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## College for Free, But at What Cost?

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#### ABSTRACT

*A growing number of states offer tuition waiver programs for youth involved in the foster care system who wish to attend higher education programs. However, many tuition waiver programs fall short of their goal by not providing adequate support for students to complete their college degree. Foster youth not only face numerous challenges before they enroll in an undergraduate degree program, but they also face many obstacles after enrollment which impact their ability to graduate from college. Much more needs to be done to increase postsecondary education graduation rates to best support these youth. This Article will examine the legal obstacles facing foster youth with college enrollment, review state-sponsored tuition waiver programs, and address the challenges for foster youth in completing their college education.*

#### INTRODUCTION

**F**oster youth not only experience trauma when removed from their families, but they also commonly experience trauma within the

foster care system. Predictably, many of these youth often then experience challenges through adulthood, such as homelessness, incarceration, unemployment, and incomplete education.<sup>1</sup> High school completion and college enrollment results in higher employment rates, higher paying jobs, and decreased participation in criminal activities compared to those youth without a diploma.<sup>2</sup> Recognizing significant disparities in educational attainment for foster youth versus non-foster youth, states began to develop tuition waiver programs in the 1990s, with the goal of assisting foster youth in obtaining a college degree.<sup>3</sup> Although completing a college degree yields greater earning potential, unfortunately, too many obstacles remain in place for foster youth to be able to enroll in college and complete their education.<sup>4</sup> Too often, higher education programs, despite tuition waivers, seem out of reach to many foster youth or former foster youth for many reasons discussed throughout this paper, such as poor secondary academic achievement, inadequate financial support, limited mentorship and guidance in the application process, housing instability, and so on.<sup>5</sup> Despite the fact that foster youth who attend college may have similar levels of financial need, states vary significantly in the amount of financial support provided to foster youth attending college.<sup>6</sup>

As a result of various forms of trauma, the educational well-being of youth in foster care is too often inferior to their non-foster care involved

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<sup>1</sup> Mark E. Courtney & Amy Dworsky, *Early Outcomes for Young Adults Transitioning From Out-Of-Home Care in the USA*, 11 CHILD & FAM. SOC. WORK 209, 209–19 (2006).

<sup>2</sup> Jennifer Ma & Matea Pender, *Education Pays 2023, The Benefits of Higher Education for Individuals and Society*, COLL. BD. 4–5 (2023), <https://research.collegeboard.org/media/pdf/education-pays-2023.pdf> [<https://perma.cc/XK59-AHKP>]; see also JOEL MCFARLAND ET AL., TRENDS IN HIGH SCHOOL DROPOUT AND COMPLETION RATES IN THE UNITED STATES: 2019, <https://nces.ed.gov/pubs2020/2020117.pdf> [<https://perma.cc/Z98H-WRCV>].

<sup>3</sup> Toni Watt & Monica Faulkner, *The Texas Tuition and Fee Waiver Program for Youth Who Have Experienced Foster Care: An Assessment of Waiver Utilization and Impact*, 117 CHILD. & YOUTH SERVS. REV., 2020, at 1, 1.

<sup>4</sup> EMILY PARKER & MOLLY SARUBBI, EDUC. COMM'N OF THE STATES, TUITION ASSISTANCE PROGRAMS FOR FOSTER YOUTH PURSUING POSTSECONDARY EDUCATION, 50-STATE REVIEW 1 (2017).

<sup>5</sup> Fewer than half of foster youth continue past their first year of college, compared to other first-generation college students, 75% of whom continue past their first year. Nathanael J. Okpych & Mark E. Courtney, *When Foster Youth Go to College: Assessing Barriers and Supports to Degree Completion for College Students with Foster Care Histories*, 39 FOCUS ON POVERTY 8, 9 (2023).

<sup>6</sup> JOHN BURTON ADVOC. FOR YOUTH ET AL., TUITION WAIVER PROGRAMS FOR STUDENTS WITH EXPERIENCE IN FOSTER CARE: POLICY AND PRACTICE RECOMMENDATIONS 3 (2022).

peers.<sup>7</sup> School and home stability will directly impact a child's educational achievement as well as their college preparation.<sup>8</sup> Children who are involved in the foster care system may have significant gaps in their academic achievement, which may require significant intervention in order to obtain the appropriate grade-level standards.<sup>9</sup> Although living within the foster care system can cause learning disruptions based on school changes, foster youth may also enter foster care with lower levels of academic proficiency than their non-foster peers.<sup>10</sup> Only half of foster youth who age out of the system will have some form of gainful employment by the age of twenty-four, and less than 3% of children who have aged out of foster care earn a college degree at any point in their life,<sup>11</sup> compared to 37% of the general population of the United States.<sup>12</sup>

Only in recent years have researchers begun to study the success of tuition waiver programs to determine whether the programs are successful in assisting foster youth in enrolling and completing their postsecondary education.<sup>13</sup> A study completed in 2020 showed that tuition waiver programs need to become even more accessible and should be evaluated further to determine their utilization rates and impact.<sup>14</sup> Tuition waiver programs vary dramatically in terms of the program's eligibility criteria, as well as simplicity for students to access the program.<sup>15</sup>

Anecdotally, as an attorney and supervising attorney, I have represented many children who were placed within the foster care system and witnessed the extreme struggles they faced as they pursued

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<sup>7</sup> Rami Benbenishty et al., *School-Related Experiences of Adolescents in Foster Care: A Comparison with Their High-School Peers*, 88 AM. J. ORTHOPSYCHIATRY 261, 261–68 (2018).

<sup>8</sup> Elysia V. Clemens et al., *The Effects of Placement and School Stability on Academic Growth Trajectories of Students in Foster Care*, 87 CHILD. & YOUTH SERVS. REV. 86, 86 (2018).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Brandon Gaille, *51 Useful Aging Out of Foster Care Statistics*, BRANDON GAILLE SMALL BUS. & MKTG. ADVICE (May 24, 2017), <https://brandongaille.com/50-useful-aging-out-of-foster-care-statistics/> [<https://perma.cc/UKN2-XBDY>].

<sup>12</sup> Katherine Schaeffer, *10 Facts About Today's College Graduates*, PEW RSCH. CTR. (April 12, 2022), <https://www.pewresearch.org/short-reads/2022/04/12/10-facts-about-todays-college-graduates/> [<https://perma.cc/5Q97-JDH6>].

<sup>13</sup> JOHN BURTON ADVOC. FOR YOUTH ET AL., *supra* note 6, at 4.

<sup>14</sup> Watt & Faulkner, *supra* note 3.

<sup>15</sup> Liliana Hernandez et al., *Increasing College Access and Retention Rates of Youth in Foster Care: An Analysis of the Impact of 22 State Tuition Waiver Programs*, 16 J. POL'Y PRAC. 397, 404–05 (2017).

a college degree.<sup>16</sup> Former and current foster youth often experience a disrupted high school education and financial challenges; these youth also lack mentors and supportive adults, which all culminates in the youth feeling that a college education is unattainable.<sup>17</sup> Very unfortunately, too many of my clients have been unable to complete college, ending their college experience with significant debt and without a degree. This Article will define the legal framework for supporting older youth; explore the complexity of barriers in preparing for higher education experiences; examine racial disproportionality; and review state-sponsored tuition waiver programs. Finally, the Article will define mechanisms to improve outcomes for foster youth in higher education.

## I

### LEGAL FRAMEWORK FOR SUPPORTING OLDER YOUTH INVOLVED IN JUVENILE COURT

#### *A. Overview of the Family Regulation System and Racial Disparity*

The child welfare system, also known as the family regulation system, was originally developed to respond to reports of child abuse and provide protection to children.<sup>18</sup> When a report is made to a governmental entity that a child is allegedly being abused or neglected, child welfare workers may intervene and courts may order children to be removed from their parents' custody due to concerns of abuse and neglect within the family.<sup>19</sup> Yet, due to systemic failures, there have been increasing calls to dismantle the system of family regulation due to concerns about how the family policing system overly surveils impoverished communities.<sup>20</sup> When reports are made and the government intervenes, a court determines whether the children should be removed and taken into protective custody, such as with a

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<sup>17</sup> See Clemens et al., *supra* note 8, at 87, 93.

<sup>18</sup> See generally DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES – AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022) [hereinafter *TORN APART*]; DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2001) [hereinafter *SHATTERED BONDS*].

<sup>19</sup> *Understanding Child Welfare and the Courts, Factsheets for Families*, CHILD'S BUREAU 3–4 (Oct. 2022), [https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/cwandcourts.pdf?VersionId=1kHnv8ZqoZLz1VuzsQGkPVeCr\\_6.Zwk](https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/cwandcourts.pdf?VersionId=1kHnv8ZqoZLz1VuzsQGkPVeCr_6.Zwk) [https://perma.cc/EJ2P-X5CD].

<sup>20</sup> *TORN APART*, *supra* note 18, at 278.

kinship/family, a foster family, or an alternative environment such as a congregate care facility.<sup>21</sup> Children can enter the foster care system as a young infant or up until the age of eighteen.<sup>22</sup> While the number of youth who are involved in the foster care system has declined steadily in recent years, a shocking 5% of children in the United States enter the foster care system at some point in their lives.<sup>23</sup> Even more concerning, up to 9% of Black children and 11% of American Indian and Alaska Native children will enter the foster care system.<sup>24</sup>

Federal and state laws have changed over the decades since governments became involved in the family regulation business.<sup>25</sup> In 1997, the Adoption and Safe Families Act (ASFA) signaled a major shift in policy from family preservation to child protection.<sup>26</sup> The statutory changes resulting from the passage of ASFA led to an increase in the number of children removed from their families and accelerated termination of parental rights.<sup>27</sup> However, too many children continue to languish in the foster care system without returning to their families or finding a permanent home.<sup>28</sup> Despite federal guidance, states vary significantly in the proportion of children who have their parental rights

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<sup>21</sup> See, e.g., PA. R. JUV. CT. PROC. 1210 for a Pennsylvania court rule that allows a court to remove a child from their home.

<sup>22</sup> See, for example, under Pennsylvania law, Children in Foster Care Act, 11 PA. STAT. AND CONS. STAT. ANN. § 2632 (West 2024), which defines “child in foster care” as “[a]n individual who was adjudicated dependent before reaching 18 years of age and who . . . has not reached 18 years of age and is in [foster care]; or . . . is in [foster care] after reaching 18 years of age and while engaged in a course of instruction or treatment requests the court to retain jurisdiction until the course of instruction or treatment is completed, but in no event shall the court maintain jurisdiction after the individual reaches 21 years of age.”

<sup>23</sup> THE ANNIE E. CASEY FOUND., FOSTERING YOUTH TRANSITIONS 2023 STATE AND NATIONAL DATA TO DRIVE FOSTER CARE ADVOCACY 2 (2023).

<sup>24</sup> Youngmin Yi et al., *Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement for US Children by Race/Ethnicity, 2011–2016*, 110 AM. J. PUB. HEALTH 704, 707 tbl.2 (2020).

<sup>25</sup> See generally John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449 (2008); ALAN J. DETTLAFF, CONFRONTING THE RACIST LEGACY OF THE AMERICAN CHILD WELFARE SYSTEM (2023).

<sup>26</sup> Sandra P. Chipungu, *The Impact of Child Welfare Policies on African American Families: A Decade Later*, in CHILD WELFARE REVISITED: AN AFRICENTRIC PERSPECTIVE 77, 81 (Joyce E. Everett et al. eds., 2004).

<sup>27</sup> Alice M. Hines et al., *Factors Related to the Disproportionate Involvement of Children of Color in the Child Welfare System: A Review and Emerging Themes*, 26 CHILD. & YOUTH SERVS. REV. 507, 518 (2004).

<sup>28</sup> Agnel Philip & Eli Hager, *The “Death Penalty” of Child Welfare: In Six Months or Less, Some Parents Lose Their Kids Forever*, PROPUBLICA (Dec. 20, 2022, 8:30 AM), <https://www.propublica.org/article/six-months-or-less-parents-lose-kids-forever> [https://perma.cc/4P4C-2WTF].

terminated within five years of entering the foster care system.<sup>29</sup> Older youths (ages fourteen to twenty-one) previously comprised 34% of the total foster care population in 2006 but comprised only 24% of the foster care population in 2021.<sup>30</sup>

When a child is removed from their parents by a court and placed under the custody of the government, the child welfare agency becomes responsible for meeting all of the child's needs. However, the foster care system often does not provide the opportunity for stability and healing, as entering foster care is traumatic due to separation from family, friends, and, too often, school teachers and classmates.<sup>31</sup> Even after entering foster care, a child may be forced to change placements and schools, which adds additional trauma and directly impacts the continuity and success of a youth's education.<sup>32</sup> Ultimately, the experiences within the foster care system can dramatically impact a student's preparedness for college.<sup>33</sup> While more than 250,000 children are placed in the foster care system every year, approximately 23,000 youth exit the foster care system each year due to their age.<sup>34</sup> The relationship between aging out of foster care and dropping out of high school, unemployment, homelessness, and substance use can produce dire circumstances that lead to criminal involvement, with a quarter of foster care alumni entering the criminal justice system within just two years of exiting care.<sup>35</sup> Close to one-fifth of the prison population in the United States is comprised of former foster children,<sup>36</sup> and about 70% of youth who exit foster care as legal adults are arrested at least once by age twenty-six.<sup>37</sup>

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<sup>29</sup> LAURA RADEL & EMILY MADDEN, U.S. DEP'T OF HEALTH & HUM. SERVS., FREEING CHILDREN FOR ADOPTION WITHIN THE ADOPTION AND SAFE FAMILIES ACT TIMELINE: PART 1 – THE NUMBERS 1 (2021).

<sup>30</sup> THE ANNIE E. CASEY FOUND., *supra* note 23.

<sup>31</sup> *Understanding Trauma*, ADOPTUSKIDS, <https://www.adoptuskids.org/meet-the-children/children-in-foster-care/about-the-children/understanding-trauma> [https://perma.cc/HAQ5-ZCUD] (last visited Feb. 10, 2024).

<sup>32</sup> See Clemens et al., *supra* note 8, at 87.

<sup>33</sup> See MARK E. COURTNEY ET AL., CHAPIN HALL AT UNIV. OF CHI., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 26, at 21 (2011).

<sup>34</sup> *51 Useful Aging Out of Foster Care Statistics*, NAT'L FOSTER YOUTH INST. (May 25, 2017), <https://nfyi.org/51-useful-aging-out-of-foster-care-statistics-social-race-media/> [https://perma.cc/GM4U-8VQ2].

<sup>35</sup> See *What Is the Foster Care-to-Prison Pipeline?*, JUV. L. CTR. (May 26, 2018), <https://jlc.org/news/what-foster-care-prison-pipeline>.

<sup>36</sup> LAUREN G. BEATTY & TRACY L. SNELL, U.S. DEP'T OF JUST., SURVEY OF PRISON INMATES, PROFILE OF PRISON INMATES, 2016, at 1 (2021).

<sup>37</sup> COURTNEY ET AL., *supra* note 33, at 92 tbl.103.

Black youth are overrepresented in the foster care system.<sup>38</sup> In addition to being more likely to be removed from their homes than children of other races, Black children also remain in foster care longer, have more placements, receive fewer services, and are less likely to be reunited with their families or be adopted.<sup>39</sup> While the alleged intent behind the “child welfare system” was to provide protection for abused children, the system has had racially disproportionate impacts and calls for abolishment of the system abound.<sup>40</sup>

### *B. Laws Specifically Addressing Older Youth and Transition to Adulthood*

This section provides an overview of the laws and policies that directly impact foster youth, specifically in transition to adulthood and their path through education.

#### *1. Historic Termination of Support at Age Eighteen*

Historically, young people in foster care were forced to exit foster care at age eighteen.<sup>41</sup> However years of research have documented poor life outcomes for these youth, as they have not been adequately prepared for independent life as an adult.<sup>42</sup> Furthermore, foster youth who have been in placements and separated from family are usually unable to turn to family members for financial and emotional support.<sup>43</sup> In 1986, Congress passed an amendment to the Social Security Act to include funding for an “Independent Living Program” to make federal funds available to states in order to provide services to assist older

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<sup>38</sup> *Foster Care Race Statistics*, THE ANNIE E. CASEY FOUND.: BLOG, <https://www.aecf.org/blog/us-foster-care-population-by-race-and-ethnicity> [<https://perma.cc/MW3B-B5GB>] (May 14, 2023).

