

# *Success Beyond 18:*

## RE-EXAMINING THE FOSTER CARE REVIEW PROCESS:

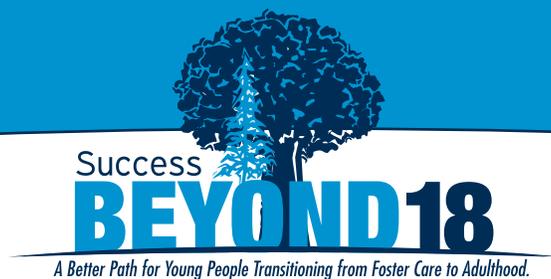
Extended Foster Care as a Catalyst for Improved  
Practices and Better Outcomes

Issue Brief

August 2013







## INTRODUCTION

*Success Beyond 18* is a national campaign that advances policies and practices that address the unique developmental needs of young people transitioning from foster care. These policies and practices are designed to provide young people leaving care with the same building blocks for success in family, work and adult life that are available to their peers in intact families.

The policies and practices promoted by *Success Beyond 18* are based on the Jim Casey Youth Opportunities Initiative's decade of work, the ideas and perspectives shared by young people who have experienced foster care firsthand, and the lessons that research and science teach us about what is best for young people. These policies and practices are organized around three overlapping and interrelated areas of focus:

- » Providing developmentally appropriate supports and services for young people transitioning from foster care to adulthood through extension of care to at least age 21;
- » Ensuring that young people have a meaningful voice in all aspects of decision making about their lives and futures, including case planning and court proceedings; and
- » Creating systems with quality oversight and accountability to ensure that young people in foster care are receiving developmentally appropriate supports and services that lead to positive life outcomes.

This issue brief focuses on establishing case oversight and review processes that include youth in developmentally appropriate ways, make room for their voices to be heard, and maximize their opportunities to receive the supports and services they need for a successful transition to adulthood. This brief is designed as a guide for jurisdictions seeking to implement quality oversight and review processes for young adults in extended care as envisioned by the Fostering Connections To Success and Increasing Adoptions Act. As jurisdictions implement these processes for young adults in care, they also are urged to re-examine their existing oversight and review processes for older youth (ages 14 to 17) to ensure that those processes are developmentally appropriate and that they provide for meaningful youth participation.

In this brief, we outline the key elements of the foster care review process required by federal law for young adults in extended foster care, discuss important considerations for jurisdictions as they implement review processes consistent with the federal requirements, and provide recommendations for jurisdictions to consider as they design and implement these processes for young people in extended foster care and re-visit their review processes for older youth in care.



Feedback from young adult leaders from the Jim Casey Initiative sites around the country has informed this brief. These young people are encouraged by the extension of important foster care supports related to housing, education, employment, health and mental health, and the opportunity to build “social capital” as young people ages 18 to 21 transition from foster care to functional adulthood. They believe that if “done right,” extended supports and services will lead to improved outcomes for young people transitioning from foster care. For these young people, “doing it right” means ensuring an accessible, responsive and supportive review process in which young people’s voices are heard and their choices are respected—something that all too often has been missing from the experience of young people in foster care.

This brief also has been informed by what we believe about the value of youth engagement—the value of “involving young people in the creation of their own destinies” and “genuinely involving them in case planning and encouraging them to advocate for themselves.”<sup>1</sup> Authentic youth engagement requires more than inviting input. As young people approach adulthood, authentic engagement means that increasing levels of respect are accorded their choices and preferences, even in challenging situations that involve some degree of risk. Too often, courts, review boards and others pay lip service to “youth voice”: they provide for the young person to be present and allow the young person to speak; but the young person’s preferences are respected only when those preferences coincide with the professionals’ viewpoints. Authentic engagement occurs only when young people know that their voices actually have an influence on the decisions being made. A case planning and case review process that embraces the engagement of young people ensures that they have the benefit of adult counsel and guidance appropriate to their specific circumstances while allowing them to take increased ownership of and responsibility for themselves.

Many respected practitioners and policy analysts argue persuasively that this type of engagement both improves the experience of the young person and enhances the quality of the reviews. When young people provide input and hear the rationale behind judges’ decisions, they are better positioned to develop advocacy skills, understand the process and accept the results.<sup>2</sup> They are more likely to have trust in a system that they otherwise may view as untrustworthy and arbitrary.<sup>3</sup>

When judges and other decision makers such as foster care review boards hear from and interact directly with the young people whose cases they are reviewing, they often have the benefit of more comprehensive information and their decision making is strengthened. For these reasons, the National Council of Juvenile and Family Court Judges’ guidelines for improving permanency and well-being outcomes advance as a guiding principle that young people be present and engaged in court proceedings.<sup>4</sup> As the Pew Commission on Children in Foster Care observed, “Children, parents, and caregivers all benefit when they have the opportunity to actively participate in court proceedings, as does the quality of decisions when judges can see and hear from key parties.”<sup>5</sup>

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*The mantra of the young people who guide the work of the Jim Casey Youth Opportunities Initiative—“Nothing about us without us”—must be a driving force in the design and implementation of review and oversight processes for young adults in foster care.*

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<sup>1</sup> Shirk & Stangler, 2004.

