or inaccurate causing service, and even graduation delay. Youth in foster care can lose hard-earned credits because of the school’s failure to locate appropriate documentation. Additionally, when youth turn 18, they have the legal right to obtain a copy of their education records, but are often unaware of this right. Frequent turnover of professionals in the child welfare system (i.e. attorneys, GALs, caseworkers) is one reason that youth have difficulty obtaining a complete set of education records.
- **Special Education** – There is a high rate of special education placement among youth in foster care, entitling these youth to a number of additional educational and transitional services and programs. However, this high rate has also lead to restrictive educational placements for a disproportionate number of youth in care. For more information on youth with special needs, refer to the “Special Considerations for Youth With Disabilities” in Chapter IV.
- **School drop out** – There are many reasons that youth in care decide to drop out of school. Many states give youth the legal right to leave school at 16 or 17. A youth’s home life difficulties and a history of abuse and neglect may result in the youth being too preoccupied with family matters to be interested in completing high school. The frequent moves that result in school changes can be frustrating to youth, and cause credit problems and graduation delays that lead the youth to leave school. Many youth do not have positive role models and have not been exposed to the benefits of completion of high school, much less pursuing additional education. Without understanding the benefit, youth are more likely to leave school before graduation.
- **GED vs. High School diploma** – Many youth in care are encouraged to pursue a GED as opposed to a high school diploma, under the guise that it will be “easier” and “faster” to obtain. While GEDs are appropriate for some youth, there are many issues to consider. The GED exam still requires a certain skill level, and may not be the easy road youth may expect. A GED may limit post high school options, as some colleges and employment opportunities require a high school diploma.
- **Discipline Issues** – Youth in foster care who are subject to suspensions and expulsions lose valuable education time that may delay high school completion. Sometimes youth use the disciplinary measure as a reason to quit school.

- **Lack of post-secondary planning/transitioning** – Many youth in care have not thought about plans post high school and after they have aged out of care. A number of these youth do not think vocational training programs or college are possibilities for them because no one has taken the time to explain how they could access these schools or programs.

Post-Secondary Education

- **Exposure to Options** – Many youth in care have not been exposed to the array of career paths that are available to them. Without an understanding of the existing options, many youth will make quick choices or be swayed by foster parents, peers or others to take a career path that may not be right for them..
- **Decision making about educational future** – Even when youth in foster care are exposed to various career and education options, making a decision about their future can be challenging. While all youth experience this challenge, youth in care are more likely to be without adult supports that can help them consider their options and make important education decisions.
- **Supports throughout process** – The lack of adult support continues to be problematic once youth in care make a decision about their future education. For example, a youth deciding to pursue college may need help preparing for standardized exams, arranging and going on school visits, completing applications, writing essays, preparing and attending interviews, and ultimately making the final choice of schools should they be accepted. The youth may need a mentor or role model to assist them with these needs.
- **Financial supports** – Many youth may not plan on further education after high school because they do not think there is financial assistance to make further education a reality. The concern over money may even include such basic precursors to higher education such as standardized testing review classes or materials (i.e. PSAT or SAT). Professionals in the child welfare system may mistakenly believe a youth is unmotivated or uninterested in pursuing further education, when the youth is actually interested, but believes the price tag accompanying any additional education will be prohibitive.
- **Ongoing emotional support** – College can be an adjustment for youth in foster care. For many, it will be the first time living on their own. There will be many academic and social demands placed on the youth, who may need emotional support from an adult in their lives. Unfortunately, youth in care who go on to college do so around the time they age out of care, and many of the supportive individuals in their lives (including lawyers and judges) are gone. If permanent adult connections have not been established before aging out of care, a youth's success at higher education could be at risk because of the lack of needed emotional support.

Critical Federal Laws and Services

Foster Care Independence Act (FCIA)

What education services can be provided through a state Chafee program?

The FCIA specifies the following education services for youth aging out of care, but these services listed are not meant to be exhaustive:

Secondary education

- Assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention
- Assistance in receiving the education, training, and services necessary to obtain employment

Post-Secondary education

- Prepare for and enter postsecondary training and education institutions
 - Some states have expanded the parameters of traditional education provision by utilizing Chafee dollars to creatively address the needs of youth aging out of foster care. For example, in Chicago, IL, the Department of Child and Family Services has used their Chafee money to fund an Alternative Schools Network of Chicago program called the Youth Skills and Development Training Program (YSDTP). Most students involved in the program are operating 6 years behind their actual grade level in math and reading comprehension. The program provides year round instruction, after school assistance, counseling, mentoring, and a savings account that participants can cash in at the completion of the program. In addition, students receive pocket money that is dependent on class attendance, a clothing allowance, and scholarship funds after graduation to apply to future post-secondary educational programs.

What are some general principles to know for Chafee programs?

There are a number of general assertions that are important to keep in mind when considering any Chafee program offered to youth in your state:

- Each state has discretion to continue a court’s jurisdiction for a youth after that youth reaches the age of majority. Without court jurisdiction, it may be more difficult to monitor a youth’s progress in and access to Chafee programs.
- Each state also has wide latitude in terms of how it utilizes its Chafee dollars and the programs it does or does not offer, in addition to setting the eligibility requirements in a majority of their programs.
- For more information on what states must provide in their Chafee programs and what is discretionary, see the “Current Federal Law” section in Chapter II.

McKinney-Vento Act²⁸

What does McKinney-Vento provide?

McKinney-Vento provides that children and youth in homeless situations receive a free, appropriate public education, and removes obstacles that delay enrollment or prevent access. Students are permitted to remain in their home school or gain immediate access to a new school. The act eliminates traditional obstacles to timely enrollment, such as residency and record requirements (e.g. residency, immunization and school record requirements), guardianship requirements, and lack of transportation. McKinney-Vento requires that all school districts identify a McKinney-Vento liaison, whose role is to facilitate school stability or the transfer process, and to link the child to community resources.

Who is eligible under this McKinney-Vento?

McKinney-Vento defines homeless children and youth as those who lack a fixed, regular, and adequate nighttime residence, which includes youth “awaiting foster care placement.”²⁹

How can youth aging out of care benefit from this Act?

The McKinney-Vento Act will apply to some youth currently in foster care who are “awaiting foster care placement” as well as youth who have aged out and find themselves lacking a fixed and permanent living arrangement, but still have not completed high school. The youth or their advocate must contact the McKinney-Vento liaison for the school district they attend to gain enrollment.³⁰

²⁸ 42 U.S.C.A. § 11431 et seq. (2004). As of 2004, all U.S. jurisdictions receive McKinney-Vento funds except the District of Columbia.

²⁹ 42 U.S.C.A. § 11434A(2) (2004).

³⁰ For additional information on McKinney-Vento visit the National Law Center on Homelessness website, at http://www.nlchp.org/FA_Education/ (last visited June 22, 2004).

No Child Left Behind (NCLB)³¹

What is NCLB?

NCLB was signed into law in 2002 and is the reauthorization of the Elementary and Secondary Education Act. The act focuses on such issues as annual testing, better teacher qualifications, and changes for low-performing schools.

Who has a right to transfer schools under NCLB?

Youth attending schools that have been designated “in need of improvement” for two consecutive years must be given the opportunity to attend better performing public schools. The schools must provide transportation to the new school.

Additionally, youth attending schools designated as “persistently dangerous” or who have been the victim of a crime at school, have a right to transfer to a safer school.

Who has the right to supplemental education services under NCLB?

Youth attending schools that have been designated “in need of improvement” for three of the four previous years must be offered supplemental education services, outside of school time and at the school system’s expense. Consult your district or State Department of Education to obtain a list of approved supplemental education services providers.

Family Education Rights Privacy Act (FERPA)³²

What is FERPA?

FERPA is a federal law that provides for the privacy of a student’s education record, unless parental consent is obtained for the release of the information. The law also provides exceptions for when education records can be released without parental consent (i.e., transferring records from one school to another when a student transfers).

How does FERPA define “parent”?

Parent includes natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.³³

How can judges and lawyers access education records under FERPA?

Records can be obtain through one of three options:

1. Obtain parental consent to access records.
2. Obtain consent of “an individual acting as the parent” if the parent or guardian is absent. When the youth is in the child welfare agency’s custody, the school system might consider the child welfare agency to be a “parent” for the purposes of FERPA.
3. Request (attorneys) or issue (judges) a court order releasing the information to the court.

What happens when a child turns 18?

The right to have and control access to education record transfers to youth over 18. Youth older than 18 can request a copy of their complete education record, as well as determine who else has access to that information. For youth with disabilities, this entitlement may be different. Refer to “Special Considerations for Youth with Disabilities” in Chapter IV.

³¹ 20 U.S.C.A. §6301 et seq. (2004)

³² 20 U.S.C.A. §1232g (2004); 34 C.F.R. §99.1 et. seq (2004).

³³ 34 C.F.R. §99.3.

Higher Education Act (HEA)³⁴

What is the Higher Education Act?

The HEA provides a number of programs and services to help combat the often prohibitive cost of attending post-secondary institutions. The HEA includes all of the federal financial aid programs (i.e., Stafford, Pell, Perkins) in addition to funding outreach, mentoring, tutoring programs for low-income youth and adults, loan-forgiveness programs for graduates who take lower-paying jobs in social service and public interest positions.

How can the HEA benefit youth in care or those who have recently been emancipated?

Although there are no HEA funded programs set up to specifically address the educational needs of youth in care and those aging out, these youth can benefit from the HEA in two key areas:

- **Financial Aid:** Youth who have been emancipated and whose parents no longer have rights will qualify for more financial aid, and the aid with the lowest interest rates. Youth who are in the state's care may also qualify for this aid, even if their parents' rights have not been terminated if they can successfully argue that they are independent from their biological parents. In order to qualify for aid, youth must fill out the Free Application for Federal Student Aid (FAFSA).
- **Post-Secondary Education Preparatory Programs:** There are a number of programs funded under this act. One of particular interest to youth in care is the Upward Bound program, a program that offers tutoring assistance to low-income youth between 13 and 19 who need extra support in order to pursue post-secondary education.³⁵

NOTE:

Individuals with Disabilities Education Act (IDEA)

See "Special Considerations for Youth With Disabilities" in Chapter IV.

Section 504 of the Rehabilitation Act/Americans With Disabilities Act

See "Special Considerations for Youth With Disabilities" in Chapter IV.

Discipline:

State law governs the regular education disciplinary process; however, federal law provides additional disciplinary protections for youth with disabilities. See "Special Considerations for Youth with Disabilities" in Chapter IV for more information on these additional protections.

What rights do youth have when they are subject to suspensions of less than 10 days?

There are minimum due process protections that schools must afford students accused of school violations resulting in short-term (under 10 day) suspensions:³⁶

- notification of violation,
- opportunity to refute charges, and
- explanation of evidence relied upon.

³⁴ 20 U.S.C.A. §§ 1001 et seq. (2004).

³⁵ For more on the Upward Bound program, visit the U.S. Dept. of Education website at <http://ed.gov/programs.trioupbound/index.html> (last visited July 28, 2004).

³⁶ See, *Goss v. Lopez*, 419 U.S. 565 (1975).

Schools may have additional procedures for these short-term suspensions, including some limited appeal process to a higher-level administrator within the system.

What procedural protections exist for long-term (over 10 days) suspensions and expulsions?

Case law suggests that for suspensions over 10 days and expulsions, some additional due process protections should exist for students.³⁷ Beyond that, schools are free to determine what those due process protections look like. In most schools, students at risk of long-term suspension or expulsion have a right to an administrative hearing, where they can call witnesses and present their case before a neutral hearing officer. Often there are procedures for appealing the case before the school board and ultimately a court. Specific procedures can vary from state to state and even school district to school district.

Does bringing a gun to school require an automatic expulsion, or do some exceptions exist?

The Federal Gun-Free Schools Act mandates a one-year expulsion for students who bring a firearm to school and requires schools to refer the offending student to the criminal or juvenile justice system.³⁸ However, the law allows the “child administrative officer,” usually the school superintendent, to modify the mandatory expulsion on a case-by-case basis.³⁹

Financing for Higher Education

Federal and state grant programs

Federal Pell grants, Stafford Loans, and state financial aid programs are all based on financial need. A youth in care may not have to report any parental income when applying for aid because under the Higher Education Act (HEA), an applicant who is a “ward of the court” is deemed “independent” from his or her parents and will not benefit financially from them.⁴⁰ Not reporting parental income means that many of these youth will qualify for some type of federal or state aid. Many post-secondary programs require that applicants complete a Free Application for Federal Student Aid (FAFSA) to determine eligibility, so make sure youth who are looking into education programs understand the federal financial aid application process.⁴¹

Scholarships

Scholarship programs aimed at youth formerly in foster care are available on both the state and national level. Many have restrictions on their programs that preclude youth from applying if they left care prior to age 18. Examples of national scholarship programs include:

- Casey Family Scholars Program: open to youth in foster care for at least 12 months and are not subsequently adopted.
- The Hildegard Lash Merit Scholarship: requires eligible applicants to have completed high school or turned 18 while in foster care.⁴²

³⁷ Id. at 584. (“Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.”). For further discussion, see, Kevin Brady, *Weapon of Choice: Zero Tolerance School Discipline Policies and the Limitations of Student Procedural Due Process*, 22 CHILD. LEGAL RTS. J. 2 (Spring 2002).

³⁸ 20 U.S.C.A. § 7151 (2004).

³⁹ Kevin Brady, *Weapon of Choice: Zero Tolerance School Discipline Policies and the Limitations of Student Procedural Due Process*, 22 CHILD. LEGAL RTS. J. 9, FN 19 (Spring 2002).

⁴⁰ See, U.S. DEPT. OF ED., THE STUDENT GUIDE 8-9 (2004) available at http://studentaid.ed.gov/students/publications/student_guide/index.html (last updated March 19, 2004).

⁴¹ More information on the application, and a downloadable form is available at the U.S. Dept. of Ed., FAFSA, at <http://www.fafsa.ed.gov> (last visited July 2, 2004).

⁴² For more information on both of these programs, see www.orphan.org.

At the state level, ten states have scholarship programs that offer foster youth between \$500 and full tuition to pursue post-secondary education.⁴³ Many state funded scholarship programs use Chafee dollars and are for the same group of youth that are eligible for 18 to 21 services. Other scholarship programs are needs-based programs. Examples of state scholarship programs include:

- Washington state’s Governor’s Scholarship Program;⁴⁴
- Arizona Friends of Foster Children Foundation scholarship program;⁴⁵ and
- Illinois scholarship program.⁴⁶

Tuition Waivers

A number of states have tuition waiver programs that allow youth aging out of care at 18 or older to attend public universities or vocational programs without paying tuition. Some of these tuition waiver programs cover room and board charges, books and related fees.⁴⁷

Education and Training Vouchers

See Chapter II, “Current Federal Laws” for more information.

Tips for Practitioners:

- Maintain youth in same school when appropriate and possible; determine if the youth is eligible for McKinney-Vento protections to either remain in his or her home school or gain immediate access into a new school, if appropriate, by obtaining your state’s interpretation of “awaiting foster care placement.”
- Know which schools in your community are designated “in need of improvement” or “persistently dangerous” under NCLB and advocate for transfers and supplemental services when appropriate. Consult your state or local department of education (or check their websites) to obtain these public lists.
- Overcome confidentiality barriers to obtain complete and accurate education records for minor youth prior to aging out of care. Obtain parental consent, determine if the child welfare agency can be considered a parent for FERPA purposes, or seek a court order to gain access to complete and accurate education records for youth under 18.
- Ensure that youth 18 and older are aware of (and assist them in accessing) a complete copy of their own education records.

⁴³ For a listing of state-sponsored education assistance youth, see, The National Conference of State Legislatures, *Independent Living for Foster Youth: Executive Study*, Appendix D at <http://www.ncsl.org/programs/cyf/ILFY.htm> (last updated February 2002).

⁴⁴ See, Washington Education Foundation, *Governor’s Scholarship Program For Washington Youth*, (2003) at <http://www.waedfoundation.org/gs/index.htm> (last visited June 22, 2004).

⁴⁵ See, Arizona Friends of Foster Children Foundation, *General Awards & Scholarships*, at <http://www.affcf.digital-dogs.com/awards> (last visited June 22, 2004).

⁴⁶ JOHN BLANKENBERGER, DIVISION OF PLACEMENT AND PERMANENCY, ILLINOIS DEPARTMENT OF CHILDREN AND FAMILIES SERVICES, *CROSSROADS, A HANDBOOK FOR YOUTH IN TRANSITION TO ADULTHOOD 20-25* (2003), available at <http://www.state.il.us/dcf/docs/crossroads.pdf> (last visited June 22, 2004).

⁴⁷ A list of states offering financial support was compiled by The National Conference of State Legislatures, *Independent Living for Foster Youth: Executive Study*, Appendix D at <http://www.ncsl.org/programs/cyf/ILFY.htm> (last updated February 2002).

- Advocate for youth to be able to participate in extracurricular activities, including providing the youth with appropriate equipment, or transportation if necessary.
- Advocate for youth at disciplinary proceedings that may affect their access to continued education. Ensure their rights are protected and that their version of the incident and their unique circumstances are explained when appropriate.
- Discuss future education options with youth and help youth identify further education plans.
- Encourage youth interested in university education to take college entrance exams, ensure they have transportation to these exams, and advocate for financial assistance for preparatory classes.
- Educate youth on availability of grants, scholarships, and tuition waiver programs that may influence the youth's decision about continued educational pursuits.
- Remind youth of the availability of Education and Training Vouchers (ETVs).
- Utilize adult literacy, GED, English as a second language (ESL) and education programs for older youth who qualify.

Questions to Ask Youth:

- ***What school do you attend? What grade are you in? (Never assume an age correlates with a particular grade).***
- ***How are things going at school? Is there anything particular you like/dislike about school?***
- ***Are you in any extracurricular activities (i.e., sports, clubs, groups, etc.)***
- ***How many different schools have you attended since entering foster care?***
- ***Do you have a preference of which school you would like to attend? What about that school makes you want to continue attending/transfer?***
- ***Are you involved in after school activities at your school? If you want to be involved, but aren't, are there barriers to being involved?***
- ***Do you have any safety concerns at your current school? Have you been the victim of a crime at your current school?***
- ***Have you reviewed your education records? Do you know how many credits you need to graduate? Are you missing any credits for classes you successfully completed? If 18 and older: Do you have a complete and accurate copy of your education records?***
- ***Do you know how many days of school you have missed this year? Do you know why you missed school?***
- ***Have you been disciplined at school this year? What do you attribute this to? Has the discipline caused you to miss school time?***
- ***What are your career plans? What do you want to do after high school?***

- ***If considering a GED: Have you discussed your decision to pursue a GED with anyone at your school? Can you explain the reasons that have led to your decision to pursue a GED? Have the requirements of obtaining a GED been fully explained to you? Have you compared the requirements to receive your high school diploma verses the requirements to obtain a GED?***
- ***If considering leaving school: Have you discussed the possibility of leaving school with a trusted adult? Is there anything about the supports or program you are receiving at school that could be changed that would affect your decision to leave school?***
- ***Are you considering continuing your education post-high school? What type of a program are you considering? Have you discussed your education options with someone at your school or another trusted adult?***
- ***If bound for higher education: Are you enrolled in AP classes? Have you considered taking the PSAT, SAT or other standardized test required for college admissions? Have you considered taking a preparatory class for these exams? Do you need financial assistance to enroll in these classes or for university applications?***
- ***Are you aware of grants, scholarships, and tuition waiver programs that may be available to you in your state? Do you have someone to help you fill out financial aid and other applications? Do you have money for the application fees?***
- ***Do you need help writing essays for you applications? Do you have a way to visit a school or program you are considering? Have you ever been on a college or program interview? Do you need help preparing for interviews? Do you need help with transportation to and from the school and program visits and interview?***

HEALTH

Needs

Children in foster care are at higher risk for health-related problems than the general population. The higher incidence of health issues can be related to a child's circumstances before entering the child welfare system as well as issues that occur once in the system.

Physical Health:

Youth in care have higher incidences of asthma, obesity, tuberculosis and a number of other physical ailments that often require medical intervention. For example, in a study of foster care youth in San Francisco, CA, researchers found that 12.3% of those youth entering care were found to have a positive tuberculin test— compared with averages in the general population of 2-6%.⁴⁸

Mental Health:

As victims of abuse and/or neglect who have been separated from birth families, these youth have a high incidence of mental health issues, as well. An estimated 40% to 65% of all children in the foster care system are in severe to critical need of mental health services, compared to 14% to 20% of the general population.⁴⁹ Un-addressed mental health issues become barriers to maintaining personal relationships and can affect a youth's ability to maintain employment and housing once leaving care.

Access to Services and Records:

Additionally, youth in foster care are less able to access medical services or obtain copies of medical records. A longitudinal study of foster youth in Wisconsin found that only 15% of the youth were assisted in obtaining their medical records and 11% were helped in setting up health insurance before they were discharged. Twelve to eighteen months after discharge, 62% of youth interviewed felt “not very well prepared” or “somewhat prepared” to obtain their own health information.⁵⁰ That same longitudinal study reported that even as about 47% of youth interviewed while still in foster care reported receiving mental health services, only 21% reported receiving such services 12-18 months after discharge.⁵¹

Part of maintaining a high level of quality medical service provision requires a continuity of care because doctors must be able to access a patient's complete medical history in order to fully address patients' medical needs. Medical histories also make it easier to identify, diagnose, and treat chronic or worsening conditions. Due to frequent placements and various primary physicians, many children in foster care have been unable to establish a “medical home” where information about health diagnosis and services can be gathered and stored.

⁴⁸ See, Abigail English and Kathi Grasso, *The Foster Care Independence Act of 1999: Enhancing Youth Access to Health Care*, J. OF POVERTY L. AND POL'Y, 219 n. 13 (July/Aug 2000).

⁴⁹ CLAIRE VAN WINGERDAN ET. AL, CASEY FAMILY PROGRAMS, EDUCATION ISSUE BRIEF: IMPROVING SPECIAL EDUCATION FOR CHILDREN WITH DISABILITIES IN FOSTER CARE 17 (2002).

⁵⁰ Mark E. Courtney, et al., "Foster Youth Transitions to Adulthood: A Longitudinal View of Youth Leaving Care" 32 CHILD WELFARE 685, 685 (Nov/Dec 2001).

⁵¹ *Id*

Additional Health Issues – In addition to physical and mental health, and access to services and medical records, youth in foster care face other key health matters that judges and lawyers must be aware of when working with youth aging out of foster care.

- Substance Abuse/Addiction – Adolescents in foster care with un-addressed abuse and addiction problems are at higher risk of being devastated by such abuse. These youth often do not have the support networks, family resources, or access to services that allow individuals to overcome an addiction.
- Sexual Health – All youth are more sexually active today than a generation ago and sexual health has become a major issue for young people in the United States. A youth in foster care with a history of sexual abuse will need additional supports in the area of sexual health.
- Contraceptive Use and Abortion – All minors have the legal right to use contraception in addition to a female minor’s right to choose to have an abortion. In some states, a minor must receive parental consent for an abortion, which may prove difficult for youth in foster care. However, states must provide an emergency override to parental consent, usually through the state judiciary. Juvenile court judges may be asked to provide this override in cases where a teen has chosen to terminate her pregnancy, and parents or legal guardians are unavailable.
- Pregnancy and Parenthood – Not only do youth in foster care need to have access to health care while they are pregnant, but they need to know how to access health care for their newborn children.
- Vision/Dental- Foster youth are less likely to receive basic services addressing vision and dental care that other similarly aged youth.

Critical Federal Programs and Services

Foster Care Independence Act Medicaid Extension

What is the Medicaid extension?⁵²

Under the FCIA, Congress allowed each state to elect to extend their Medicaid program to eligible youth aging out of foster care until they turn 21. The legislation allows for the continuation of federal matching percentages using funds from the Chafee Independent Living Program Funds for youth aging out of foster care at 18 through their 21st birthday. The federal government pays 50-76% of Medicaid costs for a state, depending on the state’s overall annual income.

While only a few states have extended Medicaid for these youth under this plan in this way, many more have chosen to extend coverage under either their existing State Children’s Health Insurance Program (SCHIP), or under another state health insurance program.

⁵² For more information, see, NATIONAL FOSTER CARE AWARENESS PROJECT, FREQUENTLY ASKED QUESTIONS ABOUT THE FOSTER CARE INDEPENDENCE ACT OF 1999 AND THE JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM 22-24 (2000) available at <http://www.nrcys.ou.edu/PDFs/Publications/faq.pdf> (last visited June 22, 2004); NATIONAL FOSTER CARE AWARENESS PROJECT, FREQUENTLY ASKED QUESTIONS II ABOUT THE FOSTER CARE INDEPENDENCE ACT OF 1999 AND THE JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM 18 – 22 (2001) available at http://www.nrcys.ou.edu/PDFs/Publications/FAQII_FINAL.pdf (last visited June 22, 2004). See also, Nat’l Conference of State Legislators, Child Welfare Project, *Independent Living for Foster Youth: Executive Summary* (2002) at <http://www.ncsl.org/programs/cyfl/ILFY.htm> (last updated February 2002).⁵²

What youth are eligible for the extension under FCIA?⁵³

Youth who were in foster care on their 18th birthday are eligible for the Medicaid extension in those states that have decided to take the opportunity to expand care. Each state has discretion over how long after emancipation that coverage will last. However, the FCIA extension may only be used to cover children who have aged out of foster care at their 18th birthday and have not yet turned 21. If the state has decided to cover these youth under a different program, then age requirements may differ.

There is no income or resource status requirement in the federal program, but states have the latitude to implement restrictions on youth's participation in both the duration of coverage and income limits.

What states provide an extension of Medicaid under FCIA or using some other state health care program?

The number of states who extend Medicaid or some other form of health care coverage to youth after age 18 is growing rapidly. Currently, over half of US states provide some type of health care extension that covers youth aging out of foster care and many more are considering it in their upcoming legislative sessions. Because the list of states changes so frequently, to find out if your state provides the extension, contact your state's Medicaid benefits or SCHIP office for specific details.

What if a state does not extend coverage to older youth who have aged out of foster care?

Most states are looking at the extension of health care coverage to youth who have aged out of care as a major issue. If, however, a state does not extend Medicaid to youth who have aged out of foster care, then check to see if these youth are covered under another state health care extension:

- Some 18 year-olds may be covered for one additional year if they meet a state's income guidelines. See the questions regarding the "State Children's Health Insurance Program – SCHIP" later in this section.
- Young people with disabilities who qualify for Supplemental Security Income (SSI) can qualify for Medicaid. See section on "Special Considerations for Children With Disabilities" in Chapter IV.
- Pregnant or parenting teens that meet the state's income eligibility guidelines are covered.
- Other young people who have been granted an exception, due to participation in a particular state-sponsored program may be covered as well.⁵⁴

Early and Periodic Screening, Diagnosis and Treatment (EPSDT)⁵⁵

Who is eligible for EPSDT?

Children who are Medicaid-eligible and under 21 or those with disabilities are covered, see section on "Special Issues For Youth With Disabilities" in Chapter IV for more information.

⁵³ For a chart identifying states and their federal matching funds, see, OFFICE OF HEALTH POLICY, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FEDERAL MEDICAL ASSISTANCE PERCENTAGES, at www.aspe.hhs.gov/health/fmap.htm (last updated December 2003).

⁵⁴ For example, in Nebraska, those youth who are emancipated, but are involved in a state-sponsored educational program may be covered until age 21 and in Louisiana, those youth involved in a young adult independent living program qualify for Medicaid coverage through age 21. See, National Conference of State Legislatures, Independent Living for Foster Youth: Executive Summary, Child Welfare Project Appendix C, February 2002, available at <http://www.ncsl.org/programs/cyf/ILFY.htm> (last visited June 28, 2004).

⁵⁵ See, 42 U.S.C.A. § 1396d(a),(r) (2004). See also, Maureen O'Connell and SIDNEY WATSON, MEDICAID AND EPSDT, (March 2001) at www.nls.org/conf/epsdt.htm; NATIONAL HEALTH LAW PROGRAM, FACT SHEET: EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (March 1999), available at <http://www.healthlaw.org/pubs/19990323epsdtfact.html> (last visited June 23, 2004).

What services can a youth receive under EPSDT?

Qualifying children should be provided with periodic screening, vision, dental, and hearing services provided in the state's plan, in addition to any medically necessary health care that falls within the scope of services.⁵⁶ The screenings must include physical and mental health assessments, lab tests, check-ups, and health education. EPSDT also includes pre and post-natal care for adolescent mothers.

Even though a state may not cover all procedures, state are required to cover all medically necessary services (see insert box) regardless of whether the state plan covers them. States are also required to do outreach to eligible youth and their families.

Categories of Coverage under Early Periodic Screening, Diagnosis and Treatment⁵⁷

There are a number of discretionary procedures that can be covered under the program as well, check with your local benefits office to find out what additional items are covered.

- Inpatient and outpatient hospital care,
- Physician's services,
- Nurse/midwife services,
- Pediatric and Family nurse practitioner services,
- Federally qualified heal centers,
- Laboratory services and x-rays,
- Rural health clinic services,
- Family planning services,
- Home healthcare services for those older than 21 who qualify (includes medical equipment and supplies),
- Vaccines,
- Physical therapy, and
- Prescribed drugs, prosthetics, and eyeglasses.

How is this program funded?

EPSDT is funded through a state's Medicaid program.

State Children's Health Insurance Program – SCHIP⁵⁸

What does SCHIP provide generally?

