

# HOUSE BILL REPORT

## ESHB 2684

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### As Passed Legislature

**Title:** An act relating to defining best practices for the process and people involved in best interest determination of students in out-of-home care.

**Brief Description:** Defining the process for best interest determinations of students in out-of-home care.

**Sponsors:** House Committee on Education (originally sponsored by Representatives Caldier, Senn, Kagi, Kilduff, Ortiz-Self, Johnson, Muri and McBride).

#### **Brief History:**

##### **Committee Activity:**

Education: 1/23/18, 1/30/18 [DPS].

##### **Floor Activity:**

Passed House: 2/8/18, 97-0.

Passed Senate: 2/28/18, 49-0.

Passed Legislature.

#### **Brief Summary of Engrossed Substitute Bill**

- Modifies requirements governing protocols developed by the Department of Children, Youth, and Families (DCYF) and school districts regarding the status and progress of foster children by replacing references to "foster children" with "children in out-of-home care," and by requiring the protocols to include additional protocols for making best interest determinations for students in out-of-home care.
- Establishes requirements for making best interest determinations for students in out-of-home care.
- Requires school districts to designate a foster care liaison to facilitate district compliance with state and federal laws related to students in out-of-home care and to collaborate with the DCYF to address educational barriers for these students.
- Repeals provisions establishing a 2002 working group of the Department of Social and Health Services tasked with preparing a one-time plan for the Legislature that addressed educational stability and continuity for school-age children who enter into short-term foster care.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Makes all provisions effective September 1, 2018.

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## HOUSE COMMITTEE ON EDUCATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Santos, Chair; Dolan, Vice Chair; Stonier, Vice Chair; Harris, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Bergquist, Caldier, Hargrove, Johnson, Lovick, McCaslin, Ortiz-Self, Senn, Slatter, Steele, Stokesbary and Valdez.

**Staff:** Ethan Moreno (786-7386).

### **Background:**

#### Educational Responsibilities for Children and Youth in Foster Care.

State and federal requirements govern the responsibilities of public schools and public school agencies for children and youth in foster care who are enrolled schools or who are seeking enrollment.

"Foster care" is defined in rules of the Department of Social and Health Services (DSHS) as 24-hour per day temporary substitute care for the child placed away from the child's parents or guardians and for whom the DSHS or a licensed or certified child placing agency has placement and care responsibility. This definition includes any out-of-home care if the child is under the placement and care responsibility of the DSHS and placed in out-of-home care by the DSHS.

As defined in state law, "out-of-home care" is placement in a foster family home or a licensed group care facility or placement in a home, other than that of the child's parent, guardian, or legal custodian, that is not required to be licensed under specific state requirements. Out-of-home care could include placement with a relative.

Under state law, whenever practical and in the best interest of the child, children placed into foster care must remain enrolled in the schools they were attending at the time they entered foster care. State law also requires the DSHS and school districts to develop protocols specifying communication, coordination, and collaboration strategies for foster children to maximize the educational continuity and achievement for these children.

Federal law also includes requirements related to educational continuity for foster children. Under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act in 2015, a child in foster care must remain in his or her school of origin if that is determined to be in the child's best interest.

#### Best Interest Determinations/School Selection.

If the birth parents or caregivers are not the educational decision makers for a foster child, a process for making best interest determinations for the child must be utilized. Federal law does not prescribe a specific process for making best interest determinations related to

educational needs for foster children, but the United States Department of Education encourages state education agencies (in Washington, the Office of the Superintendent of Public Instruction (OSPI)), to work with state or tribal child welfare agencies to establish guidelines for the decision-making process.

The Foster Care Education Program (FCEP) of the OSPI states that decisions regarding school selection for children and youth in foster care should be made on a case-by-case basis, giving attention to the circumstances of each individual student. Documents created by the FCEP in support of its duties include a nonexhaustive list of student-centered factors that may be considered in making a best interest determination regarding whether a child or youth in foster care should remain in their school of origin, and a checklist to assist with the school selection decision.

#### Educational Continuity for Persons in Out-of-Home Care, Responsibilities of the Department of Social and Health Services.

The DSHS is required to provide youth residing in out-of-home care with the opportunity to remain enrolled in the school he or she was attending prior to out-of-home placement, unless:

- the safety of the youth is jeopardized;
- a relative or other suitable person placement approved by the DSHS is secured for the youth; or
- it is determined not to be in the youth's best interest to remain enrolled in the school he or she was attending prior to out-of-home placement.

Unless otherwise directed by the court, the educational responsibilities of the DSHS for school-aged youth residing in out-of-home care obligate the DSHS to:

- collaboratively discuss and document school placement options and plan necessary school transfers during a family team decision-making meeting;
- notify the receiving school and the school of origin that a youth residing in foster care is transferring schools;
- request and secure missing academic records or medical records required for school enrollment within 10 business days;
- document the request and receipt of academic records in the individual service and safety plan;
- pay any unpaid fees or fines due by the youth to the school or school district;
- notify all legal parties when a school disruption occurs; and
- document factors that contributed to any school disruptions.

#### Department of Children, Youth, and Families – Receipt of New Duties.

Legislation adopted in 2017 (*i.e.*, Chapter 6, Laws of 2017, 3rd special session, enacted as Second Engrossed Second Substitute House Bill 1661), created the Department of Children, Youth, and Families (DCYF). On July 1, 2018, the child welfare functions of the DSHS, which are currently performed by the Children's Administration division within the DSHS, are transferred from the DSHS to the DCYF.