<sup>39</sup> TORN APART, *supra* note 18, at 37–38.

<sup>40</sup> *Id.* at 278.

<sup>41</sup> See Ziba Kashef, *Social Work Research Explores the Effects of ‘Enduring Relationships’ for Older Youth in Foster Care*, UCONN TODAY (Sept. 27, 2023), <https://today.uconn.edu/2023/09/social-work-research-explores-the-effects-of-enduring-relationships-for-older-youth-in-foster-care/> [<https://perma.cc/KGQ8-9NF5>].

<sup>42</sup> Courtney & Dworsky, *supra* note 1, at 209.

<sup>43</sup> MARK E. COURTNEY & AMY DWORSKY, CHAPIN HALL AT UNIV. OF CHI., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 19, at 1 (2005), [https://www.chapinhall.org/wp-content/uploads/Courtney\\_Midwest-Evaluation-Adult-Functioning\\_Exec-Summ\\_2005.pdf](https://www.chapinhall.org/wp-content/uploads/Courtney_Midwest-Evaluation-Adult-Functioning_Exec-Summ_2005.pdf) [<https://perma.cc/QV4L-UY8D>].

foster youth with the transition to independence.<sup>44</sup> Despite this funding, the outcomes for this population did not improve.<sup>45</sup>

Then, in 1999, Congress passed the John H. Chafee Foster Care Independence Act to provide further assistance to address the difficult transition period to adulthood for foster youth.<sup>46</sup> The stated purpose of the Chafee Act is to provide states with funding for supporting services to help youth in their transition to adulthood, such as assistance in obtaining a high school diploma and postsecondary education.<sup>47</sup> The Chafee Act was amended multiple times, including in 2002 to include the Education and Training Voucher (ETV) program.<sup>48</sup> The ETV program was intended to assist foster youth in attending college by providing financial assistance.<sup>49</sup> Research on the ETV program showed that the voucher program made adults more likely to enroll in college, more likely to choose a four-year school, and more likely to attend college full-time.<sup>50</sup> Research also showed that receiving an ETV was correlated with better educational outcomes in that students were more likely to complete two semesters of college and graduate by age twenty-four than those students who did not receive an ETV.<sup>51</sup> However, the ETV program was not perfect, and young people found challenges with the application process, delays in grant processing, and insufficient funding to cover their expenses.<sup>52</sup> In the ten states that were studied, many youth who were eligible for ETVs did not receive them.<sup>53</sup>

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<sup>44</sup> Toni Naccarato et al., *The Foster Youth Housing Crisis: Literature, Legislation, & Looking Ahead*, 23 J. CIV. RTS. & ECON. DEV. 429, 430 (2008).

<sup>45</sup> Courtney & Dworsky, *supra* note 1, at 209.

<sup>46</sup> Foster Care Independence Act of 1999, Pub. L. No. 106-169, 113 Stat. 1822 (1999) (codified at 42 U.S.C. § 677).

<sup>47</sup> 42 U.S.C. §§ 677(a)(1)–(7).

<sup>48</sup> Promoting Safe and Stable Families Amendments of 2001, Pub. L. No. 107-133, 115 Stat. 2413 (2002) (codified at 42 U.S.C. § 677).

<sup>49</sup> *See id.*

<sup>50</sup> DEVLIN HANSON ET AL., EDUCATION AND TRAINING VOUCHERS IN TEN STATES 3 fig.2 (2022).

<sup>51</sup> *Id.* at 4 figs.3 & 4.

<sup>52</sup> AMELIA COFFEY ET AL., URB. INST., PARTICIPANT PERSPECTIVES ON EDUCATION AND TRAINING VOUCHERS, HOW YOUNG PEOPLE WITH FOSTER CARE HISTORY EXPERIENCE THE EDUCATION AND TRAINING VOUCHER PROGRAM 7–12 (Mar. 2023), <https://www.urban.org/sites/default/files/2023-04/Participant%20Perspectives%20on%20Education%20and%20Training%20Vouchers.pdf> [https://perma.cc/5PWC-Y3M9].

<sup>53</sup> PATRICK A. LANDERS, CONG. RSCH. SERV., IF11070, JOHN H. CHAFEE FOSTER CARE PROGRAM FOR SUCCESSFUL TRANSITION TO ADULTHOOD (2024).

## 2. *Extension of Support Beyond Age Eighteen*

A significant shift in the law occurred in 2008 when the Fostering Connections to Success and Increasing Adoptions Act was signed into law.<sup>54</sup> This law made many significant policy changes, but most importantly it created a fundamental shift in that it allowed states to provide care and support to youth until the age of twenty-one as compared to eighteen, with specific eligibility criteria including enrollment in postsecondary education or vocational training.<sup>55</sup> Approximately 14% of youth in the foster care system are between the ages of sixteen and twenty.<sup>56</sup> As of 2019, twenty-six states received approval from the federal government to provide extended foster care support for foster youth beyond age eighteen up until twenty-one.<sup>57</sup> States have discretion in developing a variety of supervised living arrangements for older youth, which may look different than traditional foster care and can include transitional living programs which allow older youth to live in an apartment with a friend or in a dormitory.<sup>58</sup> This extension of care can also include provision of services to help youth with financial literacy and daily living skills, which can assist students attending higher education programs.<sup>59</sup>

The federal legislation also required states to work to promote a successful transition to independence by working with the youth on a transition plan to address housing, education, employment, and more.<sup>60</sup> The Fostering Connections Act further authorized agencies to reimburse youth between the ages of eighteen and twenty-one for housing in settings outside of traditional foster care arrangements, such

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<sup>54</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008) (codified at 42 U.S.C. § 677).

<sup>55</sup> *Id.* § 201.

<sup>56</sup> KidsCount Data Center, *Children in Foster Care by Age Group in United States*, THE ANNIE E. CASEY FOUND., <https://datacenter.aecf.org/data/bar/6244-children-in-foster-care-by-age-group?loc=1&loct=1#1/any/false/2048/2619/12989> (last visited Sept. 1, 2023).

<sup>57</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-411, FOSTER CARE: STATES WITH APPROVAL TO EXTEND CARE PROVIDE INDEPENDENT LIVING OPTIONS FOR YOUTH UP TO AGE 21 (2019).

<sup>58</sup> *See id.*

<sup>59</sup> SARA EDELSTEIN & CHRISTOPHER LOWENSTEIN, SUPPORTING YOUTH TRANSITIONING OUT OF FOSTER CARE, at 4, 7 (URB. INST., Dec. 2014), <https://files.eric.ed.gov/fulltext/ED559339.pdf> [<https://perma.cc/3GG9-D93H>].

<sup>60</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008 § 202(3)(H). States interpreted the federal act to include dormitory settings. See OFF. OF CHILD., YOUTH AND FAMS., COMMONWEALTH OF PA., DEP'T OF PUB. WELFARE, BULL. NO. 3130-14-01, 10 (2014), which specifically mentions dormitory settings.

as living independently, including in college dormitories.<sup>61</sup> This shift had a dramatic impact in that, for the first time, states now had an obligation to support foster youth through college years.

In states where extended care is offered, youth may still choose to forego additional support and sign out of the foster care system at age eighteen.<sup>62</sup> Alternatively, youth may remain under court supervision until age twenty-one to receive transitional living services while participating in postsecondary education or working.<sup>63</sup> The eligibility criteria for continued Social Security Title IV-E support payments to youth over age eighteen require the youth to be completing secondary school (or the equivalent), enrolled in postsecondary or vocational school, participating in a program or activity that promotes or removes barriers to employment, employed eighty hours per month, or incapable of school and/or work requirements due to a documented medical condition.<sup>64</sup> Importantly, the act also amended the definition of what constitutes a child care institution pursuant to 42 U.S.C. § 672(c)(2) to include a supervised setting in which an individual who has reached age eighteen is living independently.<sup>65</sup> However, state-funded extended foster care programs are not required to meet the requirements of the federal extended care program, and states may even choose to go further than the federal guidance.<sup>66</sup> Many states have chosen to follow the school and work requirements of the federal program.<sup>67</sup>

States vary in how they handle older youth involved in foster care. “In 33 States, youth who leave foster care when they reach age 18 may request, at any time prior to their 21st birthday (or as otherwise specified in [s]tate law), to return to foster care . . . [or] a supervised independent living situation or a resumption of transitional living services[.]”<sup>68</sup> “In these States, youth can return to care and/or supervision to pursue [their] educational or job training goals, . . . or to further develop the skills needed to achieve self-sufficiency.”<sup>69</sup> Often, the child welfare agencies and/or the court require the youth to work

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<sup>61</sup> 42 U.S.C. § 672(a)(1).

<sup>62</sup> CHILD.’S BUREAU, EXTENSION OF FOSTER CARE BEYOND AGE 18, at 2 (Mar. 2022), <https://www.childwelfare.gov/pubpdfs/extensionfc.pdf> [<https://perma.cc/4TU6-MHFD>].

<sup>63</sup> *Id.*

<sup>64</sup> *See* 42 U.S.C. § 675(8)(B).

<sup>65</sup> CHILD.’S BUREAU, *supra* note 62.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* (parentheses omitted).

<sup>69</sup> *Id.*

actively with their assigned caseworkers to develop a clear plan for how the youth will accomplish their goals. “In 27 States, a youth who requests extended foster care services must enter a . . . voluntary placement agreement with the child welfare agency that will be providing the services.” Furthermore, the agreement “serves as a contract between the agency and the youth.”<sup>70</sup>

Youth should take an active role in developing any placement agreement and identifying significant people who could help to make the plan successful. The plan should ideally include specific goals for the youth such as a postsecondary education.<sup>71</sup> The agency should provide resources and services to help the youth achieve their goals with the ultimate plan to make the youth self-sufficient. For example, if a youth is planning to attend college, the plan could identify who could assist the child with completing the Free Application for Federal Student Aid (FAFSA), college applications, application fee waivers, etc. When the youth transitions to higher education, the plan should be amended to include identification of assistance for study skills, budgeting, financial management, career preparation, etc.<sup>72</sup> Even if a youth voluntarily signs out of foster care, according to federal law, states are to provide financial support, housing, and employment assistance to former foster care recipients between the ages of eighteen and twenty-one through aftercare.<sup>73</sup> The purpose of the federal law is to provide states with flexible funding that will

provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age (or 23 years of age, in the case of a State with a certification under subsection (b)(3)(A)(ii) to provide

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<sup>70</sup> *Id.* at 3 & n.6 (Alaska, California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Rhode Island, Vermont, Virginia, Washington, West Virginia, and Wisconsin).

<sup>71</sup> *See, e.g.*, JUV. L. CTR. & PA. P'SHIPS FOR CHILD., FOSTERING SUCCESSFUL YOUTH TRANSITIONS IN PENNSYLVANIA: LAYING THE GROUNDWORK FOR CHANGE THROUGH LAW AND POLICY REFORM 3–4 (2019), <https://www.papartnerships.org/wp-content/uploads/2019/04/Transition-Aged-Youth-FAQ-4-24-19.pdf> [<https://perma.cc/E27E-GD4A>] (suggesting details for planning).

<sup>72</sup> For a detailed description of the academic supports provided to youth who have been in foster care, including support for postsecondary education, see CHILD'S BUREAU, EDUCATIONAL SUPPORTS FOR OLDER YOUTH IN FOSTER CARE (Apr. 2020), <https://cwig-prod-prod-drupal-s3fs-us-east-s3.amazonaws.com/public/documents/educationalsupports.pdf?VersionId=RyZU314WXsM.ZpKHlu67OjaVIFFW4wtX> [<https://perma.cc/L3WQ-PQ8J>].

<sup>73</sup> As per the John H. Chafee Foster Care Program for Successful Transition to Adulthood, 42 U.S.C. § 677(a)(4), (b)(3)(A)(i).

assistance and services to youths who have aged out of foster care . . . ) 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[.]<sup>74</sup>

Consistent with this federal directive, states should be providing the funding and supports to ease this challenging transition to adulthood, specifically for former foster youth, as the stakes are critical for supporting self-sufficiency. By providing appropriate and sufficient trauma-informed resources to assist youth in their transition, including assistance with college preparation, we can decrease the impact of the legal system on children.<sup>75</sup> Without providing adequate services, the outcomes will not improve.

Additional changes in federal law would also have an impact in supporting older youth in their educational success. For example, in 2013, Congress passed the Uninterrupted Scholars Act, which made changes to the education privacy laws related to student records.<sup>76</sup> Congress enacted an exception to the Family and Educational Rights and Privacy Act (FERPA), to make it easier for schools to release a student's records without consent of parents.<sup>77</sup> This change was implemented to promote the timely release of records and minimize delays in school enrollment for foster youth.<sup>78</sup> Any delay in enrollment only further disrupts a youth's education. Ideally, a foster youth should not be required to change schools when a placement change occurs.

In 2019, the Family First Preservation Act (FFPA) was signed into law, which, among other components, changed the name of the "John H. Chafee Foster Care Independence Program" to the "John H. Chafee Foster Care Program for Successful Transition to Adulthood."<sup>79</sup> This law amended the Chafee program to describe how states can provide

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<sup>74</sup> *Id.*

<sup>75</sup> See *Young Adults Formerly in Foster Care: Challenges and Solutions*, YOUTH.GOV, <https://youth.gov/youth-briefs/foster-care-youth-brief/challenges> [<https://perma.cc/S89M-URBG>] (last visited Feb. 10, 2024) (emphasizing the challenges facing youth when they move out of the child welfare system).

<sup>76</sup> Uninterrupted Scholars Act, Pub. L. No. 112-278, § 2(1)–(2), 126 Stat. 2480, 2480–81 (2013) (codified at 20 U.S.C. § 1232g).

<sup>77</sup> AM. BAR ASS'N CTR. ON CHILD. & THE L. ET AL., FOSTER CARE & EDUCATION Q&A 1 (2014), <https://static1.squarespace.com/static/63dcf65b8d0c56709027332e/t/64b09e998684957a0aadb3/1689296633697/QA+USA+2014+%286%29.pdf> [<https://perma.cc/3TDP-5XTG>].

<sup>78</sup> *Id.* at 2.

<sup>79</sup> Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 50753(d)(1), 132 Stat. 260, 265 (codified as amended at 42 U.S.C. § 677).

services to youth beyond foster care until the age of twenty-three, and expanded eligibility for the ETV up until age twenty-six.<sup>80</sup>

Research shows that older youth who participate in extended foster care have better life outcomes, even if they stay for only a short period of time.<sup>81</sup> These better outcomes include higher employment rates, high school diploma, housing rates, etc.<sup>82</sup> Perhaps most importantly, the longer an older youth stays in foster care, the more likely they are to receive supports such as independent living skills to assist them in their transition to independence.<sup>83</sup> However, the research also shows that extension of foster care until twenty-one does not increase the rate at which foster youth find permanent homes.<sup>84</sup> Lack of permanency arrangements only highlights the need for older youth in foster care to receive more support and mentorship from staff, especially as they transition to college. Older foster youth are particularly vulnerable and can benefit from a competent and caring adult willing to assist their pursuit of higher education.<sup>85</sup> Importantly, each additional year in foster care more than doubles the odds that a youth will obtain secondary education and triples the chances that the youth will enroll in college.<sup>86</sup>

## II

### CHALLENGES WITH EDUCATION PARITY FOR FOSTER YOUTH

Foster youth face multiple challenges throughout their educational experiences compared to youth who do not enter the foster care system. Not only is a child's education frequently disrupted through placement in the foster care system, but their home and family connections may

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<sup>80</sup> *Id.* § 50753(a), (c).

<sup>81</sup> Rachel Rosenberg & Samuel Abbott, *Supporting Older Youth Beyond Age 18: Examining Data and Trends in Extended Foster Care*, Report in *Child Welfare*, CHILD TRENDS (June 3, 2019), <https://www.childtrends.org/publications/supporting-older-youth-beyond-age-18-examining-data-and-trends-in-extended-foster-care> [https://perma.cc/4XFG-TLWB].