SCHIP amended the Social Security Act to provide a block grant to states and territories creating and/or expanding health care coverage to children in low-income families who do not already have insurance.⁵⁹ Originally, it was envisioned as a program to address the health insurance needs of the working poor, those who earned too little to afford health insurance, but too much to qualify for other state aid.

The grants to states under SCHIP may be used to expand coverage under Medicaid to children under age 19, or to create or expand an existing state insurance program. States can set their own income guidelines as long as those eligible are not making more than 300% of the federal poverty line.

⁵⁶ 42 U.S.C.A. § 1396d(r) (2004).

⁵⁷ Taken from 42 U.S.C.A. § 1396d(r) (2004), for full listing of services, refer to the federal statute or your state Medicaid plan.

⁵⁸ For an exploration of the pros and cons of various methods of using SCHIP funds, see, THE AMERICAN ACADEMY OF PEDIATRICS, STATE INSURANCE PROGRAM (SCHIP): COMPARISON OF MAJOR STATE OPTIONS, at <http://www.aap.org/advocacy/schipcom.htm> (last visited on June 22, 2004).

⁵⁹ See, CENTER FOR CHILD HEALTH AND MENTAL HEALTH POLICY, GEORGETOWN UNIVERSITY CHILD DEVELOPMENT CENTER, STATE CHILDREN'S HEALTH INSURANCE PROGRAM, at <http://gucchd.georgetown.edu/links13.html> (last modified July, 2001) (including basic information about SCHIP and links to various websites, legislation, and publications that provide more in depth information).

How can older foster youth benefit from SCHIP?

Foster youth can benefit from SCHIP once they have aged out of foster care because the federal government extended funding for states' health care coverage programs to age 19 for youth whose family income is 200% of the poverty level or less.⁶⁰ As long as youth under age 19 meet their state's specific income guidelines, they should be able to qualify for health care coverage under SCHIP.⁶¹

Does the coverage SCHIP programs offer differ from Medicaid's coverage?

That depends. If the state has chosen to use SCHIP funds to expand Medicaid to cover a wider range of people the state cannot use those funds to extend a different version of Medicaid to some recipients. However, if the state chooses to create or expand an existing state insurance program, then the standards of coverage under SCHIP can be different. States may choose to cover a greater or lesser number of treatment options, and the state SCHIP administration office is separate from the Medicaid administration office.

Medical Record Requests and the Health Insurance Portability and Accountability Act of 1996 (HIPAA)⁶²

What is HIPAA?

HIPAA is federal legislation including the protection of the privacy of personal health information and to ensure that people are not denied health insurance due to pre-existing health conditions. Since states can modify some of the provisions of this legislation, the full extent of consumer protection varies from state to state.

HIPAA has four objectives:

- assure health insurance portability by eliminating job-lock due to pre-existing medical conditions,
- reduce healthcare fraud and abuse,
- enforce standards for health information, and
- guarantee security and privacy of health information.

What are HIPAA's privacy rules?

There are a number of policy regulations regarding standards of privacy establishing when and to whom health information can be released without authorization. These regulations allow for more individual control over the release of medical information, in addition to providing administrative procedures for both divulging information and for filing complaints against organizations that do not comply.⁶³

⁶⁰ The federal guidelines set the outer limit, but individual states may make the eligibility standards more stringent. Contact your local SCHIP office for more details.

⁶¹ See, Eugene M Lewit, et. al., *Health Insurance for Children: Analysis and Recommendations*, 13 THE FUTURE OF CHILD. 5 (Spring 2003), available at www.futureofchildren.org/usr_doc/tfoc13-1_nophoto.pdf (last visited June 23, 2004).

⁶² Pub. L. No. 104-191 (August 21, 1996). For more information pertaining to this legislation, its implementation and effects, visit the Dept. for Health and Human Svcs., Office for Civil Rights HIPAA website at <http://www.hhs.gov/ocr/hipaa/> (last visited July 2, 2004).

⁶³ 45 C.F.R. §164.500(2003).

Only organizations that are considered “covered entities” must comply with the privacy provisions of HIPAA. A “covered entity” includes health plans, health care clearinghouses, and health care providers. There is no federal guidance as to whether child welfare agencies are covered entities for the purposes of this law. Consequently, states have made their own determination, with a majority finding that these agencies are covered.

How does HIPAA relate to youth in foster care?

Since under the federal privacy provisions, covered entities must protect individually identifiable health information, and under state laws or internal agency regulation, child welfare agencies could be considered “covered,” children in foster care may benefit from HIPAA. Unless there is a federal or state exception, child welfare agencies must keep the medical information regarding the children in their care private. This can be a difficult position for agencies since they are often the legal guardians of children in their care, making medical decisions and offering consent for un-emancipated minors in place of a parent.

Once a child ages out of care, he or she can control access to personal health information. Each youth who is emancipating has a right to get a copy of all health records including immunizations, dental records, check-ups or treatment reports. If the foster care agency has not kept track of this information on behalf of the youth, a foster child who has been moved multiple times and has not maintained the same primary care physician may find it difficult to collect all relevant medical information.

When can a “covered entity” release medical information?

Disclosure is allowed when authorized by the individual, under court order or subpoena, or for treatment purposes, but strict procedures apply for each of these exceptions.⁶⁴ Additional disclosure exceptions are also available, including: where state law requires “the reporting of disease or injury, child abuse, birth, or death...” for billing purposes,⁶⁵ or when there is a compelling state need for disclosure that relates to public health, safety or welfare.⁶⁶

Tips For Practitioners:

- Ensure all youth in care have general physical health check-ups as well as dentist and optometrist appointments regularly while in care and shortly before leaving.
- Female youth should also have at least one appointment for a pelvic exam with an Obstetrician/Gynecologist before aging out of care.
- Ensure youth have access to information on health, diet, and exercise and advocate for youth to be able to participate in extracurricular activities positively affecting their physical and/or mental health.
- Check to make sure that a current mental health evaluation has been conducted, if appropriate. If a youth has already been diagnosed, ask about the youth’s support in addressing these health issues (doctor or therapist, for example) to try and ensure those supportive clinical relationships survive emancipation.

⁶⁴ See, Dept. for Health and Human Svcs., Office for Civil Rights HIPAA website at <http://www.hhs.gov/ocr/hipaa/> (last visited July 2, 2004).

⁶⁵ For example, when multiple people are covered under one health plan and the health insurance company sends a report to the named insurance holder.

⁶⁶ 45 C.F.R. § 160.203(c) (2004).

- Assess whether a youth with a diagnosis or condition requiring ongoing treatment and attention understands the diagnosis and his or her role in continuing treatment.
- Assess whether a youth currently taking medication understands why the medication is necessary and is able to manage it without supervision.
- Ensure mental health services, transitional living, or other opportunities are set up to provide a youth aging out of care with mental health or behavioral issues with a safety net after exiting care.
- Know whether the youth is covered under Medicaid both while in care and after aging out. Contact your state’s Medicaid office to see if it has signed on for the Medicaid extension or if there is another extension program that a youth aging out of care can access.
- Make sure that the youth knows how to continue health care after emancipation through an extension of Medicaid or some other state-sponsored medical coverage.
- Assist the child welfare agency with gathering a child’s medical records well before his or her 18th birthday, as that process can take some time.
- Obtain authorization to release medical information from the parent if state law considers a child welfare agency a “covered entity” under HIPAA, or if the parent is unwilling, use a court order or subpoena.
- Work with the youth on establishing a “medical home” where all health care can be provided and all related information saved.
- Ensure that youth in foster care who will soon be parents have access to maternal and child health care services (see chapter on “Special Issues for Teen Parents”).

Questions To Ask Youth

- ***Have you been to see a doctor in the last year? Have you needed to see a doctor and been unable?***
- ***Have you been diagnosed with a medical issue? What treatment is needed?***
- ***Do you have particular medications you are taking? What health issues do they address?***
- ***Do you have plans for how to maintain your medical treatment and/or medications after leaving foster care?***
- ***Have you ever been pregnant? Are you currently raising a child?***
- ***When was the last time you saw your doctor? Dentist? Optometrist/Ophthalmologist? OB/GYN?***
- ***Do you have access to healthy foods at school/home?***
- ***Do you have your own copy of your immunization records? If the youth is raising a child of her own: Do you have a copy of your child's immunization records?***
- ***Do you have a copy of your medical history?***
- ***If you do not have your own copy, have you asked the child welfare agency for a list of all of your treating doctors and a copy of your medical records?***
- ***Do you know what kind of medical coverage you have now? Do you know if you will be able to continue that coverage after leaving foster care?***

EMPLOYMENT

Need

If a youth in foster care leaves the state's care without being prepared to enter the labor market,⁶⁷ success is difficult and the youth may eventually need to turn to the state for supplemental assistance.⁶⁸

Factors often faced by children in foster care – instability in the home, less educational achievement, lack of consistent adult role models, and the absence of a financial or emotional safety net - are some of the same factors that inhibit finding and maintaining employment. A national study of youth aging out of foster care in 1991 revealed that two to four years after leaving care, just 38% of youth surveyed had maintained any type of employment and only 48% of those youth held full-time jobs.⁶⁹ State-focused studies looking at this phenomenon have found similar trends.⁷⁰

A more extensive study of youth exiting care in three states found that youth aging out of care were underemployed and had mean earnings below the poverty level. It also showed that youth who were working when the study was conducted had begun to do so early, but tended to advance more slowly in the labor market than those who had never been in the state's care.⁷¹

Preparing an 18-year-old who is aging out of foster care for entrance into the workplace is not always easy, but early planning and reliable continuing services are key to leading youth in foster care to self-sufficiency after emancipation.

⁶⁷ A federal study of independent living (IL) services found that in 1996 (of the 30 states that reported such statistics), 37% of total eligible youth did not receive any IL services whatsoever. See, ADMINISTRATION FOR CHILDREN, YOUTH, AND FAMILIES, US DEPARTMENT OF HEALTH AND HUMAN SERVICES, TITLE VI-E INDEPENDENT LIVING SERVICES: A DECADE IN REVIEW, EXECUTIVE SUMMARY iii (1999), available at <http://www.nrcys.ou.edu/online/b.htm> (last visited June 23, 2004).

⁶⁸ A study of emancipated youth in Maine documented that 51% were unemployed and 66% on some form of public assistance after emancipation. See, CASEY FAMILY PROGRAMS, ISSUE BRIEF: IMPROVING EDUCATION FOR CHILDREN WITH DISABILITIES IN FOSTER CARE 16 (2002).

⁶⁹ R. COOK, A NATIONAL EVALUATION OF TITLE IV-E FOSTER CARE INDEPENDENT LIVING PROGRAMS FOR YOUTH: PHASE 2 FINAL REPORT (1991).

⁷⁰ For example, using employment statistics from 1995-1997, a study in Wisconsin found that 21% of youth who had been in foster care but were emancipated in 1995 were unemployed, and 24% of emancipated youth were employed 9 months or less out of the 24 months following emancipation. A. DWORSKY, AND M. E. COURTNEY, SELF-SUFFICIENCY OF FORMER YOUTH IN FOSTER CARE IN WISCONSIN: ANALYSIS OF UNEMPLOYMENT INSURANCE WAGE DATA AND PUBLIC ASSISTANCE DATA (2000) at <http://aspe.hhs.gov/hsp/fosteryouth/W100> (last modified July 30, 2001).

⁷¹ Robert M. Goerge, University of Chicago, Chapin Hall Center for Children, *Executive Summary: Employment Outcomes for Youth Aging Out of Foster Care* CHAPIN HALL DISCUSSION PAPER (2002), available at http://www.chapinhall.org/home_new.asp (last visited June 23, 2004).

Major Issues

Problems Youth Face In Finding and Maintaining Jobs – Youth in foster care confront a number of issues seeking employment and maintaining jobs once hired. There are a number of factors that judges and attorneys should be aware of before emancipation:

- **Job Training/Education** – Unless a youth in care has received adequate education and/or job training, it can be difficult to find even the lowest paying entry-level jobs. Literacy is a must, since many of the largest low-wage employers require their applicants to take written “personality” tests as a prerequisite for being hired.⁷²
- **Experience and Exposure to Job Possibilities** – Without prior experience or a personal contact within the industry, finding jobs can be difficult. This lack of personal contact may also make it difficult for youth to have an understanding of the variety of jobs that exist and the skills needed to be hired into such jobs.
- **Lack of Motivation and Enforcement of Positive Work Ethic** – A number of youth in foster care have not had consistent adult role models who were employed and who encouraged the youth to achieve. Without a solid foundation in the importance of employment and the mechanics of getting and keeping a job, youth can become disinterested in finding work or in committing themselves to a job once hired.
- **Availability** – The range of entry-level jobs is limited, especially jobs that provide a living wage, benefits, and/or room for advancement.
- **Job Stability** – Youth in care often struggle to keep employment once they have found a job. Often issues in the youth’s personal life may interfere with maintaining employment (e.g., health issues or child care).
- **Inadequate Pay** – The federal minimum wage for 2004 is \$5.15 an hour, although most low-wage jobs hover around \$6 - \$8 an hour. This equates to a monthly salary of \$980- \$1280 before taxes, which often cannot address all of a person’s housing, food, and transportation needs, not to mention health care expenses or the cost of raising a child. These low-wages force workers to take on more than one job (if more than one can be found) or to turn to alternative, sometimes illegal, forms of economic advancement.

⁷² For example, Wal-Mart administers a personality test that they believe indicates personality traits that lead to factors such as employee absenteeism, theft, and poor work ethic. See, BARBARA EHRENREICH, NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA 123-29 (1998).

Critical Federal Programs and Services

Foster Care Independence Act (FCIA)/John H. Chafee Independent Living Program (Chafee Program)

What employment services can be provided under the Chafee program?

The first purpose of the FCIA is to identify youth likely to stay in foster care until age 18 and help them transfer to self-sufficiency. As part of that goal, states are encouraged to provide a number of services including career exploration, vocational training, job placement and job maintenance, and budgeting and financial management skills. However, states have wide latitude as to what services they provide and what methods, agencies, and contractors they use to deliver these services.

The fifth purpose reiterates the need to help in the transfer to self-sufficiency, focusing on service provision to youth who have aged out of care and are between 18 and 21. States are allowed to create and fund programs that “complement” a youth’s own move toward independence.

What are some general principles to know for Chafee employment programs?

There are a number of general assertions that are important to keep in mind when considering any Chafee program offered to youth in your state:

- Each state has discretion to continue a court’s jurisdiction for a youth after that youth reaches the age of majority (ages 18 to 21, depending on state law). Without court jurisdiction, it may be more difficult to monitor a youth’s progress in and access to Chafee programs.
- Each state also has wide latitude in terms of how it utilizes its Chafee dollars and the programs it does or does not offer, in addition to setting the eligibility requirements in a majority of their programs.

For more information on what states must provide in their Chafee programs and what is discretionary, see Chapter II, “Current Federal Laws.”

What employment programs are provided to youth in foster care?

Program provisions vary from state to state. Some examples include:

- Maine’s “Life Skills Coordinators” connect youth to employment services that are both state and privately run so that youth can understand these agencies before they reach their 18th birthday.⁷³
- Idaho’s Chafee Independence Program State Plan – Idaho’s employment component focuses on a combination of educational goals (from GED to college depending on the youth), employment counseling, placement and training.⁷⁴ The state identifies youth as young as 15 as being eligible for their services, if the child is determined to be a likely candidate for continuing in foster care until age 18.

⁷³ See, MAINE BUREAU OF CHILD AND FAMILY SERVICES, APPLICATION AND STATE PLAN; TITLE IV-E INDEPENDENT LIVING PROGRAM; FEDERAL FISCAL YEARS 2001-2004, at <http://www.state.me.us/dhs/bcfs/cf3p4.htm> (last updated August, 2003) and http://www.nrcys.ou.edu/NRCYD/State_Pages_f/state_me.htm (last visited June 23, 2004).

⁷⁴ See, IDAHO DEPARTMENT OF HEALTH AND WELFARE, CHAFEE FOSTER CARE INDEPENDENCE PROGRAM STATE PLAN, STATE OF IDAHO, FFYS 2001 – 2004, at http://www.nrcys.ou.edu/NRCYD/State_Pages_f/state_id.htm (last visited June 23, 2004).

- In California, each city provides slightly different services, producing a wide range of programs. One statewide program involves working with the Community College Foundation to contract out for Independent Living Services to older youth in foster care. The contract includes educational training, job training and preparation, and life skills training prepared by and provided on the campuses of Community Colleges across the state.⁷⁵

Workforce Investment Act⁷⁶

What is the Workforce Investment Act (WIA)?

The WIA is a federal program that mandates states to provide employment services to adults, dislocated workers, and youth. These services include job search assistance, assessment and case management, and training.

In addition, WIA requires states to create one-stop centers for adults that provide career counseling, job training, and job searching. The intent of these centers is to combine all the elements of searching for a job into one location, rather than sending job seekers to various offices throughout a city to apply for counseling or sign up for job training. These one-stop centers operate with varying levels of success, as the quality of the service provision is not consistent from jurisdiction to jurisdiction.

How can children in foster care and those who are aging out benefit from the program?

Youth in care and those about to age out have access to both the WIA's youth program and the adult program. The youth program allows individuals ages 14 to 21 to participate in skill-building activities by focusing on apprenticeship and teaching basic job and job-seeking skills. Youth ages 14 to 21 qualify for services as long as they are low-income and have met at least one of six specific barriers to employment:

1. Deficiency in basic literacy skills
2. School dropout
3. Homelessness, run away, foster child
4. Pregnant or parenting
5. Juvenile or adult offender
6. Individual requiring additional assistance to complete an educational program, or to secure and hold employment

While the youth program is geared toward apprenticeship, mentorship and training, the adult WIA program focuses on results-based job searching and job training assistance. Participants from ages 18 to 21 who are part of the youth program can also enroll with the dislocated/adult worker programs. In this way, older youth are able to take advantage of both programs.

What does each program provide?

Both the youth and adult programs under the WIA evaluate the needs of each participant and tailors services to meet those needs. However, due to the differences in the populations served, there are differences between the programs.

⁷⁵ A general overview of the California state program is available at http://www.dss.cahwnet.gov/cfsweb/ILPCountyC_1443.htm (last visited June 22, 2004). Specifics on the Community College Foundation can be found at <http://www.communitycollege.org/> (last visited June 22, 2004).

⁷⁶ 29 U.S.C.A. §2801 et seq. (2004).

Youth Programs:

All local youth programs must offer the following services, many of which are geared toward the special needs of adolescents entering the workforce for the first time:⁷⁷

- Tutoring, study skills training and instruction leading to secondary school completion
- Alternative secondary school offerings
- Summer employment opportunities directly linked to academic and occupational learning
- Paid and unpaid work experiences
- Occupation skill training
- Leadership development opportunities
- Supportive services
- Adult mentoring
- Follow-up services for at least 12 months
- Comprehensive guidance and counseling, including drug and alcohol abuse counseling and counseling referrals

Adult Programs:

Adult programs also have a list of services they must provide. Most significantly, the WIA mandated the formation of “One-Stop” centers where job seekers can receive basic services like job counseling and placement assistance, skill aptitude evaluation, job training, resume assistance, and follow-up services.

The services provided to adults age 18 and above through the One-Stop centers are divided into three categories:

- 1. Core Services:** All those who come into the One-Stop be able to access services related to determining WIA eligibility, intake, skill/aptitude/ability assessment, job search and placement assistance, referral information, labor market information, performance information for One-Stop providers and follow-up services.
- 2. Intensive Services:** Those unable to find work with Core Services and meet other eligibility criteria may access more specialized assistance like the development of an individual employment plan, counseling, case management, and “short-term, prevocational services.”
- 3. Training Services:** Available to those eligible for Intensive Services, training may include programs related to specific occupational skills, on the job and workplace training, upgrading skill level, job readiness, adult education and literacy training, or more customized trainings.⁷⁸

⁷⁷ 20 C.F.R. § 664.410 (2004).

⁷⁸ See, National Center on Secondary Education and Transition, *Youth with Disabilities and the Workforce Investment Act of 1998*, 1 POLY UPDATE (December 2002), http://www.ncset.org/publications/policy/2002_12.asp (last updated December 4, 2002).

How do states and local governments receive funding to provide WIA youth services?

In response to grant proposals from individual organizations, the federal government distributes federal funds called “youth formula” WIA funds to states, localities, and Reservations (see the “Special Considerations for Tribal / ICWA Youth” in Chapter IV for more information) to provide WIA activities for eligible youth.⁷⁹

Of the funds distributed to each program, at least 30% of local employment assistance funds must go to help youth who are not in school. Youth not in school include those who have dropped out as well as those who have graduated; however, a youth in an alternative school is not considered as part of this population.⁸⁰

Driver’s Licenses and Youth In Foster Care

Often, an important factor in providing an older youth in foster care with employment opportunities is access to transportation. Driving can be crucial to youth in both finding and maintaining a job. In addition, a driver’s license can provide youth with needed identification that assists in the job application process when filling out an employer’s tax documents and when doing other activities like opening a bank account. Having a driver’s license while in care is also helpful to youth who are transitioning from the foster care system to independence, since they are exposed to situations that will arise while living on their own (i.e., going to the DMV, applying for driver’s insurance, understanding the cost of car maintenance, etc.). However, state child welfare agencies have different rules on how young drivers in the child welfare system are handled. If you have a youth who would benefit from having access to a driver’s license, there are a number of factors to consider:

- Whether special approval from the child welfare agency is needed before a youth in care applies for his or her license.
- Whether the state provides either driving lessons to youth in care through independent living programs or reimbursement to foster families who pay for these lessons for the youth.
- Whether your state agency reimburses foster parents or youth in care for driver’s insurance costs.⁸¹
- Whether youth are allowed, under state law, to be covered under a foster parent’s insurance policy or if a youth needs to find his or her own coverage.

⁷⁹ In 2000, a total of 36 sites were selected to receive funds, the majority of the funding going to urban areas and those remaining going to rural areas and Native American Reservations. See, US DEPT. OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, YOUTH OPPORTUNITY GRANTS 2000 (2000).

⁸⁰ Workforce Investment Act, 65 Fed. Reg. 49,293-49,342 (August 11, 2000) (final Rule codified as 20 C.F.R. Part 652 (2000)).

⁸¹ Coverage of car insurance costs under Title IV-E maintenance payments is an unresolved issue for child welfare agencies. “Liability insurance with respect to a child” is included in the Social Security Act’s language of covered costs in § 475(4), but no definition of “liability insurance” is given. Some states have chosen to pay for car insurance using Chafee dollars. For a discussion of insurance coverage and Title IV-E, See, CHILDREN’S BUREAU, U.S. DEPT. OF HEALTH AND HUMAN SVCS., 8.1B TITLE IV-E, ADMINISTRATIVE FUNCTIONS/COSTS, ALLOWABLE COSTS - FOSTER CARE MAINTENANCE PAYMENTS PROGRAM (2002) at http://www.acf.dhhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=36#736 (last updated July 14, 2004).

National “Away from Home” Employment Programs For Youth

There are a number of employment opportunities for older youth that provide a stipend, housing, medical care and the chance to gain hands-on experience. However, the availability of many of these opportunities varies from community to community as do admissions criteria. There are some popular national programs available that have been used by youth in foster care or those who have just aged out as the first steps toward employment. It is important to discuss goals, strengths, and weaknesses with each youth and help them approach their individual job search.

Job Corps⁸²

What is Job Corps and who runs it?

Job Corps is an education, job training, and residential program administered by the US Department of Labor and the Employment and Training Administration specifically set-up to assist at-risk youth ages 16 to 24.

The program runs in stages, from the basics of outreach and general social skills training to career preparation and professional development. There are 118 Job Corps centers across the U.S. and each one covers different areas of job training, from clerical to web design to culinary skills. All centers also offer classes to help those without high school degrees get their GED. Many centers are either fully residential or are partially residential and partially commuter. Each program must provide it’s participants with opportunities for mentorship and internships, in addition to their in-class work⁸³

Besides training, what does Job Corps provide to youth participants?

Job Corps provides a small stipend for living expenses, health insurance including vision and dental, three meals a day and a fund for starting a new career upon graduating from the program.

What happens to a youth once he or she finishes the Job Corps program?

Youth are able to take the money offered through the program to help them in their quest to find a job. Before the end of the program, Job Corps works with the youth on finding employment and maintains contact with each graduate for 12 months to assist with housing or employment issues that may arise.

Americorps⁸⁴

What is Americorps?

Americorps is the overarching organization that funds two programs for young adults in the United States - Vista and the National Civilian Community Corps (NCCC). These programs provide support to low-income communities, assist in disaster relief efforts, and work on environmental protection projects in national and local wildlife areas.

⁸² All information taken from the Job Corps website at the US Department of Labor, Employment and Training Administration at <http://jobcorps.doleta.gov> (last visited June 23, 2004), and from the Job Corps Career Development Center’s website at <http://www.jccdc.org> (last visited June 23, 2004).

⁸³ For more information on Job Corps and the application process, look to the Job Corps website at <http://www.jobcorps.org> (last visited June 23, 2004).

⁸⁴ All information taken from Americorps’ website at <http://www.americorps.org> (last visited June 23, 2004).

Can youth aging out of foster care participate in any Americorps program?

That depends on the youth's experience. Vista requires a bachelor's degree or at least 3 years of work experience. If a youth has not had such experience upon graduation, then the NCCC is a better option. The NCCC does not have education or experience requirements and only requires that applicants be available to relocate to one of their five work sites across the country.⁸⁵ Both programs require that a youth be a U.S. citizen, U.S. national or a lawful permanent resident.

What do these programs provide youth?

Americorps programs provide housing (or a stipend for housing expenses), a small stipend for other living expenses like food, transportation, entertainment, health care, and an education award at the end of service that can be used toward paying for college, vocational training, or graduate school.

Contact your local Americorps recruitment office for particular program details and the application process, www.americorps.org or call 1-800-942-2677.

Conservation Corps⁸⁶

How does the Conservation Corps differ from the other programs available for youth?

The Conservation Corps (CC) offers much of the same services as other residential programs for youth including a stipend, classroom instruction, general and technical skills training, supportive services, and in many cases, an Americorps post-service educational stipend.

What differs about the programs is their structure and focus. The CC puts a strong emphasis on experiential and environmental service based education and has its focus on efforts of environmental conservation, urban infrastructure, and human service projects.

How many CC programs exist in the US?

There are approximately 118 programs in 31 states and the District of Columbia.⁸⁷

Is this a federally-funded program?

The CC only receives about 26% of its annual operating budget from the federal government. The rest is raised by the states themselves and by sponsoring individuals and organizations.

United States Military

Youth who leave the child welfare system and join the US military are drawn to the experience for a variety of reasons. For some, it is a way to secure housing, salary, job training and job experience and perhaps to begin a military career. Others may be brought to it through a sense of duty, or to prove themselves and earn respect.

There are many benefits that can be derived from enlisting but there are many sacrifices as well. The decision to join should be conscientious and well thought out. For those youth with an interest in military service, lawyers and judges may need to explain the commitment required so that a particular youth's decision is made with knowledge of all available information.

⁸⁵ Worksites located in Charleston, SC; Washington, DC; Perry Point, MD; Denver, CO; and Sacramento, CA.

⁸⁶ All information in this section take from the National Association of Conservation Corps' website at <http://www.nascc.org> (last visited June, 23, 2004).

⁸⁷ Programs exist in AK, AZ, CA, CO, DC, FL, IL, ME, MD, MA, MI, MN, MT, NV, NH, NJ, NM, NY, NC, OH, OR, PA, RI, SC, TX, UT, VT, WA, WV, WI. For a listing of the organizations and the work they do, See, National Association of Conservation Corps at <http://www.nascc.org/corpslist.htm>.

What does the military have to offer a youth aging out of foster care?

Enlistment provides recruits with food and shelter, in addition to clothing, health care, and a stipend to cover other expenses. There is job training and, for some, a chance to advance within the service or to continue in higher education after they have served. The military can also provide structure and a sense of community.

While some youth thrive in a military environment, others may not. Although the military provides much to its enlistees, there is nothing particular to the military that equips the institution with the skills needed to relate to or address the needs of a youth coming out of foster care with a possible history of abuse or neglect.

What are the eligibility criteria for joining?

Before deciding to join the military, there are eligibility restrictions to consider. Each youth should check out the specific limitations with a local U.S. military recruiter, but as a general rule, a person enlisting must be between 18-35.⁸⁸ All enlistees must be U.S. citizens or a permanent legal residents. While U.S. citizens are free to move up within military ranks, those who are not citizens are restricted in their service. Legal residents who are not citizens cannot be promoted to positions requiring security clearance and cannot reenlist beyond their first term of service.⁸⁹

Single parents are not allowed to enlist and individuals with certain disabilities or mental health histories are prohibited as well. There are vision, height, and weight requirements that are enforced without being restricted by anti-discrimination legislation like the Americans with Disabilities Act. Those who do not pass the military's psychological evaluation or their moral assessment – either due to former drug use or criminal convictions – may also be denied enrollment.

The military prefers that applicants have at least a high school diploma. They will accept those with a GED or similar certificate of completion for basic level of study as long as the individual scores well enough on the military entrance exam. The military accepts a very small number of people without diplomas, and only from the pool of those who score very highly on the exam.

Fiscal Responsibility

Learning the basics of maintaining finances is an important, but overlooked skill. Following are a list of basic money management skills and ideas that each youth becoming independent from the state needs to know:

- How to create and maintain a workable budget, including an introduction to “what things cost” so that the youth is not scrambling to keep up with bills that are far more than expected,
- Basic banking skills: how to open a checking and savings account, what documentation is needed, whether a co-signer is needed,
- Check writing, balancing a checking account, and
- Basic tax information, how to file a 1040EZ or 1040-tax form, and when it must be submitted.

