



Senate

General Assembly

File No. 21

February Session, 2010

Substitute Senate Bill No. 31

Senate, March 11, 2010

The Committee on Human Services reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT IMPLEMENTING THE BUDGET RECOMMENDATIONS OF THE GOVERNOR CONCERNING THE EDUCATIONAL PLACEMENT OF CHILDREN IN THE CARE AND CUSTODY OF THE DEPARTMENT OF CHILDREN AND FAMILIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2010*) (a) For purposes of this
2 section:

3 (1) "Child" means (A) any school-aged child, (B) any child ages three
4 to five, inclusive, who has been identified as eligible for special
5 education pursuant to sections 10-76a to 10-76d, inclusive, of the
6 general statutes or under the Individuals with Disabilities Education
7 Act, 20 USC 1400 et seq., as amended from time to time, or (C) any
8 child ages three to five, inclusive, who has been referred to a planning
9 and placement team to determine eligibility for special education and
10 related services pursuant to sections 10-76a to 10-76d, inclusive, of the
11 general statutes or under said Individuals with Disabilities Education
12 Act, who is placed in out-of-home care by the commissioner pursuant

13 to an order of temporary custody or an order of commitment, in
14 accordance with section 46b-129 of the general statutes.

15 (2) "School of origin" means the school that the child is attending at
16 the time the department places the child in out-of-home care or the
17 school the child is attending at the time of any change of out-of-home
18 care, by the commissioner.

19 (3) "Receiving school" means the school that a child is attending
20 following a school placement decision by the department in cases in
21 which remaining in the school of origin is determined not to be in the
22 child's best interests.

23 (4) "School placement decision" means a decision made by the
24 department regarding the school in which the child will attend while
25 the child is in out-of-home care and does not refer to the provision of a
26 free, appropriate public education to children eligible for special
27 education.

28 (5) "Department" means the Department of Children and Families.

29 (6) "Commissioner" means the Commissioner of Children and
30 Families.

31 (b) (1) Whenever a child is placed in out-of-home care by the
32 department pursuant to an emergency order under subsection (e) of
33 section 17a-101g of the general statutes, or an order of temporary
34 custody or an order of commitment under section 46b-129 of the
35 general statutes, and at any subsequent change in out-of-home care,
36 any such child may, if it is in the best interests of the child, as
37 determined pursuant to subdivision (3) of this subsection, continue to
38 attend his or her school of origin. Such child shall continue to be a
39 resident of the school district in which such school is located during
40 such attendance for purposes of chapters 168 to 170, inclusive, 172 and
41 173 of the general statutes. The board of education for the school of
42 origin shall continue to provide free school privileges to the child.

43 (2) Every decision by the department to place a child into out-of-

44 home care under the provisions of subsection (e) of section 17a-101g
45 and section 46b-129 of the general statutes, and any subsequent change
46 in out-of-home care, shall take into account the appropriateness of the
47 school setting and the proximity to the school of origin.

48 (3) (A) Whenever a child is placed in out-of-home care by the
49 department pursuant to an emergency order under subsection (e) of
50 section 17a-101g of the general statutes, or an order of temporary
51 custody or an order of commitment under section 46b-129 of the
52 general statutes, and at any subsequent change in out-of-home care,
53 the department shall immediately determine whether it is in the best
54 interests of the child to remain in the school of origin. There shall be a
55 presumption that it is in the child's best interests to remain in the
56 school of origin. The department shall provide written notice of its
57 decision to the parties not later than three business days after the date
58 on which the decision is made. Such notice shall identify the factors
59 that form the basis of the department's decision. Any party may object
60 to the department's decision not later than three business days after
61 receipt of such notice. The child shall remain in the school of origin
62 until the time for objection has passed and until any disagreement is
63 resolved, except as provided in subparagraph (C) of this subdivision.
64 The child shall be transported to the school of origin pursuant to
65 subsection (c) of this section during any such disagreement except as
66 provided in subparagraph (C) of this subdivision. Such disagreements
67 shall be expeditiously resolved. The department shall bear the burden
68 of proof that the school placement decision is in the child's best
69 interests.

70 (B) The school placement decision may be revisited at any time
71 during the child's out-of-home care, if circumstances change, in order
72 to ensure that the school placement decision remains in the best
73 interests of the child. Notice of any subsequent decision to change the
74 child's school placement decision shall be provided in accordance with
75 subparagraph (A) of this subdivision. Any disagreement with a school
76 placement decision made pursuant to this section may be challenged
77 through the dispute resolution process for treatment plans. The child

78 shall remain in the school of origin until any such disagreement is
79 resolved, except as provided in subparagraph (C) of this subdivision
80 and shall be provided with transportation in accordance with
81 subsection (c) of this section.