<sup>2</sup> Krinsky, 2006.

<sup>3</sup> Weisz, Wingrove & Faith-Slaker, 2007.

<sup>4</sup> National Council of Juvenile and Family Court Judges, 2012.

<sup>5</sup> Pew Commission on Children in Foster Care, 2004..



## FEDERAL REQUIREMENTS RELATED TO OVERSIGHT AND REVIEW

### The Structure of the Case Review Process

As a condition of receiving federal funding under Title IV-E of the Social Security Act, federal law has long required that jurisdictions provide judicial oversight and review of the cases of children in foster care. Jurisdictions must have systems in place to review the status of each case at least every six months and the young person's permanency plan at least once a year. For Title IV-E eligible youth age 16 and older, these reviews must encompass plans regarding the provision of services that the young people need to transition from foster care to independence. Consistent with the flexibility allowed under federal law, some jurisdictions have opted to conduct annual court reviews while utilizing administrative bodies (such as foster care review boards or citizen review panels) to conduct the periodic required reviews during the year. In other jurisdictions, judges conduct all required reviews.

**The Fostering Connections Act reaffirms the importance of oversight and review.**

The Fostering Connections Act reaffirms the importance of oversight and review. The Act provides two processes for oversight and review for young people who enter extended foster care at age 18 or older: one process for young people in extended foster care whose abuse and neglect cases remain open and one process for young people who enter extended foster care through voluntary placement agreements. For young people with open abuse and neglect cases, the Fostering Connections Act requires:

- » A permanency review by a court at least once every 12 months;
- » A judicial finding of reasonable efforts to finalize permanency goal or achieve permanency; and
- » A review of the case plan every six months by a court or administrative body.

For young people whose abuse and neglect cases are closed at age 18 and who enter extended care through voluntary placement agreements, the Fostering Connections Act requires:

- » A judicial determination that remaining in foster care is in the best interests of the young adult; and
- » Periodic review (at least once every six months) by a court or "administrative panel of appropriate persons at least one of whom is not responsible for case management."

The vast majority of jurisdictions that have extended foster care beyond age 18 have implemented the same review processes that they use for Title IV-E required reviews of cases of children under the age of 18. These jurisdictions use court reviews or a combination of court reviews and administrative reviews. At least one state uses an administrative review for young people who enter extended care pursuant to a voluntary placement agreement, but continues the judicial review process for those young people in extended care through continued jurisdiction over their original abuse and neglect case.<sup>6</sup>

<sup>6</sup> That state, Michigan, has been advised by a representative of the U.S. Department of Health and Human Services that while periodic judicial reviews are required in cases in which the young person enters extended foster care as a continuation of jurisdiction under the open juvenile court case, if the original juvenile court case is closed and the young person enters extended foster care through a signed voluntary agreement, the juvenile court need not be involved in the conduct of reviews or in the establishment and/or oversight of the administrative process. Some contend that Title IV-E should be interpreted as requiring an annual judicial review of the transition plan and progress made toward achieving transition even in voluntary placement cases. Proponents of a continued judicial role in case oversight and review point to a study from Illinois finding that strong advocacy within the juvenile court on behalf of youth in foster care plays a primary role in keeping youth in care and achieving better outcomes. Specifically, the Chapin Hall study found that a higher degree of court advocacy was associated with greater availability of placements and services for older youth in foster care, more involvement by caseworkers and other adults, more positive attitudes about remaining in care beyond 18, and a greater awareness that, by law, youth may remain in care beyond 18. Peters, C., Claussen Bell, K.S., Zinn, A., Goerge, R. M., & Courtney, M. E. (2008). *Continuing in Foster Care Beyond Age 18: How Courts Can Help*. Chicago: Chapin Hall at the University of Chicago.



It is understandable that jurisdictions have tended to build on existing foster care review processes, preferring to utilize processes familiar to agency staff and court personnel. However, as many jurisdictions have recognized, review processes designed for younger children must be modified to reflect (and respect) the legal status of young adults in extended care. And as jurisdictions work to implement review processes appropriate for young adults in extended care, the insights gained through that work provide opportunities to re-examine and improve their existing review processes for older youth (ages 14-17) in care. These older youth have different needs than younger children and review processes must be developmentally appropriate; actively engage them in the review process; give increased deference to their views and their preferences regarding plan content, services and placement; and allow them to assume increasing responsibilities for their lives as they approach adulthood.

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Some jurisdictions have created separate court review dockets and specialized foster care review boards for older youth and young adults that are specifically designed to engage and empower them in the review. Judges and hearing officers, foster care review board members, and others staff participating in these reviews bring special interest and expertise to these reviews.