⁸⁸ A youth can be 17 and enlist with parental consent. The various branches have set their own outer age limits for first time enlistees, for example those up to age 34 may enlist in the Army, but only those up to 27 may do so for the Air Force. See, ROD POWERS, YOUR GUIDE TO THE U.S. MILITARY, at <http://usmilitary.about.com> (last updated June 24, 2004).

⁸⁹ If a non-citizen youth has been a resident of a country considered hostile to US interests, then he or she will need a waiver to enlist. Check with your recruiter to see what countries qualify.

Tips For Practitioners:

- Know what programs exist in your community to address employment through your Chafee program and the WIA.
- Advocate for youth to be enrolled in appropriate job training programs.
- Evaluate programs available to youth in or aging out of foster care to determine if the training programs teach the following employment skills:
 - How to look for jobs
 - How to fill out job applications
 - How to prepare a resume
 - Interview skills
 - Job application and interview follow-up
 - Being a good employee - timeliness, appropriate dress, etc.
 - Rights and responsibilities of employees and their employers
 - How to address negative issues at work, who to approach with complaints, dispute resolution
- Ensure that the independent living services provided to youth include budgeting and fiscal responsibility assistance since the low pay of entry-level jobs require strict fiscal responsibility and a system of keeping track of costs.
- Request a vocational assessment for youth who are questioning what kind of training or job skills they should pursue. Youth with disabilities are entitled to this assessment under IDEA (see “Special Considerations for Youth with Disabilities” in Chapter IV).
- Advocate for the youth to access mentorship or internship programs in your area to help establish a foot in the door to gainful employment, expand the youth’s idea of employment possibilities, and be a role model for workplace conduct.
- Know which costs related to applying for and maintaining a driver’s license, if any, the child welfare agency will cover for youth in care.
- Review all employment options with your clients. Do not forget options like Job Corps, Americorps, Conservation Corps and the U.S. Military, including the pros and the cons of the various programs and options.

Questions To Ask Youth

- *If you could end up in any career, what career would that be?*
- *What experience (job, apprenticeship, extracurricular) have you had at this point?*
- *Do you know any family members or other adults who have jobs you are interested in? Do you feel comfortable approaching them to ask questions about their job?*
- *Have you been thinking about potential jobs for after emancipation/graduation?*
- *Have you applied for any jobs? What kinds of jobs?*
- *Do you have any people who could provide references for you?*
- *Have you had any job training?*
- *What kind of job training/information would you like to make it easier to get a job?*
- *Do you know about Job Corps, Americorps, and the Conservation Corps? The U.S. military?*

HOUSING

Need⁹⁰

Without proper resources and support, being in the state's care as a young adult becomes a factor that strongly impacts on an individual's "personal risk factors" for homelessness. Youth in foster care sometimes leave the system without basic independent living skills, unresolved issues surrounding their removal from the home of their parents, alcohol/substance abuse, lack of adult support networks, no income source, and/or insufficient education.⁹¹ Each of these issues can affect a youth's ability to obtain and maintain appropriate housing.

Most studies investigating foster care's link to homelessness have reported anywhere from 20% - 36% of a city's homeless population has been in foster care. The number is shocking because only 2% of a city's general population has ever been placed in out-of-home care.⁹² In a Chicago study, 45% of homeless youth interviewed reported that they had been wards of the state,⁹³ and in Wisconsin, youth aging out of foster care were found to be 12 times more likely to experience homelessness than other youth.⁹⁴

Major Issues

Until a child is emancipated from care, the child welfare system is responsible for providing housing. For older youth, this can be through foster homes, group homes, supervised housing programs or by supporting a child living on their own. There are also support options for youth as they age out of the child welfare system, but a youth must understand how to access these supports. Attorneys and judges must explore the youth's living arrangement possibilities after emancipation before closing the case. In addition, they must understand the hurdles faced by youth who are looking for appropriate housing. These hurdles include:

- **Affordability** – Finding affordable housing is a difficult process. Cities across the United States are facing increasing rental costs while public programs meant to preserve affordable housing are facing budget cuts. Without help, young, first-time renters in urban areas may have problems finding affordable housing or negotiating the maze of public benefits.
- **Availability/Safety** – Along with the dearth of affordable housing in many municipalities is the lack of available units in safe communities. For example, affordable housing units in urban areas are often in areas with high rates of violence, gangs and/or drug-related activity.

Table continued on next page

⁹⁰ See, CASEY FAMILY PROGRAMS, RESOURCES ON FOSTER CARE AND HOMELESS YOUTH (2001), available at http://www.hunter.cuny.edu/soc-work/nrcfcpp/downloads/policy-issues/foster_care_homeless_youth.pdf (last visited June 23, 2004).

⁹¹ Nan P. Roman and Phyllis Wolfe, National Alliance to End Homelessness, Web of Failure: The Relationship Between Foster Care and Homelessness (April, 1995), at <http://www.endhomelessness.org/pub/fostercare/webrept.htm> (last visited June 23, 2004).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See, DIVISION OF CHILDREN AND FAMILY SERVICES, WISCONSIN DEPT OF HEALTH AND HUMAN SERVICES, INDEPENDENT LIVING FOR CHILDREN IN OUT OF HOME CARE 23 (2001), available at <http://www.nrcys.ou.edu/PDFs/Publications/IndependentLiving-rpt.pdf> (last visited June 23, 2004).

- **Sustainability** – Once a youth who has aged out of foster care has found a place to live, maintaining their housing becomes the next obstacle. Access to financial resources is the single most important factor in maintaining housing; however, access to independent living programs are also crucial. Some foster youth leave foster care without having a clear grasp on how to write checks and balance a checkbook, rights and responsibilities of a renter, or what to expect from a rental application. Getting a foster child housing before he or she ages out will be futile if the youth is unable to maintain that housing once emancipated. Private landlords often enforce their own version of this policy, applying zero tolerance for drug use, and/or rental payments that are late or incomplete.
- **Addiction** – Untreated addiction, often a coping mechanism for those with mental health issues, is a leading cause of homelessness. Many public housing units have a zero tolerance policy regarding a tenant’s use of drugs, or drug use by any of the tenant’s guests.
- **Returning to Inappropriate Family Environments** – A number of youth in foster care, if not provided with adequate housing, will return to their birth families. While this might be a good housing option for some youth, this may mean a return to a negative environment for others. Without state intervention to help the family prepare the home for the youth’s return and the opportunity for future intervention and family therapy, a youth may return to the same negative family environment the state originally felt was unhealthy or dangerous.

Housing Realities

While we list housing programs available in some communities, there are two important facts to remember about these programs.

First, the goal for the majority of federal and state housing programs is to provide short-term housing while administering other services like educational assistance, job training, and life-skills training. The housing is therefore temporary and ultimately, after one to two years in the program, the youth is responsible for finding and maintaining his or her own housing. These programs provide an often necessary buffer between being financially supported and housed by a foster family or by the state and being fully self-sufficient.

Additionally, these federal programs are not the only means of housing assistance available to teens aging out of care. In fact, many youth leaving care may address their housing issues in other, more creative ways. They will live with family members, former foster parents, a friend’s parents, a coach, or an employer. Sometimes, these living situations are only meant to be temporary, while others offer more permanent options.

For some youth, these alternative choices provide a better safety net than traditional housing options discussed below. Those who know and trust an adolescent will be more apt to be forgiving when the rent is late or the music too loud. Although not funded with state or federal dollars, these options are resources available for many youth. Since judges and attorneys are in the role of linking youth to services and resources before and often after they turn 18, these non-traditional resources should not be overlooked. However, close examination of these options is necessary to determine if they are short-term solutions or if they can permanently address a youth’s housing needs.

Critical Federal Programs and Services

Title IV-E Foster Care Funding

May states use their Title IV-E funds for housing programs for older youth in care?

Yes. States may use their Title IV-E funds to create a variety of programs that address the housing needs specific of older youth under the age of 18. States have been creative in addressing this need, for example, by providing supervised independent living programs for older youth to create an environment similar to that of living on their own while maintaining the child welfare safety net. States cannot use Chafee dollars for housing programs for youth under the age of 18.

Housing Programs Covered Under Foster Care Independence Act (FCIA)

What specific Chafee housing programs are covered under FCIA?

The FCIA does not delineate specific Chafee housing programs, but does allow each state to spend up to 30% of the Chafee dollars on housing for youth ages 18 to 21. Chafee dollars are meant to augment current housing programs in the state rather than relieve the state of having to pay for such programs itself. Consequently, states have used the money in different ways.⁹⁵ Some states use the money to provide comprehensive housing services at a higher cost per child. These programs can offer excellent supportive services, but their cost means that fewer youth are served. Others use the money for less comprehensive programming, like rental assistance, that reaches a greater number of youth.

Housing may also be covered under the Education and Training Voucher (ETV) program discussed more fully in the “Education” section in Chapter III, since the vouchers may be used for any education-related expenses, including rent or on-campus housing. The use of ETVs does not affect the 30% cap on spending on strictly housing programs under the FCIA. Theoretically, a youth who has turned 18 may receive housing assistance through both programs.

Some examples of state-sponsored programs:⁹⁶

- Texas’ Chafee plan specifies that they will spend 30% of their Chafee independence program dollars on paying for “aftercare room and board.” They will provide money for rent and rent deposits, utilities, food/groceries, residential housing at a university, and payments to host homes that allow a youth to rent a room while sharing common areas with the host family.
- The Youth Housing Assistance Program in Illinois provides housing and counseling services, start-up seed money, and supplemental financial support for up to 12 months after a youth has emancipated from foster care.

Who is eligible?

The eligibility standards are the same for all Chafee programs, and the state has similar discretion in terms of services provided. However, there is an important distinction in Chafee housing programs: a foster child who is emancipated from foster care at any point before his or her 18th birthday is not eligible for any housing services funded by the FCIA. This applies even to runaway youth, so be sure not to close the youth’s case until after his or her 18th birthday. This way, should the youth resurface at 19 and seek assistance, these programs are still available.

⁹⁵ See your state’s Chafee Plan to determine the services available as part of this federal funding. Instructions on where this information is located can be found in Chapter V, “State Information for Youth in Foster Care.”

⁹⁶ For more information, See, NATIONAL ASSOCIATION TO END HOMELESSNESS, BEST PRACTICES, MAKING SYSTEMS CHANGES THAT PREVENT HOMELESSNESS (2003), available at <http://www.endhomelessness.org/best/ILyouth.htm> (last visited June 24, 2004).

Other Federally-Funded Housing Assistance Available:

The following resources are not housing programs specifically set up to address the needs of foster youth. In fact, some programs are closed to youth while they are still in care. However, youth who are in care today may be homeless once emancipated and judges and attorneys should be aware of programs that may be available post-emancipation.

Transitional Living Program (TLP) under the Runaway and Homeless Youth Act⁹⁷

What is the TLP and how is it funded?

The Transitional Living Program is part of the Family and Youth Services Bureau (FYSB) Runaway and Homeless Youth Program. It provides for grants to public and nonprofit agencies to fund longer-term supportive housing and other independent living services for youth ages 16-21 who are homeless. These organizations provide a range of services to the youth in their residence that may include job and life-skills training, basic education and GED classes, and some on-site health care.

Through the FYSB, each state is allotted at least \$100,000 in five-year grants to fund these programs.⁹⁸ Since, the program has been provided with limited federal funds, states often augment the financial allotment to each program.

Are youth in foster care eligible for this program?

Not while in care. These programs are meant for youth who have received no state aid, are of a certain age and have no other viable housing options. A youth who is still in the state's care and custody is not considered to be without housing because the state should be providing this youth with a safe alternative living arrangement. Most TLPs will not accept youth currently in care while others require a large amount of specific documentation as to why the state can no longer provide a particular youth with adequate housing before allowing a foster youth to access services. Before assuming that a youth will or will not be eligible for services, contact the individual TLP in your area to request specifics.⁹⁹

Although these programs are not meant specifically to be assistance for youth who have aged out of foster care, in certain situations, these youth may be eligible. The TLPs provide residential services to homeless youth ages 16–21 for up to 18 months. The definition of “homeless” within the act specifies that the program covers youth from ages 16-21 who cannot live with a relative and have no other safe place to go.¹⁰⁰ In some cases, youth who have aged out of or been emancipated from foster care may be able access these resources if they have no other place to go.

⁹⁷ Information taken from the National Resource Center on Youth Services (NRCYS) website at <http://www.nrcys.ou.edu/NRCYD/tlpprog.htm> (last visited June 24, 2004) and from The Runaway and Homeless Youth Act, Public Law 106-71 (2000) (codified as amended at 45 U.S.C.A. §5701 et. seq (2004)). For a complete listing of TLP programs organized by region of the country, go the NRCYS's website, at <http://www.nrcys.ou.edu/NRCYD/tlp.htm> (last visited June 24, 2004).

⁹⁸ A list of all the grantees by region for 2003-2004 is available at <http://www.nrcys.ou.edu/NRCYD/TLP.htm> (last visited June 24, 2004).

⁹⁹ For a list of all the grantees by region for 2003-2004, see The National Resource Center for Youth Services, National Resource Center for Youth Development at www.nrcys.ou.edu/NRCYD/TLP.htm.

¹⁰⁰ See, Runaway and Homeless Youth Act, Pub. L. 106-71 §387(3) (codified as amended at 45 U.S.C.A. §5701 et. seq (2004)) (“HOMELESS YOUTH.—The term ‘homeless youth’ means an individual— (A) who is— (i) not more than 21 years of age; and (ii) for the purposes of part B, not less than 16 years of age; (B) for whom it is not possible to live in a safe environment with a relative; and (C) who has no other safe alternative living arrangement).

How are the programs designed?

These services are designed to help youth who are homeless make a successful transition to self-sufficient living and to prevent their reliance on public aid in the future. To that end, services must not only involve housing assistance, but also include services to better equip youth to live on their own. TLPs receiving federal funding must provide youth with the following services:

- Safe, stable living accommodations.
- Basic life-skill building, including consumer education and instruction in budgeting, using credit, housekeeping, menu planning, and food preparation.
- Interpersonal skill building, including enhancing young people's abilities to establish positive relationships with peers and adults, make decisions, and manage stress.
- Educational opportunities, such as GED preparation, postsecondary training, or vocational education.
- Assistance in job preparation and attainment, such as career counseling and job placement.
- Education, information, and counseling to prevent, treat, and reduce substance abuse.
- Mental health care, including individual and group counseling.
- Physical health care, including routine physicals, health assessments, and emergency treatment.

How can I find out if there is a TLP in my area and what are some examples of TLPs around the country?

The National Resource Center for Youth Development maintains a listing of TLP programs organized by region. There are over one hundred and fifty programs listed.¹⁰¹

Some examples include:

- Cincinnati, OH – Lighthouse youth services is a comprehensive housing program for children in foster care, youth offenders, and for youth who have become homeless. The Lighthouse Housing Continuum provides many different levels of housing options for those youth it assists, depending on the youth's need for supervision – scattered site apartments, supervised apartments, shared homes, host homes and boarding homes.¹⁰²
- St. Charles, MO – Youth in Need provides transitional housing and independent living services to youth ages 16-21 and to teen parents with children up to age 3. After their stay in the transitional housing unit, youth either move on to supervised scattered apartments throughout the city, to a relative's home, or to their own apartment.¹⁰³
- Centre County, PA – The Stepping Stone Project is one of a number of programs offered by the Centre County Youth Service Bureau. Stepping Stone provides transitional living services to youth in a graduated setting. Youth move from a highly supervised environment, to a living situation with less supervision, and then to their own apartments where they can still access services and receive rental assistance.

¹⁰¹ See, <http://www.nrcys.ou.edu/NRCYD/resources.htm> (last visited June 24, 2004).

¹⁰² For more information, visit the National Alliance to End Homelessness, at <http://www.endhomelessness.org/best/lighthouse.htm> (last visited June 24, 2003).

¹⁰³ For more information, visit Youth In Need at <http://www.youthinneed.org> (last visited June 24, 2004).

How can a youth access these services?

TLPs are run by both public and private agencies, and usually receive their participants from referrals. Therefore, a social worker, homeless shelter, doctor, or legal advocate can refer youth to these agencies. However, most of these programs also allow for self-referrals, so youth who have emancipated may access the services if something goes wrong with their housing after leaving the state's care. However, space in the residential programs is limited, so youth should be in contact with the service provider as early as possible.

Housing Choice Vouchers (Section 8)

Who can apply?

There are three major requirements for applying for a Section 8 voucher. First, the applicant must be 18 years old or older. Second, the applicant must either be employed or have a steady stream of income. Finally, the applicant must be "very low income," which the federal government has left to states to define as long as the income limit does not exceed 80% of the median income for the area.¹⁰⁴

How does a voucher work?

Although the waitlist is often years long in urban areas, Section 8 vouchers are still one of the most successful housing programs the federal government has sponsored to assist low-income families and individuals find and maintain housing. The vouchers are based on the premise that a person whose income meets the qualifications should only be paying 1/3 of their salary to rent, rather than the 1/2 or greater most low-income families find themselves paying. Recipients receive a voucher and present it to a landlord. The recipient pays 1/3 of his or her salary and the government pays the remainder.

How can youth in foster care aging out of care benefit from Section 8 vouchers?

Section 8 vouchers can be used as a backup for foster youth about to leave care. Because of their long wait-time and the fact that youth cannot apply until they have turned 18, the vouchers are not an adequate primary housing option for those who are emancipating at 18. However, some states allow youth of a certain age in care to apply for these vouchers, so contact a local housing authority to find out at what point your state allows youth to apply. Since the wait-list is often long, and many youth are unable to apply before aging out, older youth in foster care should be considered for these vouchers in conjunction with other housing programs.

Some jurisdictions have made youth who have aged out of foster care with no other housing options a priority category for Section 8. For example, New York City gives youth in foster care priority in Section 8 applications, in addition to a number of other housing options.¹⁰⁵

Important points to remember about Section 8 vouchers and youth leaving foster care:

Section 8 vouchers provide housing assistance only to the person or persons named on the voucher. If other people are benefiting from the voucher, then it may be revoked. Local housing authorities can be very strict about this rule, which impacts youth aging out of foster care who may be inclined to allow friends or family in need to stay with them in their new apartment for weeks or months. Everyone who will be living in the apartment needs to be listed on the voucher application, and all those who are living in a subsidized apartment must meet the state's definition of a "family." Although this may include cousins, grandparents and nieces, this does not include friends and acquaintances.

¹⁰⁴ See, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SECTION 8 RENTAL VOUCHER PROGRAM, at <http://www.hud.gov/progdesc/voucher.cfm> (last updated May 13, 2004).

¹⁰⁵ See, New York City Independent Budget Office, *Aging Out: From Foster Care to Homeless Shelters?*, INSIDE THE BUDGET (March 24, 2004). New York City has also expanded a number of transitional living programs using state funds in an effort to stem the tide of homeless individuals who had been part of the foster care system.

Family Unification Program (FUP)¹⁰⁶

What is the current program availability and funding status?

The FUP is funded through the U.S. Department of Housing and Urban Development (HUD). Since the program does not have its own budget, uncertainty in HUD's finances affects FUP's funding. Unfortunately, in fiscal years 2002 and 2003, HUD did not dedicate funding to FUP.

The original FUP program was authorized under the Cranston-Gonzalez National Affordable Housing Act of 1990 and was set up as a protection for families who were in danger of losing their children to state welfare agencies because of inadequate housing. In 2000, the coverage of the act was extended to include youth aging out of foster care. Although FUP vouchers are funded through HUD's budget rather than a separate government program entitlement, FUP vouchers are distributed through the Housing Choice Voucher program.

Though not currently funded, this program is an option that may arise for youth aging out of foster care in the future. For two years after its inception, it benefited youth, and hopefully, it will again be funded to assist those in need.

Who is eligible for FUP?

Both families and individuals are eligible. Families must be in danger of having a child placed in child protective custody because of a family's impending or current homelessness. Youth aging out of foster care are eligible from ages 18 to 21 as long as they aged out of foster care, or had left foster care sometime after their 16th birthday.

What can FUP provide older foster youth?

When funded, the program provides youth with access to a special type of Section 8 vouchers. FUP vouchers differ from other vouchers in the Housing Choice Voucher Program because all other types of Section 8 vouchers do not have time limits imposed. A family or individual receiving a regular voucher may use it as long as necessary. The FUP vouchers for foster youth, however, are time limited and can be used no longer than 18 months. An additional difference is that FUP requires the agency that referred the youth to the program to be responsible for the youth's aftercare, including continuing independent living skills classes, follow-up services, and other supportive service provision.

Supportive Housing Program (SHP) / McKinney-Vento Act¹⁰⁷

How can a child in foster care be eligible for programs funded under SHP?

A person must be homeless before receiving housing assistance under SHP. Therefore, youth currently in foster care are less likely to receive assistance through this program, but those who have run away or who have left their foster parents or group home and are now homeless may qualify. For youth in foster care, SHP is meant to supplement, but not substitute for the state's assistance.

¹⁰⁶ See, Nat'l Low Income Housing Coalition, *Family Unification Program*, 2003 ADVOC. GUIDE TO HOUSING AND COMMUNITY DEV. POL'Y, at <http://www.nlihc.org/advocates/fup.htm> (last visited June 24, 2004); and CHILD WELFARE LEAGUE OF AMERICA, HUD RESOURCES FOR YOUTH LEAVING FOSTER CARE, at <http://www.cwla.org/programs/housing/hudresources.htm> (last visited June 24, 2004).

¹⁰⁷ 42 U.S.C.A. §11381 et. seq (2004). For a basic discussion on the provisions of the supportive housing programs and specific examples, See, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, THE SUPPORTIVE HOUSING PROGRAM at <http://www.hud.gov/offices/cpd/homeless/programs/shp/index.cfm> (last updated June 23, 2004).

The HUD eligibility criteria¹⁰⁸ establish that someone applying for SHP funds must be:

- residing in a place not fit for human habitation,
- in an emergency shelter,
- in transitional housing having come from off the streets or from a shelter,
- in any of the above places, but is spending 30 days or less in a hospital or institution,
- being evicted within 30 days without a subsequent place to live,
- being discharged from a hospital or institution, where that person has been for more than 30 days, without a place to live, or
- someone fleeing a domestic violence situation.

***What kinds of programs are supported by McKinney-Vento funds?*¹⁰⁹**

McKinney-Vento money can be used on a variety of services in the state: emergency shelter and supportive housing programs, and financial assistance to those who have received eviction notices.¹¹⁰ Supportive housing projects include: transitional housing (24 month programs that are to be used as a stepping stone to permanent housing); permanent housing for homeless with disabilities;¹¹¹ supportive services for homeless not in housing; and other innovative supportive housing programs.

Each program must achieve three goals with each of its client/residents:

- residential stability,
- an increase in residential skill level (through GED classes, independent living classes, job training, or a combination) and/or income, and
- more residential control and influence over decisions that affect their lives.

How are these programs funded?

HUD awards SHP funds as annual competitive grants to states, local governments, other government agencies (e.g., public housing agencies), private nonprofit organizations, and nonprofit community mental health associations. Grantees must match the federal funds for acquisition, rehabilitation, and new construction of buildings. SHP funds up to 75% of the operating costs for a supportive housing project.

¹⁰⁸ See, Dept. of Housing and Urban Development, *Section B Eligible Participants*, Supportive Housing Program Desk Guide, at <http://www.hud.gov/offices/cpd/homeless/library/shp/shpdeskguide/dgb.cfm> (last updated March 19, 2001).

¹⁰⁹ A listing of each state's McKinney-Vento housing programs can be found with U.S. Department of Housing and Urban Development, at <http://www.hud.gov/local/index.cfm> (last updated April 1, 2004).

¹¹⁰ See, 42 USC §12705 (2004). Also, refer to the DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SUPPORTIVE HOUSING PROGRAM DESK REFERENCE at <http://www.hud.gov/offices/cpd/homeless/library/shp/shpdeskguide/> (last updated March 19, 2001).

¹¹¹ For more information, see the housing discussion in Chapter IV's section, "Special Considerations For Youth With Disabilities."

HUD utilizes a program called the Continuum of Care (CoC) to plan for supportive housing programs in a community and to fund those programs. The SHP program is one of three that use the CoC for planning and funding. Any community that has an organization looking for federal funding must have in place a CoC Board made up of community members (including individuals who are homeless), organizations, and local businesses. This Board must first complete a community assessment for HUD to determine the needs of their area and how to best combat homelessness, in addition to how local groups can best collaborate to address these needs. The Board establishes its own application process that local organizations must follow each year when federal funding is made available.¹¹² Attorneys and judges who are interested in becoming part of their community's CoC Board should contact the Board itself, or their local HUD office to find out how to become involved.

Supportive Housing for Persons With Disabilities, Section 811 programs

See chapter IV on “Special Considerations for Youth With Disabilities”

Tips For Practitioners:

- Know what housing options exist for youth over 18 through the child welfare system and in your community.
- Discuss housing plans for the future with youth, providing enough time to plan or to research possibilities.
- Brainstorm about housing alternatives for the youth, working with the youth's needs and providing flexibility as the child struggles to achieve self-sufficiency.
- Ensure that the youth understands the basic rights and responsibilities of a tenant and a landlord, basic sections of a lease, legitimate reasons for being evicted, how to terminate a lease, penalties for terminating early, etc.
- Assist youth in thinking about establishing a relationship with an adult who can act as a co-signer on a lease, should the landlord require such a guarantee.
- Help the youth in foster care establish a permanent mailing address, which may be with a mentor, a foster family, or grandparents/aunts/uncles in order to have a place where important state aid documentation (especially Section 8) can be sent and is guaranteed to reach the youth.
- Advocate for non-traditional housing alternatives for the youth that provide the possibility for long-term stability.
- If you suspect the youth in foster care has a disability, arrange an evaluation as early as possible since more housing programs are available to those with disabilities.
- Ensure that the youth in foster care sign up for Section 8 supportive housing as early as possible. Find out if youth in foster care are considered a priority within the Section 8 application and allocation process.

¹¹² For more information on the CoC, *See*, TECHNICAL ASSISTANCE COLLABORATIVE, INC. & ADVOCATES FOR HUMAN POTENTIAL, INC, HOW TO BE A “PLAYER” IN THE CONTINUUM OF CARE: TOOLS FOR THE MENTAL HEALTH COMMUNITY (2001) at <http://www.csh.org/index.cfm?fuseaction=document.showDocumentByID&DocumentID=33> (last visited July 29, 2004); *see also*, Corporation for Supportive Housing, at <http://www.csh.org/index.cfm?nodeId=1> (last visited July 29, 2004).

Questions To Ask Youth

- *Where do you live now? Do you feel safe there?*
- *Where do you want to live? Is it close to adult connections, family, etc.?*
- *What kind of income would you have? What portion of that income can be dedicated to rent?*
- *If you are going to continue in school after emancipation, will scholarship money or other supports help with housing?*
- *Do you have ideas about someone who might be able to help with housing (friend's parents, former foster parents, etc. etc)?*
- *Have you ever signed a lease? Do you know what a lease contains?*
- *Do you have an adult willing to co-sign a lease with you, if needed?*
- *If the youth has found housing: Do you have a lease for the unit you want to rent? Do you understand the terms?*
- *Do you have a child of your own? Where will the infant/toddler live once you are emancipated? (See "Special Considerations for Teen Parents" in Chapter V)*
- *Have you ever been diagnosed with a disability?*

CHAPTER IV

Focusing on Adolescent Well-Being: *Special Considerations for Certain Youth*

The services and programs highlighted in the previous chapter apply to all youth in foster care. This chapter focuses on specific youth in care with more unique circumstances and highlights specific programs, services and practitioner tips to be considered for these particular youth. The information in this section should be used in addition to all of the general information highlighted in the previous sections.

This chapter pulls out four separate categories of youth to discuss – youth with disabilities, Native American youth, undocumented youth, and teen parents. However, there are numerous other youth who may require heightened attention. For example, many lesbian, gay, bisexual and transgendered youth face issues surrounding their health and safety that other foster youth may not encounter. These issues affect all aspects of their well-being. Equally, cultural competency and understanding is important for a large number of youth in foster care, however, this chapter only discusses Native American youth. Judges and attorneys should be aware of the individualized needs and concerns of their charges and clients and be able to address these needs as fully as possible.

SPECIAL CONSIDERATIONS FOR YOUTH WITH DISABILITIES¹¹³

Need

Children in foster care have a high incidence of both mental and physical disabilities. Various studies on children in foster care have found that anywhere from 30% to 75% of these children have or are at risk for acute, chronic, or disabling physical or mental health conditions.¹¹⁴

Disabilities provide an additional hurdle for children in foster care. For example, a child in foster care already struggling in an educational setting can have additional problems caused by an un-addressed disability. Nationally, more than 500,000 U.S. children and youth are in foster care and 30% to 40% of those are receiving special education services in school.¹¹⁵

In addition to education, children with disabilities may have greater difficulty finding and keeping a job, securing housing, and negotiating an often confusing health care system. However, there are a number of federal supports available for children with disabilities. The key is to diagnose the youth as early as possible, obtain appropriate educational services, link the youth to supportive services prior to exiting foster care, and empowering the older youth with both the skills and the resources to continue accessing these needed services in their adult lives.