82 (C) If at any time the department determines that continued
83 placement in the school of origin will jeopardize the child's immediate
84 physical safety, the department may immediately remove the child
85 from the school and shall notify the child's attorney, parents, guardian
86 ad litem and surrogate parent, if any, by phone or by facsimile on the
87 same business day. Any party may object to the decision to change the
88 child's school placement not later than three business days after receipt
89 of such notice. If any party objects to the change in school placement,
90 the department shall hold an administrative hearing not later than
91 three business days after the objection.

92 (c) (1) If it is determined that it is in a child's best interests to remain
93 in his or her school of origin, the department and the board of
94 education for such school of origin shall collaborate on a
95 transportation plan for such child from the town in which the child is
96 placed to such school of origin. The department shall be responsible
97 for any additional or extraordinary cost of such transportation beyond
98 that to which the child would otherwise have access. The department
99 shall maximize federal reimbursements under Title IV-E of the Social
100 Security Act, as amended, for costs of transporting Title IV-E eligible
101 children. The department and the board of education for the school of
102 origin shall consider cost-effective, reliable and safe transportation
103 options.

104 (2) If it is not in the best interests of the child to attend the school of
105 origin, the department shall work with the board of education for such
106 school of origin and the receiving school to ensure immediate and
107 appropriate enrollment and attendance of the child in the receiving
108 school in accordance with the provisions of section 10-253 of the
109 general statutes and subsection (e) of section 10-76d of the general
110 statutes. The educational records of the child shall be provided by the

111 school of origin to the receiving school, in accordance with the federal
 112 Fostering Connections to Success and Increasing Adoptions Act of
 113 2008, Public Law 110-351. Upon notification by the department of a
 114 decision to change a child's school placement and notwithstanding
 115 section 10-220h of the general statutes, the school of origin shall
 116 transmit to the receiving school, not later than one business day after
 117 receipt of such notification, all essential educational records for the
 118 child, including, but not limited to, the child's individualized
 119 education plan and behavioral intervention plan, if any, and all
 120 documents necessary for the receiving school to determine appropriate
 121 class placement and to provide educational services. The school of
 122 origin shall transfer nonessential records to the receiving school in
 123 accordance with section 10-220h of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2010	New section

HS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Children & Families, Dept.	GF - Precludes Federal Revenue Loss; Cost; Potential Revenue Gain	Significant	Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

Enactment of this bill will ensure continued receipt by the state of federal Title IV-E reimbursements (approximately \$100 million in FY 10).¹ It would require, when it is in a foster child's best interest, transport to the school the child attended prior to placement or change in placement.

The Governor's FY 11 Midterm Budget includes approximately \$2.9 million under the Department of Children and Families' budget to implement a transportation system. An estimated 550 children will be served in FY 11, at a projected average annual cost per child of about \$10,500. Actual costs per child will depend upon yet to be negotiated rates with vendors.² Out year costs are estimated at approximately \$8.7 million in FY 12 and \$11.5 million in FY 13, reflecting phased-in placement of additional children over time.

¹ The Fostering Connections to Success and Increasing Adoptions Act of 2008 (FCSIAA) requires states to adopt a transportation policy concerning foster children no later than during the 2010 legislative session, and implement the same by 7/1/10 as a requirement of continuing participation in the Title IV-E program.

Actual costs of the transportation system may vary from the projections above should a higher percentage of foster children be placed in their home school district following the bill's implementation. Future changes in placement patterns cannot be determined in advance.

Partially offsetting federal financial participation under the Title IV-E program would be expected, assuming that the state's method for allocating transportation expenses is deemed acceptable by the federal government.³ Projected revenues would approximate \$0.7 million in FY 11, \$2.0 million in FY 12 and \$2.7 million in FY 13.

It is anticipated that the bill will not result in a fiscal impact to either local boards of education or the State Department of Education.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation, fluctuations in foster care caseloads, and policy changes affecting the Title IV-E program.

Sources: Administration for Children and Families/ Boston; Federal Funds Information for States - Issue Brief 10-6, "Preliminary FY 2010 Second Quarter ARRA FMAPs"; Governor's Midterm FY 10-11 Budget

² A procurement process will be administered by DCF and the Department of Administrative Services during Spring 2010.

³ Per FCSIAA, the foster care maintenance payment definition is expanded to include the cost of reasonable travel for transportation expenses related to allowing a child to remain in the same school. 56.2% of eligible expenses may be claimed through December 2010 (June 2011 under various congressional proposals), after which the state's IV-E matching percentage will revert to 50%. Approximately 46% of children affected by this bill would be Title IV-E eligible.