### **Engagement of Young People in the Case Review Process: The Transition Plan**

Both federal legislation and federal agency guidance underscore the importance of ensuring the active participation of young people in the case review process. The provision of the Fostering Connections Act requiring a transition plan (*see text box*) appears in the case review section of Title IV-E, indicating that the development and content of the transition plan should be the central focus of the court and administrative review process. The Child and Family Services Improvement Act of 2006 amended Title IV-E to require that jurisdictions “implement procedural safeguards to ensure that at all hearings, including any hearing regarding the transition of the child from foster care to independent living,” the court or reviewing body “consults, in an age-appropriate manner, with the child.”<sup>7</sup> The Program Instruction from the Administration on Children and Families of the Department of Health and Human Services clarifies that courts should play an important role in the development and review of the transition plan and that hearings should be held under conditions that support active engagement of young people in key decisions.<sup>8</sup>

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<sup>7</sup> 42 U.S.C.(5)(C)(iii).

<sup>8</sup> U.S. Department of Health and Human Services, 2010.



## **Fostering Connections: The Transition Plan Requirement**

Jurisdictions must assist and support youth in developing a transition plan during the 90-day period before the youth attains age 18 (or older up to 21 as elected by the agency). The transition plan must be personalized at the direction of the child and be as detailed as he or she chooses. The transition plan must include specific options regarding housing, health insurance, health care proxy, education, local opportunities for mentors and continuing support services, work force supports and employment services.

## **CORE PRINCIPLES OF DEVELOPMENTALLY APPROPRIATE CASE OVERSIGHT AND REVIEW**

Three core principles should guide jurisdictions as they design and implement the review process for young adults in extended care and as they revisit the existing review processes for youth ages 14 to 17:

- » The reviews should be conducted in venues that are youth/young adult friendly.
- » Young people should be fully prepared for the oversight and review process and supported in meaningfully participating.
- » The review process should provide context–appropriate advocacy for youth and young adults that includes support for their full involvement in the review proceedings and advocacy for achievement of case goals and resolution of other issues.

### **Ensuring that the review venue is youth/young adult friendly**

The Fostering Connections Act makes clear that young people transitioning from foster care should be actively engaged in the development and implementation of their transition plans and should actively and meaningfully participate in the review process. Irrespective of the structure of the review (judicial, administrative, or a combination of the two), much can be learned from the positive and negative experiences of youth and young adults in foster care.

Some young people in foster care describe very positive experiences with court review processes. Some describe the experience of a judge listening to them and caring about what they think as empowering and motivating. Others state that having been a part of the review process made it easier for them to understand why certain decisions were made. On the other hand, many young people describe the court process as intimidating and hard to understand. These young people describe courtrooms as inhospitable places where they could not raise concerns, say what was on their minds, or be listened to. For some young people, foster care review boards and citizen review panels were more accessible and less formal settings where they found greater receptivity to what they had to say. Not all young people, however, report this experience.



A youth/young adult friendly venue is one in which the review is structured and conducted in a manner that is conducive to the young person playing an active role. Youth/young adult friendly venues are welcoming of young people, providing comfortable waiting areas and appropriate activities for young people while they wait. There are private places where young people can talk with their attorneys and/or their guardians ad litem (GALs). Judges and court personnel are trained in youth/young adult development and have the skills to interact with young people. These professionals are skilled in asking questions to effectively elicit information from youth and young adults and are able to support young people in presenting their ideas and concerns.<sup>9</sup> Dockets are timed so that young people do not spend excessive time waiting. Reviews are scheduled at times that limit the disruption to the young person's schedule. Sufficient time is docketed to allow for youth participation. Youth/young adult friendly review processes are more easily achieved when young people who have been in foster care participate on administrative review panels, serve on "permanency roundtables" or other leadership initiatives, and/or participate on youth advisory boards for the family or juvenile court.

### **Specialized Court Dockets**

The Benchmark Hearing Program, started in Cook County, Illinois, has served as a model for designing foster care review hearings centered on the interaction between the youth and the judge. The Benchmark Hearings are special hearings for older youth who are referred by their caseworker or advocate that focus on the youth's plans for the future and the means for achieving them. In Hillsborough County, Florida, a specialized Independent Living Court implements practices and protocols, and designs documents that are developmentally appropriate for the older youth it serves.

### **Specialized Foster Care Review Boards**

In Tennessee, specialized Foster Care Review Boards are supported by the State Court Improvement Program which provides training and technical assistance to the Boards. The specialized Foster Care Review Boards use peer advocates—young adults who were in foster care and received post-custody supports—to consult with youth in foster care about options for extended care or post-custody support and help them communicate their preferences to the Board. In addition, the peer advocates provide broad based feedback to the Boards to help them assess, address and improve systemic issues in the independent living program.

The presumption is that young people should physically attend their case reviews and that efforts should focus on accommodating their attendance and participation. Moreover, young people should have the opportunity to decide how they wish to participate in hearings. They may choose to speak in court, speak to the judge alone, (when permissible), read a statement aloud, submit a letter, and/or work with their attorneys or GALs in designing a series of questions that they will answer in court. When young people cannot be physically present or they decline to attend, there should be options to ensure that the young person's voice is heard—such as through audio or video links and/or through an appropriate advocate.