Major Issues

Diagnosing Disabilities – One of the most important issues for children with disabilities is diagnosis. Too often, children in foster care with disabilities – especially more subtle learning or emotional disabilities – go through childhood either misdiagnosed or not diagnosed at all. Instead, they are labeled a “problem child” who “lacks motivation” or who is “looking for trouble.” An accurate diagnosis may provide a child with access to a host of programs and special services and an explanation for their struggles that is devoid of the judgment-laden language of school and police discipline reports.

Avoiding Over Diagnosis – A major difficulty in deciding whether to have a youth in care evaluated is that many of the behaviors associated with certain disabilities are also displayed by youth suffering the consequences of abuse and neglect and foster care placement. It can be difficult to evaluate whether the behavior is situational or something deeper, since parents may not be in a position to provide the youth’s educational and emotional history.

Obtaining accurate disability history – Some parents may be able to provide access to disability history of the child as well as any family history. However, sometimes this historic information is not available and disability related information will need to be pieced together from other sources like doctor’s reports and school records. These pieces may need to be gathered not only from before entry into care, but during the youth’s foster care stay, if he or she has had numerous placements and treatment providers.

¹¹³ For an in-depth look at disability law in general, see, U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, A GUIDE TO DISABILITY RIGHTS LAW (2002), available at <http://www.usdoj.gov/crt/ada/cguide.htm#anchor65610> (last visited June 24, 2004).

¹¹⁴ NATIONAL FOSTER CARE AWARENESS PROJECT, FREQUENTLY ASKED QUESTIONS II ABOUT THE FOSTER CARE INDEPENDENCE ACT OF 1999 AND THE JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM 24 (2001), available at http://www.nrcys.ou.edu/PDFs/Publications/FAQII_FINAL.pdf (last visited June 22, 2004).

¹¹⁵ See, CLAIRE VAN WINGERDEN, CASEY FAMILY PROGRAMS, EDUCATION ISSUE BRIEF: IMPROVING SPECIAL EDUCATION FOR CHILDREN WITH DISABILITIES IN FOSTER CARE (June 2002).

Determining appropriate education decision-maker – It can be difficult to determine who is the education decision-maker under the IDEA for a youth with disabilities who is in foster care. Does the parent retain these rights? Can the foster parent serve as the parent? Are there others who know the youth who can be appointed? The answers to these questions depend on specific circumstances of each case as well as the state law and local policies and procedures.

Obtaining secondary education services related to the youth’s disability, particularly transition services – Youth with disabilities often have special needs in their education setting. Federal laws such as the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (discussed in more depth later in this section), provide procedures to ensure youth with disabilities have special services and to address their disability. However, too often advocates for youth in foster care are unaware of the vast array of supports that can be provided under these laws, and the full extent of the law is not used advantageously for these youth.

Avoiding overly restrictive educational placements – IDEA dictates that eligible youth be placed in the least restrictive educational environment possible. Youth in foster care are often placed in more restrictive settings than appropriate, and these overly restrictive placements occur more frequently for youth in foster care than for other youth.

Understanding impact on higher education – While IDEA does not apply to higher education, support for youth with disabilities in higher education settings does exist through the Americans with Disabilities Act (ADA) and Section 504. Too often, youth with disabilities age out of care without an understanding of what assistance they may access, and therefore don’t get the needed supports in college or other programs, ultimately failing to complete their education.

Accessing housing, employment, and health care that takes into account their disability – Unfortunately, a youth’s child welfare court case may close without the youth understanding or having the ability to access needed services to address his disability. An older youth is therefore left to try to find housing, employment and health care on his or her own, without a court or attorney to assist with these arrangements.

Critical General Federal Programs and Services

Foster Care Independence Act /Chafee Programs

Are there any specialized programs offered under FCIA for children with disabilities?

No. The same programs that are available to other youth aging out of foster care are available to those youth with disabilities who are aging out. However, as federally-funded programs, all assistance offered under FCIA including independent living services, housing programs, and educational assistance must be accessible to youth with disabilities, even if some special accommodations must be made. For further discussion, refer to the sections on the ADA, IDEA and Section 504 of the Rehabilitation Act below.

Critical Educational Programs

Individuals with Disabilities Education Act (IDEA)

What is provided under the IDEA?

The IDEA provides that all children with disabilities that impact their ability to make educational progress have a right to a free appropriate public education (FAPE) in the least restrictive environment (LRE) appropriate to the child’s needs. The requirement of LRE exists so children with disabilities receive instruction with their non-disabled peers to the maximum extent possible.

How does a youth get evaluated for a disability?

Request that the school evaluate the youth to determine if he or she has a disability that warrants special services in school. A school must comply with this request, or establish through a due process hearing why such an evaluation is not necessary. Typically schools will comply with reasonable requests for evaluations. Most states permit a broad and sometimes unlimited array of people to make a referral for special education. However, who is to become the “legal decision-maker” must be resolved before evaluations are conducted because parental consent is needed to both evaluate and service a child.

Determining When To Get A Youth Tested For A Learning Disability

One of the disabilities that qualifies for services under IDEA is a learning disability.¹¹⁶ The following is a non-exhaustive list of behaviors that may indicate a child has a learning disability.¹¹⁷ However, no one factor is conclusive. Each one works together to paint the larger picture of a child struggling with something that is, without recognition and assistance, out of his or her control.

If there is suspicion that a child has a disability, request that the school perform an evaluation on the child to determine if they have a disability that warrants special services in school. While anyone can make a referral for special education, legal decision-making must be resolved before evaluations are conducted.

- **Reading/Math Problems** – reading at more than one grade below a youth’s assigned grade level, avoiding reading and/or having poor reading comprehension, low ability in applying math skills to basic life tasks (like balancing a check book).
- **Attention Problems** – difficulty answering open-ended or complex questions, cannot move on from one idea to another (i.e., getting “stuck” on a single idea), unable to stay focused.
- **Socialization Problems** – inability to relate to or bond with peers (with an understanding that the instability inherent in a foster child’s life often creates difficulties in forming new friendships), difficulty accepting criticism or giving and receiving feedback.
- **Coordination Problems** – balance or coordination problems beyond a normal teenager’s clumsiness, inability to engage appropriate depth perception.
- **Family History** – Some disabilities are genetic, passing from parent to child.

¹¹⁶ The full list of disabilities under the IDEA includes: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impaired, specific learning disability, speech or language impairment, traumatic brain injury, visual impairment including blindness. 34 C.F.R. § 300.7(c) (2004).

¹¹⁷ For a more detailed explanation of the signs of learning disabilities for children in pre-school through those in high school, *See*, Susan Bergert, *The Warning Signs of Learning Disabilities*, ERIC CLEARINGHOUSE ON DISABILITIES AND GIFTED EDUCATION, ERIC EC #E603 (2000), available at <http://www.eric.ed.gov> (last visited June 24, 2004).

Who is the legal decision-maker under IDEA?

All of the rights under IDEA are given to the child's parent. The youth's parent is considered a participating and equal member of the team, so that determining who is the parent is critical. For youth in foster care, this can sometimes make IDEA decisions complicated. IDEA defines a parent as:

- “Natural or adoptive parent of the child;
- A guardian, but not the state if the child is a ward of the state;
- A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare);
- Or a surrogate parent...”¹¹⁸

Consult your state laws and regulations to determine the procedures for appointing a surrogate parent should no one meet the first three categories of “parent.” Caseworkers cannot be the education decision-maker under IDEA. Foster parents may be able to serve in this role. States differ on whether foster parents can “act as the parent” (bullet three) or must be appointed as a surrogate (bullet four).¹¹⁹

Who can conduct evaluations?

Under IDEA, the school is obligated to evaluate a child that may have a disability warranting special education services. If the parents (or surrogate) disagree with the school's evaluation, they may request, in writing, an independent educational evaluation (IEE) that is to be conducted at the school's expense. The school may either agree to this second evaluation or take the case to a due process hearing to establish whether the school's original evaluation is sufficient.

Nothing in IDEA precludes the child welfare agency from conducting appropriate education evaluations for youth in foster care, especially if the agency is able to arrange for an evaluation more quickly. Attorneys and judges can play a role in expediting evaluations by requesting and ordering evaluations be done or pursued by the various entities involved (i.e. the school, the child welfare agency). An evaluation conducted outside of the school system must be reviewed by the school system, and the school psychologist is permitted to conduct additional tests to validate the outside evaluation.

If a youth does have a disability, will he or she automatically qualify for services under IDEA?

No. A team of professionals that must include the parent or surrogate must hold an eligibility meeting at the school to determine if the youth's disability is impacting on his or her ability to make educational progress. At this eligibility meeting the team should review the existing evaluations, including any information provided by the parents, and any current classroom-based assessments and teacher observations. Based on this information, the team must determine:

- Whether the youth has one or more of the following disabilities as defined under IDEA:
 - Autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech and language impairment, traumatic brain injury, or visual impairment including blindness.
- The present levels of performance and educational needs of the child;
- Whether the child needs special education and related services.

¹¹⁸ 34 C.F.R. § 300.20(a) (2004).

¹¹⁹ For an in-depth discussion of this issue, See, KATHLEEN MCNAUGHT, AMERICAN BAR ASS'N., *LEARNING CURVES: EDUCATION ADVOCACY FOR CHILDREN IN FOSTER CARE* (expected publication October, 2004); and Kathy McNaught, *Navigating the Special Education Process*, 23 ABA CHILD L. PRACTICE 65 (July 2004).

What happens once a youth is found eligible for services?

All students eligible under IDEA will have an individualized education program (IEP) drafted by a team of people who have connections with the youth and/or the school system. The IEP must include the special education and related services to be provided free of cost to the child. The IEP should be reviewed at a minimum of once a year, but sooner if the education decision-maker or the school feels there is a need.¹²⁰

The IEP team typically includes regular and special education teachers, the parent or surrogate, school psychologists, other school representatives and the youth when appropriate. The parent or surrogate and the school can invite any other individuals with knowledge or expertise about the youth to the meeting. Judges and attorneys can be asked by the parent or school to be part of the team. For IEPs that include transitional services (for IEPs developed for youth over 14, see below) schools must invite a representative of any other agency that is likely to be responsible for providing or paying for those transition services. This will likely mean that child welfare agency personnel must be included in IEP meetings for youth.

Until what age is a youth covered under the IDEA?

Those who qualify for services are at least eligible until turning 18. For youth older than 18, IDEA eligibility tracks state education law, ending when state responsibility for education ends at any point from age 18 through 21, or when the youth graduates, whichever is earlier.¹²¹ It is critical to get youth who meet the criterion identified as qualifying for special education services prior to turning 18.

Does IDEA provide for special services for transitioning from school to work?

Yes. Students are also entitled to transition services – assistance in preparing for the move from a school setting to a work and community setting. The 1997 IDEA amendments require that by age 14 the team must address what instruction will assist the youth prepare for transition in the IEP,¹²² and by age 16 the IEP must state what transition services the child needs, and specify interagency responsibilities or needed linkages.¹²³ The services must be aimed at the child's individual disability, and transition planning and activities can take place from age 14 through 21 if the youth has continuing educational needs.¹²⁴

Do parental rights under IDEA transfer to youth at age 18?

It depends.¹²⁵ IDEA does permit states to transfer parental decision-making rights to youth who have reached the age of majority. This issue will only apply to states that have enacted transfer statutes and also define age of majority as under the age of 21 (as IDEA applies only to students with disabilities until 21). The federal law has two restrictions that states must follow. Rights cannot be transferred to students who have achieved the age of majority if: 1) the student is incompetent (as defined by state law), or 2) if the student “does not have the ability to provide informed consent with respect to his or her educational program.”¹²⁶

¹²⁰ See, Kelly Henderson, *An Overview of ADA, IDEA and Section 504: Update 2001*, THE ERIC CLEARINGHOUSE ON DISABILITIES AND GIFTED EDUCATION, ERIC EC Digest #E606 (March, 2001), available at <http://www.eric.ed.gov> (last visited June 24, 2004). The chart from this overview has been reprinted in Appendix E.

¹²¹ 20 U.S.C.A. §1412(a)(1)(A) (2004).

¹²² 34 C.F.R. §300.347(b)(1)(i).

¹²³ 34 C.F.R. §300.347(b)(2).

¹²⁴ See, The Arc, *The Individuals with Disabilities Education Act: Transition from School to Work and Community Life*, Q & A at <http://thearc.org/faqs/qa-idea-transition.html> (last revised June 2000).

¹²⁵ For an in-depth discussion of this issue, See, Deborah Rebore and Perry Zirkel, *Transfer of Rights Under the Individuals with Disabilities Act: Adulthood with Ability or Disability?* B.Y.U. EDUC. AND L. J. 33 (2000).

¹²⁶ 34 C.F.R. § 300.517(b) (2004). This regulation further specifies that procedures must be created to appoint the parent or other qualified individual if the parent is not available, to represent the educational interests of the student.

Other Federal Laws Impacting Children with Disabilities in an Education Setting

Section 504 of the Rehabilitation Act

What is Section 504 of the Rehabilitation Act?

Section 504 prohibits discrimination against individuals with disabilities in all programs receiving federal funding.¹²⁷ While Section 504 is an anti-discrimination law not an education law, its regulations apply to preschool, elementary, and secondary programs receiving some federal funds.¹²⁸ These regulations prohibit specific discriminatory practices, and require schools to be proactive in ensuring students with disabilities receive an appropriate education. Unlike IDEA, however, no federal funding accompanies this law.

Section 504 specifically prohibits discrimination in any program that is run by, or funded through the federal government. Each agency promulgates its own 504 regulations depending on the activities covered, but most include provisions for reasonable accommodation, program accessibility, and ensuring effective communication for those with vision or hearing impairments.¹²⁹

Who qualifies for Section 504?

Children and youth with disabilities in K-12 who may not qualify for IDEA services may still qualify under Section 504 for special accommodations based on their disability. Under Section 504, an “individual with a disability” is someone who:

- i) has a physical or mental impairment which substantially limits one or more major life activities;¹³⁰
- ii) has a record of such impairment; or
- iii) is regarded as having such an impairment.”¹³¹

How is Section 504 different from IDEA?

All students who are eligible for services under IDEA are also eligible for services under Section 504, but Section 504 eligible students may not qualify for services under IDEA. Accommodations and services provided under Section 504 are typically incorporated into the IEP of an IDEA-eligible student. Youth who are not eligible under IDEA may still be eligible for Section 504 services. This is because a student must need specially tailored instruction to address the disability that is impeding academic progress to qualify under IDEA, while under Section 504 the disability must merely affect a major life activity. Therefore, Section 504 applies to a larger pool of children with disabilities than IDEA.

¹²⁷ 29 U.S.C.A. § 794 (2004).

¹²⁸ 34 C.F.R. § 104.33 (2004).

¹²⁹ There are over 20 different agencies with their own regulations, but two of importance to older youth in foster care are: 34 C.F.R. § 104 (2004) (Department of Education); and 45 CFR § 84 (2004) (Department of Health and Human Services).

¹³⁰ “Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 34 C.F.R. § 104.3(j)(2)(ii) (2004).

¹³¹ 34 C.F.R. § 104.3(j)(1) (2004).

What happens if a child qualifies under Section 504?

Section 504 requires schools to meet with parents to discuss and evaluate a child or youth's disability, determine eligibility, and make a decision about services and accommodations. Often this will be in the form of a written 504 plan. Extended time on tests, use of a computer for assignments, and tutoring are types of accommodations available to students under Section 504. Parents who are dissatisfied with the determinations may file a complaint with the U.S. Department of Education's Office of Civil Rights, take the case to an administrative hearing, or file a civil action.¹³²

Americans with Disabilities Act (ADA)¹³³

How is the ADA different from Section 504?

The Americans with Disabilities Act (ADA) developed out of the same concepts as Section 504. However, the ADA is more expansive than Section 504, as Section 504 applies only to organizations receiving federal funding and the ADA applies to public entities as well. The application of both laws to an education setting is similar, and therefore both laws can be viewed as essentially identical for educational purposes.¹³⁴

What relevance does the ADA have to children aging out of foster care?

As the ADA applies to private entities as well as most public entities, practitioners may be able to apply the ADA in support of children with disabilities who are participating in a special education program that includes job training or placement.¹³⁵ That job training, as part of an educational program, must make reasonable accommodations for children with disabilities who wish to participate.

What laws apply to youth with disabilities in higher education?

Youth in post-secondary education are covered by the ADA and Section 504, but are no longer covered by IDEA. Youth with disabilities may be entitled to accommodations in their higher education setting under ADA and Section 504, but need to inform the school of their disability and special needs, provide documentation, and request accommodation and supports.

In higher education, ADA applies to institutions that receive federal support, which includes most colleges and universities. Therefore, older youth that have disabilities that had warranted them IEPs or 504 plans in high school may be eligible for accommodations for their disability under ADA and Section 504 in their higher education settings. The youth must be proactive and bring their disability to the attention of the school.

For a side-by-side analysis of the differences and similarities of the ADA, IDEA, and Section 504's effect on education, see Appendix D.

¹³² For more information on filing a suit under Section 504, contact the Department of Justice, Civil Rights Division, Disability Rights Section, 950 Pennsylvania Ave, NW, Washington, DC 20530.

¹³³ 42 U.S.C.A. §§ 12101 et seq. (2004).

¹³⁴ For more information, See, James S. Rosenfeld, *Section 504 and IDEA: Basic Similarities and Differences*, EDLAW INC. (1999), at <http://www.edlaw.net/service/504idea.html#anchor317187> (last updated August 11, 1999).

¹³⁵ This idea applies unless the organization sponsoring the activity is not a religious institution, since an organization controlled by a religious institution is not covered under the ADA.

Critical Health Programs ¹³⁶

Medicaid / Early and Periodic Screening, Diagnosis and Treatment (EPSDT)

What is EPSDT?

EPSDT is a program under Medicaid that insures those under age 21, providing youth with basic preventative medical treatment. For more information, see the segment on EPSDT in the “Health” section from Chapter III.

How can a youth with a disability benefit from EPSDT after leaving care?

A person with a disability, defined as being unable to engage in substantial gainful activity by reason of a physical or mental impairment that can be expected to last for at least 12 months in a row or end in death,¹³⁷ is eligible to receive EPSDT services until turning 21. Being an SSI recipient automatically qualifies youth for participation in their state’s EPSDT program. Even though receiving SSI is *not* a requirement to qualify for services, an individual must either prove disability using SSI eligibility standards or similar state standards.¹³⁸

State Children’s Insurance Program (SCHIP)

Does SCHIP offer extended coverage for youth with disabilities?

No. SCHIP can extend coverage for all youth until they are 19, but does not extend beyond 19, even for youth with disabilities. If a child has a severe enough disability, they may be eligible under the Medicaid extensions provided through SSI.

Supplemental Security Income (SSI)

Does SSI provide its own health insurance coverage?

No, but the cash assistance provided families and individuals receiving SSI is meant to assist families in paying for some medical treatment. However, children who continue with SSI past the age of 18 are also able to maintain their Medicaid eligibility. For a more in-depth discussion of the SSI program, see the “Supplemental Security Income” section in this chapter under “Other Critical Federal Programs.”

¹³⁶ Peter G Szilagyi, *Care of Children with Special Health Care Needs*, 13 FUTURE OF CHILD: CHILD. HEALTH CARE 137 (Spring 2003).

¹³⁷ See, 42 U.S.C.A. § 1382c(a)(3)(A) (2004).

¹³⁸ or information pertinent to all Medicaid programs, see, DEPT. OF HEALTH AND HUMAN SVCS., CENTERS FOR MEDICARE & MEDICAID SVCS., MEDICAID AT A GLANCE 2003: A MEDICAID INFORMATION SOURCE, at [http://www.cms.hhs.gov/states/maag2002hm.asp?](http://www.cms.hhs.gov/states/maag2002hm.asp) (last updated March 19, 2004).

Critical Housing Programs

ADA

A state agency must make sure that the housing provided by the state (both for those in care as well as youth who have aged out) is reasonably suited for and accessible to a youth with a disability.¹³⁹

Section 811 Supportive Housing

What does the Section 811 Supportive Housing program provide?

The Section 811 program provides grant money to nonprofit organizations to develop rental housing for low-income people who are over 18 and have a disability. It is meant to assist people with disabilities to live independently in affordable housing with supportive services in addition to providing rental assistance to residents.¹⁴⁰

Supportive services are meant to allow residents to live as independently as possible, while still retaining a certain level of care. These housing units often provide transportation, on-site medical assistance, meals, and handicap accessible doorways and apartments.

Who qualifies to live in housing created or maintained using Section 811 funds?

A person must be low income, defined as 50% of the median income level in the area,¹⁴¹ and must also be between 18 and 62 years old and have a physical or mental disability or a chronic illness.¹⁴²

How do practitioners know if this program exists in their community and how do they access it?

In order to learn about any local providers of supportive housing for those with disabilities, contact your local HUD office. They will have a listing of the current grant recipients and their contact information.

Mainstream Program / Section 8¹⁴³

Are there special provisions under Section 8 for people with disabilities?

Yes. The Mainstream Program is part of the Section 8 Housing Choice Voucher Program, a federal program that funds rental vouchers to people with low incomes. Mainstream vouchers are dedicated vouchers meant solely for those who have disabilities and are very low income. If the head of household, the spouse of the head of household or an individual who is the only member of the household has a disability, the whole family qualifies for the Mainstream Program.

¹³⁹ HUD provides interest-free capital advances to nonprofit sponsors to help them develop rental housing. The advance need not be repaid as long as the housing is available for persons with disabilities for at least 40 years. HUD also provides rental assistance covering the difference between the HUD-approved operating cost of the project and the amount the residents pay (around 30% of adjusted income).

¹⁴⁰ See, U.S. Dep't of Housing and Urban Development, *Section 811 Supportive Housing For Persons with Disabilities*, Program Descriptions, at <http://www.hud.gov/offices/hsg/mfh/progdsc/disab811.cfm> (last updated November 30, 2001).

¹⁴¹ Fannie Mae provides an easy to use search engine for all of the HUD determinations of median household income. The search can either be done by state or by county. The search engine is available at <http://www.fanniemae.com/tools/hudmedian/index.jhtml?p=Tools+%26+Resources&s=HUD+Median+Income+Limits> (last visited June 25, 2004).

¹⁴² See, U.S. Dep't of Housing and Urban Development, *Section 811 Supportive Housing for Persons with Disabilities*, Program Descriptions, at <http://www.hud.gov/offices/hsg/mfh/progdsc/disab811.cfm> (last updated November 30, 2001).

¹⁴³ Information on the Mainstream program can be found on the US Department of Housing and Urban Development Website, available at www.hud.gov/offices/pih/programs/hcv/pwd/mainstream.cfm.

Does each state receive these dedicated vouchers automatically?

No. It depends on each state's legally codified public housing agencies', or in some cases non-profit agencies', decision to apply for the funding from the US Department of Housing and Urban Development. The funding for the Mainstream Program is considered in each fiscal year's reauthorization for Section 8 vouchers.

Are there time limits on these Mainstream Vouchers?

No. The only federal housing vouchers considered part of Section 8 that have time limits are those for former foster youth under the Family Unification Program (FUP). See the "Housing" section in Chapter III for more information on FUP vouchers.

Other Critical Federal Programs

Social Security Programs

Supplemental Security Income (SSI)¹⁴⁴

What is SSI?

SSI is federal money meant to assist anyone who meets certain income eligibility and is either over 65, blind or disabled, and is meant to cover basic necessities like food, clothing and shelter. It does not require that a person have "paid into" the system through payroll or other Social Security programs, so anyone who is eligible can qualify. Receiving SSI also allows recipients to automatically qualify for Medicaid coverage.

What is the SSI eligibility standard for youth under 18?

There are three parts to SSI eligibility for youth – citizenship status, financial need and disability. A youth must be a U.S. citizen or a qualified alien and may not have assets in excess of \$2,000.

The Social Security Administration's guidelines state that a child under 18 is considered disabled if he or she has a medically determined physical or mental impairment that results in severe functional limitations. The impairment must either be expected to end in death or to last for at least 12 months.¹⁴⁵ To determine if those criteria are met, a three-part evaluation is included:

- 1) Is the child or youth engaged in "substantial gainful activity"?** A child or youth earning more than \$700 per month is engaged in "substantial gainful activity" and presumed not to be disabled.
- 2) Does the child or youth have a severe impairment or combination of impairments?** This is a pre-screening process to separate applicants who have only a slight abnormality or combination of abnormalities that causes no more than minimal functional limitations.

¹⁴⁴ For a more detailed investigation of SSI and older youth in foster care, see, MICHAEL A. O'CONNOR, CASEY FAMILY PROGRAMS, A GUIDE TO SSI AND SOCIAL SECURITY BENEFITS FOR YOUTH IN OUT OF HOME CARE (2001), available at www.casey.org/Resources/Publications/GuideToSSI.htm (last visited June 25, 2004); and, visit the Social Security Administration's SSI & Disability web page, at <http://www.ssa.gov/notices/supplemental-security-income/index.htm> (last modified June 9, 2004).

¹⁴⁵ See, SOCIAL SECURITY ADMINISTRATION, UNDERSTANDING SUPPLEMENTAL SECURITY INCOME at <http://www.ssa.gov/notices/supplemental-security-income/text-understanding-ssi.htm> (last modified June 9, 2004).

3) Is the child or youth's impairment or combination of impairments either a listed impairment, or medically or functionally equivalent to a listed impairment?.¹⁴⁶

Those who receive SSI payments must also undergo re-evaluations at least every three years if the underlying conditions could possibly improve.

What is the SSI eligibility standard for youth over 18?

The financial and citizenship requirements for youth over 18 are the same as for those under 18.

If a youth is applying for SSI for the first time after age 18, or if he or she has been receiving SSI payments as a child and wishes to continue them past the age of majority, the standard is slightly different. Those over 18 must have a physical or mental impairment, or combination of impairments, expected to prohibit the performance of any "substantial" work for at least a year, or is expected to result in death. The federal government has outlined that a job paying \$740 or more per month is generally considered substantial.

What happens to SSI payments while a child is in care?

SSI payments for children are sent to a "representative payee" who is to use the money solely for the current and future use of the child. A representative payee can be a parent, adoptive parent, or legal guardian. Often, child welfare agencies act as legal guardians with children in foster care. If the amount of SSI received by the agency is more than the youth's monthly maintenance payment, that payment can be increased up to the SSI level. If, however, the amount a youth receives under SSI is less than his or her monthly maintenance payment, the youth's payments will remain the same.

An older child who applies for SSI, but was eligible long before application, can receive up to six months of back payments that are to be placed in a "dedicated account." This dedicated account cannot be co-mingled with other funds and can only be used for four expenditures:

- 1) Medical treatment
- 2) Education or job training
- 3) Personal needs assistance related to the child's disability – special equipment, alteration of housing, therapy, or rehabilitative services
- 4) Anything else the Social Security Administration deems related to the child's disability.

What can an older youth about to age out of foster care who is receiving SSI expect?

A youth already receiving SSI should take part in a Continuing Disability Review (CDR) at around age 17 1/2 or 18 in front of a Disability Adjudicator. This review is to determine whether or not the disability is severe enough to continue payments past the age of majority. It is important to get all medical evaluations and reports available to the Disability Adjudicator, especially because the youth will be evaluated under the more strict disability standards for adults. At that point, if the Adjudicator decides that the youth should not continue receiving SSI payments, the youth has a right to appeal the decision.

Even if a youth is determined eligible for SSI under the adult standard, they may be subject to a CDR if their condition is expected to improve or might improve with time. Each SSI award letter explains the review process and whether or how often these reviews will take place.

¹⁴⁶ See, SOCIAL SECURITY ADMINISTRATION, BENEFITS FOR CHILDREN WITH DISABILITIES, PUBLICATION NO.05-10026 (April, 2001) at <http://www.ssa.gov/pubs/10026.html#ssi-benefits> (last visited June 25, 2004). See also, MICHAEL A. O'CONNOR, CASEY FAMILY PROGRAMS, A GUIDE TO SSI AND SOCIAL SECURITY BENEFITS FOR YOUTH IN OUT OF HOME CARE (2001), available at <http://www.casey.org/Resources/Publications/GuideToSSI.htm> (last visited June 25, 2004).

How can a practitioner help youth prepare for aging out of foster care with SSI?

Youth still eligible for SSI at 18 (or 19 if the youth is still in high school) may file to become payee for their own benefits rather than assigning that right to a guardian or to the foster care agency. However, if a Disability Adjudicator believes that a youth is unable to manage his or her own funds, then a representative payee may be appointed. A youth can contest this decision, and appeal it if dissatisfied with the result.

An attorney for an older youth may want to assist the youth with this appeal or may want to pursue the appointment of a representative payee, depending on the type of representation being offered to the child. For example, if the attorney is representing a youth based on the best interest standard, the youth's own desires may not affect the advocacy, whereas the outcome could be very different if an attorney is representing a child in his or her individual capacity. Judges may want to get involved and order a party to the child welfare case to either pursue the appointment of a representative payee prior to a court case closing or to stop such an appointment.

If a youth receiving SSI receives other income, the SSI benefits are offset by that income. However, sometimes, when a youth receives other income or maintains assets from a dedicated account or savings, that income will exceed the \$2,000 asset limit. If a youth's assets surpass the \$2,000 limit, the youth or his or her lawyer should ask the Social Security Claims Representative about ways to create a Plan to Achieve Self Support (PASS). Upon approval by the Claims Representative, a PASS allocates certain savings or other assets to a specific goal. The goal may be for vocational school or setting up a business. Once established, the assets listed in a PASS do not affect SSI eligibility or benefits.¹⁴⁷

Social Security Dependent Benefits and Social Security Benefits for Adults Disabled Since Childhood¹⁴⁸

What are Social Security Dependent Benefits?