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Allison E. Thompson et al., *Natural Mentoring Among Older Youth in and Aging out of Foster Care: A Systematic Review*, 61 CHILD. AND YOUTH SERVS. REV. 40, 41 (2016).

<sup>86</sup> MARK E. COURTNEY & NATHANAE J. OKPYCH, CHAPIN HALL AT UNIV. OF CHI., MEMO FROM CALYOUTH: EARLY FINDINGS ON THE RELATIONSHIP BETWEEN EXTENDED FOSTER CARE AND YOUTHS' OUTCOMES AT AGE 19, at 5 (2017).

also be destroyed.<sup>87</sup> Overcoming such challenges requires significant resilience and an appropriate level of support.

#### A. Racial and Minority Disparity

Foster care involvement and college completion rates both vary significantly based on race.<sup>88</sup> Black youth and American Indian children are disproportionately overrepresented in the foster care system, and more likely to face educational challenges.<sup>89</sup> Not only are Black youth more likely to be referred for investigation of child abuse or neglect concerns, but they are also more likely to be removed from the parents' custody and not returned to their families, which can also directly impact their educational achievement.<sup>90</sup> In 2021, while Black children represented only 14% of the total child population, they represented 22% of all kids in foster care.<sup>91</sup> By comparison White children represented 49% of the nation's child population and only 43% of its foster care population.<sup>92</sup> Black, Hispanic, and American Indian families disproportionately experience poverty, which increases their chance of being reported to the family regulation system.<sup>93</sup>

White youth are more likely to complete their high school degree than youth of color.<sup>94</sup> Though research shows that Black children are

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<sup>87</sup> Clemens et al., *supra* note 8, at 87.

<sup>88</sup> See Jill Barshay, *College Completion Rates Are Up for All Americans, but Racial Gaps Persist*, MINDSHIFT KQED (Feb. 20, 2023), <https://www.kqed.org/mindshift/61037/college-completion-rates-are-up-for-all-americans-but-racial-gaps-persist> [https://perma.cc/G38V-2KZ2] (discussing college completion rates based on race); *Racial Disparities in Foster Care Placement, The Digest*, NAT'L BUREAU OF ECON. RSCH. (Oct. 1, 2023), <https://www.nber.org/digest/202310/racial-disparities-foster-care-placement> [https://perma.cc/LC5G-NQ22] (discussing racial disproportionality within foster care).

<sup>89</sup> See *Racial Justice, Focus Areas*, CHILD.'S RTS., <https://www.childrensrights.org/focus-areas/racial-justice> [https://perma.cc/F4YS-26UU] (last visited Feb. 10, 2024).

<sup>90</sup> Shereen White & Stephanie Marie Persson, *Racial Discrimination in Child Welfare Is a Human Rights Violation—Let's Talk About It That Way*, AM. BAR ASS'N (Oct. 13, 2022), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2022/fall2022-racial-discrimination-in-child-welfare-is-a-human-rights-violation>.

<sup>91</sup> *Foster Care Race Statistics*, *supra* note 38.

<sup>92</sup> *Id.*

<sup>93</sup> SEPARATING POVERTY FROM NEGLECT IN CHILD WELFARE, CHILD.'S BUREAU 3 (Feb. 2023), <https://cwip-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/bulletins-poverty-neglect.pdf?VersionId=x2GsXdvm8qWqsNr5PRp5cseNhOHas4zf> [https://perma.cc/7QLJ-PBJD].

<sup>94</sup> White students have a high school graduation rate of 90%, while Black students graduate at an 81% rate. *High School Graduation Rates*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/programs/coe/indicator/coi/high-school-graduation-rates> [https://perma.cc/R9KJ-98AG] (last updated May 2024).

not more likely to misbehave, Black students are more likely to be referred for school disciplinary actions and tend to experience harsher disciplinary punishments than their White peers, such as suspensions and expulsions.<sup>95</sup> School disciplinary events directly interfere with students' academic achievement and increase the likelihood of students dropping out of school.<sup>96</sup> Ongoing school segregation "by family income is the single most predictive factor of academic achievement gaps by race and income."<sup>97</sup>

While not a racial group, research suggests that lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ+) youth are also overrepresented in foster care.<sup>98</sup> Studies show that LGBTQ+ foster youth experience lower rates of placement stability and more frequent exposure to harassment.<sup>99</sup> LGBTQ+ youth in foster care experience more living placement changes than their heterosexual peers which would also impact school stability.<sup>100</sup> While many foster youth may suffer from a lack of support in transitioning to adulthood, LGBTQ+ foster youth may face added challenges of unmet needs uniquely associated with their gender or sexual minority statuses.<sup>101</sup>

### B. School Stability

When a child is placed into foster care, the length of time that a child remains in the foster care system depends upon a variety of factors and

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<sup>95</sup> See Francis L. Huang & Dewey G. Cornell, *Student Attitudes and Behaviors as Explanations for the Black-White Suspension Gap*, 73 CHILD. & YOUTH SERVS. REV. 298, 303 (2017); Emily Peterson, *Racial Inequality in Public School Discipline for Black Students in the United States*, BALLARD BRIEF, BYU (2021), <https://ballardbrief.byu.edu/issue-briefs/racial-inequality-in-public-school-discipline-for-black-students-in-the-united-states> [<https://perma.cc/YL6E-EDUK>].

<sup>96</sup> Peterson, *supra* note 95.

<sup>97</sup> NAT'L ACADS. OF SCIS., ENG'G, & MED., *THE PROMISE OF ADOLESCENCE: REALIZING OPPORTUNITY FOR ALL YOUTH 5* (Richard J. Bonnie & Emily P. Backes eds., 2019).

<sup>98</sup> June C. Paul, *Exploring Support for LGBTQ Youth Transitioning from Foster Care to Emerging Adulthood*, 119 CHILD. & YOUTH SERVS. REV., Sept. 25, 2020, at § 1.1.

<sup>99</sup> BIANCA D.M. WILSON ET AL., *SEXUAL AND GENDER MINORITY YOUTH IN FOSTER CARE: ASSESSING DISPROPORTIONALITY AND DISPARITIES IN LOS ANGELES*, UCLA SCH. OF L. WILLIAMS INST. 6 (2014), <https://williamsinstitute.law.ucla.edu/publications/sgm-youth-la-foster-care/> [<https://perma.cc/WNL2-EVDP>].

<sup>100</sup> Svetlana Shpiegel & Cassandra Simmel, *Functional Outcomes Among Sexual Minority Youth Emancipating from the Child Welfare System*, 61 CHILD. & YOUTH SERVS. REV., 101, 102 (2016).

<sup>101</sup> Paul, *supra* note 98.

can range from a short period to many years of their childhood.<sup>102</sup> The average length of time for a child to remain in the foster care system is 7.8 years.<sup>103</sup> However, not only is the length of stay in placement significant, but the total number of placements for a child is also impactful, especially considering that the average number of placements is 8.3.<sup>104</sup> High mobility is even more common for older youth as they are more likely to change placements; approximately one-third of older foster youth experience five or more school changes.<sup>105</sup> School and placement changes during high school years can impact completion of high school at a critical time when considering college applications and enrollment.<sup>106</sup>

Children and older youth in the foster system experience not only placement changes but also school changes.<sup>107</sup> School changes impact academic progress and success.<sup>108</sup> The Every Student Succeeds Act was signed into law in 2015, and a provision of this law addresses school stability.<sup>109</sup> The previous version of the law, the No Child Left Behind Act, needed updates to increase its focus on success within higher education and preparing students for careers.<sup>110</sup> A critical provision of the federal law requires a child in foster care to remain in their school of origin unless it has been determined to not be in a child's best interests.<sup>111</sup> The law goes further to address the issue of transportation if there are costs and inconveniences associated with

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<sup>102</sup> Judy Havlicek, *Patterns of Movement in Foster Care: An Optimal Matching Analysis*, 84 SOC. SERV. REV. 403, 416–25 (2010).

<sup>103</sup> *Id.* at 417 tbl.4.

<sup>104</sup> *Id.*

<sup>105</sup> *School Stability & Immediate Enrollment for Children in Foster Care*, EDUC. L. CTR. (Aug. 2019), <https://www.elc-pa.org/wp-content/uploads/2017/08/School-Stability-for-Students-in-Foster-Care-Fact-Sheet-w-attachmt-August-2019.pdf> [<https://perma.cc/6234-GVWJ>].

<sup>106</sup> Joseph Gasper et al., *Switching Schools: Revisiting the Relationship Between School Mobility and High School Dropout*, 49 AM. EDUC. RSCH. J. 487, 488 (2012).

<sup>107</sup> Kya Fawley-King et al., *The Impact of Changing Neighborhoods, Switching Schools, and Experiencing Relationship Disruption on Children's Adjustment to a New Placement in Foster Care*, CHILD ABUSE & NEGLECT, Jan. 2017, at 141, 142.

<sup>108</sup> Sarah D. Sparks, *Student Mobility: How It Affects Learning*, EDUCATIONWEEK (Aug. 11, 2016), <https://www.edweek.org/leadership/student-mobility-how-it-affects-learning/2016/08> [<https://perma.cc/VW37-M2QC>].

<sup>109</sup> Every Student Succeeds Act, Pub. L. No. 114-95, § 1111(g)(E), 129 Stat. 1802, 1844 (2015) (codified at 20 U.S.C. § 6311).

<sup>110</sup> *Every Student Succeeds Act*, U.S. DEP'T OF EDUC., <https://www.ed.gov/laws-and-policy/laws-preschool-grade-12-education/every-student-succeeds-act> [<https://perma.cc/PGN9-83RF>] (last visited Sept. 24, 2024).

<sup>111</sup> 20 U.S.C. § 6311(g)(1)(E)(i).

transporting a foster youth to their school of origin.<sup>112</sup> In addition to the stability requirement, the law includes a provision for immediate enrollment regardless of whether the child has the required enrollment records.<sup>113</sup>

Each time a child changes their school environment, the child can lose four to six months of academic progress.<sup>114</sup> This lack of school stability for foster youth not only impacts their school experience, it also impacts high school completion rates, which in turn impacts their ability to be adequately prepared for higher education.<sup>115</sup> Through studies completed at the University of California, Santa Barbara, research found that students who changed schools just one time are half as likely to graduate high school compared to students who did not change schools.<sup>116</sup> Only 58% of foster youth complete high school compared to 84% of non-foster youth.<sup>117</sup>

Juvenile courts should address educational stability any time a legal decision is made to change a child's placement.<sup>118</sup> Following a court directive, provisions of both the Fostering Connections Act and the Every Student Succeeds Act require schools to work with the government agencies to ensure school stability for students in foster care.<sup>119</sup> The Government Accounting Office (GAO) reviewed the implementation of the ESSA school stability provisions in 2019.<sup>120</sup> The report highlights ongoing challenges with implementing school stability provisions due to staffing turnover, monitoring school district implementation, obtaining school input on "BID" meetings (best

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<sup>112</sup> 20 U.S.C. § 6312(c)(5)(B).

<sup>113</sup> § 6311(g)(1)(E)(iii).

<sup>114</sup> Lauren E. Palmieri & Tamika P. La Salle, *Supporting Students in Foster Care*, 54 PSYCH. IN THE SChS. 117, 120 (2017).

<sup>115</sup> See generally Clemens et al., *supra* note 8, at 92.

<sup>116</sup> Russell W. Rumberger & Katherine A. Larson, *Student Mobility and the Increased Risk of High School Dropout*, 107 AM. J. EDUC. 1, 25 (1998).

<sup>117</sup> *Supporting Young Adults Exiting Foster Care*, INST. FOR RSCH. ON POVERTY (Oct. 27, 2023), <https://www.irp.wisc.edu/supporting-young-adults-exiting-foster-care/> [<https://perma.cc/MVR9-G39B>].

<sup>118</sup> See, e.g., 237 PA. CODE § 1148(A) (2024) ("Any order resulting in the placement of a child or a change in placement shall address the educational stability of the child.")

<sup>119</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008 § 204(a); Every Student Succeeds Act § 1111(g); see, e.g., *Education of Students Served by Pennsylvania County Children and Youth Agencies*, PA. DEP'T OF HUM. SERVS., <https://www.dhs.pa.gov/Services/Children/Pages/Education-Stability-by-Child-Welfare-Services.aspx> [<https://perma.cc/YU9D-9YQH>] (last accessed Aug. 22, 2024).

<sup>120</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-616, FOSTER CARE: EDUCATION COULD HELP STATES IMPROVE EDUCATIONAL STABILITY FOR YOUTH IN FOSTER CARE (2019).

interests determination on school enrollment), and more.<sup>121</sup> The GAO report concludes that remaining in a familiar school environment and maintaining connections with teachers enhances a student's success.<sup>122</sup>

### III

#### STATE TUITION WAIVER PROGRAMS: BENEFITS AND CHALLENGES

Most states have now developed tuition waiver programs for foster youth.<sup>123</sup> Broadly speaking, tuition waiver programs are generated by state legislation and direct colleges or universities to waive tuition fees for students who are or who have been involved in the foster care system and meet specific eligibility requirements.<sup>124</sup> Although there is no research specifically focused on the population of youth who have reunified with family from the foster care system and utilized the tuition waiver, presumably, youth reunified with family have additional supportive resources than non-reunified youth. Each states' programs vary in how they are funded, in their scope and varying eligibility requirements.

According to research completed at the University of Washington, as of 2021, thirty-five states have some type of statewide postsecondary education tuition waiver or scholarship program for students who have been in foster care.<sup>125</sup> More specifically, according to the Washington report:

- 24 states have statewide tuition waivers: Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Pennsylvania, Texas, Utah, West Virginia.
- 4 states have state funded grant programs for students in foster care: Ohio, Rhode Island, Tennessee, Virginia.
- 7 states have state funded scholarship programs for students in foster care . . . : Alabama, Arkansas, Iowa, Michigan, New York, North Carolina, and Washington.
- 15 states and the District of Columbia have only the Federal Chafee Educational Training Voucher: Delaware, District of

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<sup>121</sup> *Id.* at 8.

<sup>122</sup> *Id.* at 29.

<sup>123</sup> *Tuition Waivers by State*, UNIV. OF WASH., <https://depts.washington.edu/fostered/tuition-waivers-state> [<https://perma.cc/9TRU-2ZT7>] (last visited Feb. 10, 2024).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

Columbia, Hawaii, Idaho, Indiana, Louisiana, Mississippi, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Vermont, Wisconsin, and Wyoming.<sup>126</sup>

To explain the program differences and potential impacts on foster youth, this Article highlights a few states' examples.

#### A. Texas

Texas was one of the first states to adopt a tuition waiver program in 1993 and seems to distribute more waivers than other states.<sup>127</sup> The extensiveness of Texas's tuition waiver distributions seems to be related to the broadness of the state's eligibility rules based on age and time limits.<sup>128</sup> Pursuant to Texas law, a student receives the exemption of tuition and fees if the student was under the conservatorship of the Department of Family and Protective Services or was adopted.<sup>129</sup> A 2020 study of the Texas tuition waiver program showed that youth who took advantage of the tuition waivers were 3.5 times more likely to graduate with a bachelor's degree within six years of turning eighteen, but the waivers program is not utilized by approximately 40% of waiver-eligible foster youth in Texas.<sup>130</sup> The Texas tuition waiver law does not include a requirement for students to maintain a certain grade point average.<sup>131</sup> The Texas tuition waiver program does not include funding for food and housing costs associated with higher education.<sup>132</sup> However, Texas does offer a program titled the Preparation for Adult Living Program, which provides youth with resources and services, such as preparation for college entrance exams and financial assistance up to \$3,000.<sup>133</sup>

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<sup>126</sup> *Id.*

<sup>127</sup> Watt & Faulkner, *supra* note 3.

<sup>128</sup> *Id.*

<sup>129</sup> TEX. EDUC. CODE ANN. §§ 54.366, 367 (West 2023).

<sup>130</sup> Watt & Faulkner, *supra* note 3, at 5–6.