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<sup>9</sup> See e.g., American Bar Association Center for Children and the Law, 2008a, 2008b; New York State Permanent Judicial Commission on Justice for Children, 2008.



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*When I went to court the judge asked me a few questions from a checklist. He asked “are you still in school?” —“how are your grades?” —“having any problems in your placement?”—stuff like that. What he didn’t ask was anything that would get to the fact that I was not happy with my life—emotionally I was struggling. I was not in a good place but everybody walked away thinking I was.*

Josh, Jim Casey Youth Opportunities Initiative Young Fellow

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## Preparing Young People for the Review Process and Supporting Their Meaningful Participation

Meaningful participation in oversight and review processes requires preparation, and preparation starts with notice. Young people should receive advance notice of the time, place and purpose of the review so that they have a full opportunity to prepare and participate. Notice requires that the attorney, guardian ad litem (GAL) and/or court appointed special advocate (CASA) representing the young person provide their client with timely information about what to expect at the review, who will be present and how the young person can invite other people to attend the hearing. It is important to timely identify family members, friends, and other supportive individuals that the young person wants participating in the review. Sufficient time in advance of the review is needed to ensure that subpoenas can be served in situations requiring formal process or that other arrangements can be carried out to have the identified individuals attend in person or virtually by technologically facilitated telepresence. It is also important that representatives and agency staff ensure that young people know how they can initiate a review to address problems or concerns that arise between regularly scheduled reviews.

Preparation activities should focus on helping the young person feel ready for the hearing. The young person should be engaged in conversations about how he or she and/or supportive adults will respond to issues of concern that may arise in the hearing. Young people may express concerns about not understanding the language that is used, not knowing when to speak, becoming emotionally upset during the hearing, disagreeing with decisions or statements that adults make, or inadvertently hurting their own interests by expressing needs, interests or requests. A young person will feel a sense of greater confidence when he or she has the opportunity to work with support people or his or her team before a hearing to plan how concerns can be appropriately handled in a hearing. The attorney, GAL or CASA can use a variety of approaches to help the young person feel prepared, including role playing or accompanying the young person in visiting the venue beforehand.

One powerful means to prepare youth for review hearings is through peer advising and training programs for young people. Many youth boards and advocacy groups already use a variety of creative approaches for advising young people about the options before them and choices they will encounter while in foster care. Resources include youth/young-adult friendly manuals, forms or tools to help with preparation and other training curricula that promote youth understanding of the review process and how to prepare for active participation.<sup>10</sup>

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<sup>10</sup> Harrack & Jones, n.d.

It is equally important to provide post-review debriefings for young people immediately after hearings. The debriefing should ensure that the young person understands what happened in the hearing, including the specific decisions that were made and the next steps to be undertaken. The debriefing should provide young people with opportunities to process their thoughts and feelings about the review process.

The quality of preparation and young people's experiences in courts and with administrative review bodies is enhanced when feedback is obtained from young people through periodic surveys about their overall experiences as well as through regular "post review" surveys in which they provide feedback on what went well and what did not go well in their reviews. Dr. Clark Peters at the University of Missouri and the Jim Casey Youth Opportunities Initiative have developed a modifiable electronic survey that measures the experiences of young people related to their case review process and the advocacy support they received. This survey is freely available to interested jurisdictions and can be adapted to address specific interests of the particular jurisdiction.

### **Providing Context-Appropriate Advocacy**

Many young people attribute their most positive experiences in foster care to situations in which someone listened to what they had to say, understood what they felt they needed or wanted and advocated for them. In some cases, their most positive experiences were with advocates appointed by the court to represent them (although other young people report poor quality representation by professionals who were unprepared, uninvolved, and/or disinterested). In other cases, the young person's strong advocate was a case manager, foster parent, teacher, principal, coach or clergy person. In yet other cases, young people describe finally feeling heard after talking directly to the judge presiding over their case rather than through advocate mediators.

As required by the Child Abuse Prevention and Treatment Act (CAPTA),<sup>11</sup> all states provide for the appointment of lawyers, GALs, and/or lay advocates (CASAs) for children under the age of 18 in foster care proceedings in juvenile court. Most state jurisdictions (at least 30 states) provide children under the age of 18 with legal representation.<sup>12</sup> In some jurisdictions, the role of the lawyer, GAL or CASA prior to the child's eighteenth birthday is to advocate for the "best interests of the child" even if the child disagrees with the advocate's position. Many jurisdictions have re-examined this "best interest" approach and concluded that older children (at least those ages 14 through 17) benefit more when their advocate presents and argues for what the child wants. The trend toward client-directed representation is reflected in the positions of leading legal and child advocacy organizations and associations, such as the American Bar Association Center on Children and the Law<sup>13</sup> and the National Association of Counsel for Children.<sup>14</sup>

It is important for attorneys to explain to young clients the distinction between a best interest advocate and client-directed representation and the differing ethical obligations depending on the attorney's role. In many situations, however, the legal position that the attorney advocates will be the same irrespective of the type of advocacy provided. No matter the jurisdiction's representation scheme, both the best interest attorney and the client directed attorney should provide developmentally appropriate and in-depth consultation with young clients. Both attorneys should explore with clinical understanding the options available to the young person and help the client weigh the risks and benefits associated with each option. When this level of support is provided for the young person, attorneys generally find that what their young client wants them to advocate is consistent with the client's best interest.<sup>15</sup>

There is no federal requirement that jurisdictions provide legal representation to young adults in extended foster care at state expense. Under state law, however, these young adults may have a right to representation either by

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<sup>11</sup> 42 U.S.C. § 5106a(b).