Also called Social Security Disability Insurance (SSDI), these benefits are paid to children and youth from money derived from a parent who is collecting other disability payments or who has died. A youth's own disability need not be considered for accepting this money and a youth can continue to receive these benefits until age 18 or through age 19 if he or she is a full-time student in either a grade school or high school. This payment will, however, offset the SSI benefits that a youth with a disability receives.

What are Social Security Benefits for Adults Disabled Since Childhood and how does it relate to SSDI?

Although the dependent benefits under SSDI usually expire when a youth reaches 18 or 19, the benefit may continue to be provided if the youth was diagnosed with a disability prior to age 22. Although this benefit is considered a "child" benefit because it is based on a parent's Social Security earnings record, recipients are considered eligible for this benefit for as long as they have their disability.

¹⁴⁷ See, MICHAEL A. O'CONNOR, CASEY FAMILY PROGRAMS, A GUIDE TO SSI AND SOCIAL SECURITY BENEFITS FOR YOUTH IN OUT OF HOME CARE 8-9 (2001), available at <http://www.casey.org/Resources/Publications/GuideToSSI.htm> (last visited June 25, 2004).

¹⁴⁸ See, SOCIAL SECURITY ADMINISTRATION, BENEFITS FOR CHILDREN WITH DISABILITIES, PUBLICATION NO.05-10026 (April 2001) at <http://www.ssa.gov/pubs/10026.html#ssi-benefits> (last visited June 25, 2004)

Tips For Practitioners:

- When you suspect a youth in foster care has a disability that is not being addressed, bring it to the attention of the child welfare agency, treatment professionals, and the court. Even if the child is 17 and about to age out, a determination that he or she is disabled can open up a host of federal support programs and protections.
- Ensure that expert evaluations are comprehensive and account for the unique circumstances of children within the child welfare system.
- Talk with the youth to discuss his or her feelings about the disability and the youth's need for special services.
- Understand the benefits afforded under IDEA, Section 504, and ADA and, when appropriate, advocate for youth in foster care to receive all the services through the school system to which they are legally entitled.
- Determine who is the educational decision-maker under IDEA. This can be through a court order or through advocacy within the school system.
- Determine if a surrogate parent is needed, and if so advocate for an appropriate and knowledgeable individual to be appointed.
- If the youth has a disability impacting on educational progress, make sure that the school has a current IEP. School districts are required to provide them for children with disabilities and to update them every year. Require the IEP to be presented to the court for review.
- Understand and advocate for services and protections under Section 504 for children with disabilities, including the drafting of a Section 504 plan.
- Remember to consider Section 504 eligibility for those children found not eligible for IDEA services and protections.
- Educate the youth about their right to accommodations under ADA and Section 504 and what steps they must take to access this assistance.
- Ensure the child welfare agency has applied for SSI for qualifying youth, including the 6 months of back payments for youth who qualified for SSI prior to applying.
- Prepare a court order, if necessary, for any additional medical evaluations in preparation for a SSI eligible older youth's re-evaluation for eligibility as an adult.
- Ensure adult SSI eligibility has been arranged prior to terminating the court's jurisdiction, if possible.
- Prepare a court order, when appropriate, to appoint a representative payee for an SSI eligible youth who is unable to manage his or her own funds.

- Inform the child welfare agency of the PASS option under SSI and pursue this option for youth with other income.
- Determine if the agency's housing plan is appropriate for youth with disabilities. Advocate for the pursuit of housing options that are designed for adults with disabilities.
- Ensure that the state-provided independent living services and employment training services make reasonable accommodations for the youth with disabilities in foster care.

Questions To Ask Youth

- ***Have you been tested for or diagnosed with a disability?***
- ***Do you know if anyone in your family has ever been tested or diagnosed with a disability?***
- ***Do you understand your disability? Do you understand your abilities and limitations related to your disability?***
- ***What is your day like? What is the hardest thing you do during the day? What is the easiest?***
- ***Do you get special help at school?***
- ***Do you have other special services that help you out?***
- ***Have you been able to attend independent learning classes and job training sessions without problem? Is there something that your school/community center/etc. has not provided for you to help you get more from those classes?***

SPECIAL CONSIDERATIONS FOR TRIBAL / ICWA YOUTH

Need

Native American and Alaska Native tribes have certain federal protections set up in an attempt to redress the effects of centuries of maltreatment these tribes endured. As tribes are considered sovereign, these protections allow for greater tribal autonomy in the enforcement of tribal law, and greater tribal input into state and federal laws that affect their land or communities.

The Indian Child Welfare Act of 1978 was passed to address the disproportionate removal of Indian children from their families and their tribes by state child welfare agencies.¹⁴⁹ The law is intended to protect the best interests of Native American minors and promote stability and security for Native American tribes and families. It establishes minimum federal standards for state removal of Native American youth from their homes, termination of parental rights, and placement and adoption of Indian children in order to reflect the unique values of Indian culture.

These efforts at maintaining Native American families and tribal structure are very important in light of the fact that Native American and Alaskan Native youth are three times more likely to be in out-of-home care than Caucasian youth.¹⁵⁰ The combination of the high rate of Native American and Alaska Native youth in out-of-home care with the elevated rate of alcohol and drug abuse, depression, suicide, teen pregnancy and early educational withdrawal in this same population¹⁵¹ make the vulnerabilities of this group clear. However, in working with both tribal and state agencies, attorneys and judges can ensure that these children have access to the services that will make the transition from foster care to adulthood a success.

¹⁴⁹ 25 U.S.C.A § 1901 et seq. (2004).

¹⁵⁰ See, CASEY FAMILY PROGRAMS, CHILD WELFARE FACT SHEET: STATISTICS ILLUSTRATING MAJOR TRENDS IN THE CHILD WELFARE SYSTEM 2 (2001), available at <http://www.casey.org/MediaCenter/MediaKit/FactSheet.htm> (last visited June 25, 2004).

¹⁵¹ See, NICOLE CLEMENS, CASEY FAMILY PROGRAMS/NATIONAL INDIAN CHILD WELFARE AGENCY, IMPROVING ACCESS TO INDEPENDENT LIVING SERVICES FOR TRIBES AND AMERICAN INDIAN YOUTH 12 (December 2000). See also, GAY MUSELL, NATIONAL RESOURCE CENTER FOR YOUTH SERVICES, TRIBAL APPROACHES TO TRANSITION (2004), available at <http://www.nrcys.ou.edu/NRCYD/publications.htm> (last visited June 25,

Well-Being Indicators for Native American Children and Youth

Native American tribes struggle to find ways to address well-being issues of their young members. Although the starting point is grim, these facts are not meant to portray a sense of hopelessness. Rather, they are meant to ensure that all those who work with Native American youth take their role in these youth's lives seriously:

- In a 1997 study, the percentage of pregnant females under 20 within Native American Tribes (20%) was nearly double that for white teens (11%).¹⁵²
- For American Indians and Alaska Natives, suicide is the third leading cause of death for 11-14 year olds and the second leading cause of death for 15-24 year olds.¹⁵³
- In a 1992, Native American and Alaskan Native youth had the highest dropout rate of any ethnic or racial group, 25.4%, a rate that was twice the national average.¹⁵⁴
- In 2003, almost 30% of Native American youth between the ages of 16 and 24 were neither enrolled in school nor working, the largest percentage of any other U.S. group.¹⁵⁵

Major Issues

Violations of ICWA causing youth's disconnection with tribe – ICWA is not always understood or followed. Older tribal youth may be aging out of care without any efforts ever being made to connect them to their tribal community. As the tribal community may be a source of great emotional support as the youth navigates adulthood, reconnection to the tribe may never be too late to attempt. However, older youth may have more difficulty adjusting to the tribal community than if the connection was made for them at a younger age.

Culturally appropriate approaches to transition – Professionals within the child welfare system are often not trained in the use of culturally appropriate approaches to the transition to adulthood for Native American youth. Often this may cause tension between the adult and youth, and between the youth and his or her community.

Transition Services provided within tribal communities – Tribal resources may be limited and Tribes are not allowed direct access to Title IV-E funds without a separate agreement with the state; federal or state government may not provide adequate support to tribes so that these tribes can provide the same level of transition services that the state child welfare agency does.

¹⁵² U.S. DEPT. OF HEALTH AND HUMAN SVCS., FINAL REPORT: PROFILE OF THE STATE OF INDIAN CHILDREN AND YOUTH 19 (1997)

¹⁵³ NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, U.S. DEPT. OF HEALTH AND HUMAN SVCS., TEN LEADING CAUSES OF DEATH, UNITED STATES, 1998, AMERICAN INDIAN/ALASKA NATIVE, BOTH SEXES (2002).

¹⁵⁴ NAT'L CNTR. FOR EDUCATION STATISTICS, U.S. DEPT. OF EDUCATION, THE CONDITION OF EDUCATION (1994).

¹⁵⁵ NAT'L CNTR. FOR EDUCATION STATISTICS, U.S. DEPT. OF EDUCATION SCIENCES, THE CONDITION OF EDUCATION 2004 53 (June 2004), *available at* <http://nces.ed.gov/programs/coe> (last visited July 28, 2004).

Critical Federal Programs and Services

Title IV-E of the Social Security Act

Do tribes have access to general funding through Title IV-E?

Not without a separate agreement with the state. Because ICWA legislation discussing foster care and Tribal rights does not include a federal funding scheme, and legislation covering the disbursement of funds to youth in foster care does not specifically address Native American Tribes, registered Tribes in the United States may not apply for Title IV-E funds directly.

There is pending legislation, called the Indian and Alaska Native Foster Care and Adoption Services Amendments,¹⁵⁶ that would allow Tribes to apply for Title IV-E Funds directly from the federal government. If passed, the legislation would mandate that Tribes meet most of the same qualifications as states. As of March 2004, the bills were in subcommittee in both the House and the Senate, but until these bills or similar legislation is passed, tribes must apply for funding through the state in which the tribe is domiciled.

Foster Care Independence Act (FCIA)

Are there different standards for Native American youth and non-native youth in qualifying for FCIA funds?

No. FCIA applies equally to Native American and non-Native youth, so that all youth have the same access to health care, and educational, employment, and housing assistance. Both the state and tribally funded FCIA programs can be resources for the youth.

What are the special FCIA provisions for reaching Native American youth?

Services provided to Native American youth must correspond to services provided to other youth. States are required to confer with each Native American Tribe living within the state on the programs available and to provide tribe members with full access to these programs. States are also required to work with tribal leaders to ensure that services offered are adequate for American Indian youth in foster care.

Workforce Investment Act (WIA)

Can WIA funds be allocated to Native American Reservations?

Yes. WIA funds for both youth programs and adult services can and should be allocated to Reservations. For more information on WIA, see the “Employment” section in Chapter III.

Other Programs Available

American Indian College Fund¹⁵⁷

The American Indian College Fund is an organization that has provided financial support to a number of the 34 Indian Colleges throughout the United States. They also provide scholarships, the majority set aside for Native American youth who are planning to attend one of these institutions, though they do offer a more limited number of scholarships for use at “mainstream” four-year universities. They also publish a guide booklets for Native American youth who wish to further their education.

¹⁵⁶ Found in S. 331 (2003) and H.R. 443 (2003).

¹⁵⁷ See, American Indian College Fund, at <http://www.collegefund.org> (last visited June 25, 2004).

How is the program funded and who is eligible?

The American Indian College Fund is a privately funded program that receives its support through various grants and sponsors. Anyone who is a member of one of the registered tribes in the United States is eligible for their scholarships.¹⁵⁸

For what colleges may the tuition assistance be spent?

Youth who qualify can get tuition assistance to any of the 34 Tribal Colleges (made up of 2 and 4-year programs and polytechnic institutes) in the United States,¹⁵⁹ or to any of the other accredited colleges and universities in the United States.¹⁶⁰

What impact does enrollment in a Tribal College have for older youth?

Enrollment in a Tribal College has a huge impact on those students who receive degrees or certificates. A year after completing their program, the vast majority of graduates were either employed or were continuing their degrees at another educational institution.¹⁶¹

Tips for Practitioners:

- Find out whether a youth is part of a registered Native American tribe.
- Assist in getting the youth registered with his or her tribe, if the youth so desires.
- Ensure that ICWA has been followed for Native American youth in foster care, especially older youth and those who have aged out.
- Explore a youth's desire to re-connect with tribe if separation has occurred as soon as possible, as the longer youth are isolated from their tribal community, the less likely they are to be able to reconnect.
- Inform youth of tuition assistance that exists as a result of tribal membership, and advocate for this assistance when appropriate.
- Explore additional transition resources that may be available to youth through their Tribe.

Questions To Ask Youth

- ***Do you know if you are a member of a Native American tribe or if your parents are members of a tribe?***
- ***Are you familiar with your tribe or other members of your tribe?***
- ***Do you have the opportunity to spend time with members of your tribe?***
- ***Do adults who work with you understand your tribal customs and practices?***
- ***What are your thoughts about making or maintaining contact with your tribe?***

¹⁵⁸ For a list of the federally registered tribes in the 48 contiguous states, see a listing at <http://www.doi.gov/bureau-indian-affairs.html> (last visited June 25, 2004 and currently unable to publish data due to pending litigation regarding the Indian Trust).

¹⁵⁹ A map with all 34 tribal colleges can be found at <http://www.collegefund.org/enh.html> (last visited June 25, 2004).

¹⁶⁰ A map with all 34 tribal colleges can be found at <http://www.collegefund.org/enh.html> (last visited June 25, 2004).

¹⁶¹ A.F. CUNNINGHAM AND K.E. REDD, AMERICAN INDIAN HIGHER EDUCATION CONSORTIUM, CREATING ROLE MODELS FOR CHANGE: A SURVEY OF TRIBAL COLLEGE GRADUATES 8 (2000), available at <http://www.aicec.org/rolemodels.pdf> (last visited June 30, 2004).

SPECIAL CONSIDERATIONS FOR UNDOCUMENTED YOUTH

Need

Undocumented youth in the child welfare system are especially vulnerable as they reach 18. Often, these minors had no choice in coming to the United States, but their social and community ties are now in the U.S. rather than their country of origin. They face the same challenges and hardships of other youth in foster care, but with the added isolation that comes from language barriers, education barriers, and/or the fear of deportation.

In addition to the isolation, a child aging out of foster care without documentation is left to struggle with housing, health, education, and employment issues without the aid of the courts or state agencies for the poor. Many other agencies find themselves limited to giving assistance only to US citizens or permanent residents because of restrictions tied to funding and federal laws expressly banning aid.

Critical Federal Programs and Services

Special Immigrant Juvenile Status (SIJS)¹⁶²

What is special immigrant juvenile status (SIJS)?

In an effort to help undocumented abused, neglected and abandoned children and youth, Congress began a program that allows these children and youth to petition for lawful permanent resident status in the United States. If they are granted special immigrant juvenile status and their petition for an adjustment of status is approved, then the child becomes a legal resident alien of the United States with the ability to live and work within the U.S. without fear of deportation. After five years, legal resident aliens may apply for citizenship, if they choose.

What are the eligibility standards for SIJS?

Unmarried children who are under age 21 and meet the following three standards may apply for SIJS.

- 1. A youth must be dependent on a juvenile court** – Federal standards do not require the termination of parental rights to find dependency, but that the parents have effectively relinquished control over their child or youth (either voluntarily or involuntarily), leaving the court as caretaker for a minor who has been placed in foster care or a guardianship situation. In terms of foster care, effective relinquishment means that the minor's permanency plan does not include reunification. This standard of parental relinquishment also covers other areas where the juvenile court has jurisdiction, like in delinquency cases.

¹⁶² Most of the information on SIJS has been taken from: IMMIGRANT LEGAL RESOURCE CENTER, SPECIAL IMMIGRANT JUVENILE STATUS FOR CHILDREN UNDER JUVENILE COURT JURISDICTION (May 2001), available at <http://www.ilrc.org/sijs/sijsmanual.pdf> (last visited June 25, 2004); and Zabrina Aleguire and Gregory Chen, *Special Immigrant Juvenile Status for Children in Legal Guardianships*, 23 Child L. Practice 12 (March 2004).

2. **Youth must have been deemed “eligible for long-term foster care”.**¹⁶³ – This standard requires that reunification with the child’s parents must not be a “viable option.”¹⁶⁴ The juvenile or family court judge must find that efforts at reunification have ceased, and other permanency options are being considered (foster care, adoption, guardianship, etc.). Recognize that this language does not comport with the new requirements of ASFA in that long-term foster care is no longer an acceptable permanency option for youth in care. However, a youth in care on track for anything other than reunification should be given the option to apply for SIJS. In addition, being adopted does not automatically naturalize a youth who is undocumented. If adopted while still without papers, the adoptive parents must naturalize the youth.
3. **It must not be in the youth’s best interest to return to his or her home country** – This determination should be included in the court’s findings and can be made using a variety of methods: interviewing the youth to find out whether there is any known and appropriate place to go if returned to the home country or country of last residence; reports from third parties about the unsuitability of relatives’ homes available to the child in the home country, etc. The court should make it clear that the findings in the order have been based on abuse, neglect, or abandonment, and not simply to secure legal immigrations status.

Are there reasons, besides not fitting the above three criteria, that a youth would be denied permanent status?

Yes. This is a crucial point to discuss with the youth before beginning the process. An absolute bar to applying for SIJS is if the youth filing an application is already married. However, a number of past transgressions may also act as a bar to receiving SIJS. The following list indicate issues that factor into an INS decision of whether to grant permanent resident status:

- If an applicant has a juvenile record of any kind including involvement with drugs, prostitution, or other violent and non-violent crimes.
- If an applicant is HIV positive.
- If an applicant has committed fraud or was previously deported.

The above list is not exhaustive and other issues may be considered as a negative when evaluating an application. None of these factors are an absolute bar on granting a petition, but they all provide extra barriers that a legal representative will need to face during the proceeding. Any legal advocate who is faced with these additional factors in a SIJS petition should seek advice from an immigration attorney to ensure that the youth receives the best legal representation possible.

What risks and benefits for youth are involved?

The biggest risk faced by youth who apply for this special status is the denial of their petition and an INS decision to send them back to their country of origin. For some youth, deportation means reentry to a country he or she knows little about and to which he or she has few connections. However, if a youth is already in deportation proceedings for his or her removal, there is nothing to lose by filing an application for SIJS.

On the other hand, there is also a risk for youth who do not apply. Although youth can apply for SIJS up until they turn 21, after turning 18, many states close a youth’s case in the juvenile or family court.

¹⁶³ See, 8 C.F.R. § 204.11(a) (2004). Practitioners may note that this language is expressly opposed to the idea that long-term foster care is no longer an appropriate state agency plan for a youth in care. However, this phrase has been taken to mean that the court has determined that family reunification is not possible and is looking into other options for the child now placed in foster care, including adoption, guardianship, and independent living.

¹⁶⁴ *Id.*

Once the case is closed and the juvenile courts no longer have jurisdiction, applying for SIJS is no longer an option. If a youth is emancipated without legal documentation, he or she may not have another chance to apply for legal status in the United States. Those who remain in the U.S. without documentation face a number of obstacles to stability and well being, including poor working conditions, low pay, inability to receive a driver's license, inability to apply for credit, and a constant fear of discovery and deportation.

The benefits are clear if the petition is accepted. Permanent residents can live and work where they chose, obtain mortgages, and apply for driver's licenses. Additionally, legal residents are protected by state and federal wage and hour laws and are guaranteed a number of other legal rights. They can travel as they wish between states and between countries, and after five years, legal residents can apply for U.S. citizenship.

If SIJS has been granted, what is the status of the youth's birth parents? Can they benefit from their youth's SIJS?

For immigration purposes, the parent or parents of a youth who has been granted SIJS cannot benefit from their youth's new status.¹⁶⁵ Therefore, a youth granted legal residence and then citizenship using this application process may not use his or her new status to assist biological parents with attaining legal standing. Although there is no clear direction on how siblings are to be treated after a youth is granted SIJS, the youth could potentially be barred from assisting siblings, as well. Since a youth who has received SIJS is no longer the "child" of his or her parents for immigration purposes, local INS offices may assert that the youth no longer has a relationship with any other children born to his or her parents.

In general, what is the application procedure for SIJS?

As soon as the three eligibility standards are met and the court issues its findings, the application process may begin. The minor or a representative must file two applications simultaneously, one for SIJS and one for an adjustment of status from undocumented to lawful permanent resident. Additionally, the youth must submit a medical form from a check-up conducted by a doctor approved by the INS that includes a test for HIV and drugs, filing fees (unless waived), and proof of age.

After applying, a youth can obtain employment authorization while the application is being considered. The INS will schedule an appointment for fingerprinting to run a background check, and then the applicant will need to wait for an interview to be scheduled. This can sometimes take a long time, with some local offices scheduling interviews within six months while others taking up to three years. Remember, the juvenile court must retain jurisdiction over the child throughout the SIJS process, so start as far in advance as possible of the time the case must be closed.

¹⁶⁵ See, INA § 101(a)(27)(J) (1998) – "no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act."

How to Apply for SIJS:¹⁶⁶

1. Evaluate the minor's case to make sure that it fits within each of the three eligibility criteria.
2. Discuss the option fully with the youth, explaining in plain language what SIJS is, what it could do for the youth and the risk involved. It is important to emphasize the risk of deportation and the impact SIJS has on the youth's rights toward birth parents and siblings.
3. If the youth decides to proceed with the application for SIJS but has a mitigating factor on his or her record (i.e., arrests, convictions, drug abuse, testing positive for HIV), then contact an experienced immigration attorney. These cases are not impossible to win, but they are more difficult and require a more intricate knowledge of the process.
4. If proceeding with the application for SIJS, have a fact-finding hearing on the three criteria in court.
5. At the end of the hearing, the judge should write up the court's findings in an "Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status" that includes factual findings. Although not conclusive for the INS, this order must be included in the child's application for SIJS. An example of the proposed order on the three criteria using specific language can be found in Appendix E.
6. Fill out and turn in both an SIJS and a change in legal status form to your local INS office.¹⁶⁷
7. The INS should grant the applicant minor employment authorization while the case is pending and should schedule an appointment for the youth to be fingerprinted for an FBI criminal activity check.
8. Next, the INS will schedule an interview, where a number of people (social worker, lawyer, etc.) can also attend. The INS might make a decision on the application at the interview, or may ask for further information or time.
9. This process can take as long as 3 years. Make sure you begin early, so that the juvenile court can maintain jurisdiction throughout the process.

¹⁶⁶ This list is a shortened version of the process. For more detailed explanations, *see*, IMMIGRANT LEGAL RESOURCE CENTER, SPECIAL IMMIGRANT JUVENILE STATUS FOR CHILDREN UNDER JUVENILE COURT JURISDICTION (May 2001), *available at* <http://www.ilrc.org/sijs/sijsmanual.pdf> (last visited June 25, 2004);

¹⁶⁷ Although the current practice is to turn these two forms in simultaneously, it is important to contact your INS office beforehand to check for any changes in procedure. A listing of local INS offices can be found *at* <http://uscis.gov/graphics/fieldoffices/statemap.htm> (last modified August 15, 2003).

Important Points to Remember in the Application Process:

- The minor loses the option of applying for SIJS once the juvenile courts no longer have jurisdiction or the youth turns 21, whichever comes first. In those states that close cases at age 18, a youth will need to have applied for SIJS well before his or her 18th birthday.
- The juvenile court must retain jurisdiction throughout the INS process until the youth is granted SIJS.¹⁶⁸
- Although the judge's order regarding the youth's eligibility for long term care and the best interest standard are not binding on the INS, they are very important. The court should make the findings clear and based on factual evidence.
- In its order, the court must highlight the fact that it has made its findings based on abuse, neglect or abandonment rather than on the youth's immigration status.
- The INS requires that applicants for SIJS remain unmarried until the whole process is completed and the youth receives permanent residency.
- SIJS is not the only way for a youth to get permanent residency. Talk to a professional immigration attorney about other methods for obtaining a green card. For example, a youth may have a parent, step-parent, or adoptive parent who is a US citizen apply on his or her behalf, a youth may "self-petition" if a citizen parent refuses to file on his or her behalf, a youth can apply for asylum, etc.

Victims of Trafficking and Violence Protection Act (VTVPA)¹⁶⁹

What is trafficking?

A number of children and youth brought illegally into this country each year are not brought by their parents, but by those who intend to use them as cheap or unpaid labor, sex workers, or drug runners. Alternatively, some young victims entered this country on their own and were later tricked into becoming part of this underground labor force.

Trafficking in humans, referred to as a form of modern day slavery, preys on individuals from other countries who are often poor, unemployed or underemployed, and/or who lack protective social safety nets. In most cases, young people who are trafficked receive little to no compensation for their services and are kept isolated from those who might be of assistance.

Attorneys and judges working with youth in the child welfare area need to be aware of this growing problem. However, the information in this section is meant as a brief overview as trafficking laws are complex. A lawyer or judge faced with this issue should consult with an experienced immigration attorney or justice before taking any action on behalf of a minor.

¹⁶⁸ 8 C.F.R. §204.11(c)(5) (2004).

¹⁶⁹ Pub. L. 106-386 (2000). Much of the information in this section on the VTVPA was taken from, U.S. DEPT. OF JUSTICE, CIVIL RIGHTS DIVISION, TRAFFICKING IN PERSONS: A GUIDE FOR NON-GOVERNMENTAL ORGANIZATIONS, at <http://www.usdoj.gov/crt/crim/wetf/traffbrochure.html> (last visited June 25, 2004).

What protections does the VTVPA provide undocumented children?

The VTVPA is a comprehensive bill that addresses the needs of victims of domestic violence, terrorism, and human trafficking among others. The “Trafficking Victims Protection Act” addresses all victims of human trafficking, and provides alternative methods of gaining legal resident status for child victims.

The major differences between protection for adults and for minors is that, in order to be granted special visa status, child and youth victims of trafficking have less stringent approval procedures and do not need to promise to help prosecute traffickers as a condition to their visa application. Adults, on the other hand, must provide much more in depth information regarding their living and working conditions in this country and must commit to assisting district attorneys prosecute human traffickers.

What should someone who suspects that a youth in foster care is the victim of trafficking do?

First, judges and attorneys must talk to the youth to determine whether or not his or her situation fits the description of someone who is a trafficking victim. This determination can be difficult since youth brought over as bond workers or indentured servants may be unwilling or unable to speak about their situation in specific terms. Some reluctance comes from a fear of that a trafficker’s threats of harm to them and their family will come to bear if they disclose their situation. Other youth may lack the cultural context for identifying that they have been trafficked, having come from a culture where selling or “leasing” children out as labor to pay off debts is an accepted practice.

Next, legal advocates must ask the youth whether or not they wish to stay in the United States or return to their families in their homes of origin. It should not be assumed that a trafficked child wishes to stay in the United States.

Regardless of the youth’s desire to stay or leave, the next step is to contact an experienced immigration attorney. There are a number of visas available to victims of trafficking and some cases may be severe enough to request asylum. Additionally, the INS may be willing to help reunite the youth with his or her family.

Tips For Practitioners:

- Important: both SIJS and trafficking cases require consultation with an attorney or judge experienced in matters of immigration law. Handling these cases without the proper input and guidance could produce unforeseen negative consequences.
- Talk to the youth before taking any action, explaining the risks and benefits of taking immigration action.
- Do not assume that an undocumented youth wants to gain documentation rather than return to his or her family and/or his or her country of origin.
- Start the process of applying for SIJS as soon as you can. The system often works slowly and the case must come to completion while a youth is still under court jurisdiction in order to qualify for this readjustment of status.
- Follow those steps listed in “Special Considerations for Undocumented Children” when applying for SIJS.
- Be aware that a youth who has been trafficked may have mental and physical health issues specific to the trafficking that should be addressed.

Questions to Ask Youth:

- *How did you arrive in this country? When?*
- *Do you have a birth certificate?*
- *Do you wish to remain in the U.S. after aging out of foster care?*
- *Where is your family? Do you wish to return to them after leaving foster care?*
- *Do you have any siblings? Where are they right now?*
- *Have you worked while here in the U.S.? How much money did you make a week/month?*
- *While you were working, where did you live?*

CHAPTER V

SPECIAL ISSUES FOR TEEN PARENTS IN FOSTER CARE

Need

Parenting as a teenager is difficult. A number of youth in foster care entered care as parents or have become parents while in the child welfare system. A study in Washington State found that 29% of females in foster care had experienced a pregnancy and 11% of males indicated that they had contributed to a pregnancy. Eleven percent of all the youth in this study indicated that they had at least one child. However, U.S. teenagers are often emotionally unprepared for parenthood and the sacrifices it entails.¹⁷⁰ Logistically, teens are caught between the demands of high school and college or job preparation, and the demands of caring for an infant or toddler.

Child welfare agencies, foster parents, judges, attorneys, and the youths themselves must work together to treat teen parenthood as an important educational opportunity for growth and enrichment. A cycle within the child welfare system exists so that a high number of adults who were in the system end up having one or more of their own children cared for by the state. By providing services and teaching parenting skills to youth, this cycle can be broken and teen parents who age out of foster care can ensure that their own children are not brought under the state's care.

¹⁷⁰ See, CAROL BRANDFORD, OFFICE OF CHILDREN'S ADMINISTRATION RESEARCH, FOSTER YOUTH TRANSITION TO INDEPENDENCE STUDY, SECOND ANNUAL REPORT 11 (2003), available at http://www1.dshs.wa.gov/ca/pdf/FYTRpt_2.pdf (last visited June 25, 2004).