<sup>131</sup> Sara Tiano, *Texas Foster Youth Get Free College Tuition, but Nearly Half of the State's Eligible Students Don't Use It*, THE IMPRINT (Feb. 28, 2022, 7:44 AM), <https://imprintnews.org/foster-care/texas-college-tuition-waiver-underused/62905> [<https://perma.cc/NK8Y-BG4A>].

<sup>132</sup> *Texas Tuition Waiver, FAQs*, TEX. HEALTH & HUM. SERVS., <https://www.hhs.texas.gov/services/disability/deaf-hard-hearing/tuition-waiver> [<https://perma.cc/2E9A-ZT6C>] (last visited Aug. 23, 2024) (select “What costs are waived?”).

<sup>133</sup> *Preparation for Adult Living (PAL) Program*, TEX. DEP'T OF FAM. & PROTECTIVE SERVS., [https://www.dfps.texas.gov/Child\\_Protection/Youth\\_and\\_Young\\_Adults/Preparation\\_For\\_Adult\\_Living/](https://www.dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Preparation_For_Adult_Living/) [<https://perma.cc/D5WR-5DKD>] (last visited Feb. 10, 2024).

### B. California

In California, approximately 11,000 students are enrolled in postsecondary education who have a history of involvement in the foster care system.<sup>134</sup> As of 2014, the majority of foster youth who were pursuing a postsecondary education were attending community colleges in California.<sup>135</sup> Since 2015, California offered financial assistance in the community college program such as, tutoring, transportation, and housing support.<sup>136</sup> Additionally, the Cal Grant program provides full tuition waivers at University of California, or California State University, or up to \$9,704 at an eligible in-state private college or university.<sup>137</sup> Additionally, there is the Cal Grant Access Award for Foster Youth, which provides \$6,000 for non-tuition costs.<sup>138</sup> Then, in 2018, the Foster Youth Tuition Waiver Program originated with the passage of Senate Bill 967 to address the gap in postsecondary education completion rates for foster youth.<sup>139</sup> In 2023, California state budget included funding for the Fostering Futures program with a goal of making college debt-free for foster youth.<sup>140</sup>

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<sup>134</sup> LAURA PACKARD TUCKER ET AL., URB. INST., FOSTER CARE, POSTSECONDARY EDUCATION, AND FINANCIAL AID IN CALIFORNIA 1 (Mar. 2023), <https://www.urban.org/sites/default/files/2023-03/Foster%20Care%2C%20Postsecondary%20Education%2C%20and%20Financial%20Aid%20in%20California.pdf> [<https://perma.cc/4N5K-A2GD>].

<sup>135</sup> RTI INT'L & STUART FOUND., CHARTING THE COURSE: USING DATA TO SUPPORT FOSTER YOUTH COLLEGE SUCCESS, CALIFORNIA COLLEGE PATHWAYS 4 (Oct. 2015), [https://www.ccollegepathways.org/wp-content/uploads/2016/01/charting\\_the\\_course\\_final.pdf](https://www.ccollegepathways.org/wp-content/uploads/2016/01/charting_the_course_final.pdf) [<https://perma.cc/RL87-LUAG>].

<sup>136</sup> Troy Farah, *California Expands Community College Assistance for Current, Former Foster Youth*, THE IMPRINT (Nov. 24, 2017, 9:00 AM), <https://imprintnews.org/news-2/california-expands-community-college-assistance-current-former-foster-youth/28782> [<https://perma.cc/4QVH-HL3Y>].

<sup>137</sup> CAL. EDUC. CODE § 66025.3(b)(1)-(3) (West 2024) (“Notwithstanding Section 76300, a campus of the University of California or the California State University shall not charge any mandatory systemwide tuition or fees, including enrollment fees, registration fees, differential fees, or incidental fees, to a current or former foster youth . . .”) (listing conditions); see *What Are the Cal Grant Award Amounts*, CAL. STUDENT AID COMM’N, <https://www.csac.ca.gov/post/what-are-cal-grant-award-amounts> [<https://perma.cc/5Y99-J9E5>] (discussing available grant awards at various institutions) (last visited Sept. 24, 2024).

<sup>138</sup> *Expanding Financial Aid*, JOHN BURTON ADVOC. FOR YOUTH, <https://jbyay.org/college/expanding-financial-aid/> [<https://perma.cc/6CSC-UE7F>] (last visited Sept. 24, 2024).

<sup>139</sup> S.B. 967, 2017-2018 Reg. Sess. (Cal. 2018).

<sup>140</sup> Oumou Fofana, *New State Legislation Allows Foster Youth in California to Attend College for Free*, REVOLT (July 21, 2023), <https://www.revolt.tv/article/2023-07-21/317138/new-law-allows-foster-youth-in-california-to-attend-college-for-free> [<https://perma.cc/H9E4-BAMK>]; see also Press Release, Sen. Ashby Secures \$25 Million in Ongoing Annual Funding to Make Debt-Free College a Reality for Cal.’s Foster Youth, Angelique Ashby State Sen. 8<sup>th</sup> Dist. (July 10, 2023), <https://sd08.senate.ca.gov/news/senator-ashby-secures>

*C. Pennsylvania*

In 2019, the Pennsylvania Governor signed the “Fostering Independence Tuition Waiver” program into law.<sup>141</sup> The program offers tuition waivers for public, private, community colleges, and state-related schools.<sup>142</sup> The waiver program requires the student to first exhaust all federal and state grants, after which the institution must cover the remaining balance of a student’s tuition and certain fees.<sup>143</sup> The student may receive a tuition waiver for up to a total of five years.<sup>144</sup> The Pennsylvania law also requires that each postsecondary institution to designate a staff person as the point of contact for students in the tuition waiver program.<sup>145</sup> The contact staff person must provide technical assistance to eligible individuals to complete applications and financial aid forms.<sup>146</sup> With the goal of improving retention, the staff contact persons are also obligated to report to the Pennsylvania Department of Education a variety of data, including the number of students who participate in the tuition waiver program and the number of students with unmet financial needs.<sup>147</sup>

The Pennsylvania Department of Human Services Secretary Teresa Miller is quoted as saying, “[The Tuition Waiver Program] makes it so that students from the foster care system only need to focus on adjusting to college life and getting good grades.”<sup>148</sup> Despite this goal, there continues to be some room for improvement, including additional data tracking in order to determine the success of the program. Pennsylvania’s law does not include coverage of room and board costs, and eligibility lasts for only five years.<sup>149</sup> This five-year limit impacts students who are working full time and attending classes part-time.

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-25-million-ongoing-annual-funding-make-debt-free-college-reality [https://perma.cc/4S44-DADV].

<sup>141</sup> 24 PA. CONS. STAT. § 26-2601-K (2019).

<sup>142</sup> *Fostering Independence Tuition Waiver Program*, PA. DEP’T OF EDUC., <https://www.education.pa.gov/Postsecondary-Adult/CollegeCareer/FosteringIndependence/Pages/default.aspx> [https://perma.cc/8932-T7GT] (last visited Feb. 10, 2024).

<sup>143</sup> 24 PA. CONS. STAT. § 2602-K(b).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* § 2604-K.

<sup>146</sup> *Id.* § 2603-K(b)(1).

<sup>147</sup> *Id.* § (b)(3).

<sup>148</sup> *Fostering Independence Tuition Waiver Program*, *supra* note 142.

<sup>149</sup> *See* 24 PA. CONS. STAT. § 2602-K(b).

*D. Illinois*

Illinois provides both a tuition and fee waiver program for foster youth as well as a scholarship program for foster youth or former foster youth.<sup>150</sup> The scholarship program requires that the student maintain both full-time status and a “C” average.<sup>151</sup> The program is open to foster youth for the first five years the student is enrolled in a community college or public university, as long as the student is making satisfactory progress toward their degree.<sup>152</sup> Students, however, must be selected to receive the waivers and must be in the state’s care, aged out of care or been adopted, or been placed in private guardianship.<sup>153</sup> The statute indicates that students must apply and a minimum of fifty-three students shall receive the scholarship and fee waivers, allowing the students to complete education at community college, university, or college.<sup>154</sup> The scholarship program includes a limited board payment of \$1,506, which does not cover all room and board costs or tuition to private and out-of-state colleges or university.<sup>155</sup> The scholarship program also includes the benefit of a Medicaid card for Illinois students.<sup>156</sup> For the tuition waiver program, tuition and mandatory fees are waived for any Illinois public university or in-district community college and any Pell Grants, must be applied first.<sup>157</sup> The waivers are available for up to five years.<sup>158</sup> The waiver does not cover room and board costs or tuition to private, out-of-state, or for-profit schools.<sup>159</sup> Illinois promotes the Education and Training Voucher to provide the additional \$5,000 to cover education related

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<sup>150</sup> *Financial Aid for Foster Youth in Illinois: DCFS Programs*, FOSTER PROGRESS, <https://www.foster-progress.org/financial-aid-for-foster-youth-in-illinois-dcfs-programs> [<https://perma.cc/LDU2-NJHF>] (last visited Feb. 10, 2024).

<sup>151</sup> *The Decision to Leave DCFS Care: Are You Ready?*, ILL. DEP’T. OF CHILD. & FAM. SERVS., <https://dcfs.illinois.gov/content/dam/soi/en/web/dcfs/documents/brighter-futures/promoting-independence-and-self-sufficiency/documents/getting-there-tip-sheets.pdf> [<https://perma.cc/2Y94-QAGZ>] (last visited Feb. 11, 2024).

<sup>152</sup> *Post-Secondary Education Services*, ILL. DEP’T OF CHILD. & FAM. SERVS., <https://dcfs.illinois.gov/brighter-futures/growing-minds/post-secondary-education-services.html> [<https://perma.cc/6MX4-K9W>] (last visited Feb. 11, 2024).

<sup>153</sup> H.B. 5122, 100th Gen. Assemb. (Ill. 2018).

<sup>154</sup> *Id.*

<sup>155</sup> *Financial Aid for Foster Youth in Illinois: DCFS Programs*, *supra* note 150.

<sup>156</sup> *Id.*

<sup>157</sup> *Post-Secondary Education Services*, *supra* note 152.

<sup>158</sup> *Id.*

<sup>159</sup> *Financial Aid for Foster Youth in Illinois: DCFS Programs*, *supra* note 150.

expenses such as books, supplies, and transportation not covered by the scholarship or fee waiver.<sup>160</sup>

### *E. Maryland*

Maryland expanded its tuition waiver program to provide financial assistance to homeless youth as well as foster youth.<sup>161</sup> In Maryland, a foster care or homeless youth is exempt from paying tuition at any public institution of higher education, regardless of that foster care or homeless youth's receipt of any scholarship or grant, provided that the student is enrolled on or before their twenty-fifth birthday.<sup>162</sup> The waiver program includes vocational certificates, associate's degrees, and bachelor's degree programs.<sup>163</sup> The tuition waiver program does not include financial assistance for room, board, books, or transportation.<sup>164</sup>

### *F. Massachusetts*

With the stated recognition that foster children have fewer supports and significant financial needs, the Massachusetts Tuition Waiver Program was created with goal of reducing educational loan debts.<sup>165</sup> The Massachusetts law also requires that qualifying youth “[h]ave approved eligibility status as a ‘High School Completer,’ per the Massachusetts Tuition Equity Law, or be a U.S. Citizen, permanent legal resident, or non-citizen eligible under Title IV regulations.”<sup>166</sup> In 2023, Massachusetts passed the Tuition Equity Law to expand access to in-state tuition rates for all students who went to high school in the Commonwealth for at least three years.<sup>167</sup>

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<sup>160</sup> *Education & Training Vouchers*, ILL. DEP'T. OF CHILD. & FAM., <https://dcfs.illinois.gov/content/dam/soi/en/web/dcfs/documents/brighter-futures/promoting-independence-and-self-sufficiency/documents/getting-there-tip-sheets.pdf> [https://perma.cc/3Q8J-LYMG] (last visited Sept. 11, 2024).

<sup>161</sup> MD. CODE ANN., EDUC. § 15–106.1(b)(1) (West 2024).

<sup>162</sup> *Id.* § (b)(1)–(2).

<sup>163</sup> *Id.* § (b)(1)(ii).

<sup>164</sup> *Tuition Waiver for Foster Care Recipients*, MD. HIGHER EDUC. COMM'N, [https://mhec.maryland.gov/preparing/Pages/FinancialAid/ProgramDescriptions/prog\\_fostercare.aspx](https://mhec.maryland.gov/preparing/Pages/FinancialAid/ProgramDescriptions/prog_fostercare.aspx) (last visited Feb. 11, 2024).

<sup>165</sup> *Department of Child and Families (DCF) Foster Child Tuition Waiver and Fee Assistance Program*, MASS. DEP'T OF HIGHER EDUC., <https://www.mass.edu/osfa/programs/dcffoster.asp> [https://perma.cc/K3EU-ZSEZ] (last visited Aug. 20, 2024).

<sup>166</sup> *Id.*

<sup>167</sup> *Celebrating Tuition Equity for Massachusetts Students*, MASS. DEP'T OF HIGHER EDUC., <https://www.mass.edu/tuitionequity/home.asp> [https://perma.cc/T6DN-YU4V] (last visited Feb. 11, 2024).

### G. Minnesota

Taking effect in the fall of 2022, Minnesota’s law not only provides the full cost of tuition but also dramatically covers nontuition costs.<sup>168</sup> The Fostering Independence Higher Education Grants provide assistance for Minnesota residents under age twenty-seven who were involved in the foster care system at any point after their thirteenth birthday.<sup>169</sup> The grant is designed to cover the cost of attendance at any Minnesota public or participating private college and university.<sup>170</sup> As of the fall of 2022, over 400 college students have received state funding to cover not only tuition costs but also living expenses.<sup>171</sup> The Minnesota program is the first “in the nation to use state funds to pay for full cost of attendance . . . .”<sup>172</sup> For the first semester of implementation, 64% of enrolled youth attended to two-year state colleges, 17% attended four-year colleges, and the remaining 18% of students went to either University of Minnesota, nonprofit, or profit colleges.<sup>173</sup> Prior to implementation of the grant program, a student needed to rely on grants and scholarships, however, those funding sources never covered all the additional college-related expenses.<sup>174</sup> Using state money, the program covers the *full* cost of attendance to include living expenses.<sup>175</sup> “[G]rants are . . . to cover ‘last dollar money,’ or costs left over after all resources from federal grants and third-party scholarships are exhausted.”<sup>176</sup> Governor Walz also signed HF 3845 into law in June of 2022, which “established an ombudsperson for foster youth.”<sup>177</sup>

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<sup>168</sup> Alex Perez, *College Grant Program for Minnesota Foster Youth a Victim of Its Own Success*, THE IMPRINT (Mar. 26, 2024, 4:13 PM), <https://imprintnews.org/top-stories/minnesota-college-grant-program-shortfall/248361> [https://perma.cc/7DGQ-FK3E].

<sup>169</sup> *Id.*

<sup>170</sup> See *Fostering Independence Higher Education Grants*, MINN. OFF. OF HIGHER EDUC., <https://www.ohe.state.mn.us/mPg.cfm?pageID=2491> [https://perma.cc/7985-WEEG] (last visited Aug. 20, 2024).

<sup>171</sup> Nicole Ki, *College Is Now Free for Young Minnesotans Who Were in Foster Care as Teens*, MINN. PUB. RADIO NEWS (Apr. 12, 2023, 4:00 AM), <https://www.mprnews.org/story/2023/04/12/college-is-now-free-for-minnesotans-who-were-in-foster-care-as-teens> [https://perma.cc/3M4T-E8Z7].