<sup>12</sup> First Star, 2011.

<sup>13</sup> American Bar Association, 2009.

<sup>14</sup> National Association of Counsel for Children, 2001.

<sup>15</sup> See, e.g., Tennessee Rules of Court, Rule 40A.



a lawyer or a lay advocate. In all cases, young adults in extended care are entitled to retain counsel, either on their own or through pro bono bar association or legal aid programs.

Guidelines endorsed by a number of organizations, including the ABA Center on Children and the Law<sup>16</sup> and the National Association of Counsel for Children<sup>17</sup>, take the position that a developmentally appropriate oversight and review process for older youth and young adults should include both the opportunity for the young person to speak on his or her own behalf and the assistance of an advocate. Irrespective of a jurisdiction's approach to legal or lay representation for children in care who are under the age of 18, client-directed representation must be the standard once a young person in foster care reaches the age of majority. As legal adults, they are entitled to the same client-directed advocacy as other adults. Young adults in extended care have a corresponding right, unless found legally incompetent, to object to the appointment and/or involvement in a proceeding of a GAL and/or another person purporting to represent the young person's best interest.

**A developmentally appropriate oversight and review process for older youth and young adults should include both the opportunity for the young person to speak on his or her own behalf and the assistance of an advocate.**

A well-designed review process encourages a level of self-advocacy by young people. It invites young people to engage members of their support network as participants in reviews. At the same time, it ensures that the young person has access to a trained advocate prior to age 18 when developing and presenting the transition plan and when deciding whether to "opt in" to extended foster care. Even in jurisdictions that have done a good job of providing young people with quality training and skill building in self-advocacy, the advocacy system should ensure that young people have access to trained advocates beyond age 18 when complex matters related to extension of care arise or when other significant interests are at stake. At a minimum, a well-designed review process ensures that a young person has the benefit of a hearing and the assistance of counsel before being denied entry or re-entry into extended care or being terminated from extended care against the young person's wishes.

Self-advocacy skills can be learned by young people in foster care, and those in the legal and social services systems are ideally positioned to help young people acquire these skills. The work of Youth Advocacy Center demonstrated that the teens who were most successful in obtaining adult support, improving their situations in foster care or moving toward their education and career goals relied on some common principles and tactics of self-advocacy.<sup>18</sup> Those principles and tactics included analyzing a problem or situation critically; identifying goals; planning a strategy that addresses the needs of every party involved; and based on analysis and planning, taking action to achieve one's goals<sup>19</sup> (*see following text box*).

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<sup>16</sup> American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, 1996.

<sup>17</sup> NACC Accommodations for Representation of Children in Abuse and Neglect Cases, 2001.

<sup>18</sup> The Youth Advocacy Center, founded in 1992 by Betsy Krebs and Paul Pitcoff (attorneys for children in Manhattan Family Court), worked originally with youth in foster care with the goal of engaging youth in advocacy projects directed at changing the foster care system. The Center eventually moved to creating self-advocacy projects for young people and educated those working with youth on new approaches and practices. The Youth Advocacy Center closed in 2012.

<sup>19</sup> Krebs, Pitcoff, & Shalof, forthcoming, 2013.

## Developing Self-Advocacy Skills

Specific steps in the self-advocacy process are:

- » Setting short and long term goals;
- » Gathering and analyzing relevant information;
- » Understanding the needs of other organizations or individuals involved;
- » Assessing one's strengths;
- » Communicating the value of these strengths and connecting them to the needs of the "other side";
- » Engaging the help and advice of supportive adults and peers; and
- » Developing and implementing a concrete plan of action to achieve one's goals.

Young people can learn self-advocacy in a variety of ways, some as structured as a semester long seminar and some unstructured through working individually with a lawyer or social worker.

*Source: Krebs, Pitcoff, & Shalof, forthcoming 2013.*

## ENSURING APPROPRIATE CASE PLANS WITH A FOCUS ON WELL-BEING

In 2012, the Administration of Children, Youth and Families (ACYF) released an Information Memorandum to promote greater focus on the social and emotional well-being of children and youth served by child welfare systems.<sup>20</sup> The increased focus on well-being was not intended to be a repudiation of the emphasis on safety and permanency, but a call for a more integrated approach.<sup>21</sup> Ensuring safety and achieving permanency are necessary to well-being, but they are not sufficient. Most of the adverse effects of maltreatment are concentrated in behavioral, social and emotional domains. ACYF endorsed a well-being framework developed by Lou and colleagues that identifies four basic domains of well-being: cognitive functioning; physical health and development; behavioral/emotional functioning; and social functioning.<sup>22</sup> ACYF recognized that aspects of healthy functioning within each domain vary according to the age and developmental status of the child or young person.