Major Issues that Affect Teen Parents: Teenagers who become parents are challenged in a number of ways by the needs of their child:

- **Delays in Education and Employment Goals** – Youth who were planning on going to college or entering into a job training program find themselves needing to devote most of their time to the care and upbringing of their child. Without reliable day care, even leaving the house for an errand becomes difficult for parents, let alone attending classes or work for six to ten hours a day.
- **Additional Financial Burden** – Raising young children is expensive and parents need money for food, diapers, clothing, strollers, toys, books, and medicine. Youth in foster care may not have much disposable income and are often unable to turn to parents or relatives for financial assistance.
- **Infant and Toddler Needs** – Even though young children are a financial strain on many low-income homes, what also affects teen parents are the non-financial needs that must be addressed. Parents not only need to arrange for child care and become adept at working around their baby’s schedule, they also need to become teachers, mentors, and friends to their children.
- **Emotional Strain** – There are some issues to watch for when dealing with teenage emotion. First, teenagers going through their own developmental issues may find that the constant care and attention demanded by a young child can become unbearable. Second, there are youth whose pregnancies resulted from acts of sexual violence or abuse. The emotions that travel with such trauma can be devastating to a young parent.

Critical Federal Assistance For Teen Parents

General Title IV-E Funding

Are children of foster youth covered under Title IV-E?

Yes, as long as the teen parent is covered under Title IV-E and their own child is living with them, the child is covered as well. Under the language of Title IV-E, as part of “foster care maintenance payments,” the state must cover the costs of food, clothing, shelter, and supervision for a youth in the child welfare system. In addition, the state must cover the costs of a youth and an infant or toddler together if the youth is the younger child’s parent.¹⁷¹ There is nothing in the statutory language that indicates an infant born to a youth in care must be independently declared dependent on the state in order to be covered by Title IV-E. Once a teen is no longer eligible for Title IV-E, her or his child is no longer eligible.

¹⁷¹ See, 42 U.S.C.A. § 675 (4)(A) (2004). The term “foster care maintenance payments” means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel to the child’s home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where --

(i) a child placed in a foster family home or child care institution is the parent of a son or daughter who is in the same home or institution, and (ii) payment described in paragraph A are being made under this part with respect to such child, the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter: (italics added). See also, 42 U.S.C.A. § 671(a)(1) (2004) and 42 U.S.C.A. § 672 (2004).

Additionally, the infants or toddlers of youth in foster care should be eligible for Medicaid under Title IV-E.¹⁷² Note that, using Title IV-E funds to support the infant may bar young parents from receiving Temporary Aid to Needy Families (TANF) (see further information below) on behalf of their child, but once the parent is ineligible for Title IV-E, she or he may receive the federal TANF assistance.

FCIA/Chafee Program

Do Independent Living Programs for youth in foster care provide parenting classes?

Although each IL program is different, most do provide parenting classes as part of their curriculum. Since the goal of the IL programs is to prepare each youth in care for the responsibilities of adulthood, most state, local, and community groups have found that this area is important to cover.

How can federal funding for the Chafee Program be used for childcare?

States may choose to use some of their Chafee program funds for childcare for those youth who would otherwise qualify for those funds. In addition, youth who have aged out of foster care and receive Education and Training Vouchers (see Chapter II, “Current Federal Laws “ for more details) for post-secondary education can use a portion of those funds for childcare.

Other Federal Child Care Funding¹⁷³

Child Care and Development Block Grant (CCDBG)

What is the CCDBG?

The CCDBG is a federal funding block grant created in 1990 under the Child Care and Development Block Grant Act of 1990¹⁷⁴ to create child care subsidies for states to provide their low-income residents. It was revised in 1996 under the Personal Responsibility and Work Opportunity and Reconciliation Act.¹⁷⁵ The CCDBG provides a set amount of money to each state that can be augmented based on a formula calculating the number of children under five and the number of children who receive free lunches. States can also elect to increase the funds further by providing matching funds.

A large part of the flexibility of this program is based on the idea of parental choice; therefore, states must provide parents with choices of child care providers within the program. These choices must include any legally operating childcare provider, even if that provider is a relative or religious organization.

Who can qualify for this assistance?

States set their income limitations within the federal guidelines. The guidelines mandate that each state must spend at least 70% of their allotted funds to families receiving Temporary Aid to Needy Families (TANF), those who are transitioning off of TANF, and those in danger of becoming eligible for TANF (see below for more information on TANF). In addition, states may include families with income levels up to 85% of the median income for the state (although most set their eligibility standards lower).

¹⁷² See, 42 U.S.C.A. § 674(a)(1) (2004). For each quarter beginning after September 30, 1980, each State which has a plan approved under this part shall be entitled to a payment equal to the sum of:

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as foster care maintenance payments under section 472 for children in foster family homes or child care institutions;

¹⁷³ Adapted from, STEPHANIE SCHAEFER, NATIONAL ASSOCIATION OF CHILD ADVOCATES, A CHILD ADVOCATE'S GUIDE TO FEDERAL EARLY CARE AND EDUCATION POLICY (February 2003).

¹⁷⁴ Authorization found at 42 U.S.C.A. § 9858 (2004).

¹⁷⁵ Pub. L. 104-193 (1996).

States are also required to give priority to young children with special needs and to those children from very low-income families. However, states may choose to prioritize other categories of children, like those born to teen parents or into families on TANF.

How can a foster youth apply for these funds?

Each state must have an agency in place to administer the program. Contact your local agency for details. A list of state childcare administrators can be found at the National Child Care Information Center web site, at www.nccic.org.

Head Start/Early Head Start¹⁷⁶

What is Head Start?

Head Start is a federally funded and administered program focused on the development of children age three to five born into low-income households. Head Start agencies provide educational, health, nutrition, and parental involvement guidance and assistance for these children and their parents in a culturally and linguistically sensitive environment.

What is Early Head Start?

Early Head Start is an addition to the Head Start program that focuses on low-income pregnant women and families of children under age three. The goal of Early Head Start is to promote healthy prenatal outcomes, enhance infant and toddler functioning and development, and to promote healthy family functioning.

What is the benefit of becoming involved in Head Start and Early Head Start?

One of the biggest benefits is that these programs are directly funded by the federal government and administered by a local agency, bypassing any state administrative involvement. The Head Start programs use a two-tiered approach to childcare, assisting parents as well as children. These programs expand the focus on child development to include family health and well-being. The program's availability to parenting teens is especially useful for those young parents in foster care since these youth may not have parental role models to teach them about child rearing and development.

What services are available under Head Start and Early Head Start?

In addition to educational programs for children under five, both Head Start and Early Head Start provide parental support and information on issues like child development and nutritional needs. Both programs work together to provide comprehensive health services, but Early Head Start begins providing health and nutritional assistance in addition to parenting classes when a woman is pregnant. Early Head Start continues and expands their level of care to include the child after birth, and Head Start continues the focus on child development once the child turns three.

Temporary Aid to Needy Families (TANF)

What does TANF have to do with child care?

As part of welfare reform in 1996, child care was recognized as necessary for supporting workers and was included in TANF legislation. States are allowed to spend a portion of their block grant directly on childcare for those in the TANF program, and may transfer up to 30% of their TANF block grant to the CCDBG.

¹⁷⁶ For more information see the Administration for Children and Families, Head Start Bureau, at <http://www2.acf.dhhs.gov/programs/hsb/programs/index.htm> (last modified April 28, 2004).

Are families who have children in child care under TANF subject to the rules of TANF?

Yes, even families who are not part of the TANF employment program but who are receiving TANF assistance for childcare are subject to the programs strict work-related rules and regulations, time limits and child care support assignments (rather than the parental choice stressed in the CCDBG).

Tips For Practitioners

- Ensure that youth in foster care who will soon be parents have access to maternal and child health care services.
- Ensure that older youth in care raising children on their own have the ability to continue health care for their children.
- Advocate for the child welfare agency to create or revise a pregnant or parenting youth's Independent Living Plan (ILP – see “Current Federal Law” for more information on ILPs) and for appropriate services to be provided, such as a mother-child placement for after the birth, prenatal services, and registration for pregnancy/parenting-specific classes provided to foster youth by the state.
- Help ensure youth who have children of their own have the same rights as any parent – the right to decide schooling, health, and day to day issues for their child, in addition to having the right to maintain their legal standing (in the absence of a TPR) and the right to relinquish this legal standing.
- Help ensure a youth's right to be placed in a setting that is appropriate for raising a child, whether that is in a foster home or a group setting.
- Ensure that a youth with a disability who is a parent receives services appropriate based on her or his disability.
- Counsel youth who feel overwhelmed and inadequate by parenthood, explaining their options and the consequences of their decisions – joint placement, voluntary placement agreement, kinship care, etc.
- Ensure that teen parents are not forced to sign a voluntary placement agreement. Signing this agreement with the state can have dire consequences for a youth in care who wishes to keep the child in her or his care after emancipation.
- Discuss the pros and cons of filing for paternity determination, child support, and/or custody for the teen parent and pursue those filings if the youth so chooses.
- Work with young father-clients who wish to be involved to establish visitation so that you can assist with negotiating the travel issues, curfews, the rules of mother-child residences.
- If the youth's family income qualifies, advocate for federal child care aid.
- If the youth's pregnancy resulted from an act of sexual violence or abuse, advocate for appropriate therapeutic intervention, involving professionals specializing in trauma related to rape, sexual assault, and sexual abuse.

Questions To Ask Youth:

- *Have you ever given birth (or fathered a child)?*
- *Are you pregnant now?*
- *Was/is it a planned pregnancy?*
- *Has anyone discussed pregnancy options with you (keeping the child, terminating the pregnancy, and placing the child for adoption)?*
- *Do you live with the child? Have you ever been separated from that child? What were the circumstances? How often do you have contact with your child?*
- *Who cares for your child when you are at school, IL classes, other activities, etc.?*
- *Have you considered obtaining a paternity determination, child support action or legal custody agreement on behalf of your child?*
- *For females with custody: Do you want the father to have access to the child? Does the father want contact with the child?*
- *For males without custody: Do you want to see your child? Does the mother want you to have contact with the child?*
- *Are you enrolled in parenting classes?*

CHAPTER VI

STATE INFORMATION FOR YOUTH IN FOSTER CARE

STATE SPECIFIC INFORMATION

Introduction and Instructions

Except for a few examples throughout the text, this guide focuses on federal laws and programs funded with federal dollars. However, to make this guide fully functional, each practitioner needs to be able to personalize the guide to provide information for particular states, counties, or municipalities. In an effort to facilitate this process, this section has been provided for judges and lawyers to fill with their own locality's information.

To that end, the following section lists web sites and links where certain information can be found in addition to providing a space within the guide for information on Chafee plans, housing options, and programs for education, employment and health. Please, print out the pertinent information you find and add it to your guidebook, updating the information whenever necessary. In that way, this book can remain a relevant source of information for working with youth as they transition from foster care to independence.

How do I personalize my guidebook?

This section contains a list of questions that can be used to personalize this guidebook. After each question, we have provided instructions on how and/or where you can find the answers in order to add them to the guide. Once you have found the relevant information, three-hole punched it and placed it in your binder under the appropriate tabs, you will have a personalized reference section for your state's specific programs and services.

If I cannot locate some of my state's important information online, where else can I find that information?

If you find that a provided link does not bring you the information you require, or that your state or locality has not placed their information on the web, contact your state Independent Living (IL) Coordinator and ask that the materials be mailed to you or that the Coordinator relate all relevant information to you on the phone or via email.

Each state's IL Coordinator can be found on the National Resource Center for Youth Services at www.nrcys.ou.edu/NRCYD/ilcoord.htm. That information can also be found in a state-by-state format that includes information on housing, education, and employment at http://www.nrcys.ou.edu/NRCYD/state_home.htm.

GENERAL QUESTIONS EVERY PRACTITIONER SHOULD ANSWER WITH STATE SPECIFIC INFORMATION

1. What does my state's Chafee Plan indicate are the services we provide to older youth?

To find this information, you may look to a number of sources. Appendix B indicates where practitioners can find many of their state Chafee plan on the Internet. However, not every state has listed their plans on the web. In case your state is one of them, contact your local Independent Living Coordinator from the list provided in Appendix D.

2. What age must a youth be to qualify for these services in my state?

Since many programs' age requirements are left to the states, look to your particular state Chafee plan (see instructions for question #1) to see what programs are available to each youth and when.

3. What does my state's ETV plan say?

Since the ETV program arose after many states had submitted their original Chafee plans, most ETV plans have been filed as addendums. Follow the instructions for finding states' Chafee plans from Appendix C. However, if your state's ETV addendum plan is not on the web, contact your state's Independent Living Coordinator provided in Appendix D.

4. Does my state provide other tuition assistance or waivers/scholarships for youth who have aged out of care?

First, look to your state's Chafee Program plan (see information in #1) or, if you cannot locate your plan, contact your local Independent Living Coordinator from Appendix C. For state sponsored scholarships that are not funded with Chafee dollars, in 2002, the National Conference of State Legislatures produced a list of educational assistance for independent and former foster youth that can be found at <http://www.ncsl.org/programs/cyf/appendices.pdf>. It is important to note that since this particular document was created, there may have been changes in each state's law. However, this listing is a good place to begin. It is also a good idea to contact your state's Department of Education to find out if these programs exist and which youths are eligible to apply.

5. Does a state continue Medicaid or other medical coverage beyond a youth's 18th birthday?

The National Resource Center for Youth Development has state-by-state listings of the various programs each state provides for youth aging out of care. Check their web site at www.nrcys.ou.edu/NRCYD/state_home.htm to see whether or not they have posted their information.

Contact your state's Medicaid office to find out if there is a Chafee Medicaid extension for youth who have aged out of foster care or if a specific youth qualifies for any other state sponsored extension of benefits for youth beyond age 18. If there is no Medicaid extension, contact your state's SCHIP office to see if there is a state provision that will extend health care coverage to youth over age 18.

6. Does my state have any housing assistance for youth who are aging out of foster care or who have already left care and have no where to go?

First, check your state's Chafee plan for housing programs. Next, look to alternative housing programs that may or may not benefit former foster youth directly. For example, the National Resource Center on Youth Development provides a list of the Transitional Living Programs (TLPs) that have been funded for the current year. For a listing of those available in your state, please visit www.nrcys.ou.edu/NRCYD/tlp.htm. The U.S. Department of Housing and Urban Development also provides a list of McKinney-Vento housing program grant recipients on its website at www.hud.gov/local/index/cfm.

You may also find useful information on supportive housing programs, Section 8 vouchers and other federally funded housing programs if you contact your local HUD office. Local HUD offices can be found at www.hud.gov/local/index.cfm.

7. Does my state have any employment assistance programs for older youth in foster care or for those who have aged out?

Check with your IL Coordinator, listed in Appendix D, to see what programs are available in your area and whether state-wide eligibility requirements apply.

APPENDIX A:

IN THE COURTROOM, GUIDES FOR EASY REFERRAL

Included as part of this guide are condensed versions of the information provided throughout the book for easy reference. A timeline of benefits, outlining when judges and attorneys need to address certain issues, and a courtroom checklist for both attorneys and judges have been provided to demonstrate what specific information needs to be included in a variety of orders relating to the well-being of youth in care.

Time Line of Benefits

Age	Steps to Take
14	<ul style="list-style-type: none"> • Identify youth likely to remain in the state’s care until at least 18 who have no Independent Living Plan and advocate for one to be developed. • Check to see when youth are available to begin Independent Living classes in your state, and if they are now available, ensure that the youth are registered and attending. • Discuss education goals with youth and check his or her school records to see if the youth is on track toward those aspirations. • Discuss employment goals with the youth and arrange to involve the youth in employment programs, mentorship opportunities and independent living services that will assist the youth toward these goals. • Youth can begin to take advantage of WIA employment programs at 14, and should start to look into employment options during school. • If the youth has a disability, apply for SSI payments and make sure that the school has made a determination of eligibility for special education services. For eligible youth make sure there is an IEP for the youth that is appropriately meeting their needs and updated annually. • A youth with a disability who qualifies for services under the IDEA must have a statement of transition services included in his or her IEP by age 14. These services need to cover the youth’s needs for transition from school to a work/community setting. • Advocate for youth receiving SSI at their continuing disability reviews or assist another lawyer advocate at each review. • Discover whether a youth is a member of a U.S. Native American tribe, and if so, make sure that Chafee programs will be made fully available. • Speak with undocumented youth about Special Juvenile Immigrant Status and if they chose to proceed, begin now if not earlier.
15	<ul style="list-style-type: none"> • Continue to address issues raised in previous section. • Help facilitate a meeting at the school with the appropriate personnel to discuss issues such as credits, graduation requirements and post high school plans. • If an adolescent is interested in getting a driver’s license at 16, look into the state’s rules governing when a youth in care can receive a license and what portion of the licensing process will the state financially cover.

Time Line of Benefits

Age	Steps to Take
16	<ul style="list-style-type: none"> • Continue to address issues raised in previous sections. • Remind youth who are adopted from state’s care at 16 and beyond that they are still eligible for Education and Training Vouchers for post-secondary education expenses if they begin their advanced education prior to turning 21. • Deadline Approaching: Speak with undocumented youth about Special Juvenile Immigrant Status. The application cannot be granted if the youth is no longer in a juvenile court’s jurisdiction and the application process can take up to three years.
17	<ul style="list-style-type: none"> • Continue to address the issues raised in previous sections. • If a state closes cases at age 18, make sure that the youth completely understands this fact with a full year to prepare for case closure. If your state allows child welfare cases to remain open beyond a youth’s 18th birthday, explain what this extension would mean for the youth, including benefits and drawbacks. • Youth with disabilities who receive SSI should expect to meet with a Disability Adjudicator between age 17-17.5 to evaluate whether or not the youth will continue to receive SSI as an adult. Gather evidence in support of the youth’s disability if the youth wants to remain on SSI.
17.5	<ul style="list-style-type: none"> • Continue to address the issues raised in previous sections. • Discuss housing and health insurance options with youth who are leaving care at 18. • Even if the youth can continue in the state’s care after age 18, begin discussions now about housing options with the youth, especially if there are state residential programs for youth aged 18 – 21. • The youth and the child welfare agency should ensure collection of complete and up-to-date medical history and help youth establish a “medical home” where all future medical treatment can be provided and records can be maintained. Youth should obtain and keep copy of records. • If the youth qualifies for a Medicaid extension under Chafee or a state plan, assist with requesting paperwork and filling out the application so that the youth’s health care will transition from foster care to independence seamlessly. • Prepare youth with disabilities who are on SSI for their Disability Review where they will need to convince a Disability Adjudicator that they qualify for adult SSI. • Youth with disabilities who qualify for other adult services (like housing, health, etc.) should be linked with those programs before being emancipated.

Time Line of Benefits

Age	Steps to Take
18 (For states where the youth emancipates from care at 18 or where a youth elects to emancipate at 18)	<ul style="list-style-type: none"> • Continue to address issues raised in previous sections. • Important: DO NOT emancipate a youth before his or her 18th birthday. Otherwise, you will deny the youth the ability to take part in housing assistance, and depending on your state, a number of other services provided through the Foster Care Independence Act to youth who age out. • If a youth is likely to continue on to post-secondary education, make sure that he or she knows about how to apply for the Education and Training Vouchers and knows about state, tribal or federal scholarship/financial aid. • For those youth continuing on to post-secondary education programs, assist them in applying for an ETV offered by their state, state or tribal sponsored scholarships, and/or other forms of financial aid. • Make sure youth know how to access housing programs provided to those who are leaving foster care. • Youth may sign up for Section 8 vouchers after turning 18, so help get those youth who would like a voucher on the public housing authority's list. • Make sure that the youth who is applying for state benefits has established a permanent address where state agencies can send materials that are assured to reach the youth. • Ensure youth have copies of their complete educational and medical records and understand their right to continue to get copies of these records with information on how to make such a request on their own. • Youth may begin to take advantage of the adult WIA program in their local One-Stop Center, even as they are still utilizing the youth program.
18 (For states where youth can stay in child welfare's care beyond 18)	<ul style="list-style-type: none"> • Continue to address issues raised in previous sections. • Even if the youth is continuing in care, it is important to ensure that he or she has complete copies of educational and medical records, understands the right to continue to get copies of this information, and knows how to make such a request without assistance. • If a youth is likely to continue on to post-secondary education, make sure that he or she knows about how to apply for the Education and Training Vouchers and knows about state, tribal or federal scholarship/financial aid. • Youth may begin to take advantage of the adult WIA program in their local One-Stop Center, even as they are still utilizing the youth program. • Discuss housing options with youth who wish to enter into a group home or other supportive living environment fostering independent living skills for youth in care.

Time Line of Benefits

Age	Steps to Take
19	<ul style="list-style-type: none"> • Continue to address issues raised in previous sections. • Some states allow youth who are continuing in care, but who are older than 18, to apply for Section 8 housing vouchers so that part of the time spent waiting for the voucher can be spent in the state’s care. If this is true in your state, make sure the youth without other housing options has applied for this housing assistance.
<p style="text-align: center;">20 to 21</p> <p>(If the state has kept the child’s file open and you are still in regular contact with that child)</p>	<ul style="list-style-type: none"> • Continue to address issues raised in previous sections. • Deadline Approaching: Many Chafee programs are only available to youth until they reach 21. Prepare the youth for the end of a number of the supportive programs in which they have been participating – housing, health, independent living classes, etc. • Deadline Approaching: If a youth is just finishing secondary education and would like to go on to a post-secondary educational or training program, the youth should apply for an ETV. As long as the youth is in the ETV program at age 21 and making satisfactory progress, he or she can continue receiving aid under this program until age 23. • Discuss housing arrangements for those youth who are living in independent living housing programs or relying on other Chafee housing programs or supports since many of these programs will end once the youth turns 21. • Youth still in care with disabilities who qualify for other adult services (like housing, health, etc.) should be linked with those programs before being emancipated.
<p style="text-align: center;">19-21</p> <p>(Where the case has closed)</p>	<ul style="list-style-type: none"> • Youth, even in states where the case has been closed, are still eligible for Chafee transitional programs regardless of the court’s involvement. • If the case is closed, but you still have contact with the youth, you may choose to inform the youth about housing programs, ETV availability, and other Chafee Independent Living Programs for which the youth may be eligible.

Checklist for Attorneys

Below is a checklist specialized for attorneys based on the practitioner's tips listed at the end of each well-being chapter. This checklist is to be used as a quick reference for the courtroom, since it only touches on the issues from each section without fully explaining the concepts addressed. Therefore, this checklist is not fully useful unless the guidebook itself has been consulted.

The checklist is divided to correspond with the well-being sections in Chapters III, IV, and V. Each sub-checklist begins with a question to be asked about a youth. If the answer to that question is "no," then refer to the checklist that follows to see how to best address the youth's issues.

Are court hearings for older youth conducted appropriately?

- Consult with your client to determine if he or she desires to be present at their court hearing.
- At hearing, advocate for an independent living plan to be created for the youth, if one does not already exist and ensure youth receives a copy of that plan.
- At permanency hearings, argue for the an appropriate permanency plan for the youth and for appropriate independent living services to be provided, regardless of the plan.
- At permanency hearings, advocate for "no reasonable effort" findings when the agency has not made reasonable efforts to finalize a permanency plan for the youth.
- Advocate for the establishment of permanent connections for youth.
- If youth is participating in a Chafee program, ensure that the youth has helped in designing the individual program to meet his or her unique needs.
- For youth over 18 and court jurisdictions that keep cases open beyond 18: Consult with your client on his or her desire to keep case open beyond 18. Strategize with youth and advocates at hearings to keep case open when appropriate, especially if case is at risk for closure due to noncompliance.
- Advocate for all services to address the older youth's well-being needs (see each section below).

Is the youth on track educationally?

- Maintain youth in same school when appropriate and possible; determine if the youth is eligible for McKinney-Vento protections to either remain in their home school or gain immediate access into a new school, if appropriate, by obtaining your state's interpretation of "awaiting foster care placement."
- Know which schools in your community are designated "in need of improvement" or "persistently dangerous" under NCLB and advocate for transfers and supplemental services when appropriate.
- Obtain parental consent, determine if the child welfare agency can be considered a parent for FERPA purposes, or seek a court order to gain access to complete and accurate education records for youth prior to turning 18.
- Ensure that youth 18 and older are aware of (and assist them in accessing) a complete copy of their own education records.
- Advocate for youth to be able to participate in extracurricular activities, including providing the youth with appropriate equipment, or transportation if necessary.
- Advocate for youth at disciplinary proceedings that may affect their access to continued education.
- Discuss future education options with youth and help youth identify further education plans.

- Encourage youth interested in university education to take college entrance exams, ensure they have transportation to these exams, and advocate for financial assistance for preparatory classes.
- Educate youth on availability of grants, scholarships, and tuition waiver programs.
- Remind youth of the availability of Education and Training Vouchers (ETVs).
- Utilize adult literacy, GED, English as a second language (ESL) and education programs for older youth who qualify.

Are all the youth's health care needs being addressed?

- Ensure all youth in care have general physical health check-ups as well as dentist and optometrist appointments regularly while in care and shortly before leaving. Female youth should have at least one pelvic exam with an Obstetrician/Gynecologist before aging out of care.
- Ensure youth have access to information on health, diet, and exercise and advocate for youth to be able to participate in extracurricular activities positively affecting their physical and/or mental health.
- Check to make sure that a current mental health evaluation has been conducted, if appropriate, and that any supportive clinical relationships that are related to a diagnosis survive emancipation.
- Assess whether a youth with a diagnosis or condition requiring on-going treatment and attention understands the diagnosis and their role in continuing treatment.
- Assess whether a youth currently taking medication understands why the medication is necessary and is able to manage it without supervision.
- Ensure mental health services, transitional living, or other opportunities are set up to provide a youth aging out of care with mental health or behavioral issues with a safety net.
- If the youth has a diagnosis, check to see if it rises to the level of a disability that qualifies for certain educational and supportive services.
- Know whether the youth is covered under Medicaid while in foster care and after aging out.
- Make sure that the youth knows how to continue health care coverage after emancipation.
- Assist the child welfare agency with gathering a child's complete medical records well before his or her 18th birthday so youth can have a copy of this information.
- Obtain authorization to release medical information from the parent if state law considers a child welfare agency a "covered entity" under HIPAA, or if the parent is unwilling, use a court order or subpoena.
- Work with the youth on establishing a "medical home."

Is the youth prepared for employment?

- Know what programs exist in your community to address employment issues for older youth aging out.
- Advocate for youth to be enrolled in appropriate job training programs.
- Evaluate programs available to youth in or aging out of foster care on the quality of employment skills provided (i.e. how to look for jobs, prepare resume, interview skills, etc.).
- Ensure that the independent living services provided to youth include budgeting and fiscal responsibility assistance.
- Request a vocational assessment for youth who are questioning what kind of training or job skills they should pursue. Youth with disabilities are entitled to this assessment under IDEA (see "Special Considerations for Youth with Disabilities in Chapter IV).

- Advocate for the youth to access mentorship or internship programs in areas of employment interest.
- Review all employment options with your clients and discuss pros and cons of the various programs and options.
- Investigate child welfare agency rules for youth who wish to get their driver's license and whether the costs of driver's lessons and car insurance can be reimbursed.

Does the youth have stable housing for after emancipation?

- Know what housing options exist for youth over age 18 through the child welfare system and in your community.
- Discuss housing plans for the future with youth.
- Brainstorm about housing alternatives for the youth, working with the youth's needs and providing flexibility as the child struggles to achieve self-sufficiency.
- Ensure the youth understands basic rights and responsibilities of a tenant and a landlord, basic sections of a lease, legitimate reasons for being evicted, how to terminate a lease, penalties for terminating early, etc.
- Assist youth in thinking about establishing a relationship with an adult who can act as a co-signer on a lease, should the landlord require such a guarantee.
- Help the youth in foster care establish a permanent mailing address.
- Advocate for non-traditional housing alternatives for the youth that provide the possibility for long-term stability.
- If you suspect the youth in foster care has a disability, arrange an evaluation as early as possible since more housing programs are available to those with disabilities.
- Ensure that the youth in foster care sign up for Section 8 supportive housing as early as possible. Find out if youth in foster care are considered a priority within the Section 8 application and allocation process.

Does the youth with a disability or a suspected disability have all his or her service and care needs met?

- If you suspect the youth in foster care has an undiagnosed disability, arrange an evaluation.
- If you suspect a youth in care with a disability is not receiving services, bring it to the attention of the child welfare agency, treatment professionals, and the court.
- Ensure that expert evaluations are comprehensive and account for the unique circumstances of children within the child welfare system.
- Talk with the youth to discuss his or her feelings about the disability and need for special services.
- Understand the benefits afforded under IDEA, Section 504, and ADA and, when appropriate, advocate for children in foster care to receive all the services through the school system to which they are legally entitled.
- Determine who is the educational decision-maker under IDEA.
- Determine if a surrogate parent is needed, and if so advocate for an appropriate and knowledgeable individual to be appointed.
- If the youth has a disability impacting on their educational progress, make sure the school has a current IEP and require the IEP to be presented to the court for review.
- Understand and advocate for services and protections under Section 504.