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

### H. New York

In New York, the College Choice program launched in 2022 and was designed to increase the number of foster youth who graduated college.<sup>178</sup> A college student enrolled in this program can attend college at no cost and can receive supporting services, such as tutoring.<sup>179</sup> To be eligible for this program, the student must be or have been in foster care through the NYC Administration for Children’s Services, must be enrolled in at least 12 credits during each of the fall and spring semesters, and must maintain a 2.0 cumulative GPA.<sup>180</sup> Previously, students in foster care were eligible to participate in “the FCSI/Dorm Project,” which provided year-round housing and academic support to youth in foster care attending college in New York.<sup>181</sup> The New York Administration for Children’s Services also offered the Fostering College Success Stipend, which provided college students in foster care with a \$31 daily stipend.<sup>182</sup>

In 2022, New York City Mayor Eric Adams announced a new initiative, the College Choice program, to “provide college students in foster care with greater support systems, including financial support” to attend college of their dreams with worrying about cost.<sup>183</sup> The funding support comes from the Administration on for Children’s Services (ACS) to “pay [the] remaining costs of [] tuition—up to \$15,000 each year—in addition to any room and board not covered by

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<sup>178</sup> N.Y.C. ADMIN. FOR CHILD.’S SERVS., NYC ADMINISTRATION FOR CHILDREN’S SERVICES COLLEGE CHOICE PROGRAM UPDATES TO PROGRAM SPECIFIC GUIDELINES ACADEMIC YEAR 2023-2024 1 (2023), [https://fosteringcollegesuccessinitiative.org/wp-content/uploads/2023/07/College-Choice-Summary\\_Updated-July-2023.pdf](https://fosteringcollegesuccessinitiative.org/wp-content/uploads/2023/07/College-Choice-Summary_Updated-July-2023.pdf) [https://perma.cc/R5JA-ZAVG].

<sup>179</sup> *Program Information*, FOSTERING COLL. SUCCESS INITIATIVE, <https://fosteringcollegesuccessinitiative.org/program-information/> [https://perma.cc/WT9B-K69V] (last visited Aug. 20, 2024).

<sup>180</sup> N.Y.C. ADMIN. FOR CHILD.’S SERVS., *supra* note 178.

<sup>181</sup> *Guide to the College Choice Program*, THE CTR. FOR FAIR FUTURES, <https://resources.fairfuturesny.org/AppendixG13> [https://perma.cc/EY3R-JVUC] (last visited June 20, 2024).

<sup>182</sup> Reema Amin, *College Felt Impossible to This Student in Foster Care. Then NYC Offered to Pay.*, CHALKBEAT N.Y.C (June 15, 2023, 9:14 AM), <https://www.chalkbeat.org/newyork/2023/6/15/23762089/ny-college-choice-foster-care-students-tuition-loans-debt/> [https://perma.cc/UU7M-ZFNL].

<sup>183</sup> *Mayor Adams, Administration for Children’s Services Announce ‘College Choice’ Program to Help Cover Cost of College Expenses for Hundreds of Students in Foster Care*, N.Y.C. (Oct. 4, 2022), <https://www.nyc.gov/office-of-the-mayor/news/719-22/mayor-adams-administration-children-s-services-college-choice-program-help-cover#0> [https://perma.cc/DB27-KQ45].

. . . financial aid package.”<sup>184</sup> Additionally, college students “receive a \$60 daily stipend per year” to “be used towards food, clothing, transportation, and more.”<sup>185</sup> This program extends beyond New York colleges and universities.<sup>186</sup> This new program, similar in ways to the Minnesota program, serves as model to provide holistic support to youth in foster care. The “Fair Futures [program] has been in place since 2019, but the Adams administration recently provided additional resources to ACS so that Fair Futures could be expanded to include youth in foster care from ages 21 to 26.”<sup>187</sup>

#### IV

##### ADEQUATE PREPARATION FOR HIGHER EDUCATION

A disturbingly low number of youth who have been involved in the foster care system are adequately prepared to attend and complete their college educations, as only 3–4% of foster youth complete a four-year degree.<sup>188</sup> Too often, foster youth lack not only the finances to afford college, but in the years leading up to college, they may also lack adequate guidance, mentorship, support, and stability needed to navigate the college application and preparation process.<sup>189</sup> As a result, the number of foster youth who are adequately prepared for and able to pursue higher education is staggeringly low for a variety of reasons beyond their own individual control.<sup>190</sup> Historically, the overwhelming cost of the entire higher education experience has served as a barrier toward pursuing a college degree, as most foster youth report that lack of financial resources impacts their ability to complete their postsecondary degree.<sup>191</sup> Although research does not decipher the level of which each barrier interferes, foster youth struggle at every level from postsecondary enrollment to academic performance in college

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<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *See id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Higher Education for Foster Youth*, THE NAT’L FOSTER YOUTH INST., <https://nfyi.org/issues/higher-education/> [<https://perma.cc/BA2U-WM4V>] (last visited Feb. 11, 2024).

<sup>189</sup> *Id.*

<sup>190</sup> Okpych & Courtney, *supra* note 5.

<sup>191</sup> Jennifer M. Geiger et al., *A Descriptive Analysis of Programs Serving Foster Care Alumni in Higher Education: Challenges and Opportunities*, 85 CHILD. & YOUTH SERVS. REV. 287, 290 (2018).

and completion of their degree.<sup>192</sup> What follows is an examination of some of the barriers to college enrollment.

### *A. School Stability*

As discussed in Section II.B of this Article, youth who are involved in the foster care system unfortunately experience significant school disruption. One study found that approximately one-third of foster youth have changed schools five or more times by the time they turn age eighteen.<sup>193</sup> Frequent school changes impact a student's ability to complete their high school education because school changes are linked to lower academic performance, higher rates of grade retention and absenteeism, and lower graduation rates.<sup>194</sup>

Relatively recent federal laws have been enacted to improve school stability for foster youth. For example, the Fostering Connections Act of 2008 included a provision to ensure educational stability by establishing that a best interest determination should be made to focus on whether it is appropriate for a child to stay in their school of origin or transfer to a new one.<sup>195</sup> Despite the provisions of this federal law being focused on addressing school stability, too many youth continue to experience school instability. The Every Students Succeeds Act of 2015 further reinforced the school stability requirements with the presumption that foster youth stay in their school of origin as compared to changing schools when changing placements.<sup>196</sup> Other positive provisions of the law included the identification of a "point of contact" within schools with the requirement that states provide guidance on implementation.<sup>197</sup> Training is being provided to the point of contacts in local education agencies, which is helpful for dissemination of information and training on responsibilities.<sup>198</sup>

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<sup>192</sup> See Angelique Day et al., *An Examination of Post-Secondary Retention and Graduation Among Foster Care Youth Enrolled in A Four-Year University*, 33 CHILD. & YOUTH SERVS. REV. 2335 (2011).

<sup>193</sup> Palmieri & La Salle, *supra* note 114, at 119.

<sup>194</sup> Janette E. Herbers et al., *School Mobility and Developmental Outcomes in Young Adulthood*, 25 DEV. & PSYCHOPATHOLOGY 501, 501 (2013).

<sup>195</sup> H.R. 6893, 110th Cong., 2d Sess. (2008) (enacted).

<sup>196</sup> S. 1177, 114th Cong., 1st Sess. (2015) (enacted).

<sup>197</sup> Kathleen McNaught & Emily Peeler, *Every Student Succeeds Means Children in Foster Care Too: State Progress on ESSA's Foster Care Provisions*, A.B.A. CTR. ON CHILD. & THE L. (Dec. 1, 2017), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-36/nov-dec-2017/every-student-succeeds-means-children-in-foster-care-too--state-/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/nov-dec-2017/every-student-succeeds-means-children-in-foster-care-too--state-/).

<sup>198</sup> See *id.*

## B. Educational Challenges Throughout High School

### 1. School Discipline

In addition to school enrollment issues and school stability, research shows that foster youth are also more likely to experience poor academic performance and more disciplinary actions in school compared to non-foster youth.<sup>199</sup> Disciplinary referrals can often lead to even more educational interruptions, as the school's response may include expulsions or suspensions.<sup>200</sup> Research indicates that “foster youth are three times more likely than their peers to experience disciplinary events in school.”<sup>201</sup> Foster youth often start with fewer connections to their schools due to high mobility and frequent school changes, and therefore are less likely to have established supportive relationships with their classmates, teachers, and school administrators.<sup>202</sup> Furthermore, foster youth are often unable to develop school connections through extracurricular activities compared to their non-foster youth peers.<sup>203</sup> Without these connections, foster youth may experience more school discipline situations. “[R]esearch has linked both suspensions and expulsions to negative educational and life outcomes for children, including lower rates of proficiency on state math and . . . [l]anguage [a]rts examinations and increase in the risk of dropping out of school.”<sup>204</sup> Any student who is living in a precarious housing arrangement, which uniquely affects homeless and foster youth, is much more likely to be suspended from school and lose instructional time in school, which is critical to their academic success.<sup>205</sup>

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<sup>199</sup> Cheryl L. Somers et al., *Academic Achievement Among a Sample of Youth in Foster Care: The Role of School Connectedness*, 57 PSYCH. SCHS. 1845, 1845 (2020).

<sup>200</sup> Brianna H. Kothari et al., *A Longitudinal Analysis of School Discipline Events Among Youth in Foster Care*, 93 CHILD. & YOUTH SERVS. REV. 117, 117 (2018).

<sup>201</sup> *Id.*

<sup>202</sup> Clare Tilbury et al., *Making a Connection: School Engagement of Young People in Care*, 19 CHILD & FAM. SOC. WORK 455, 455–56 (2014).

<sup>203</sup> Katherine C. Pears et al., *Early School Engagement and Late Elementary Outcomes for Maltreated Children in Foster Care*, 49 DEVELOP. PSYCH. 2201, 2202 (2013).

<sup>204</sup> Jennifer Erb-Downward & Michael Blakeslee, *Recognizing Trauma: Why School Discipline Reform Needs to Consider Student Homelessness*, UNIV. OF MICH. POVERTY SOLS. 1, 1 (May 2021), <https://files.eric.ed.gov/fulltext/ED614739.pdf> [<https://perma.cc/P9ZK-2LD2>].

<sup>205</sup> RAMON T. FLORES & DANIEL J. LOSEN, LOST INSTRUCTION TIME IN CALIFORNIA SCHOOLS: THE DISPARATE HARM FROM POST-PANDEMIC PUNITIVE SUSPENSIONS, THE C.R. PROJECT 1, 5 (Oct. 2023), <https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/lost-instruction-time-in-california-schools-the-disparate-harm>

One particular study addressing the concern of increased disciplinary action showed that in the 2021–22 school year, before considering race and ethnicity, teachers in California punished foster youth the most, which led to foster students losing seventy-seven days of instruction due to suspensions per 100 students enrolled.<sup>206</sup> Upon examination of the racial and ethnic breakdown of rates for foster and homeless youth, even more concerns arise in that “African American foster youth lost 121 days of instruction per 100 enrolled.”<sup>207</sup> If school suspensions are a form of punishment designed to teach students a lesson about what constitutes appropriate behaviors, the lesson seems counterproductive because suspended students lose instructional time.<sup>208</sup> Missed instructional time further hinders a student’s preparation for higher education programs.<sup>209</sup> Fortunately, research shows that providing specialized training for teachers can improve student engagement and reduce office referrals for student misconduct.<sup>210</sup>

## 2. Academic Performance

Academic success while in high school can certainly impact a youth’s future success and, ultimately, enrollment in higher education.<sup>211</sup> Due to a host of reasons, high school students who are involved in the foster care system tend to score below their peers in state standardized testing.<sup>212</sup> Standardized test scores play a significant role in college admissions, and only in relatively recent times have universities become more concerned about the impediment that testing

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-from-post-pandemic-punitive-suspensions/Lost\_Instruction\_Time\_CA\_Schools\_October\_2023.pdf [https://perma.cc/FP84-TET5].

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at 6.

<sup>208</sup> *Id.*; see also ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS, AM. PSYCH. ASS’N ZERO TOLERANCE TASK FORCE, 63 AM. PSYCH. 852 (2008).

<sup>209</sup> Brenda Álvarez, *School Suspensions Lead to Stark Losses in Instructional Time*, NAT’L EDUC. ASS’N: NEA TODAY (Nov. 19, 2020), <https://www.nea.org/nea-today/all-news-articles/school-suspensions-lead-stark-losses-instructional-time> [https://perma.cc/6Y24-Q2L5].

<sup>210</sup> Anne Gregory et al., *Eliminating Disparities in School Discipline: A Framework for Intervention*, 41 REV. RSCH. EDUC. 253, 262 (2017).

<sup>211</sup> See Melissa J. Sullivan et al., *School Change, Academic Progress, and Behavior Problems in a Sample of Foster Youth*, 32 CHILD. & YOUTH SERVS. REV. 164 (2010).

<sup>212</sup> *Young Adults Formerly in Foster Care: Challenges and Solutions*, YOUTH.GOV, <https://youth.gov/youth-briefs/foster-care-youth-brief/challenges> [https://perma.cc/4UV8-XWZZ] (last visited Feb. 11, 2024).

has on diverse students and other social inequities.<sup>213</sup> During the 2013–14 school year, “[f]oster youth were more likely than their peers to have a GPA below 2.0, and were less likely to have a 3.0 GPA or higher.”<sup>214</sup>

Not only are foster youth impacted by school disruptions, but poor children generally have less access to quality education. Specifically, Black students are more likely to live in a community with educational disparities.<sup>215</sup> Of special note is recent litigation in Pennsylvania challenging the constitutionality of the education funding system, in which the court determined that Pennsylvania’s school funding system was unconstitutional.<sup>216</sup> “Black and White child placement rates are more similar in counties with the fewest socio-economic assets.”<sup>217</sup>

Furthermore, students in foster care are twice as likely to be absent from school.<sup>218</sup> On a national level, students in foster care miss an average of twenty-five days of school compared to twelve days for non-foster care involved youth.<sup>219</sup> Often, youth in foster care miss school through no fault of their own because of enrollment issues, school changes, etc.<sup>220</sup> There is no doubt that the more missed school days

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<sup>213</sup> REBECCA ZWICK, THE ROLE OF STANDARDIZED TESTS IN COLLEGE ADMISSIONS, THE C.R. PROJECT 1, 9 (2023), [https://civilrightsproject.ucla.edu/research/college-access/admissions/the-role-of-standardized-tests-in-college-admissions/Admissions\\_Zwick\\_060523-082923-copyright-fix.pdf](https://civilrightsproject.ucla.edu/research/college-access/admissions/the-role-of-standardized-tests-in-college-admissions/Admissions_Zwick_060523-082923-copyright-fix.pdf) [<https://perma.cc/QP6H-BGYG>].

<sup>214</sup> RTI INT’L & STUART FOUND., CHARTING THE COURSE: USING DATA TO SUPPORT FOSTER YOUTH COLLEGE SUCCESS 1, 13 (2015), [https://www.cacollegepathways.org/wp-content/uploads/2016/01/charting\\_the\\_course\\_final.pdf](https://www.cacollegepathways.org/wp-content/uploads/2016/01/charting_the_course_final.pdf) [<https://perma.cc/YHH5-BBDN>].

<sup>215</sup> Larry J. Walker & Ramon B. Goings, *A Dream Deferred: How Trauma Impacts the Academic Achievement of African American Youth*, in LINKING HEALTH AND EDUCATION FOR AFRICAN AMERICAN STUDENTS’ SUCCESS 3, 3 (Nadine M. Finigan-Carr ed., Taylor & Francis Group 1st ed. 2017).

<sup>216</sup> William Penn Sch. Dist. v. Pa. Dep’t of Educ., 294 A.3d 537, 963 (Pa. Commw. Ct. 2023) (“Applying strict scrutiny, the Court concludes Petitioners have established an equal protection violation. No compelling government purpose has been espoused for the disparities identified between low-wealth and high-wealth school districts. Even applying the less stringent intermediate or rational basis scrutiny, the Court would conclude that there is no rational basis for such disparities.”).

<sup>217</sup> Fred Wulczyn et al., *Race, Poverty, and Foster Care Placement in the United States: Longitudinal and Cross-Sectional Perspectives*, 20 INT’L J. ENV’T RSCH. & PUB. HEALTH 6572, 6572 (2023).

<sup>218</sup> Palmieri & La Salle, *supra* note 114, at 117.