The ACYF Information Memorandum emphasizes two concepts especially important in designing a system of case oversight and review. First, given the multiple case plans for young people in foster care, the plans must be integrated and congruent. Second, safety and permanence must be viewed from a developmental perspective that supports each young person's overall well-being.

The permanency plan, the independent living plan (ILP) and the transition plan are three different but related plans that are the focus of oversight and review. The contents of these three plans may have overlapping and connecting elements and contain milestones and benchmarks with different timelines. In addition, the plans may incorporate findings, recommendations and action steps from plans developed from involvement in other systems such as health or education. At times it may be helpful to consolidate the reviews of these plans, but it is important to conduct the consolidated review in a manner that examines the distinct components of each plan and preserves the purposes served by each.

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<sup>20</sup> U.S. Department of Health and Human Services, 2012.

<sup>21</sup> U.S. Department of Health and Human Services, 2012.

<sup>22</sup> Lou, et al, 2008.



**The Permanency Plan.** The foster care review process for children in foster care under the age of 18 focuses on ensuring that there is an appropriate permanency plan; that the permanency plan is being conscientiously implemented; and that adjustments are made to ensure that permanency goals are met. The scope of the review also includes inquiry into issues of safety and well-being. The scope of review is the same for a young person who remains in foster care beyond age 18, but the areas of inquiry and emphasis must reflect the young adult's legal status, strengths, and needs. Permanency, safety, and well-being remain the focus, but are considered through a different lens.

Young people who at age 18 remain in foster care based on a continuation of jurisdiction (their abuse or neglect cases remain open) must have case plans that include permanency plans, independent living plans and transition plans. Permanency continues to be a required goal for young people in extended care when jurisdiction of the original abuse or neglect case continues. Permanency plan reviews and findings of reasonable efforts as required by the Adoption and Safe Families Act (ASFA) to achieve permanency continue to be mandated for these young people. ASFA findings are not required for those in extended care under a voluntary placement agreement, but ACF program instructions urge jurisdictions to “continue to work with youth to form permanent connections with caring adults, including continuing to explore the options of “adoption, guardianship or living with other caring adults.”<sup>23</sup>

**The Independent Living Plan (ILP).** As part of the judicial review process for children and youth in foster care, courts provide oversight on aspects of well-being. The well-being inquiry generally focuses on issues related to health (physical and mental health) and educational success and school stability. Well-being concerns are particularly relevant for young people preparing to transition to adulthood. For youth in foster care, federal law requires that no later than the youth's sixteenth birthday, the child welfare agency must develop and implement an ILP as part of the case planning process and as an addition to the permanency plan. The ILP focuses on preparing the youth for the transition to adulthood. It is expected that the ILP will be discussed and reviewed throughout the case review process. The court is required to make findings at each permanency hearing about “the services needed to assist the child to make the transition from foster care to independent living.”<sup>24</sup>

Federal law does not provide specific guidance regarding the components of an ILP. It makes good sense, however, that courts, when reviewing ILPs, evaluate the planning and service provisions related to the domains of the transition plan that later will be developed with the young person—life/daily living skills, education, employment, housing, supportive adult and community connections, health (including health care coverage and decision making), and other support services. By focusing attention on these domains in the ILP review process well in advance of the development of the transition plan, courts can increase the likelihood of quality transition plans.

**The Transition Plan.** Under the Fostering Connections Act, the child welfare agency is required to assist a young person in developing a transition plan no later than 90 days prior to a young person's eighteenth birthday or the date on which the young person will be discharged from care. The Fostering Connections Act requires that a state child welfare agency caseworker and, as appropriate, other representatives of the young person provide him or her with support in developing a transition plan that includes specific options on:

- » housing;
- » health insurance;
- » education;
- » local opportunities for mentors and continuing support services;

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<sup>23</sup> U.S. Department of Health and Human Services, 2012.

<sup>24</sup> 42 U.S.C.A. 675 (5)(c)(iii).

- » work force supports and employment services; and
- » information about health care decision making.

The transition plan is to be “*personalized at the direction of the child*” and be “*as detailed as the child may elect*” (*italics added*). The transition plan is an extension of the ILP but is more specific and outcome-focused. The ILP, for example, should include housing goals and activities related to housing searches, learning budgeting and home management, but the transition plan should address the ultimate result sought related to housing and include specific information on where the youth will live and how the young person will pay for housing.