- Remember to consider Section 504 eligibility for those children found not eligible for IDEA services and protections.
- Educate youth about their right to accommodations under ADA and Section 504 and what steps they must take to access this assistance.
- Ensure the child welfare agency has applied for SSI for qualifying youth.
- Prepare a court order, if necessary, for any additional medical evaluations in preparation for an SSI eligible older youth's re-evaluation for adult eligibility.
- Attempt to ensure adult SSI eligibility has been arranged prior to terminating court's jurisdiction.
- Prepare a court order, when appropriate, to appoint a representative payee for SSI eligible youth unable to manage their own funds.
- Inform the child welfare agency of the PASS option under SSI and pursue this option for youth with other income.
- Determine if the agency's housing plan is appropriate for youth with disabilities.
- Advocate for the pursuit of housing options designed for adults with disabilities.
- Ensure that the state-provided independent living services and employment training services make reasonable accommodations for the youth with disabilities.

Has a Native American youth had his or her needs addressed?

- Find out whether a youth is part of a registered Native American tribe.
- Assist in getting the youth registered with his or her tribe, if the youth so desires.
- Ensure that ICWA has been followed for Native American youth.
- Explore youth's desire to re-connect with tribe, if separation has occurred. Provide the opportunity to re-connect as soon as possible, as the longer youth are isolated from their tribal community the less likely they are to be able to re-connect.
- Inform youth of tuition assistance related to tribal membership, and advocate for this assistance when appropriate.
- Explore additional transition resources that may be available to youth through a youth's tribe.

Is the youth a citizen or legal permanent resident?

- Important: Both SIJS and trafficking cases require consultation with an attorney or judge experienced in matters of immigration law to avoid unforeseen negative consequences.
- Explain risks and benefits of taking immigration action.
- Do not assume that an undocumented youth wants to gain documentation rather than return to their family and/or home country.
- Start the process of applying for SIJS or VTVPA as soon as possible.
- Follow those steps listed in "Special Considerations for Undocumented Children" when applying for SIJS.
- Be aware that a youth who has been trafficked may have mental and physical health issues specific to the trafficking that should be addressed.

Has a teen parent had all of her or his needs addressed?

- Ensure that youth in foster care who will soon be parents have access to maternal and child health care services.
- Ensure that older youth in care raising children on their own have the ability to continue health care for their children.
- Advocate for the child welfare agency to create or revise a pregnant or parenting youth's Independent Living Plan (ILP) and to provide appropriate pre and post-natal services.
- Help ensure youth who have children of their own have the same decision-making rights as any parent.
- Help ensure a youth's right to be placed in a setting that is appropriate for raising a child.
- Ensure that a youth with a disability who is a parent receives services appropriate based on her or his disability.
- Counsel youth who feel overwhelmed and inadequate by parenthood, explaining placement and counseling options and the consequences of their decisions.
- Ensure that teen parents are not forced to sign a voluntary placement agreement.
- Discuss the pros and cons of filing for paternity determination, child support, and/or custody for the teen parent and pursue those filings if the youth so chooses.
- Pursue or assist with filing for child support for the teen parent, if needed.
- Work with young father-clients who wish to be involved to establish visitation.
- If the youth's family income qualifies, advocate for federal child-care aid.
- If the youth's pregnancy resulted from an act of sexual violence or abuse, advocate for appropriate therapeutic intervention.

Checklist for Judges

Below is a checklist specialized for judges based on those practitioner’s tips listed at the end of each well-being chapter. This checklist is to be used as a quick reference for the courtroom, since it only touches on the issues from each section without fully explaining the concepts addressed. Therefore, this checklist is not fully useful unless the guidebook itself has been consulted.

The checklist is divided to correspond with the well-being sections in Chapters III, IV, and V. Each sub-checklist begins with a question to be asked about a youth. If the answer to that question is “no,” then refer to the checklist that follows to see how to best address the youth’s issues.

Are court hearings for older youth being conducted appropriately?

- When youth are present for hearings, ensure that they understand the proceeding and are given opportunity for input, either directly or through their advocate.
- When youth are not present, consult with parties to ensure that youth did not desire to be present for hearing.
- At hearing, question agency regarding the contents of the independent living plan, or the creation of an independent living plan for the youth, if one does not already exist.
- At permanency hearings, determine an appropriate permanency plan for the youth, and order appropriate independent living services be provided, regardless of the plan.
- At permanency hearings, make “no reasonable effort” findings when the agency has not made reasonable efforts to finalize a permanency plan for the youth.
- Order parties to help establish permanent connections for older youth.
- If youth is participating in a Chafee program, ensure that the youth has helped design the individual program to meet his or her unique needs.
- For youth over 18 and court jurisdictions that keep cases open beyond 18: Consider youth’s desire to keep his or her case open beyond 18. Consider the youth’s ongoing well-being needs when deciding to close a case due to noncompliance.
- Ensure all services are provided to address the older youth’s well-being needs (see each section below).

Is the youth on track educationally?

- Consider school stability when making placement decisions.
- Instruct advocates to seek determinations of the youth’s eligibility for McKinney-Vento protections to either remain in his or her home school or gain immediate access into a new school, if appropriate when considering a placement move.
- Know which schools in your community are designated “in need of improvement” or “persistently dangerous” under NCLB and order parties to pursue school transfers and supplemental services when appropriate.
- Obtain complete and accurate education records for minor youth prior to aging out of care. If there is no parental consent or a determination that the child welfare agency can be considered a parent for consent purposes, issue court orders releasing information to appropriate parties.
- Ensure that youth 18 and older are aware of their right to a complete copy of their own education records, and order appropriate advocates to assist them in obtaining records.

- Ensure that youth have advocates at disciplinary proceedings that may affect their access to continued education.
- Encourage youth interested in university education to take college entrance exams; ensure they have transportation to these exams, and financial assistance for preparatory classes.
- Discuss future education options with youth and help youth identify further education plans.
- Educate youth on availability of grants, scholarships, and tuition waiver programs.
- Remind youth of the availability of Education and Training Vouchers (ETVs).

Are all the youth's health care needs being addressed?

- Order appropriate parties to arrange for all youth in care to have a general physical health check-up as well as a dentist and optometrist appointment regularly while in care and shortly before leaving. Female youth should have at least one pelvic exam with an Obstetrician/Gynecologist before aging out of care.
- Ensure youth have access to information on health, diet, and exercise and include in orders participation in extracurricular activities positively affecting their physical and/or mental health
- Order a current mental health evaluation to be conducted, if appropriate, and order services ensuring supportive clinical relationships survive emancipation.
- Assess whether a youth with a diagnosis or condition requiring ongoing treatment and attention understands the diagnosis and their role in continuing treatment.
- Assess whether a youth currently taking medication understands why the medication is necessary and is able to manage it.
- Order appropriate mental health services, transitional living, or other services to provide a youth aging out of care with mental health or behavioral issues with a safety net after exiting care.
- Determine if a youth is covered under Medicaid both while in care and after aging out.
- Make sure that the youth knows how to continue health coverage after emancipation.
- Order advocates to gather a child's medical records well before his or her 18th birthday.
- Obtain authorization to release medical information from the parent if state law considers a child welfare agency a "covered entity" under HIPAA, or if the parent is unwilling, use a court order or subpoena.
- Order advocates to work with the youth to establishing a "medical home."

Is the youth prepared for employment?

- Know what programs exist in your community to address youth employment issues.
- Order child welfare agency to enroll youth in appropriate job training programs.
- Evaluate programs available to youth in or aging out of foster care (i.e. how to look for jobs, prepare resume, interview skills, etc.).
- Ensure that independent living services include instruction on budgeting and fiscal responsibility.
- Order a vocational assessment for youth who are questioning what kind of training or job skills they should pursue. Order advocates to pursue vocational assessments for eligible youth with disabilities through IDEA (see "Special Considerations for Youth with Disabilities in Chapter IV).

- Order the child welfare agency to provide mentorship or internship programs for youth.
- Ensure advocates have reviewed all employment options with the youth.
- Ensure advocates have investigated child welfare agency rules for youth who wish to get their driver's license and whether the costs of driver's lessons and car insurance can be reimbursed.

Does the youth have stable housing for after emancipation?

- Know what housing options exist for youth over 18 through the child welfare system and in your community.
- Question parties about housing plans with enough time to plan or to research possibilities.
- Order advocates to explore housing alternatives for the youth.
- Ensure that each youth understands the basic rights and responsibilities of a tenant and a landlord, basic sections of a lease, legitimate reasons for being evicted, how to terminate a lease, penalties for terminating early, etc.
- Assist youth in thinking about establishing a relationship with an adult who can act as a co-signer on a lease, should the landlord require such a guarantee.
- Help the youth in foster care establish a permanent mailing address.
- Consider approving non-traditional housing alternatives for the youth that provide the possibility for long-term stability.
- If you suspect the youth in foster care has a disability qualifying him or her for special housing services, order evaluations early.
- Order child welfare agency to sign youth up for Section 8 supportive housing as early as possible.

Does the youth with a disability or a suspected disability have all his or her service and care needs met?

- When you suspect a youth in foster care has a disability that is not being addressed, order evaluations and appropriate treatment.
- Ensure that expert evaluations are comprehensive and account for the unique circumstances of children within the child welfare system.
- Talk with the youth to discuss their feelings about their disability and need for special services.
- Understand the benefits afforded under IDEA, Section 504, and ADA and, when appropriate, order an advocate to pursue all the services through the school system to which the youth is legally entitled.
- Clarify through court order who is the educational decision-maker under IDEA.
- Determine if a surrogate parent is needed, and if so order an advocate to pursue the appointment of an appropriate and knowledgeable individual.
- If the child has a disability impacting on their educational progress, make sure that the school has a current IEP and require parties to provide a copy to the court.
- Order a party to advocate for services and protections under Section 504 for children with disabilities.
- Ensure advocates consider Section 504 eligibility for those children found not eligible for IDEA services and protections.

- Educate the youth about their right to accommodations under ADA and Section 504 and what steps they must take to access this assistance.
- Order the child welfare agency to apply for SSI for youth that would qualify, including the 6 months of back payments, if applicable.
- Issue a court order, if necessary, for any additional medical evaluations in preparation for a SSI eligible youth's re-evaluation for eligibility as an adult.
- Ensure adult SSI eligibility has been arranged prior to terminating court's jurisdiction, if possible.
- Issue a court order appointing a representative payee for SSI eligible youth unable to manage their own funds.
- Inform the child welfare agency of the PASS option under SSI and order the pursuit of this option for youth with other income.
- Determine if the agency's housing plan is appropriate for youth with disabilities. Order the child welfare agency to pursue housing options designed for adults with disabilities.
- Ensure that the state-provided independent living services and employment training services make reasonable accommodations for those youth in foster care with disabilities.

Has a Native American youth had his or her needs addressed?

- Find out whether a youth is part of a registered Native American tribe.
- Order that an advocate assist in getting the youth registered with his or her tribe, if the youth so desires.
- Ensure that ICWA has been followed for Native American youth in foster care.
- Explore youth's desire to re-connect with tribe, if separation has occurred.
- Order advocates to pursue tuition assistance that exists as a result of tribal membership.
- Explore additional transition resources that may be available to youth through membership in a particular tribe.

Is the youth a citizen or legal permanent resident?

- **Important:** both SIJS and trafficking cases require consultation with an attorney or judge experienced in matters of immigration law to avoid unforeseen negative consequences.
- Ensure advocates have counseled youth about taking immigration action.
- Ensure advocates are pursuing SIJS and VTVPS for appropriate youth with enough time to complete process.
- Ensure court orders contain factual findings and appropriate language needed for SIJS application and a copy of the order is expeditiously provided to advocate handling the INS proceeding.
- Monitor status of SIJS application, particularly as the termination of juvenile or family courts jurisdiction draws near.
- Ensure advocates follow steps listed in "Special Considerations for Undocumented Children" when applying for SIJS.
- Be aware that a youth who has been trafficked may have mental and physical health issues specific to the trafficking that should be addressed.

Has a teen parent had all of her or his needs addressed?

- Order appropriate maternal and child health care services for youth in foster care who will soon be parents.
- Order appropriate supports to ensure that older youth in care raising children of their own continue health care for their children.
- Order the child welfare agency to create or revise a pregnant or parenting youth's Independent Living Plan (ILP) and order the appropriate services.
- Ensure that youth with children of their own understand their rights as a parent.
- Order youth in foster care to be placed in a setting that is appropriate for raising a child.
- Order youth with disabilities who are parenting a child receive appropriate services based on the disability.
- Ensure youth who feel overwhelmed and inadequate in parenting, have been counseled in placement and counseling options and the consequences of their decisions.
- Ensure that teen parents are not forced to sign a voluntary placement agreement.
- Make determinations and issue orders regarding paternity and child support, as needed.
- Assist young fathers who wish to have visitation.
- If the youth's family income qualifies, advocate for federal child-care aid.
- If the youth's pregnancy resulted from an act of sexual violence or abuse, order appropriate therapeutic services.

Questions to Ask Youth

Below is a listing of the questions found at the end of each section in Chapters III, IV, and V. Practitioners may find it useful to look over the list before meeting with a youth to identify which questions have gone unanswered. Judges and attorneys who have asked enough questions of a youth to know the answers to the following questions are better able to address the needs of those youth.

Education

- ***What school do you attend? What grade are you in? (Never assume an age correlates with a particular grade).***
- ***How are things going at school? Is there anything particular you like/dislike about school?***
- ***Are you in any extracurricular activities (i.e., sports, clubs, groups, etc.).***
- ***How many different schools have you attended since entering foster care?***
- ***Do you have a preference of which school you would like to attend? What about that school makes you want to continue attending/transfer?***
- ***Are you involved in after school activities at your school? If you want to be involved, but aren't, are there barriers to being involved?***
- ***Do you have any safety concerns at your current school? Have you been the victim of a crime at your current school?***
- ***Have you reviewed your education records? Do you know how many credits you need to graduate? Are you missing any credits for classes you successfully completed? If 18 and older: Do you have a complete and accurate copy of your education records?***
- ***Do you know how many days of school you have missed this year? Do you know why you missed school?***
- ***Have you been disciplined at school this year? What do you attribute this to? Has the discipline caused you to miss school time?***
- ***What are your career plans? What do you want to do after high school?***
- ***If considering a GED: Have you discussed your decision to pursue a GED with anyone at your school? Can you explain the reasons that have lead to your decision to pursue a GED? Have the requirements of obtaining a GED been fully explained to you? Have you compared the requirements to receive your high school diploma verses the requirements to obtain a GED?***
- ***If considering leaving school: Have you discussed the possibility of leaving school with a trusted adult? Is there anything about the supports or program you are receiving at school that could be changed that would affect your decision to leave school?***
- ***Are you considering continuing your education post-high school? What type of a program are you considering? Have you discussed your education options with someone at your school or another trusted adult?***
- ***If bound for higher education: Are you enrolled in AP classes? Have you considered taking the PSAT, SAT or other standardized test required for college admissions? Have you considered taking a preparatory class for these exams? Do you need financial assistance to enroll in these classes or for university applications?***
- ***Are you aware of grants, scholarships, and tuition waiver programs that may be available to you in your state? Do you have someone to help you fill out financial aid and other applications? Do you have money for the application fees?***

- *Do you need help writing essays for you applications? Do you have a way to visit a school or program you are considering? Have you ever been on a college or program interview? Do you need help preparing for interviews? Do you need help with transportation to and from the school and program visits and interview?*

Health

- *Have you been to see a doctor in the last year? Have you needed to see a doctor and been unable?*
- *Have you been diagnosed with a medical issue? What treatment is needed?*
- *Do you have particular medications you are taking? What health issues do they address?*
- *Do you have plans for how to maintain your medical treatment and/or medications after leaving foster care?*
- *Have you ever been pregnant? Are you pregnant now? Are you currently raising a child?*
- *When was the last time you saw your doctor? Dentist? Optometrist/Ophthalmologist? OB/GYN?*
- *Do you have access to healthy foods at school/home?*
- *Do you have your own copy of your immunization records? If the youth is raising a child of her own: Do you have a copy of your child's immunization records?*
- *Do you have a copy of your medical history?*
- *If you do not have your own copy, have you asked the child welfare agency for a list of all of your treating doctors and a copy of your medical records?*
- *Do you know what kind of medical coverage you have now? Do you know if you will be able to continue that coverage after leaving foster care?*

Employment

- *If you could end up in any career, what career would that be?*
- *What experience (job, apprenticeship, extracurricular) have you had at this point?*
- *Do you know any family members or other adults who have jobs you are interested in? Do you feel comfortable approaching them to ask questions about their job?*
- *Have you been thinking about potential jobs for after emancipation/graduation?*
- *Have you applied for any jobs? What kinds of jobs?*
- *Do you have any people who could provide references for you?*
- *Have you had any job training?*
- *What kind of job training/information would you like to make it easier to get a job?*
- *Do you know about Job Corps, Americorps, and the Conservation Corps? The U.S. military?*

Housing

- *Where do you live now? Do you feel safe there?*
- *Where do you want to live? Is it close to adult connections, family, etc.?*
- *What kind of income would you have? What portion of that income can be dedicated to rent?*
- *If you are going to continue in school after emancipation, will scholarship money or other supports help with housing?*

- *Do you have ideas about someone who might be able to help with housing (friend's parents, former foster parents, etc. etc)?*
- *Have you ever signed a lease? Do you know what a lease contains? Do you have an adult willing to co-sign a lease with you, if needed?*
- *If the youth has found housing: Do you have a lease for the unit you want to rent? Do you understand the terms?*
- *Do you have a child of your own? Where will the infant/toddler live once you are emancipated?*¹⁷⁷
- *Have you ever been diagnosed with a disability?*

Youth with Disabilities

- *Have you been tested for or diagnosed with a disability?*
- *Do you know if anyone in your family has ever been tested or diagnosed with a disability?*
- *Do you understand your disability? Do you understand your abilities and limitations related to your disability?*
- *What is your day like? What is the hardest thing you do during the day? What is the easiest?*
- *Do you get special help at school?*
- *Do you have other special services that help you out?*
- *Have you been able to attend independent learning classes and job training sessions without problem? Is there something that your school/community center/etc. has not provided for you to help you get more from those classes?*

Tribal/ICWA Youth

- *Do you know if you are a member of a tribe or if you parents are a member of a tribe?*
- *Are you familiar with your tribe or other members of your tribe?*
- *Do you have the opportunity to spend time with members of your tribe?*
- *Do adults who work with you understand your tribal customs and practices?*
- *What are your thoughts about making or maintaining contact with your Tribe?*

Undocumented Youth

- *How did you arrive in this country? When?*
- *Do you have a birth certificate?*
- *Do you wish to remain in the U.S. after aging out of foster care?*
- *Where is your family? Do you wish to return to them after leaving foster care?*
- *Do you have any siblings? Where are they right now?*
- *Have you worked while here in the U.S.? How much money did you make a week/month?*
- *While you were working, where did you live?*

¹⁷⁷ See infra, "Special Issues for Teen Parents in Foster Care."

Teen Parents In Foster Care

- *Have you ever given birth (or fathered a child)?*
- *Are you pregnant now?*
- *Was/is it a planned pregnancy?*
- *Has anyone discussed pregnancy options with you (keeping the child, terminating the pregnancy, and placing the child for adoption)?*
- *Do you live with the child? Have you ever been separated from the child? What were the circumstances? How often do you have contact with your child?*
- *Who cares for your child when you are at school, IL classes, other activities, etc?*
- *Have you considered obtaining a paternity determination, child support action or legal custody agreement on behalf of your child?*
- *For females with custody: Do you want the father to have access to the child? Does the father want contact with the child?*
- *For males without custody: Do you want to see your child? Does the mother want you to have contact with the child?*
- *Are you enrolled in parenting classes?*

APPENDIX B:

Highlights of the Foster Care Independence Act of 1999

(the entire legislation can be downloaded at www.nrcys.ou.edu/NRCYD/programs/chafee.htm)

The Foster Care Independence Act replaced the Title IV-E Independent Living Initiative of 1986. Its purpose was spelled out in the legislation and had 5 initial points:

1. to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);
2. to help children who are likely to remain in foster care until 18 years of age receive the education, training and services necessary to obtain employment;
3. to help children who are likely to remain in foster care until 18 years of age prepare for and enter post secondary training and education institutions;
4. to provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;
5. to provide financial, housing, counseling, employment, education and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood; and
6. to make available vouchers for education and training, including post secondary learning and education, to youths who have aged out of foster care (this point was added in the Promoting Safe and Stable Families Amendments of 2001).

What were the major changes in provisions from the 1986 legislation to the Chafee Legislation?

The Chafee program made revisions to previous provisions in the federal law and added some new ones. Some of those changes are outlined here. (Most of the information outlined below was gathered from the Frequently Asked Questions booklet prepared by the National Foster Care Awareness Project which can be downloaded at www.nrcys.ou.edu/NRCYD/programs/chafee.htm).

Provisions	John H. Chafee Foster Care Independence Program	Former IL initiative
Amount of Funding?	\$140 million	\$70 million
Are State Matching Funds required?	20% on total allocation	No match for allocations under \$45 million
What is used to determine the amount a state can get?	The figure is based on the number of children in federal and state funded foster care in the most recent fiscal year, no state will get less than they did in 1998.	Based on the number of children in federal funded foster care in 1984.
Who is eligible?	Youth who are likely to remain in care until age 18 and who have aged out of care until age 21, regardless of their eligibility for Title IV-E funding (federally funded foster care). A portion of the funds must be set aside for youth 18-21 who have aged out of care.	Youth 16-18 in federally funded foster care. States had an option to serve youth until age 21 and those who were in state funded foster care.
What benefits are available to Native American youth?	States are required to make the same benefits available to native youth as are available to other children.	No Provision
How must the youth be involved?	The youth must participate directly in developing their program and they must take responsibility for seeing it happen.	No provision
Can states use the funds for helping a youth with room and board expenses?	States can use up to 30% of their allocation for room and board expenses for youth that are 18-21 as long as they were in care when they turned 18.	Use of funds for room and board was not allowed.
Is independent living a permanency plan?	No. Chafee clarified that independent living activities are not an alternative to seeking permanence for a youth and can be used concurrently with adoption planning and other permanency services.	No provision
What are the provisions for health care coverage?	States have been encouraged to provide medical to youth who have aged out of care and have been given an option of extending Medicaid services to youth 18-21 that have aged out of care.	No provision
How much can a youth own and still be eligible for services?	A youth can now have assets valued up to \$10,000. This can include a vehicle and bank accounts.	The previous limit was \$1,000.

APPENDIX C:

State Chafee Plans

To receive funding from the federal government for programs contained under the Foster Care Independence Act, Chafee Independent Living Program, a state must submit a Chafee Plan. The FCIA gives states an infusion of funding to make the provision of services easier.

What is a state's Chafee Plan?

A state's Chafee Plan outlines a number of important facts for both federal officials administering funds and local practitioners trying to find youth supports. First, the Plan identifies which agency is responsible for administration and oversight of the funds and the programs that benefit. Next, the Plan outlines how the state will use the funds to help youth acquire each of the skills outlined in the FCIA's goals: make the transition from foster care to self-sufficiency; assist youth in receiving education/training to gain employment; help youth receive post-secondary training and education; provide emotional support; provide youth with financial, housing, counseling, employment, education, and other supports and services; and make education and training vouchers available to youth who have aged out of care after turning 18.

How is my state Chafee Plan organized?

Generally, each Chafee plan follows a similar format. First, a state must identify those state agencies that will administer and/or supervise the programs under their plan. Next, they must describe how the state has designed and will conduct their programs to comport with the six goals of the FCIA. Then, they must break down how youth of various ages and developmental abilities will benefit from the program. They also must describe how the state determines eligibility for the benefits and services listed in the program.

How can I use my state's plan to get services for a youth?

Judges and attorneys should familiarize themselves with their state Chafee Plan. This can help in courtroom debates with child welfare agency staff and their representative in court regarding what services are available.

Can judges order a state agency to comply with the services listed under a state's Chafee Plan?

Yes. Judges can order child welfare agencies to provide any service a youth needs to have his or her well-being issues addressed.

What happens if a state is no longer following its own Chafee plan?

Judges and lawyers need to work with their local and state child welfare agencies to determine why services outlined in a state Chafee plan are not available or being provide to youth. Sometimes through such collaborative efforts, barriers to appropriate implementation of the Chafee plan can be overcome, resulting in better services and outcomes for older youth throughout the state. Advocates may also want to contact the National Resource Center on Youth Development to provide some technical assistance to the state child welfare agency to assist with more appropriate Chafee plan implementation. Ultimately advocates could contact the Chafee program coordinator at the federal level for assistance.

How can I find my state's Chafee plan?

Below is a website listing for the National Resource Center for Youth Developments' (NRCYD) State-By-State pages. These pages break down the programs available for youth in foster care, in addition to providing the name and contact information for each state's Independent Living (IL) Coordinator. Many states have posted their Chafee plans on this website in addition to copies their Education and Training Voucher (ETV) Plans. New Chafee and ETV plans were to have been submitted to the federal government by June 30, 2004. There is a listing of IL Coordinators in Appendix C, but note that turnover may mean that those listed are not the most up-to-date information. Check the NRCYD website for updates in names and contact information.

Attorneys and Judges can also use internet-based search engines to find their state's Chafee plans since often those plans are reproduced on a government or agency website.

The NRCYD state pages are available at www.nrcys.ou.edu/NRCYD/state_home.htm. Following is an example of a state's page on the website and the information it contains.



State by State Fact Pages

Choose State



GO



national foster care coalition

Oklahoma

A State Web-based Fact Sheet

(last updated August 17, 2004)

State Coordinator

Chafee Plan

Educational Assistance

Youth Advisory Boards

Room and Board

Medicaid Option

Services for 18-21
year-olds

Transitional Living
Programs (TLP)

Working with Tribes

Children and Family
Service Reviews (CFSR)

Program Improvement
Plan (PIP)

State Coordinator

Cathy Connelly
Oklahoma Department of Human Services
P. O. Box 25352
Oklahoma City, OK 73125
(405) 521-6671
fax (405) 521-4373
cathy.connelly@okdhs.org

Clay Zahn
Oklahoma Department of Human Services
P.O. Box 25352
Oklahoma City, OK 73125
(405) 521-4077
fax (405) 521-4373
clay.zahn@okdhs.org

Link to Oklahoma's IL page, www.okdhs.org/dcf/il.htm

For a complete list of all Independent Living Coordinators go to www.nrcys.ou.edu/NRCYD/ilcoord.htm.

Chafee Plan

A Chafee Plan is written by each individual state to outline the state's plan for implementing the Foster Care Independence Act of 1999 (FCIA), or John H. Chafee Independence Program. FCIA was signed into law on December 14, 1999 and replaced the former Title IV-E Independent Living Initiative (established in 1986). The law offers important new help to young people transitioning from foster care.

Among other improvements, the new Chafee Independence Program:

- Increases funding for independent living activities,
- Offers increased assistance, including room and board, for young people ages 18-21 who are leaving foster care,
- Emphasizes the importance of securing permanent families for young people in foster care,



- Emphasizes the importance of securing permanent families for young people in foster care,
- Expands the opportunity for states to offer Medicaid for young people transitioning from care, and
- Increases state accountability for outcomes for young people transitioning from care.

For more detailed information on the Foster Care Independence Act of 1999 (Chafee Independence Program), you can download Frequently Asked Questions About the Foster Care Independence Act of 1999 and Frequently Asked Questions II About the Foster Care Independence Act of 1999 from the National Resource Center for Youth Services website, www.nrcys.ou.edu.

What is Oklahoma's plan to meet Chafee Mandates?

To see a copy of Oklahoma's Chafee plan (PDF), [click here](#).

Educational Assistance

What does Chafee say about educational assistance?

A primary purpose of the John H. Chafee Foster Care Independence Program is to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood.

Some states are making great strides in providing educational assistance to youth. This assistance may help youth complete high school or a GED. It may also allow college or vocational school to be attainable to a young person. Assistance may come in the form of a tuition waiver, payment towards room and board, or financial assistance for books and other fees incurred as a result of being in school.

What are Education and Training Vouchers?

The passage of the Promoting Safe and Stable Families Legislation of 2001 added a sixth purpose to Chafee that mandated specific money for education and training vouchers. This provision was funded for fiscal year 2003 and states are in the process of implementing these programs. Youth who age out of foster care or are adopted after age 16 years from foster care could be eligible for up to \$5000.00 a year towards post-secondary education in universities, colleges, vo-technical schools and many others. For more information on this program go to our [ETV information](#) page.

Check back soon for more information on this program and to see plans from each state on their implementation.

What other educational assistance program(s) does Oklahoma have in place for youth?

State House Bill No. 2452, effective July 1, 2000 provides tuition waivers for many youth in custody of the State of Oklahoma. The tuition waivers are for 1) undergraduate resident tuition at institutions within the Oklahoma State System of Higher Education, and, 2) resident tuition for enrollment in post secondary programs of the area vocation-technical districts. Students will be eligible until they earn a baccalaureate degree of program certificate or until age twenty-six, whichever comes first.



Youth Advisory Boards

What is a Youth Advisory Board?

The Youth Advisory Board (YAB) is a group of youth and adults working together to educate the community, empower youth for success, improve child welfare system through problem solving, promote independent living through training and resources and bridge the gap between youth and adults.

What YAB process does Oklahoma have in place?

Oklahoma has youth advisory boards. There are several area advisory boards throughout the state. Those youth participating in youth advisory boards are given credit for their participation when we are selecting youth for National Teen Conference and selecting youth for pages at the House of Representatives. The state pays mileage for any youth who has their own car or staff or foster parent to transport the youth to meetings. If you are interested in Oklahoma's YAB, look below for the regional boards and contact information.