<sup>219</sup> DAVID RUBIN ET AL., IMPROVING EDUCATION OUTCOMES FOR CHILDREN IN CHILD WELFARE 3 (2013), [https://policylab.chop.edu/sites/default/files/pdf/publications/PolicyLab\\_EtoA\\_%20Improving\\_Education\\_Outcomes\\_for\\_Children\\_in\\_Child%20Welfare\\_2013.pdf](https://policylab.chop.edu/sites/default/files/pdf/publications/PolicyLab_EtoA_%20Improving_Education_Outcomes_for_Children_in_Child%20Welfare_2013.pdf) [<https://perma.cc/P75C-9EDM>].

<sup>220</sup> See, e.g., GINNY BLANKENSHIP, REDUCING CHRONIC ABSENTEEISM FOR CHILDREN IN FOSTER CARE AND FINS 2 (2018), <https://www.attendanceworks.org/wp-content/uploads/2018/10/FINS-memo-web-version-9.13.18.pdf> [<https://perma.cc/7QBL-AT7G>].

directly impact student performance.<sup>221</sup> Not only do school absences impact foster youth, but children can enter the foster care system due to concerns about school truancy, as a grounds for dependency.<sup>222</sup> Further, school enrollment delays impact attendance and school completion.<sup>223</sup>

### 3. Increased Involvement with Special Education Services

Approximately 30–50% of foster youth received special education services in school compared to about 11% of non-foster youth students.<sup>224</sup> In order to qualify for special education services, a student must meet eligibility criteria for a disability and must also require additional services pursuant to the Individuals with Disabilities in Education Act.<sup>225</sup> Also, while schools may overidentify foster children as needing special education if students are struggling academically,<sup>226</sup> it may also be possible that these youth are experiencing significant gaps in their instruction due to school changes.<sup>227</sup> Schools must be adept at recognizing that children who are placed in the foster care system are also experiencing various forms of trauma which may result in behavioral issues, anxiety, attention problems, etc., within a school setting.<sup>228</sup> Approximately 15% of all students receive special education services, with a learning disability being the most diagnosed

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<sup>221</sup> EMMA GARCIA & ELAINE WEISS, STUDENT ABSENTEEISM 5 (Econ. Pol’y Inst., Sept. 2018), <https://files.epi.org/pdf/152438.pdf> [<https://perma.cc/SS7K-Y8M6>].

<sup>222</sup> For example, in Pennsylvania, “truancy” is a ground for adjudication of dependency, pursuant to 42 PA. CONS. STAT. § 6302 (2024) (definition of “Dependent child,” §§ (1), (5)). As for a dependent child, the court may decide to remove the child from the parents’ custody and place them into foster care. 42 PA. CONS. STAT. § 6351 (2024).

<sup>223</sup> CHERYL SMITHGALL ET AL., EDUCATIONAL EXPERIENCES OF CHILDREN IN OUT-OF-HOME CARE (2004), [https://www.chapinhall.org/wp-content/uploads/Smithgall\\_Educational-Experiences-Children-Out-of-Home\\_Report\\_2004.pdf](https://www.chapinhall.org/wp-content/uploads/Smithgall_Educational-Experiences-Children-Out-of-Home_Report_2004.pdf) [<https://perma.cc/3FVQ-9BB3>].

<sup>224</sup> Somers et al., *supra* note 199, at 1846.

<sup>225</sup> 20 U.S.C. § 1400.

<sup>226</sup> Over identification of foster youth for special education services was noted by Zetlin in 2006. Andrea Zetlin, *The Experiences of Foster Children and Youth in Special Education*, 31 J. OF INTELL. & DEVELOPMENTAL DISABILITY 161, 162–63 (July 2009).

<sup>227</sup> Palmieri & La Salle, *supra* note 110, at 120.

<sup>228</sup> Nancy McKellar & Katherine C. Cowan, *Supporting Students in Foster Care*, PRINCIPAL LEADERSHIP, Sept. 2011, at 12–16; Nancy McKellar, *Foster Care for Children: Information for Teachers*, 36 NAT’L ASS’N SCH. PSYCH. S2-29, S2-29 (2007), <http://foster-carechildren.pbworks.com/w/file/fetch/63728545/Foster%20Care%20for%20Children-%20Information%20for%20Teachers.pdf> [<https://perma.cc/5HZ9-9CKZ>].

disability.<sup>229</sup> Regardless of whether foster youth are overidentified for special education, research shows that just 65% of students with a disability graduate on time.<sup>230</sup> They also have lower college graduation rates than their peers.<sup>231</sup>

#### 4. High School Graduation Rates

Multiple challenges impact foster youth graduation rates, which are lower than those of non-foster youth.<sup>232</sup> Under the Every Student Succeeds Act, beginning in the 2017–18 school year, school districts were required to keep data on graduation rates for students who are in the foster care system.<sup>233</sup> This statutory data tracking requirement necessitates communication between child welfare governmental agencies and school districts.<sup>234</sup> Not only are dropout rates three times higher for foster youth than non-foster youth, but 40% of foster youth experience some form of educational challenges.<sup>235</sup> A recent study of Colorado students in foster care showed that the students changed schools an average of 3.46 times during their first four years of high school. As the number of school changes increased, the odds of earning a high school diploma or equivalency diploma decreased.<sup>236</sup> Various studies show that systemic barriers prevent foster youth from receiving regular diplomas.<sup>237</sup>

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<sup>229</sup> *Students with Disabilities*, NAT'L CTR FOR EDUC. STAT. (May 2023), <https://nces.ed.gov/programs/coe/indicator/cgg/students-with-disabilities> [<https://perma.cc/2WU6-2VJJ>].

<sup>230</sup> KYRIE E. DRAGOO, CONG. RSCH. SERV., R44887, *STUDENTS WITH DISABILITIES: HIGH SCHOOL TO POSTSECONDARY TRANSITION* (2017).

<sup>231</sup> Sarah Butrymowicz & Jackie Mader, *Almost All Students with Disabilities Are Capable of Graduating On Time. Here's Why They're Not*, THE HECHINGER REP. (Nov. 4, 2017), <https://hechingerreport.org/high-schools-fail-provide-legally-required-education-students-disabilities/> [<https://perma.cc/3AWF-UNE9>].

<sup>232</sup> See generally Dan Lips, *Foster Children Struggling to Graduate High School*, THE FOUND. FOR RSCH. ON EQUAL OPPORTUNITY, <https://blog.freopp.org/foster-children-are-struggling-to-graduate-high-school/> [<https://perma.cc/C4XW-K2ZJ>] (last visited June 20, 2024).

<sup>233</sup> S. 1177, 114th Cong. (2015) (enacted).

<sup>234</sup> See *ESSA Report Card*, PA. DEP'T OF EDUC., <https://www.education.pa.gov/K-12/ESSA/ESSAReportCard/Pages/default.aspx> [<https://perma.cc/L8GQ-8CRW>] (last visited June 20, 2024).

<sup>235</sup> *Higher Education for Foster Youth*, *supra* note 188 (citing MARK E. COURTNEY ET AL., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26*, CHAPIN HALL (2011)).

<sup>236</sup> Elysia V. Clemens et al., *The Relationship Between School Mobility and Students in Foster Care Earning a High School Credential*, 68 CHILD. & YOUTH SERVS, REV. 193, 193 (2016).

<sup>237</sup> *Id.* at 194.

## V

## COLLEGE COMPLETION CHALLENGES FOR FOSTER YOUTH

While tuition waiver programs can provide tremendous support to foster youth, research must focus on whether such programs are effective and how we can improve the outcomes in college completion rates. While the foregoing sections highlight the challenges that impact foster youth's preparedness for higher education, this section of the Article will address the ways in which foster youth are not adequately supported to complete college. Data shows that over 84% of older youth in foster care say they want to pursue a postsecondary degree, yet foster youth enroll in college at half the rate of non-foster youth, and most do not complete past their first year of college.<sup>238</sup> Only 3–11% of foster youth complete their college degree in comparison to 33% of the national average of students.<sup>239</sup> This next section of the Article covers additional challenges uniquely facing foster youth.

*A. Room and Board Costs*

Most commonly, tuition waiver programs do not include room and board costs connected with a college education.<sup>240</sup> However, the cost of room and board for foster youth may make the opportunity impossible. The average cost of room and board takes up 30% of the undergraduate's budget and the average cost of room and board for four years of college is \$49,480.<sup>241</sup> But, this cost can vary significantly by state and by the type of housing arrangements that the student chooses.<sup>242</sup>

Following the passage of the Fostering Connections Act, children were able to remain in the foster care system until age twenty-one, a significant change from the previous law which discharged youth at

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<sup>238</sup> Renny Osuma Perla, *Higher Education Access for Youth in Foster Care*, TEMP. UNIV., THE HOPE CTR. (May 2024), <https://hope.temple.edu/newsroom/hope-blog/national-foster-care-month> [<https://perma.cc/UM6V-35MB>].

<sup>239</sup> Shannon Lee, *Foster Care to College: Online Resources*, STUDENT TRAINING & EDUC. IN PUB. SERV. (Aug. 4, 2022), <https://www.publicservicedegrees.org/college-resources/foster-youth-online-college-support-resources/> [<https://perma.cc/R8FK-AZGX>]; see also Burt S. Barnow et al., *Effective Services for Improving Education and Employment Outcomes for Children and Alumni of Foster Care Service: Correlates and Educational and Employment Outcomes*, 20 CHILD & FAM. SOC. WORK 159 (2013).

<sup>240</sup> See generally PARKER & SARUBBI, *supra* note 4.

<sup>241</sup> Imed Bourchrika, *What Is Included in Room and Board in College: How to Cover the Costs in 2024?*, RESEARCH.COM (July 16, 2024), <https://research.com/education/what-is-included-in-room-and-board-in-college>.

<sup>242</sup> *Id.*

age eighteen.<sup>243</sup> If a foster youth is still dependent past age eighteen and not participating in further education, the child welfare governmental agency has an obligation to pay for the cost of food and shelter through foster care payments.<sup>244</sup> Students with foster care histories are less likely to live with parents or relatives compared with other young people.<sup>245</sup> Students who live off campus face a higher cost of attendance than students who live with parents or relatives, but estimating exactly how much higher is difficult.<sup>246</sup>

Take, for example, an eighteen-year-old foster youth living in a foster home who graduates high school, gets a job, and continues to reside in the foster home. The governmental child welfare agency would continue to make foster payments through a foster care provider to cover the cost of the child's room and board. This arrangement could continue until the child is twenty-one, per federal and a majority of state laws, provided that the child is working, in school, in a training program, or unable to do so due to a disability.<sup>247</sup> A child who is attending college and meets the criteria for extended foster care, however, often has to take out loans to pay for room and board.<sup>248</sup> However, if the child moves out of the foster home and into a dorm, why is it that a foster youth would need to take out loans to pay the cost of room and board? Should states not provide more assistance beyond tuition waivers commensurate with the support that a foster youth who is not in college receives?

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<sup>243</sup> H.R. 6893, 110th Cong. § 201(a)(iii) (Oct. 7, 2008) (enacted).

<sup>244</sup> 42 U.S.C. § 675(4)(A); see also *Foster Care: States with Approval to Extend Care Provide Independent Living Options for Youth up to Age 21*, U.S. GOV'T ACCOUNTABILITY OFF. (May 21, 2019), <https://www.gao.gov/products/gao-19-411> [<https://perma.cc/72SG-Q2AP>].

<sup>245</sup> LAURA PACKARD TUCKER ET AL., THE URB. INST., FOSTER CARE, POSTSECONDARY EDUCATION, AND THE NEED FOR FINANCIAL AID: HOW AFFORDABLE IS POSTSECONDARY EDUCATION FOR YOUNG PEOPLE WITH A FOSTER CARE HISTORY? 7 (2023), <https://files.eric.ed.gov/fulltext/ED629114.pdf> [<https://perma.cc/MXE2-RPT4>].

<sup>246</sup> Integrated Postsecondary Education Data Systems is the best source of data on college costs but likely underestimates the cost of attendance for those living at home; for instance, it automatically sets the cost of room and board to zero for students living at home. This does not appear to measure the cost of attendance estimated by some schools accurately. Some institutions list a non-zero cost of room and board for those living at home on their websites. *Federal Cost Data for Students Living at Home Are Significantly Understated*, THE INST. FOR COLL. ACCESS & SUCCESS (May 24, 2016), <https://ticas.org/accountability/federal-cost-data-students-living-home-are-significantly-understated/> [<https://perma.cc/XJG8-3W3N>].

<sup>247</sup> 42 U.S.C. § 675(8)(B)(iv).

<sup>248</sup> *Id.*

### B. Indirect College Expenses

In the recent surge of states offering tuition waiver programs, as documented throughout this article, most of the focus is on tuition and fees as compared to indirect costs associated with college attendance. In addition to tuition costs, room and board costs may create barriers to entry for many students. However, in addition to room, board, and tuition, one often unconsidered cost is the indirect expense associated with postsecondary education.<sup>249</sup> U.S. News Report recently highlighted the top non-tuition costs beyond housing such as technology (computer purchases and Wi-Fi), transportation (car, parking, fuel, insurance or public transportation), travel home (if this is even an option for foster youth), books and supplies, occasional food outside of the cafeteria, internship costs (clothing, transport), emergencies, etc.<sup>250</sup> Such “indirect” costs associated with college go beyond room, board, and tuition but can involve a substantial component of college attendance costs that are often not properly planned for nor calculated.<sup>251</sup> While tuition costs have risen dramatically in the past forty years—twice as fast as inflation—tuition and fees actually represent less than 40% of the total cost of attendance for students attending four-year public colleges and universities, and just one-fourth of the cost of attendance for community college students.<sup>252</sup> Often, college students from families with financial resources can receive support for these indirect costs without having to obtain loans to cover these costs.<sup>253</sup> Indirect costs are not insignificant and may even cause students to leave college before degree completion, as the majority of college students say they paid more for indirect expenses than they originally anticipated.<sup>254</sup>

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<sup>249</sup> See generally Brianna McGurran, *College Tuition Inflation: Compare the Cost of College Over Time*, *Advisor*, FORBES (May 9, 2023, 1:46 PM), <https://www.forbes.com/advisor/student-loans/college-tuition-inflation/> [https://perma.cc/8SKK-CQRQ].

<sup>250</sup> Emma Kerr & Sarah Wood, *10 College Costs Other Than Tuition and Housing*, U.S. NEWS (June 12, 2023, 3:36 PM), <https://www.usnews.com/education/best-colleges/paying-for-college/slideshows/10-college-costs-other-than-tuition-and-housing?slide=13>.

<sup>251</sup> Ann Carrns, *The ‘Indirect’ Costs at College Can Involve Nasty Surprises*, N.Y. TIMES (Aug. 7, 2020), <https://www.nytimes.com/2020/08/07/your-money/college-costs-tuition.html>.

<sup>252</sup> ROBERT KELCHEN, EXPLORING THE TOPIC OF INDIRECT COSTS TO TODAY’S HIGHER EDUCATION STUDENTS, AM. COUNCIL ON EDUC. 1 (2015), <https://www.acenet.edu/Documents/Quick-Hits-Indirect-Costs.pdf> [https://perma.cc/F7K9-E4XE].

<sup>253</sup> See generally Ann Carrns, *supra* note 251.

<sup>254</sup> ANN COLES ET AL., BEYOND THE COLLEGE BILL: THE HIDDEN HURDLES OF INDIRECT EXPENSES 23 (2020), <https://www.uaspire.org/getattachment/f5530ca7-5e02-4290-915c-016462965793/Beyond-the-College-Bill.pdf> [https://perma.cc/GH53-8VAA].