#### Working Group - Educational Stability and Continuity for Children in Short-Term Foster Care.

Legislation adopted in 2002 directed the DSHS, in cooperation with the OSPI, to convene a working group to prepare a plan addressing educational stability and continuity for school-

age children who enter into short-term foster care. The working group was required to develop a plan for assuring that the best interests of the child are a primary consideration in the school placement of a child in short-term foster care. The plan, which was to be developed within existing resources, was due to the Legislature on November 1, 2002.

### **Summary of Engrossed Substitute Bill:**

#### Protocols to Maximize Educational Continuity for Children in Out-of-Home Care.

Provisions governing the DCYF in the development of protocols for specific strategies for communication, coordination, and collaboration regarding the status and progress of foster children (strategic protocols) are modified by replacing references to "foster children" with "children in out-of-home care." The strategic protocols must include protocols for making best interest determinations for students in out-of-home care that comply with specified requirements, and school districts are expressly directed to collaborate with the DCYF in developing the strategic protocols.

The protocols for making best interest determinations for students in out-of-home care must be implemented before changing the school placement of a student.

#### Requirements for Protocols Used in Making Best Interest Determinations.

Requirements for best interest determination protocols developed in collaboration by school districts and the DCYF for students in out-of-home care are established. The requirements specify that best interest determinations should be made as quickly as possible in order to prevent educational discontinuity for the student.

When making best interest determinations, every effort should be made to gather meaningful input from relevant and appropriate persons on their perspectives regarding which school the student should attend during his or her time in out-of-home care, consistent with the student's case plan. "Relevant and appropriate persons" include:

- representatives of the DCYF;
- representatives of the school of origin, such as a teacher, counselor, coach, or other meaningful person in the student's life;
- biological parents;
- foster parents;
- a person qualifying as an educational liaison identified under specific provisions in Washington's Juvenile Court Act;
- the student's relatives; and
- depending on the student's age, the student.

Whenever practical and in their best interest, students placed into out-of-home care must remain enrolled in the school they were attending at the time they entered out-of-home care. Student-centered factors must be used to determine what is in a student's best interest.

The requirements further specify that in order to make a well-informed best interest determination, a variety of student-centered factors should be considered. Examples of the 14 delineated factors, which align with guidance materials of the FCEP, are as follows:

- how long is the student's current out-of-home care placement expected to last;

- considering the impacts of past transfers, how may transferring to a new school impact the student academically, emotionally, physically, and socially;
- does one school have programs and activities that address the unique needs or interests of the student that the other school does not have;
- which school does the student prefer;
- how would the commute to the schools under consideration impact the student in terms of distance, mode of transportation, and travel time; and
- what school does the student's sibling attend.

Special education services of a student may not be interrupted by a transfer to a new school.

School districts are encouraged to use any best interest determination guide developed by the OSPI during the discussion about the advantages and disadvantages of keeping the student in the school of origin or transferring the student to a new school.

School districts are encouraged also to use any dispute resolution process of the OSPI when there is a disagreement about school placement, the provision of educational services, or a dispute between agencies. In order to minimize disruption and reduce the number of school transfers, the student must remain in his or her school of origin while a best interest determination is made and while disputes are resolved.

Provisions governing obligations of the DCYF to provide youth residing in out-of-home care with the opportunity to remain enrolled in the school he or she was attending prior to out-of-home placement are modified to require the actions of the DCYF to be consistent with requirements for the protocols used in making best interest determinations.

#### School District Designations of Foster Care Liaisons.

Each school district must designate a foster care liaison to facilitate district compliance with state and federal laws related to students in out-of-home care and collaborate with the DCYF to address educational barriers for these students.

Examples of the role and responsibilities of a foster care liaison, which align with guidance materials of the FCEP, are specified and may include:

- coordinating with the DCYF on the implementation of state and federal laws related to students in out-of-home care;
- coordinating with the staff of the FCEP at the OSPI;
- attending training and professional development opportunities to improve school district implementation efforts;
- leading and documenting the development of a process for making best interest determinations;
- developing and coordinating local transportation procedures; and
- ensuring that students in out-of-home care are enrolled in and regularly attending school.

#### Working Group - Educational Stability and Continuity for Children in Short-Term Foster Care.

Provisions establishing and directing a 2002 working group of the DSHS tasked with preparing a one-time plan for the Legislature that addressed educational stability and continuity for school-age children who enter into short-term foster care are repealed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on September 1, 2018.

**Staff Summary of Public Testimony:**

(In support) The bill was drafted in response to complaints from foster parents. Because of a shortage of foster parents, children are moved from school to school, even if the placement is temporary. The school of origin provisions in the federal McKinney Vento Act are not being followed by school districts. The OSPI has created recommendations related to best interest determinations that the DSHS should review, but this rarely happens and smooth school transitions are rare for foster children. School districts should already have the personnel necessary to implement the legislation. It is important to have a thoughtful approach to helping foster children.

The bill emphasizes the importance of limiting the disruption of education for foster care children, as these children have already had their lives disrupted. By allowing the students to stay in their school, they will have some semblance of normality in their lives. This bill gives foster care children an opportunity for success. The bill should be amended to require best interest determinations to be made prior to making a decision to change schools.

It is important to legislate a best interest determination process because there are tools and documents from the OSPI that are not being used. School decisions are made after the housing determinations, and home placement is elevated so far above school placement issue, that school placement issues become secondary. This practice can disrupt the school placement security of students.

(Opposed) None.

**Persons Testifying:** Representative Caldier, prime sponsor; Peggy Carlson, Office of the Superintendent of Public Instruction; and Skylar Cole, Treehouse.

**Persons Signed In To Testify But Not Testifying:** None.