### Preparing Young People to Develop Their Transition Plans

- » Inform the young person of the purpose of the transition plan and its importance and how it is similar to or different from other planning activities
- » Explain how the young person is expected to participate in developing and implementing the transition plan
- » Encourage the young person to consider who he or she would like to invite to the planning sessions to represent their needs
- » Explain the key topics that must be addressed and the options available within each topic area
- » Encourage the young person to ask questions that can uncover further information or options that the agency has not considered

Most, including ACF, acknowledge that for transition plans to be successful, the planning process should be dynamic and started well before the 90 days preceding the young person’s eighteenth birthday or discharge from care. Well in advance of the 90-day period, the child welfare agency should prepare and fully engage a young person in transition plan development (see text box). The agency can encourage and support the formation of youth leadership groups to develop youth-led recommendations on what youth need to know prior to transition planning sessions and how to advocate for themselves.<sup>25</sup> Having a fully-developed transition plan at the 90-day mark provides an opportunity to update and synthesize the content of previous plans, fill in content gaps, make appropriate adjustments based on evolving needs and changed circumstances, build in clear measures for tracking progress for future reviews, and ensure that all aspects of the plan recognize the young person’s impending status and rights as a legal adult.

There is no requirement that the permanency plan, ILP, and transition plan be consolidated into one plan or that they be reviewed at the same time. It makes sense, however, to combine the plans to ensure plan consistency and to avoid duplication of effort. Ideally, good ILPs and permanency plans result in the creation of solid and viable transition plans.

**The goal is to develop quality permanency plans, independent living plans and transition plans that work together seamlessly to ensure that all domains of well-being are addressed.**

<sup>25</sup> U.S. Department of Health and Human Services, 2012.



## KEY DOMAINS OF INQUIRY FOR CASE OVERSIGHT AND REVIEW

The basic areas of inquiry in any judicial or administrative case review for an older youth or young adult in foster care are the young person's current status, the young person's plans, and for young people in extended foster care, continuing eligibility and appropriateness of extended care.

### *The first set of questions focus on the young person's current status.*

- » Is the young person safe?
- » Is the young person in the least restrictive environment?
- » Is the young person connected or receiving help with connecting with his or her family, including siblings?
- » Is the young person being assisted in forming supportive relationships with other caring adults?
- » Is the young person developing social capital related to people, places and things that will help him or her achieve life goals? Are there opportunities to engage in community activities, extracurricular school activities, internships, cultural and civic events, volunteer programs, political events and other network-building functions?
- » Are the young person's physical and behavioral health needs being met, including any need for trauma-informed services?
- » If the young person has significant behavioral or physical health care needs that will require moderate to high supports after leaving care, are steps being taken to prepare him or her for the transition to the adult serving system and benefits?
- » Are the young person's educational needs being met and is he or she making educational progress?
- » Are plans being made to support post-secondary education or training goals?
- » Is the young person receiving appropriate training to develop life skills and independent living skills, including training to develop self-advocacy skills? Does the young person have opportunities to practice these skills? Is he or she making progress in developing these skills? Is he or she able to demonstrate these skills in practice?
- » Does the young person have opportunities to acquire employment skills? Is he or she receiving services and supports in the area of employment and career?
- » Is the young person connected with a financial institution? Does the young person know and understand his or her credit score? Does the person have financial literacy and experience in managing money? Is there a realistic set of short-term and long-term financial goals?

### *The second set of questions focus specifically on the young person's plan.*

- » Is the plan appropriate? Do the provisions of the plan address the young person's strengths and needs (and those of the young person's family)? Are the goals appropriate?
- » Has the young person been engaged in the development/modification of the plan that is subject to review?
- » Does the plan reflect the young person's own priorities and preferences?

- » Is the young person making progress in achieving the goals set forth in the plan under review?
- » If adequate progress is not being made, what are the specific barriers to progress, including those related to the young person, those related to any service provider, and those related to the agency? How does the young person, provider and/or agency propose to address those barriers?

*The third set of questions is specific to young people in extended care.*

- » Does the young person continue to meet the eligibility criteria for extended care?
- » Is continued foster care in the young person's best interest?

## **THE AUTHORITY OF THE COURT OR ADMINISTRATIVE BODY CONDUCTING THE REVIEW**

In a well-handled case, the young person is fully engaged in the development and implementation of an appropriate transition plan, which is informed by his or her permanency plan and ILP. The young person is supported by a well-functioning transition team and receives the needed services and supports. In these cases, the court or administrative body typically has the relatively simple task of periodically determining compliance with the procedural and substantive requirements of Title IV-E that must be met for receipt of that federal funding. Even in well-handled cases, however, the young person and the professionals working with him or her may have differences of opinion or conflicts that they cannot resolve satisfactorily themselves. In this situation, the court or administrative body would presumably have the authority to resolve those conflicts by approving, refusing to approve, or revising the relevant provisions of the transition plan. Those who favor judicial rather than administrative oversight and review processes argue that courts are inherently better equipped to resolve conflicts and fashion balanced remedies when problems arise.