Colleges and universities should publicize and describe estimates for indirect college costs, with a particular focus on how to account for the varying needs of students. Often, colleges include cost budgets for prospective students.<sup>255</sup> However, approximately 30% of colleges provided living allowances that were significantly below appropriate estimates, and colleges could work together to provide better consistency in how living expenses are developed.<sup>256</sup> Based on research and experience as an attorney working directly with foster youth, if these indirect costs of education are not covered by tuition waiver programs or scholarships and loans, more students will need to work during their education. Increased workload in turn can adversely affect school completion rates.<sup>257</sup>

An example of legal advocacy related to indirect expenses comes from the case of *In re S.J.* from Pennsylvania.<sup>258</sup> The Pennsylvania Superior Court found that the county agency had to pay the daily rate of \$14 to support the youth while she was away at college instead of staying in her foster home.<sup>259</sup> The intermediate appellate court found that in a child support context,

one of the express purposes of Pennsylvania’s Juvenile Act, 42 Pa.C.S. § 6301-6365, is to provide for the care, protection, safety, and wholesome mental development of children coming within the provisions of the chapter. Attending college in pursuit of a bachelor’s degree is an activity that provides for the “wholesome mental development” of a child under the Act.<sup>260</sup>

The court found that under Pennsylvania law, a child welfare agency has the duty to provide financial support and to provide for the protection and welfare of a child.<sup>261</sup> This gives the child the right to have their care and treatment paid for by the agency.<sup>262</sup> The court went on to state that it is not about the child’s tuition (prepassage of tuition

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<sup>255</sup> See generally *Net Price Calculator Center*, U.S. DEP’T OF EDUC., <https://collegecost.ed.gov/net-price> [<https://perma.cc/7D6V-3YEU>] (last visited Feb. 11, 2024). See, e.g., *Undergrad Cost of Attendance*, PENN STUDENT REGISTRATION & FIN. SERVS., <https://srfs.upenn.edu/costs-budgeting/undergraduate-cost-attendance> [<https://perma.cc/B3QZ-F4C4>] (last visited Sept. 11, 2024), and *Undergraduate Budget*, THE UNIV. OF TENN. KNOXVILLE, <https://onestop.utk.edu/billing-payments/cost-of-attending-ut-undergraduate-student/> [<https://perma.cc/P96V-VHN3>] (last visited Sept. 11, 2024).

<sup>256</sup> KELCHEN, *supra* note 252, at 5.

<sup>257</sup> *Id.*

<sup>258</sup> *In re S.J.*, 906 A.2d 547, 548–52 (Pa. Super. Ct. 2006).

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.* at 551.

<sup>262</sup> *Id.* at 552.

waiver) but about the governmental agency's responsibility to provide postsecondary educational support and the authority of the court to direct needed case management, foster care payment, etc., including limited financial assistance decisions, for adjudicated dependent children.<sup>263</sup> Finally, the court acknowledged that with such assistance, the child, SJ, would "have the opportunity to evolve into a mature young adult and develop the skills to live independently."<sup>264</sup>

### C. Health-Care Costs

Children involved in foster care often experience complex and serious physical, developmental, and mental health care needs.<sup>265</sup> Children in foster care have the highest rates of chronic health conditions of any child population.<sup>266</sup> Based on decades of research incorporated into the "Adverse Childhood Experiences" study, Kaiser Permanente determined that children with more adverse life experiences have an increased risk for lifelong medical issues such as heart disease, stroke, and depression.<sup>267</sup> These health concerns highlight the need for foster youth of any age to have access to health care and, by extension, health insurance. Despite chronic health care needs, roughly half of foster youth leaving the foster care system are uninsured and more than 20% have unmet health needs.<sup>268</sup>

The federally funded Medical Assistance program plays a critical role in the health care of foster youth.<sup>269</sup> A child who has been placed in a foster care placement is categorically eligible for their state's Medical Assistance, also known as the Medicaid program.<sup>270</sup> Medicaid, as authorized by Title XIX of the Social Security Act (SSA), is a program funded jointly by federal and state governments to provide

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<sup>263</sup> *Id.* at 548.

<sup>264</sup> *Id.* at 550.

<sup>265</sup> Moira A. Szilagyi et al., *Health Care Issues for Children and Adolescents in Foster Care and Kinship Care*, 136 PEDIATRICS (TECHNICAL REPORT) e1142, e1146 (2015).

<sup>266</sup> *See id.*

<sup>267</sup> Melissa T. Merrick et al., *Vital Signs: Estimated Proportion of Adult Health Problems Attributable to Adverse Childhood Experiences and Implications for Prevention — 25 States, 2015-2017*, 68 MORBIDITY & MORTALITY WKLY. REP. 999, 1000–05 (2019).

<sup>268</sup> Margot B. Kushel et al., *Homelessness and Health Care Access After Emancipation: Results from the Midwest Evaluation of Adult Functioning of Former Foster Youth*, 161 ARCHIVES ADOLESCENT & PEDIATRIC MED. 986, 991–93 (2007).

<sup>269</sup> EVELYNE P. BAUMRUCKER & PATRICK A. LANDERS, CONG. RSCH. SERV., IF11010, MEDICAID COVERAGE FOR FOSTER YOUTH UP TO AGE 26 (2024).

<sup>270</sup> Lindsey Rose Bullinger & Angélica Meinhofer, *The Affordable Care Act Increased Medicaid Coverage Among Former Foster Youth*, 40 HEALTH AFFS. 1430, 1430 (2021).

health-care coverage to low-income citizens. States set their own eligibility criteria under federal guidance.<sup>271</sup> As children exit the foster care system, they may lose, knowingly or unknowingly, critical health insurance coverage which could become another indirect expense connected to college attendance.<sup>272</sup> As discussed above in Section V.B of this Article, the U.S. News report on indirect college expenses does not even address the cost of health care and health insurance.<sup>273</sup> Yet, universities often require students to have health insurance prior to enrollment.<sup>274</sup> If students do not enroll with health insurance, they may be forced to purchase the university's health insurance plan.<sup>275</sup> Health insurance costs during college may uniquely impact foster youth, given possible eligibility for Medical Assistance and a lack of information provided about the program.

The Affordable Care Act (ACA) allows colleges to sell insurance to students and allows colleges to set standards and conditions of insurance for college enrollment.<sup>276</sup> Critically important to foster youth attending college, the ACA also provided in 2014 a mechanism that enables older youth to receive Medicaid until their twenty-sixth birthday, similar to the provision that allows young adults to stay on their parents' health insurance until age twenty-six.<sup>277</sup> In order for this foster care provision to apply, the child must have been "placed" in foster care under federal regulations which defines "foster care" as "24-hour substitute care for children placed away from their parents or

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<sup>271</sup> Barbara S. Klees et al., *Medicaid Program Description and Legislative History*, SSA OFF. OF THE ACTUARY, <https://www.ssa.gov/policy/docs/statcomps/supplement/2015/medicaid.html> [<https://perma.cc/2SU2-R94K>] (last visited Aug. 24, 2024).

<sup>272</sup> See generally Dashun Jackson, *Why Health Care Is Critical for Former Foster Youth*, THE IMPRINT (July 17, 2017), <https://imprintnews.org/opinion/former-foster-youth-need-health-care/27410> [<https://perma.cc/5AJZ-6Z99>] (discussing the importance of access to health insurance and care in finishing school).

<sup>273</sup> Kerr & Wood, *supra* note 250.

<sup>274</sup> Bruce Brumberg, *The Big College Expense You Probably Didn't Know About and Save for: Mandatory Health Insurance*, FORBES (Jul. 23, 2019, 5:50 PM), <https://www.forbes.com/sites/brucebrumberg/2019/07/23/the-big-college-expense-you-probably-didnt-know-about-and-save-for-mandatory-health-insurance/?sh=75fee03b4fc3> [<https://perma.cc/W58H-5A2H>]; see generally 45 C.F.R. § 147.145 (2023) (outlining requirements for student health insurance plans).

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* The Affordable Care Act states that nothing about it should be interpreted to prohibit universities "from offering student health insurance plans." 42 U.S.C. § 18118(c).

<sup>277</sup> FACT SHEET: THE IMPORTANCE OF HEALTH INSURANCE TO YOUTH AGING OUT OF FOSTER CARE, JUV. L. CTR. 2, <https://jlc.org/sites/default/files/attachments/2018-02/FactSheet-TheImportanceofHealthInsurance-YouthAgingOutofFosterCare.pdf> (last visited Feb. 11, 2024) [hereinafter IMPORTANCE OF HEALTH INSURANCE].

guardians and for whom the [child welfare] agency has placement and care responsibility.”<sup>278</sup> The federal foster care definition includes supervised independent living placements if the young adult remains in the placement and care of the child welfare agency.<sup>279</sup>

Even if a foster youth leaves court supervision, they may still be eligible for free health insurance due to their status as a former foster youth.<sup>280</sup> The youth, however, must apply for the insurance and may need help with the application process.<sup>281</sup> Amendments to the ACA established a waiver process to allow states to choose whether to cover youth who were formerly in foster care, which impacts foster youth who may be moving to a different state for college.<sup>282</sup> “As of 2019, [ten] [s]tates received such a waiver.”<sup>283</sup> Then in January of 2023, another amendment to the ACA allowed for youth formerly in foster care to remain eligible for Medicaid until age twenty-six regardless of which state they live in.<sup>284</sup> There are, however, still concerns about the amendment because it applies only to former foster youth “who turn eighteen on or after January 1, 2023.”<sup>285</sup> A few states have approved waivers to cover former foster youth from all states.<sup>286</sup>

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<sup>278</sup> 45 C.F.R. § 1355.20 (2023).

<sup>279</sup> The Fostering Connections to Success and Increasing Adoptions Act amended the definition of “child-care institution” to “include a supervised setting in which the individual is living independently.” 42 U.S.C. § 672(c)(2).

<sup>280</sup> See, e.g., YOUTH JUST. PROJECT, HEALTH CARE IN FOSTER CARE AND WHEN YOU AGE OUT, [https://clsphila.org/wp-content/uploads/2019/04/YJP-factsheet-Health-Care-in-Care\\_0.pdf](https://clsphila.org/wp-content/uploads/2019/04/YJP-factsheet-Health-Care-in-Care_0.pdf) [<https://perma.cc/4VGC-QKQ3>] (last visited Feb. 27, 2024). The ACA makes medical assistance available to former foster youth ages eighteen to twenty-six. 42 U.S.C. § 1396a(a)(10)(A)(i)(IX); 42 C.F.R. § 435.150 (2023).

<sup>281</sup> See generally Veronica Thompson, *How State Medicaid Programs Serve Children and Youth in Foster Care*, NAT’L ACAD. FOR STATE HEALTH POL’Y (May 23, 2022), <https://nashp.org/how-state-medicaid-programs-serve-children-and-youth-in-foster-care/> [<https://perma.cc/XTE7-NQUW>].

<sup>282</sup> See CTRS. FOR MEDICARE & MEDICAID SERVS., FORMER FOSTER CARE CHILDREN MEDICAID POL’Y UPDATE (2024), <https://www.cms.gov/files/document/former-foster-care-children-medicaid-policy-update.pdf> [<https://perma.cc/FL3G-7NCZ>].

<sup>283</sup> CHILD.’S BUREAU, HEALTH-CARE COVERAGE FOR CHILD AND YOUTH IN FOSTER CARE—AND AFTER 4 (2022), [https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/health\\_care\\_foster.pdf](https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/health_care_foster.pdf) [<https://perma.cc/HGB9-MLK3>].

<sup>284</sup> BAUMRUCKER & LANDERS, *supra* note 269.

<sup>285</sup> Tricia Brooks, *Implementing Changes to Medicaid Coverage for Former Foster Youth Could Be a Long, Bumpy Path but States Have Easier Option Available*, GEO. UNIV. MCCOURT SCH. OF PUB. POL’Y, CTR. FOR CHILD. & FAMS. (Jan. 12, 2023), <https://ccf.georgetown.edu/2023/01/12/implementing-changes-to-coverage-for-former-foster-youth-in-medicaid-could-be-a-long-bumpy-path-but-states-have-easier-option-available/> [<https://perma.cc/5CNJ-YNCN>].

<sup>286</sup> *Id.*

In some states, discharged foster youth are enrolled automatically in Medicaid under the former foster care category, whereas in other states, foster youths may need to apply.<sup>287</sup> Youth could ask that it be included in their transition plan or ask for a court to order a specific person to be in charge of ensuring that insurance coverage continues.<sup>288</sup> Some states allow foster youth to keep the same insurance plan and card after being discharged from the system, whereas in other states a former foster youth must receive a new card.<sup>289</sup> One issue for foster youth is that some states require verification of status as a foster youth.<sup>290</sup> Some states can verify this status without submission of documents, whereas other states require a copy of a court order or letter indicating that the child was in foster care, which may be challenging to obtain.<sup>291</sup>

If college students are not aware of continued Medicaid coverage, they may end up unnecessarily purchasing a college insurance plan. Medicaid, however, often provides additional benefits not offered through other insurance plans, and Medicaid does not include copays.<sup>292</sup> Colleges could do a better job of notifying students of any required health insurance costs.<sup>293</sup> Colleges may not accept certain health insurance plans if the plan does not provide benefits. States also determine their own medical necessity criteria for the Medicaid program.<sup>294</sup>

Regarding health care expenses, college-age foster youth must also consider the costs of prescription medication and reproductive health, which may or may not be covered by their insurance plans. This is especially relevant for youth in foster care, as children in foster care receive psychotropic medications at a higher rate than other

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<sup>287</sup> JUV. L. CTR., NATIONAL FAQ FOR YOUNG ADULTS MEDICAID TO 26 FOR FORMER FOSTER YOUTH 7, <https://jlc.org/sites/default/files/attachments/2018-02/Covereditil26%20-%20YOUTH%20FAQ.pdf> (last visited Feb. 11, 2024) [hereinafter NATIONAL FAQ].

<sup>288</sup> See 42 U.S.C. § 675 (1)(C).

<sup>289</sup> NATIONAL FAQ, *supra* note 287.

<sup>290</sup> See PA. DEP'T OF HUM. SERVS., MED. ASSISTANCE ELIGIBILITY HANDBOOK § 312.7 (2024), [http://services.dpw.state.pa.us/oimpolicymanuals/ma/index.htm#t=312\\_ACA%2F312.8\\_\\_Deciding\\_on\\_Eligibility.htm](http://services.dpw.state.pa.us/oimpolicymanuals/ma/index.htm#t=312_ACA%2F312.8__Deciding_on_Eligibility.htm).

<sup>291</sup> NATIONAL FAQ, *supra* note 287, at 9.

<sup>292</sup> *Id.* at 9–10.

<sup>293</sup> IMPORTANCE OF HEALTH INSURANCE, *supra* note 277.

<sup>294</sup> *State Definitions of Medical Necessity Under the Medicaid EPSDT Benefit*, NAT'L ACAD. FOR STATE HEALTH POL'Y (Apr. 23, 2021), <https://nashp.org/state-tracker/state-definitions-of-medical-necessity-under-the-medicaid-epsdt-benefit/> [https://perma.cc/8VV2-PVNN].

children.<sup>295</sup> Additionally, youth with child welfare involvement experience disproportionate rates of sexual and reproductive health risks and adverse outcomes.<sup>296</sup> While the federal Medicaid statute has determined that family-planning services are a mandatory benefit under the Federal Medicaid program, which exact services are included is not defined.<sup>297</sup> Ensuring that college age foster youth are aware of benefits of Medicaid available to them, determining eligibility, as well as providing access to health care continues to be a challenge. Certain states are taking steps to improve access to care like Wisconsin and Texas, which give “youth access to a specialized medical home where they have timely access to comprehensive health . . . services for coordinated care.”<sup>298</sup>

#### *D. Employment Throughout College and Financial Literacy*

Due to limited resources, the majority of foster youth attending college must also balance their education with full-time employment.<sup>299</sup> Work demands can impact college performance.<sup>300</sup> Approximately 43% of full-time students work during college, whereas

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<sup>295</sup> Keunhye Park et al., *Psychotropic Medication Use and Perceptions of Medication Effects Among Transition-Age Foster Youth*, 36 CHILD & ADOLESCENT SOC. WORK J. 583–84 (2019).

<sup>296</sup> Katie Massey Combs et al., *Sexual and Reproductive Health Protective Factors Among Adolescents with Child Welfare Involvement*, 140 CHILD. & YOUTH SERVS. REV. 1 (2022).

<sup>297</sup> Usha Ranji et al., *Medicaid Coverage of Family Planning Benefits: Findings from a 2021 State Survey*, KAISER FAM. FOUND. 1, 1 (2022), <https://files.kff.org/attachment/medicaid-coverage-of-family-planning-benefits-findings-from-a-2021-state-survey.pdf> [<https://perma.cc/UV27-EPFC>].