OLR Bill Analysis**sSB 31*****AN ACT IMPLEMENTING THE BUDGET RECOMMENDATIONS OF THE GOVERNOR CONCERNING THE EDUCATIONAL PLACEMENT OF CHILDREN IN THE CARE AND CUSTODY OF THE DEPARTMENT OF CHILDREN AND FAMILIES.*****SUMMARY:**

This bill creates a presumption that it is in the best interest of a child the Department of Children and Families (DCF) places in out-of-home care under an emergency, temporary custody, or commitment order to continue to attend the school he or she attended before the placement. The bill applies to all school-age children and three- to five-year olds who have been (1) determined eligible for special education or (2) referred for determination. It provides mechanisms for parents to challenge DCF decisions. And it makes DCF responsible for some costs of transporting a child from a placement to school.

EFFECTIVE DATE: July 1, 2010

SCHOOL PLACEMENT FOR CHILDREN PLACED OUT OF HOME***Determining School Placement***

The bill requires DCF, when it places a child in out-of-home care, such as a relative's or foster parent's home, or changes such a placement, to determine immediately whether it is in the child's best interest to remain in the school he or she had been attending (the "school of origin"). DCF must notify all parties (i.e., the child or child's attorney and the parents or their attorney) of its decision and the reasons for it, in writing, within three business days after making the decision.

Any party can object to the decision within three business days of receiving this notice. The bill requires disagreements to be resolved

“expeditiously” and requires DCF to prove that its decision is in the child’s best interest. The child must be transported to the school of origin until the three days have passed or the disagreement is resolved.

The bill permits the school placement decision to be revisited at any time while the child is in out-of-home care, if circumstances change, to ensure the placement remains in his or her best interest. It does not specify who initiates such a review or how. Notice of a decision in such a review must be given as described above. A party may challenge a disagreement about such a decision (presumably, the bill means a party may challenge a decision) by using the dispute resolution process for a DCF treatment plan. DCF policy permits a parent or child aggrieved by a treatment plan provision to ask for an administrative hearing and, if still aggrieved after the hearing decision, to appeal to Superior Court.

If DCF determines it is not in the child’s best interest to remain in his or her school of origin, the bill requires the agency to work with that school’s board of education and the board of the school that DCF decides the child should attend (the “receiving school”). This collaboration must ensure the child’s immediate and appropriate enrollment in the receiving school. (For a child requiring special education, the law requires DCF to notify orally the school board responsible for the child’s education (in most cases, the board where the child lived before being removed from home) within one day of the removal and in writing within two days.)

The bill requires the school of origin to provide the receiving school with the child’s educational records in accordance with federal law. It requires the school of origin, within one day of receiving notice from DCF, to send all essential educational records, including any individualized education or behavioral intervention plan, and all documents the receiving school needs to determine an appropriate class placement and provide educational services. It must transfer nonessential records within 10 days.

Removing a Child from School Placement

The bill permits DCF to immediately remove the child from the school of origin if it determines that remaining there jeopardizes his or her immediate physical safety. If it does so, it must notify the child's parents, attorney, guardian ad litem, and surrogate parent (if the child has one) by phone or fax on the day it removes the child. Any party (it is not clear whether this includes the guardian ad litem or surrogate parent or just those parties to the original removal from home) may object to the change in placement. It must do so within three business days of receiving the notice, and DCF must hold an administrative hearing within three business days of receiving the objection.

Paying for School Placement

The bill specifies that any child placed in another town who continues in his or her school of origin remains that district's educational and fiscal responsibility. By law, when DCF places a child receiving regular education in another town and the child attends school there, the receiving town must provide and pay for the child's education. When DCF places a child requiring special education in another town and the child attends school there, the town of origin retains educational and fiscal responsibility for the child.

The bill requires DCF, if it determines a child should remain in his or her original school, to collaborate with that school board on a transportation plan for the student. They must consider cost-effective, reliable, and safe transportation options.

The bill makes DCF responsible for any additional or extraordinary cost of transportation beyond that to which the child would otherwise have access. It does not specify what costs are additional or extraordinary. The bill requires DCF to maximize any reimbursements for the transportation costs available for eligible foster children under the Social Security Act.

BACKGROUND

Federal Law

P.L. 110-351, the 2008 Fostering Connections to Success and

Increasing Adoptions Act, requires a foster child's case plan to:

1. assure that the child's foster care placement takes account of his or her current educational setting and proximity to the school,
2. assure that the state agency has coordinated with local educational agencies to ensure the child remains in school,
3. assure that the state and local agencies will provide immediate enrollment and transfer the child's records to a new school if remaining in the current school is not in the child's best interest, and
4. consider reasonable travel to allow the child to remain in his or her current school. Connecticut must implement the federal law by July 1, 2010.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 19 Nay 0 (02/25/2010)