Antlers Area

Pushmataha County Youth
Advisory Board
Meets monthly at Pushmataha Co. DHS office,
104 S. E. B St., Antlers
Stacy Williams
TEL: (918)421-6148

Enid Area

Garfield County Youth Advisory Board
Meets monthly in Enid at varying locations
Jessica Dobson
TEL: (580)362-2548

Norman Area

Cleveland County Youth
Advisory Board
Meets monthly at Cleveland Co. DHS office,
631 E. Robinson, Norman
Linda Ochsner
TEL: (580)335-5537

Chandler Area

Lincoln County Youth Advisory Board
Meets monthly at Lincoln Co. DHS office,
1121 N. Price, Chandler
Stacy Williams
TEL: (918)421-6148

Shawnee Area

Pottawatomie County Youth
Advisory Board
Meets monthly at Pottawatomie Co. DHS office,
1400 N. Kennedy St. Shawnee
Stacy Williams
TEL: (918)421-6148

Tulsa area

Tulsa County Youth Advisory Board
Meets monthly at Youth Services of Tulsa,
311 S. Madison, Tulsa
Nancy Mason
TEL: (918)581-2358

Miami Area

Ottawa County Youth Advisory Board
Meets monthly at Ottawa Co. DHS office,
1601 N. Main, Miami
Kathy Chamberlain
TEL: (918)781-5938

Okmulgee Area

Okmulgee County Youth Advisory Board
Meets monthly at Okmulgee Co. DHS office,
5005 N. Wood Dr, Okmulgee
Kathy Chamberlain
TEL: (918)781-5938

Tahlequah Area

Cherokee County Youth Advisory Board
Meets monthly at Cherokee County DHS office,
914 S. College, Tahlequah
Kathy Chamberlain
TEL: (918)781-5938

Chickasha Area

Grady County Youth Advisory Board
Meets monthly at Grady Co. DHS office,
1707 W. Frisco, Chickasha
Linda Ochsner
TEL: (580)335-5537



Room and Board

What does Chafee say about provision of Room and Board to youth over 18?

States may not use Chafee funds to provide room and board to any youth under 18. They may use up to 30% of their program funds for room and board for youth 18-21 that have left foster care because they attained 18. This provision of funds for room and board is a significant change from previous legislation which did not allow any IL funds to be utilized for this purpose.

What is Oklahoma's plan to provide Room and Board after 18?

Oklahoma provides housing assistance to youth over 18 for a maximum of six months. Assistance can include:

Item	Cost Limit
Rent Deposit	\$350.00
Rent Payment (not to exceed six months)	\$300.00 per month
Utility Deposit (for gas, water, and electric only)	\$100.00 per utility
Food (not to exceed six months)	\$100.00 per month
Additional for each minor child	\$50.00 per month
Room and board payments (rent, utilities, and food)	\$500.00 per month

Medicaid Option

What does Chafee mandate in providing Medicaid coverage for youth?

FCIA gives states new flexibility to provide Medicaid for young people ages 18 to 21 who are transitioning from foster care. The Act creates a new optional Medicaid eligibility group for "independent foster care adolescents" who are young people under the age of 21 who were in foster care under the responsibility of the state on their 18th birthday. A state may provide Medicaid to all young people under the age of 21 who were in foster care on their 18th birthday or to "reasonable categories" of this group of young people. One important note in this "reasonable categories" is that states may put age limits that are under 21 and may restrict asset levels and income amounts to qualify for this service.

What is Oklahoma's policy on Medicaid provision?

Oklahoma has recently funded a provision for Medicaid to youth over 18 aging out of foster care. For help in applying for this, youth should contact their social worker or the Yes I Can program. Youth may access this program by calling this toll-free number, (800)397-2945 or (888)318-3526.

**Services for 18-21 year-olds****What services does Chafee mandate for youth over 18?**

States participating in the receipt of Chafee funds are required to provide a portion of those funds to youth 18-21 that were in out-of-home care at the time they turned 18. This is without regard to eligibility for Title IV-E funding. States have wide discretion in the use of these funds with the only restriction of a cap of 30% on the use of programs funds for room and board payment for 18-21 year olds.

What does Oklahoma have to offer 18-21 year olds?

Oklahoma serves youth 18-21 through the "Yes I Can" foster care alumni network who left DHS or Tribal care and in out-of-home placement at age 18 and those youth who were in DHS or Tribal care and in out-of-home placement for 9 months between the ages of 16 to 18. Youth may access this program by calling this toll-free number, (800)397-2945 or (888)318-3526.

Transitional Living Programs (TLP)**What is a Transitional Living Program (TLP)?**

TLP's are a part of the Department of Health and Human Services Family and Youth Services Bureau's (FYSB) Runaway and Homeless Youth Program and is authorized by the Runaway and Homeless Youth Act (RHYA), as amended by the Missing, Exploited, and Runaway Children Protection Act (Public Law 106-71). Through the TLP, FYSB supports projects that provide longer term residential services to homeless youth ages 16-21 for up to 18 months. These services are designed to help youth who are homeless or in need of housing services make a successful transition to self-sufficient living.

For a complete list of all Transitional Living Program grantees go to www.nrcys.ou.edu/NRCYD/tlp.htm.

What are the FYSB TLP programs in Oklahoma?

Cherokee Nation Youth Shelter
Norman Merriman
P.O. Box 948
Tahlequah, OK 74465
(918) 456-0671, Ext. 2787

The Chickasaw Nation
Chris Redman, TLP Contact
P.O. Box 1548
Ada, OK 74821-1548
(580) 223-8547

Payne County Youth Services
John Bracken
2224 West 12th
P.O. Box 2647
Stillwater, OK 74075
(405) 377-3380

Southwestern Youth Services
Judie M. Hanes, Executive Director
P.O. Box 175
1313 North Forrest
Altus, OK 73522-0175
(580) 482-6229

Youth and Family Services
Dee Blose, Executive Director
2404 Sunset Drive
El Reno, OK 73036
(405) 262-6555

Youth Services of Tulsa
James M. Walker, Executive Director
Amy Redus, TLP Contact
311 South Madison
Tulsa, OK 74120
TEL: (918) 582-0061



Working with Tribes

The Foster Care Independence Act of 1999 requires that states do more than simply include Indian children in services provided. States must also actively involve Indian tribes in developing programs.

Less than one percent of young people served by federally-funded independent living programs were identified as Native Americans, according to 1996 data from the U.S. Department of Health and Human Services. Therefore, the requirements for consultation and collaboration under the Chafee Independence Program suggest both new opportunities and new responsibilities for states, tribal organizations, and advocates to reach out to, and serve, Indian youth in transition in a more comprehensive way.

The National Indian Child Welfare Association (NICWA) has resources and technical assistance for states and tribes. For more information see NICWA's website at www.nicwa.org.

In addition, the National Resource Center for Youth Services is developing a training package for child welfare practitioners in states to assist them in working effectively with tribal governments and tribal youth. For more information see the NRCYS website at www.nrcys.ou.edu.

Children and Family Services Review (CFSR)

Why are CFSR being conducted?

The 1994 Amendments to the Social Security Act (SSA) authorize the U.S. Department of Health and Human Services (DHHS) to review state child and family service programs to ensure conformance with the requirements in titles IV-B and IV-E of the SSA. Traditionally, reviews have focused primarily on assessing state agencies' compliance with procedural requirements, as evidenced by case file documentation, rather than on the results of services and states' capacity to create positive outcomes for children and families. In addition, reviews have not provided states with opportunities for making improvements before penalties have been imposed.

On January 25, 2000, the DHHS published a final rule in the Federal Register to establish a new approach to monitoring state child welfare programs. Under the rule, which became effective March 25, 2000, states will be assessed for substantial conformity with certain Federal requirements for child protective, foster care, adoption, family preservation and family support, and independent living services. The Children's Bureau, part of the Administration for Children and Families (ACF) within DHHS, is administering the review system. The system comprises two review components: (1) child and family services reviews and (2) title IV-E foster care eligibility reviews.

For more information on this process see www.acf.hhs.gov/programs/cb/cwrp/geninfo/07200fsheet.htm

When is Oklahoma's CFSR scheduled?

Oklahoma's CFSR was scheduled for March of 2002. To view a copy of the final report (PDF), [click here](#).

What issues for Adolescents were addressed in the CFSR?

Adolescents are addressed in Item 10 under Permanency Outcome 1. Stakeholders evaluating the agency rated the independent living program high in quality however, stated that the programs, especially the residential ones, have limited spots for youth and as a consequence are only serving a small percentage of youth that need the services.

State
by State



National Resource Center for Youth Development

A Service of DHHS Children's Bureau

Program Improvement Plan (PIP)

What is a Program Improvement Plan (PIP)?

Upon completion of the CFSR process, a determination is made as to a state's substantial conformity to the outcomes and systemic factors. A state that is out of conformity is given an opportunity for program improvement prior to the withholding of any federal funds, a PIP is the plan developed by the state to achieve federal standards.

What is Oklahoma's PIP?

To see a copy of Oklahoma's PIP, [click here](#).

APPENDIX D:

State Independent Living Coordinators Contact Information

(Current as of August 10, 2004, to view a current listing of IL coordinators,
visit www.nrcys.ou.edu/NRCYD/ilcoord.htm)

Alaska

Dot Douglas

Department of Health and Social Services,
Office of Children's Services
P.O. Box 110630
Juneau, AK 99811-0630
TEL: (907) 465-8659
FAX: (907) 465-3397
dorothy_douglas@health.state.ak.us

Arkansas

Jim Dennis

Arkansas Division of Children & Family Services
P.O. Box 1437, Slot 818
Little Rock, AR 72203-1437
TEL: (501) 682-8453
FAX: (501) 682-8991
james.dennis@mail.state.ar.us

California

Sonya St. Mary

California Department of Social Services
Independent Living Program Policy Unit
744 P Street, M.S. 19-78
Sacramento, CA 95814
TEL: (916) 651-7392
FAX: (916) 653-1162
sonya.st.mary@dss.ca.gov

Alabama

Linda Campbell

Alabama Department of Human Resources
Family Services Partnership - ILP
50 Ripley Street
Montgomery, AL 36130
TEL: (334) 353-7984
FAX: (334) 353-1491
lcampbell@dhr.state.al.us

Arizona

Beverlee B. Kroll

Arizona Department of Economic Security
1818 E. Southern, Suite 17B
Mesa, AZ 85204
TEL: (480) 545-1901 ext 2042
FAX: (480) 545-2986
beverlee.kroll@mail.de.state.az.us

Colorado

Valerie D. Jenkins

Independent Living Coordinator
Child Welfare Alive/e Program
Colorado Department of Human Services
1575 Sherman Street, 2nd Floor
Denver, CO 80203
TEL: (303) 866-4539
valerie.jenkins@state.co.us

Connecticut

Bill Pinto

Connecticut Department of Children
and Families
505 Hudson Street
Hartford, CT 06106
TEL: (860) 550-6471
FAX: (860) 566-8022 or
FAX: (860) 566-3453
william.pinto@po.state.ct.us

District of Columbia

Cecille Hollingsworth

ILP Coordinator
D.C. Child & Family Services Agency
400 6th Street Southwest
Washington, DC 20024
TEL: (202) 727-7500
FAX: (202) 546-1798
chollingsw@cfsa.dc.org

Florida

Tom Bentley

Florida Department of
Children and Families
1317 Winewood Blvd., Bldg. 7
Tallahassee, FL 32399
TEL: (850) 922-0901
FAX: (850) 448-0751
tom_bentley@dcf.state.fl.us

Georgia

Millicent Houston

Georgia Division of Family and Children
Services Independent Living Program
2 Peachtree Street, 18th Floor
Atlanta, GA 30303
TEL: (404) 657-3482
mjhouston@dhr.state.ga.us

Idaho

Mickey Harmer

Idaho Department of Health and Welfare
P.O. Box 83720
Boise, ID 83720-0036
TEL: (208) 334-5695
FAX: (208) 334-6664
harmerm2@idhw.state.id.us

Delaware

Truman Bolden

Independent Living Program Manager
Division of Family Services
1825 Faulkland Road
Wilmington, DE 19805
TEL: (302) 633-2638
FAX: (302) 633-2652
tbolden@state.de.us

Florida

Joel Atkinson

State IL Coordinator
Florida Department of Children and Families
1317 Winewood Blvd., Bldg. 7
Tallahassee, FL 32399-0700
TEL: (850) 487-2383
FAX: (850) 448-0751
joel_atkinson@dcf.state.fl.us

Georgia

Walter C. Pitman

Georgia Division of Family and Children
Services Independent Living Program
P.O. Box 3249
Albany, GA 31706
TEL (229) 430-3385
FAX: (229) 430-4355
wcpitman@dhr.state.ga.us

Hawaii

Lee Dean

Hawaii Department of Human Services
Social Services Division
810 Richards St., Ste. 400
Honolulu, HI 96813
TEL: (808) 586-5704
FAX: (808) 586-4806
ldean@dhs.state.hi.us

Illinois

Dr. Sharon Latiker

Office of Education and Transition
JRTC
100 West Randolph, Suite 6-200
Chicago, IL 60601
TEL: (312) 814-6823 or (312) 814-5959
slatiker@idcfs.state.il.us

Indiana

Mary Lou Easter

Indiana Family and Social Services
Administration/Division of Family and Children
20 W. 2nd Street
Williamsport, IN 47993
TEL: (765) 762-6125
FAX: (765) 762-8017
measter@fssa.state.in.us

Kansas

Deanna Dinkel

Kansas Children and Family
Services Commission
Docking State Office Building
5th Floor South
915 SW Harrison
Topeka, KS 66606-1570
TEL: (785) 368-8184
FAX: (785) 368-8159
hadbd@srskansas.org

Louisiana

Betty Becker

Louisiana Office of Community
Services/Division of Social Services
P.O. Box 57149
New Orleans, LA 70157-7149
TEL: (504) 568-8003
FAX: (504) 599-0936
bbecker@ocs.dss.state.la.us

Maryland

Sharon Hargrove

State Independent Living Coordinator
Maryland Department of Human Services
311 West Saratoga Street
5th Floor, Room 571
Baltimore, MD 21201
TEL: (410) 767-7625
FAX: (410) 333-0127
shargrove@dhr.state.md.us

Michigan

Shannon Gibson

Michigan Department of Social Services
235 S. Grand, Suite 510
Lansing, MI 48909
TEL: (517) 241-8904
FAX: (517) 335-6177
gibsons@michigan.gov

Iowa

Holli Noble

Transition Planning Program Manager
Iowa Department of Human Services
Hoover State Office Building
Des Moines, IA 50319-0114
TEL: (515) 281-6786
FAX: (515) 281-4597
hnoble@dhs.state.ia.us

Kentucky

Fawn Conley

Kentucky Department for Community
Based Services/Division of
Protection and Permanency
275 E. Main Street
Mail Stop 3C-E
Frankfort, KY 40621
TEL: (502) 564-2147
FAX: (502) 564-9554
fawn.conley@mail.state.ky.us

Maine

Hugh E. Sipowicz

IL Coordinator
Bureau of Children & Family
Maine Department of Human Services
SHS #11 - 221 State Street
Augusta, ME 04333
TEL: (207) 287-6259
FAX: (207) 287-5282
hugh.e.sipowicz@state.me.us

Massachusetts

Maureen Fallon Messeder

Associate Director Adolescent Services
Massachusetts Department of Social Services
24 Farnsworth Street
Boston, MA 02210
TEL: (617) 748-2231
maureen.messeder@state.ma.us

Minnesota

Claire Hill

Minnesota Department of Human Services
Family and Children's Services
444 Lafayette Road
St. Paul, MN 55155-3832
TEL: (651) 296-4471
FAX: (651) 297-1949
claire.d.hill@state.mn.us

Mississippi**Pearl Holloway**

Independent Living Coordinator
Mississippi Department of Human Resources
750 N. State St.
Jackson, MS 39205
TEL: (601) 359-4983
FAX: (601) 359-2525
pholloway@mdhs.state.ms.us

Montana**Jane Wilson**

Montana Department of Human Services
P.O. Box 8005
1400 Broadway, Rm. C118
Cogswell Bldg.
Helena, MT 59604-8005
TEL: (406) 444-4191
FAX: (406) 444-5956
jawilson@state.mt.us

Nevada**Becky Richard-Maley**

ILP Coordinator/Specialist
Division of Children
& Family Services
711 East Fifth Street
Ruby Station
Carson City, NV 89701-5092
TEL: (775) 684-4450
FAX: (775) 684-4457
b.richard-maley@dcs.state.nv.us

New Jersey**Nancy Caplan**

New Jersey Division of Youth and Family
Services/Placement Services
50 East State Street, CN 717
Trenton, NJ 08625-0717
TEL: (609) 292-0887
FAX: (609) 984-8199
ncaplan@dhs.state.nj.us

New York**Nancy Martinez**

NYS Office of Children & Family Services
Capital View Office Park
Room 313
South 52 Washington Street
Rensselaer, NY 12144
TEL: (518) 474-9586
FAX: (518) 473-2410
nancy.martinez@dfa.state.ny.us

Missouri**Lee Temmen**

Program Development Specialist
Missouri Division of Family Services
P.O. Box 88
Jefferson City, MO 65103
TEL: (573) 526-3735
FAX: (573) 526-3971
lee.temmen@dss.mo.gov

Nebraska**Mark Mitchell**

Health and Human Services
P.O. Box 95044
Lincoln, Nebraska 68509-5044
TEL: (402) 471-9211
FAX: (402) 471-9034
mark.mitchell@hhss.state.ne.us

New Hampshire**Dorothy Doucette Melzard**

Independent Living Program Specialist
NH Division of Children, Youth & Families
Brown Building, 4th Floor
129 Pleasant Street
Concord, NH 03301-3857
TEL: (603) 271-4706
FAX: (603) 271-4729
dmelzard@dhhs.state.nh.us

New Mexico**Ceslie Griggs**

Program Manager
Protective Services
P.O. Drawer 5160
Santa Fe, NM 87502
TEL: (505) 476-1046
FAX: (505) 827-8433
cgriggs@cyfd.state.nm.us

North Carolina**Joan S. McAllister**

Independent Living Coordinator
North Carolina Division of
Social Services, MSC 2408
325 N. Salisbury Street
Raleigh, NC 27699-2408
TEL: (919) 733-2537
FAX: (919) 715-6714
joan.mcallister@ncmail.net

North Dakota

Don Snyder

North Dakota Department of Human Services
Children and Family Services Division
600 E. Boulevard Avenue
3rd Floor - Judicial Wing
Bismarck, ND 58505
TEL: (701) 328-4934
FAX: (701) 328-3538
sosnyd@state.nd.us

Ohio

Ron Pollard

Ohio Department of Human Services
255 E. Main St., 3rd Floor
Columbus, OH 43215
TEL: (614) 752-6208
FAX: (614) 466-0164
pollar@odjfs.state.oh.us

Oklahoma

Clay Zahn

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APPENDIX E:

Side-By-Side Analysis of the ADA, IDEA & Section 504

as they relate to Education Issues for Youth with Disabilities ¹⁷⁸

	Americans with Disabilities Act of 1990 (ADA)	Individuals with Disabilities Education Act (IDEA), amended in 1997	Section 504 of The Rehabilitation Act of 1973
Type/Purpose	A civil rights law to prohibit discrimination solely on the basis of disability in employment, public services, and accommodations.	An education act to provide federal financial assistance to state and local education agencies to guarantee special education and related services to eligible children with disabilities.	A civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private, that receive federal financial assistance.
Who is eligible?	Any individual with a disability who (1) has a physical or mental impairment that substantially limits one or more life activities; or (2) has a record of such an impairment; or (3) is regarded as having such an impairment. Further, the person must be qualified for the program, service or job.	Children and youth aged 3-21 who are determined through an individualized evaluation and by a multidisciplinary team (including the parent) to be eligible in one or more of 13 categories and who need special education and related services. The categories are autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment including blindness. Children aged 3 through 9 experiencing developmental delays may also be eligible. Infants and toddlers from birth through age 2 may be eligible for early intervention services, delivered in accordance with an individualized family service plan.	Any person who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The person must be qualified for the services or job; in the case of school services, the person must be of an age when nondisabled peers are typically served or be eligible under IDEA.

¹⁷⁸ Copied entirely from Henderson, Kelly, "An Overview of ADA, IDEA and Section 504: Update 2001," *The ERIC Clearinghouse on Disabilities and Gifted Education (ERIC EC Digest #E606)*. March, 2001. Available at <http://ericec.org/digests/e606.html>

	Americans with Disabilities Act of 1990 (ADA)	Individuals with Disabilities Education Act (IDEA), amended in 1997	Section 504 of The Rehabilitation Act of 1973
Responsibility to provide a free, appropriate public education (FAPE)?	Not directly. However, ADA provides additional protection in combination with actions brought under Section 504 and IDEA. ADA protections apply to nonsectarian private schools, but not to organizations or entities controlled by religious organizations. Reasonable accommodations are required for eligible students with a disability to perform essential functions of the job. This applies to any part of the special education program that may be community-based and involve job training/ placement. Although not required, an IEP under IDEA will fulfill requirements of Title II of the ADA for an appropriate education for a student with disabilities.	Yes. A FAPE is defined to mean special education and related services that are provided at no charge to parents, meet other state educational standards, and are consistent with an individualized educational program (IEP). Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability.” Related services are those required to assist a child to benefit from special education, including speech-language pathology, physical and occupational therapy, and others. A team of professionals and parents develop and review at least annually, an IEP for each child with a disability. IDEA requires certain content in the IEP.	Yes. An “appropriate” education means an education comparable to that provided to students without disabilities. This may be regular or special education. Students can receive related services under Section 504 even if they are not provided any special education. These are to be provided at no additional cost to the child and his or her parents. Section 504 requires provision of educational and related aids and services that are designed to meet the individual educational needs of the child. The individualized educational program of IDEA may be used to meet the Section 504 requirement.
Funding to implement requirements?	No, but limited tax credits may be available for removing architectural or transportation barriers. Also, many federal agencies provide grants to public and private institutions to support training and technical assistance.	Yes. IDEA provides federal funds under Parts B and C to assist state and local educational agencies in meeting IDEA requirements to serve infants, toddlers, children, and youth with disabilities.	No. State and local jurisdictions have responsibility. IDEA funds may not be used to serve children found eligible only under Section 504.

	Americans with Disabilities Act of 1990 (ADA)	Individuals with Disabilities Education Act (IDEA), amended in 1997	Section 504 of The Rehabilitation Act of 1973
Procedural Safeguards/ Due Process	<p>The ADA does not specify procedural safeguards related to special education; it does detail the administrative requirements, complaint procedures, and consequences for noncompliance related to both services and employment. The ADA also does not delineate specific due process procedures. People with disabilities have the same remedies that are available under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991. Thus, individuals who are discriminated against may file a complaint with the relevant federal agency or sue in federal court. Enforcement agencies encourage informal mediation and voluntary compliance.</p>	<p>IDEA provides for procedural safeguards and due process rights to parents in the identification, evaluation and educational placement of their child. Prior written notice of procedural safeguards and of proposals or refusals to initiate or change identification, evaluation, or placement must be provided to parents. IDEA delineates the required components of these notices. Disputes may be resolved through mediation, impartial due process hearings, appeal of hearing decisions, and/or civil action.</p>	<p>Section 504 requires notice to parents regarding identification, evaluation, placement, and before a “significant change” in placement. Written notice is recommended. Following IDEA procedural safeguards is one way to meet Section 504 mandates. Local education agencies are required to provide impartial hearings for parents who disagree with the identification, evaluation, or placement of a student. Parents must have an opportunity to participate in the hearing process and to be represented by counsel. Beyond this, due process is left to the discretion of local districts. It is recommended that they develop policy guidance and procedures.</p>

	Americans with Disabilities Act of 1990 (ADA)	Individuals with Disabilities Education Act (IDEA), amended in 1997	Section 504 of The Rehabilitation Act of 1973
Evaluation/ Placement Procedures	The ADA does not specify evaluation and placement procedures; it does specify provision of reasonable accommodations for eligible students across educational activities and settings. Reasonable accommodations may include, but are not limited to, redesigning equipment, assigning aides, providing written communication in alternative formats, modifying tests, reassigning services to accessible locations, altering existing facilities, and building new facilities.	With parental consent, an individualized evaluation must be conducted using a variety of technically sound, unbiased assessment tools. Based on the results, a team of professionals (including the parent of the child) determines eligibility for special education. Reevaluations are conducted at least every 3 years. Results are used to develop an IEP that specifies the special education, related services, and supplemental aids and services to be provided to address the child's goals. Placement in the least restrictive environment (LRE) is selected from a continuum of alternative placements, based on the child's IEP, and reviewed at least annually. IEPs must be reviewed at least annually to see whether annual goals are being met. IDEA contains specific provisions about IEP team composition, parent participation, IEP content, and consideration of special factors.	Section 504 provides for a placement evaluation that must involve multiple assessment tools tailored to assess specific areas of educational need. Placement decisions must be made by a team of persons familiar with the student who understand the evaluation information and placement options. Students with disabilities may be placed in a separate class or facility only if they cannot be educated satisfactorily in the regular education setting with the use of supplementary aids and services. Significant changes to placement must be preceded by an evaluation. Section 504 provides for periodic reevaluation. Parental consent is not required for evaluation or placement.

APPENDIX F:

Sample Juvenile Court Judge's Order Supporting a Special Immigrant Juvenile Status Application¹⁷⁹

IN THE SUPERIOR COURT OF THE STATE OF _____
FOR THE COUNTY OF _____
JUVENILE COURT

In the Matter of)	No.	
)		ORDER REGARDING MINOR'S
JANE DOE)		ELIGIBILITY FOR SPECIAL
)		IMMIGRANT JUVENILE
a Minor)		STATUS
)		

The court has reviewed the supporting material on file, heard the arguments of counsel and found the following:

() The minor was declared dependent on the Juvenile Court of the County of _____ [or brought under the jurisdiction of the Juvenile Court of the County of _____ and committed to the custody of a State Agency] on ____ (date) ____ . The minor remains under this Court's jurisdiction.

() The minor was deemed eligible by this court for long term foster care on ____ (date) ____ .

() This Court finds that it is not in the best interest of the minor to be returned to his/her or his/her parents' previous country of nationality or country of last habitual residence, ____ (country name) ____ . It is in the minor's best interest to remain in the United States.

() The above findings and actions were made due to [abuse, neglect or abandonment] of the minor. [Or, the above findings were made due to abuse or the minor under ____ (state code citation) ____ .]

DATED: _____

Judge

¹⁷⁹ Sample order taken from, IMMIGRANT LEGAL RESOURCE CENTER, SPECIAL IMMIGRANT JUVENILE STATUS FOR CHILDREN UNDER JUVENILE COURT JURISDICTION (May 2001), available at <http://www.ilrc.org/sijsmanual.pdf> (last visited June 25, 2004).

Resources and Additional Reading

There are a number of resources available to judges and attorneys who wish to learn more about the challenges facing youth who have emancipated from foster care and those programs available to youth while in care and just after having left. Below are listed a number of these resources, many providing general information useful in addressing the needs of youth transitioning from foster care to independence.

Courtney, Mark E., et al., *Foster Youth Transitions to Adulthood: A Longitudinal View of Youth Leaving Care, Phase One*, 80 CHILD WELFARE 6, 685-717 (November/December 2001).

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Fiermonte, Cecilia & Jennifer L. Renne, ABA CENTER ON CHILDREN AND THE LAW, MAKING IT PERMANENT: REASONABLE EFFORTS TO FINALIZE PERMANENCY PLANS FOR FOSTER CHILDREN (2002).

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Grasso, Kathy, *Litigating the Individual Living Case*, 18 ABA CHILD. L. PRACTICE 65, 66, 71-75 (July 1999).

Howze, Karen Aileen, ABA CENTER ON CHILDREN AND THE LAW, HEALTH FOR TEENS IN CARE: A JUDGE'S GUIDE (2002).

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National Foster Care Awareness Project, Frequently Asked Questions About the Foster Care Independence Act of 1999 and the John H. Chafee Foster Care Independence Program (2000), available at <http://www.nrcys.ou.edu/PDFs/Publications/faq.pdf> (last visited June 22, 2004).

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Pecora, Peter J., et al., CASEY FAMILY PROGRAMS, ASSESSING THE EFFECTS OF FOSTER CARE; EARLY RESULTS FROM THE CASEY NAT'L ALUMNI STUDY (October 2003).

Pokempner, Jennifer & Lourdes M. Rosado, Juvenile Law Center, DEPENDENT YOUTH AGING OUT OF FOSTER CARE: A GUIDE FOR JUDGES (2003), available at <http://www.jlc.org/Resources/pdfs/agingoutjudgesguide.pdf> (last visited June 23, 2004).

Sheehy, Alfred M. et. al, National Resource Center for Youth Services and Edmund M. Muskie School of Public Service, PROMISING PRACTICES: SUPPORTING TRANSITION OF YOUTH SERVED BY THE FOSTER CARE SYSTEM (1999), available at <http://www.nrcys.ou.edu/NRCYD/publications.htm> (last visited June 25, 2004)

Sheehy, Alfred M, et al., PROMISING PRACTICES: SUPPORTING TRANSITION OF YOUTH SERVED BY THE FOSTER CARE SYSTEM (2002), available at <http://www.nrcys.ou.edu/NRCYD/publications.htm>.

Winkle, Edi, et al., National Resource Center for Youth Development, AN ANALYSIS OF STATES' CHILD AND FAMILY SERVICES REVIEWS AND PROGRAM IMPROVEMENT PLANS FROM A YOUTH DEVELOPMENT PERSPECTIVE (March 2004).