<sup>298</sup> *Rethinking Service Array for Young People Transitioning from Child Welfare*, CAPACITY BLDG. CTR. FOR STATES 1, 8, [https://capacity.childwelfare.gov/sites/default/files/media\\_pdf](https://capacity.childwelfare.gov/sites/default/files/media_pdf) (last visited Feb. 27, 2024).

<sup>299</sup> Ashley Mowreader, *Prioritizing Foster Students' Success in Higher Ed*, INSIDE HIGHER ED. (Jan. 25, 2024), <https://www.insidehighered.com/news/student-success/college-experience/2024/01/25/colleges-and-universities-guide-former-foster> [<https://perma.cc/C7Y6-6ARC>].

<sup>300</sup> Walter G. Ecton et al., *Earning to Learn: Working While Enrolled in Tennessee Colleges and Universities*, 9 AERA OPEN 1, 2 (2023) (“Working while enrolled is, on average, associated with moderately lower attempted credits but no substantial decline in GPA or credit completion rates. We estimate associations suggesting that students who work are 4 to 7 percentage points less likely to complete college than otherwise similar students who do not work. Among completers, working students take longer to complete their degree.”).

81% of part-time students work during college.<sup>301</sup> Working students are 20% less likely to complete their degree than students who are not employed.<sup>302</sup> Research has demonstrated that the more hours a student works per week, the more negatively their grade point average is affected.<sup>303</sup> A study through the University of Wisconsin showed that 60% of college students who were former foster youth were working at least thirty-five hours per week.<sup>304</sup> Additionally, 62% of students are also parents.<sup>305</sup>

In addition to the demands of work and school, too often foster youth have very limited financial literacy.<sup>306</sup> While many college students may rely on family members to open a bank account, create a budget, and manage paychecks, too many foster youth do not have the support of family in learning these critical lessons.<sup>307</sup> Anecdotally, as an attorney who represents older foster youth, many clients did not understand the difference between a college loan and a scholarship. Simple emergency expenses, such as a car breakdown, can completely derail a college semester, causing a student to withdraw from college altogether. The *Midwest Evaluation of Adult Functioning of Former Foster Youth* found that at age twenty-one, only 52% of former foster youth had opened a bank account compared to 81% of similarly aged non-foster youth.<sup>308</sup> The financial demands are only further exacerbated for non-citizen college students who are foster youth. Many foster youth who do not have citizenship are unable to complete the FAFSA and may be ineligible for health insurance depending upon

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<sup>301</sup> Walter G. Ecton et al., *College Students Who Have Jobs Are Much Less Likely to Graduate Than Their Privileged Peers, Shocking Study Finds*, FORTUNE (Jan. 11, 2023), <https://fortune.com/2023/01/11/college-students-with-jobs-20-percent-less-likely-to-graduate-than-privileged-peers-study-side-hustle/> [https://perma.cc/8V8B-HXC8].

<sup>302</sup> *Id.*

<sup>303</sup> Ralph Stinebrickner & Todd R. Stinebrickner, *Working During School and Academic Performance*, 21 J. LAB. ECON. 473, 487 (2003).

<sup>304</sup> Okpych & Courtney, *supra* note 5, at 8–10.

<sup>305</sup> *Id.*

<sup>306</sup> Scott Weybright, *Study Finds Foster Youth Lack Critical Financial Skills*, WSU INSIDER (Mar. 23, 2021), <https://news.wsu.edu/press-release/2021/03/24/study-finds-foster-youth-lack-critical-financial-skills/> [https://perma.cc/4FNV-BBX9].

<sup>307</sup> *Id.*

<sup>308</sup> See MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF ADULT FUNCTIONING OF FORMER FOSTER YOUTH: *OUTCOMES AT AGE 21*, CHAPIN HALL CTR. FOR CHILD. AT THE UNIV. OF CHI., 1, 36 (2007), <https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-21.pdf> [https://perma.cc/3E9C-5DVE].

state rules and federal laws.<sup>309</sup> In order to be eligible for Medicaid, a child must be a U.S. citizen or possess some other immigration status such as Special Immigrant Juvenile Status.<sup>310</sup>

## VI

### RECOMMENDATIONS FOR CHANGE

Despite the increased number of states offering tuition waiver programs for foster youth, much more needs to be done to increase postsecondary education graduation rates to best support this population. Suggestions for improvement are included below.

#### *A. Listen to Youth!*

Instead of crafting policies and laws that we think would best help the foster youth population succeed in college, we must make more of an effort to hear the voices of youth who have experienced the challenges of postsecondary education as former foster children. We must learn from their experiences to improve the system and resist making decisions in a vacuum. State governmental entities need to make the effort to host listening sessions to hear directly from foster youth in college about the best approach to improve their higher education experiences.

#### *B. Be Aware of Trauma Impact*

Brain science research has demonstrated both the physical and mental health impact of long exposure to trauma.<sup>311</sup> Many foster youth have experienced trauma both prior to foster care and/or because of the foster care system.<sup>312</sup> Consequently, this student population needs additional supports to succeed in their postsecondary education experience given their life histories. Additionally, brain research shows the importance of understanding the significance of teenage

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<sup>309</sup> See *Eligibility for Non-U.S. Citizens*, FEDERAL STUDENT AID, U.S. DEP'T OF EDUC., <https://studentaid.gov/understand-aid/eligibility/requirements/non-us-citizens> [<https://perma.cc/J7HH-TLAD>] (last visited June 24, 2024); *Immigrants, Coverage for Lawfully Present Immigrants*, HEALTHCARE.GOV, <https://www.healthcare.gov/immigrants/lawfully-present-immigrants/> [<https://perma.cc/BP8J-CZ8X>] (last visited June 24, 2024).

<sup>310</sup> BAUMRUCKER & LANDERS, *supra* note 269.

<sup>311</sup> Annemieke Noteboom et al., *The Long-Lasting Impact of Childhood Trauma on Adult Chronic Physical Disorders*, 136 J. PSYCHIATRIC RSCH. 87, 90 (2021).

<sup>312</sup> Amy M. Salazar et al., *Trauma Exposure and PTSD Among Older Adolescents in Foster Care*, 48 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 545, 546 (2013).

vulnerability.<sup>313</sup> Trauma has an impact on a youth's sense of self-esteem, which in turn impacts a student's motivation levels as well as engagement in the learning process.<sup>314</sup> Research shows that children who have experienced trauma are more likely to have negative school experiences as indicated above.<sup>315</sup> The connection between exposure to traumatic experiences and academic failure is more prevalent for youth in the foster care system.<sup>316</sup> Consequently, appropriate services should be provided and any necessary accommodations made for this unique population of college students. For example, a simple connection to a mentor can improve student outcomes.<sup>317</sup> Not only do mentors improve outcomes, but mentors are also likely to result in decreased participation in unhealthy behaviors of their mentees because the positive mentor relationship serves as a critical support system for youth in transition to adulthood.<sup>318</sup>

### *C. Provide More Support in Planning for Higher Education*

Anecdotally, as an attorney who represents youth in their transition from high school to adulthood and independence, inadequate time is often spent on preparing for the decision to pursue higher education. Often, case workers are appropriately focused on emergent issues such as access to food and housing and insufficiently consider whether higher education is an appropriate next step for a particular foster youth. Caseworkers should be uniquely trained to deal with youth of this developmental state and provide access to resources that assist with this transition.<sup>319</sup> Ideally, child welfare agencies should hire specialized caseworkers who are uniquely trained to assist youth in

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<sup>313</sup> Zara Abrams, *What Neuroscience Tells Us About the Teenage Brain*, 53 AM. PSYCH. ASS'N 66 (2022), <https://www.apa.org/monitor/2022/07/feature-neuroscience-teen-brain> [<https://perma.cc/HNR4-FGCG>].

<sup>314</sup> *How Trauma Impacts School Performance*, MENTAL HEALTH AM., <https://mhanational.org/how-trauma-impacts-school-performance> [<https://perma.cc/56M8-PJRV>] (last visited Aug. 24, 2024).

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

<sup>317</sup> *Student Mentoring Benefits and Best Practices*, LIFOLOGY HARV. MENTORING (Mar. 19, 2024), <https://www.harvardmentoring.com/student-mentoring-benefits-best-practices/> [<https://perma.cc/Y2MT-7264>].

<sup>318</sup> Kym R. Ahrens et al., *Youth in Foster Care with Adult Mentors During Adolescence Have Improved Adult Outcomes*, 121 PEDIATRICS e246, e247 (2008).

<sup>319</sup> For example, services may include financial assistance, housing, employment, and support services. See, e.g., *For Social Workers*, FAM. RES. & TRAINING CTR., <https://familyrtc.org/independentliving/social-workers> [<https://perma.cc/G6EM-UBCF>] (last visited Aug. 28, 2024).

preparing for higher education—“[f]or too long it just wasn’t something they saw as their job . . . [and] [y]oung people just fell through the cracks.”<sup>320</sup> Additional supports should be provided for youth residing in congregate care settings as they may experience even more complex challenges in graduating high school and pursuing higher education.<sup>321</sup> Perhaps the better advice for some foster youth may be to put off pursuing college but staff invested in the youth’s individual needs should provide that well-considered advice.

If a foster youth has changed schools multiple times, they have most likely not had the opportunity to build a strong relationship with guidance counselors who are able to provide quality assistance in helping youth apply for colleges. For example, in Pennsylvania, foster youth are entitled to have their college application fees waived,<sup>322</sup> but youth must know about this option in order to benefit. Access to critical documents, such as their social security card and birth certificate, can even become challenging for youth involved in foster care.<sup>323</sup> The law requires that vital documents be made available to foster youth before age eighteen.<sup>324</sup> Resource professionals can also work to connect foster youth to specific school programs that are built for foster youth, such as University of California and Western Michigan. The Seita Scholars program at Western Michigan University specifically works to engage high school students by doing outreach in the community and connecting with foster care workers and education planners.<sup>325</sup>

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<sup>320</sup> Lacey Johnson, *As More Schools Aid Foster Students, Data on Results Needed, Researchers Say*, YOUTHTODAY (Mar. 28, 2019), <https://youthtoday.org/2019/03/as-more-colleges-states-aid-youth-in-foster-care-data-on-results-is-needed-researchers-say/> [<https://perma.cc/5MHW-DW4A>].

<sup>321</sup> EXPLORING EDUCATION OUTCOMES: WHAT RESEARCH TELLS US, A.B.A. AM CTR. ON CHILD. & L. 5 (2022), <https://static1.squarespace.com/static/63dcf65b8d0c56709027332e/t/65206d213728bb028bee2ee8/1696623910191/Education%2Boutcomes%2Bfinal-combined.pdf> [<https://perma.cc/WBH5-AZGT>].

<sup>322</sup> *Fostering Independence Tuition Waiver Program*, PA. DEP’T EDUC. POSTSECONDARY & ADULT, <https://www.education.pa.gov/Postsecondary-Adult/CollegeCareer/FosteringIndependence/Pages/default.aspx> [<https://perma.cc/TML8-DUEZ>] (last visited Feb. 11, 2024).

<sup>323</sup> Laura K. Kolb & Jennifer Pokempner, *The Importance of Identification to Transition Aged Youth*, A.B.A. (2017), <https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/strategies-assisting-youth-obtaining-identification-documents/>.

<sup>324</sup> 42 U.S.C. § 675(5)(I).

<sup>325</sup> Seita Scholars Program, *About Scholarship: What Is the Seita Scholarship?*, W. MICH. UNIV., <https://wmich.edu/fosteringssuccess/seita/about> [<https://perma.cc/7DMP-N2RA>] (last visited June 24, 2024).

Foster youth often need assistance navigating the complexity of the FAFSA application.<sup>326</sup> For example, foster youth should indicate on the form they are a ward of the state or an emancipated minor.<sup>327</sup>

Despite tuition waivers and scholarships, higher education continues to be challenging for foster youth to afford. National data shows that the country fails at providing equitable access to postsecondary education, and the main obstacle is affordability.<sup>328</sup> For example, Pennsylvania is the fifth most expensive state in which to pursue a degree.<sup>329</sup> The high cost of postsecondary education in Pennsylvania and lower rates of foster youth pursuing higher education demonstrate difficulty in pursuing a higher degree.

#### *D. More Expansive Assistance to Include Room and Board Support*

While tuition waiver programs are phenomenal for covering tuition costs, additional support must be made available to assist with room and board costs for foster youth pursuing higher education. If a youth remains dependent while attending college, room and board cost should be provided as if the child were still in a foster placement. Dormitories and college-type apartments are an appropriate living arrangement for financial reimbursement.

#### *E. More Resources Available at Colleges*

While adequate financial support is critical, equally important is support and guidance on campus. Campus support programs for foster youth may develop through various different models. Components of program models should include the identification of a central point of contact, the creation of a place for students to belong, the provision of

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<sup>326</sup> See generally *FAFSA for Foster Youth: Everything You Need To Know*, iFOSTER (Nov. 2, 2021), <https://www.ifoster.org/blogs/fafsa-for-foster-youth-everything-you-need-to-know/> [<https://perma.cc/NP9Z-SQRA>].

<sup>327</sup> See *Federal Student Aid*, U.S. DEP'T OF EDUC., <https://studentaid.gov/2324/help/orphan-foster-ward-court> [<https://perma.cc/U249-USVP>] (last visited Feb. 11, 2024).

<sup>328</sup> Marian Vargas & Kim Dancy, *College Affordability Still Out of Reach for Students with Lowest Incomes, Students of Color*, INST. FOR HIGHER EDUC. POL'Y (Aug. 16, 2023), <https://www.ihep.org/college-affordability-still-out-of-reach-for-students-with-lowest-incomes-students-of-color/> [<https://perma.cc/EL7M-FGSQ>].

<sup>329</sup> Julia Campbell, *The Average Cost of College Tuition by State*, MOVE.ORG (July 16, 2020), <https://www.move.org/college-tuition-costs-by-state/> [<https://perma.cc/QDP7-MC5X>].

academic support workshops, career counseling, and more.<sup>330</sup> Resources are easily available for program development from well-established programs, such as in California.<sup>331</sup> Too often, foster youth are not receiving the supports from their institution to be successful.<sup>332</sup>

#### *F. All States Should Adopt Tuition Waivers at Minimum*

While most states now offer tuition waiver programs for foster youth, those states that do not offer the programs should begin doing so. States that do not offer this benefit can learn from states that have successfully implemented the waiver program. No two state programs are exactly alike, and programs should continue to broaden their eligibility reach and inclusivity.

#### *G. Data Collection*

To properly evaluate the effectiveness of tuition waiver programs, more information should be collected, as accurate data and information helps understand how to best service the foster youth population.<sup>333</sup>

### CONCLUSION

While significant progress has been made in the development and expansion of tuition waiver programs, more must be done to adequately support foster youth in their pursuit of higher education. Tuition waiver programs that address tuition alone are insufficient because tuition is just one part of the cost of higher education. States should not only develop tuition waiver programs, but child welfare agencies must also provide better supports to (1) help foster youth determine if higher education is appropriate, (2) assist with the college application process, and (3) provide mentorship through the foster youth's college years. Improving access to higher education for those interested improves life outcomes.

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<sup>330</sup> See FOSTER YOUTH CAMPUS SUPPORT PROGRAMS, A LEADERSHIP GUIDE, CAL. COLL. PATHWAYS (2013), [https://www.cacollegepathways.org/wp-content/uploads/2015/12/13-7-25\\_fostercampus\\_final.pdf](https://www.cacollegepathways.org/wp-content/uploads/2015/12/13-7-25_fostercampus_final.pdf) [<https://perma.cc/CZ2T-Y53Z>].

<sup>331</sup> See *id.*

<sup>332</sup> Reema Amin, *At Six Illinois College Campuses, Advocates Seek to Create 'Comfort' for Foster Care Peers*, CHALKBEAT (Oct. 2, 2023, 3:00 AM), <https://www.chalkbeat.org/chicago/2023/10/2/23893212/foster-care-advocates-illinois-colleges-academics-community-support/> [<https://perma.cc/5XKW-FV29>].

<sup>333</sup> JOHN BURTON ADVOC. FOR YOUTH ET AL., *supra* note 6, at 4.