### **Authority to Address Non-Compliance**

What is the extent of the court's or administrative body's enforcement authority when it finds that the young person and/or the agency has failed to meet their respective responsibilities under the transition plan? Clearly, the reviewing court or administrative body can make a finding of non-compliance that may preclude the jurisdiction from receiving Title IV-E reimbursement for the case. Findings that a young person does not meet the eligibility requirements, that the transition plan is inadequate, or that the agency has failed to deliver required services or make reasonable efforts, would preclude the state from receiving reimbursement for that case. The court or administrative body can direct the child welfare agency to take a particular action or provide a particular service or face possible loss of federal reimbursement. The court or administrative body can direct the young person to take a particular action or face the temporary loss of some aspect of support. For example, a young person who decides to live in an unapproved living arrangement or housing situation may be denied housing support or face termination of extended care. Participation in extended foster care is voluntary and the reviewing court or administrative body has no coercive authority over the young person. As a result, the maximum penalty that a court or administrative body may legally impose on a young adult for non-compliance with extended foster care requirements is termination of care.

In general, in resolving disputes, the reviewing court or administrative body should place significant weight on a young person's preferences and make efforts to accommodate the young person's choices within the limits of Title IV-E eligibility. There may be cases when the young person's choice regarding a service or support



cannot be accommodated, and the young person insists on that choice. Whenever possible in these situations, the remainder of supports and services outlined in the transition plan should continue in effect, and extended care should not be terminated. If the young person's choice in and of itself disqualifies the young person for extended foster care, the child welfare agency and/or the reviewing court or administrative body should clearly explain the process for re-entry to the young person.

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*I think there should be an open door policy for young people who have left foster care to come back in. When young people say “no” to extended services at first, but want to come back later, they have shown that they are proactive in their lives and have made an effort to make it on their own. When they come back they may be in a position to benefit from the services twice as much.*

Jen, Jim Casey Youth Opportunities Initiative Young Fellow

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## Disagreements with Decisions of the Court or Administrative Body

States generally provide some form of right to appeal from an adverse decision of a court (to the appropriate appellate court) or from an adverse decision of an administrative body (to an administrative hearing officer and/or a court). In addition, federal law requires that a state's Title IV-E Plan provide an opportunity for a fair hearing “to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness.”<sup>26</sup>

Administrative appeal processes are often not used by young people in foster care or extended care. As beneficiaries of services and benefits under federal and state law, however, they are entitled to formally disagree with administrative decisions. At minimum, young people have a right to appeal any decision to terminate extended care over their objections. They also may claim the right to appeal adverse decisions related to the services or supports provided them or those denied them under their transition plans. Because an unfavorable decision can precipitate a crisis for a young adult, jurisdictions should examine applicable appellate processes to ensure that they are readily accessible to young people and that these processes are sufficiently expedited to be meaningful.

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<sup>26</sup> 42 U.S.C.A.671 (a)(12).

## CONCLUSION

The Fostering Connections Act places emphasis on oversight and review processes for all young people in foster care, including those in extended foster care. Both federal legislation and federal agency guidance underscore the importance of ensuring the active participation of young people in the case review process. The Fostering Connections Act's transition plan requirement specifically requires age-appropriate consultation with the young person. Three core principles should guide jurisdictions as they design and implement the review process for young adults in extended care and as they revisit the existing review processes for youth ages 14 to 17: reviews should be conducted in venues that are youth- and young adult- friendly; young people should be fully prepared for the oversight and review process and supported in meaningfully participating; and the review process should provide context-appropriate advocacy for youth and young adults that includes support for their full involvement in the review proceedings and advocacy for achievement of case goals and other issues. Through implementing these core principles, jurisdictions can ensure that young people have quality case plans that focus on their well-being and prepare them for a successful transition to adulthood.

The judicial and/or administrative scope of review should address three basic areas of inquiry: the young person's current status; the young person's plans; and for young people in extended care, continuing eligibility and appropriateness of extended care. The preferences and choices of young people should be given priority in resolving disputes, and young people should be afforded opportunities to appeal adverse decisions, particularly any decisions to terminate extended foster care over their objections.

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*The term “youth-driven” means that people involved in my life  
recognize that I have a voice that is my own  
and that someone is listening.*

Eddy, Jim Casey Youth Opportunities Initiative Young Fellow

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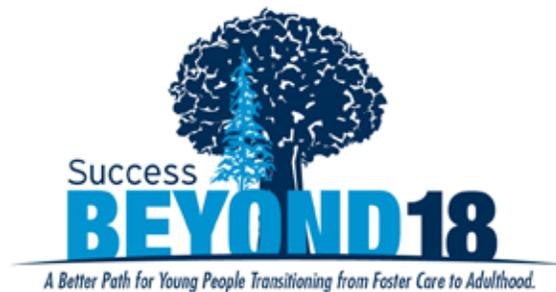
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## About the Jim Casey Youth Opportunities Initiative

The mission of the Jim Casey Youth Opportunities Initiative is to ensure that young people—primarily those between the ages of 14 and 25—make successful transitions from foster care to adulthood. We do this by working nationally, in states, and locally to improve policies and practices, promote youth engagement, apply evaluation and research, and create community partnerships. Our work creates opportunities for young people to achieve positive outcomes in permanence, education, employment, housing, health, financial capability, and social capital.



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