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[Third Reprint]

**ASSEMBLY, No. 2137**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

INTRODUCED FEBRUARY 11, 2010

**Sponsored by:**

**Assemblyman JACK CONNERS**

**District 7 (Burlington and Camden)**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington and Camden)**

**Assemblyman PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**Co-Sponsored by:**

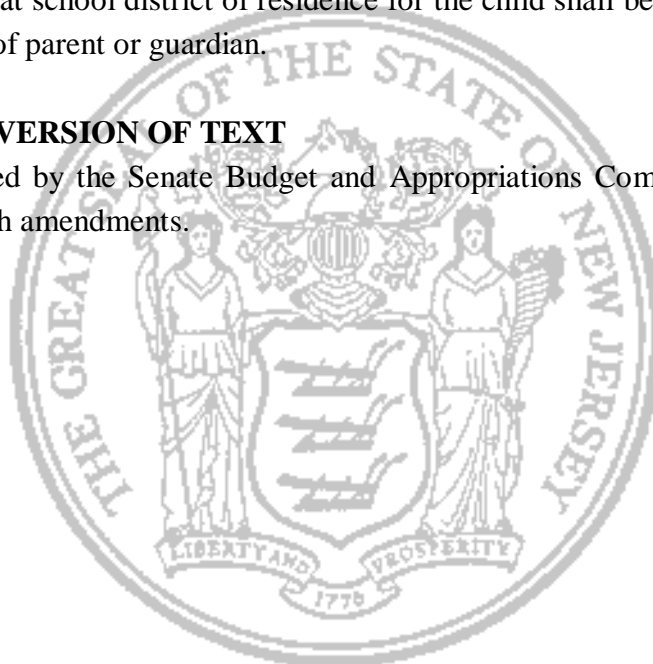
**Assemblyman O'Scanlon, Assemblywoman Casagrande, Senators Vitale,  
Ruiz and Beck**

**SYNOPSIS**

Provides for educational stability of children placed in resource family homes and that school district of residence for the child shall be present district of residence of parent or guardian.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on May 27, 2010, with amendments.



**(Sponsorship Updated As Of: 6/25/2010)**

1 AN ACT concerning children placed in resource family homes,  
2 amending P.L.1979, c.207, and amending and supplementing  
3 P.L.1951, c.138.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 19 of P.L.1979, c.207 (C.18A:7B-12) is amended to  
9 read as follows:

10 19. For school funding purposes, the Commissioner of  
11 Education shall determine district of residence as follows:

12 a. **[The]** (1) In the case of a child placed in a resource family  
13 home prior to the effective date of P.L. , c. (C. ) (pending  
14 before the Legislature as this bill), the district of residence **[for**  
15 **children in resource family homes]** shall be the district in which the  
16 resource family parents reside. If such a child in a resource family  
17 home is subsequently placed in a State facility or by a State agency,  
18 the district of residence of the child shall then be determined as if  
19 no such resource family placement had occurred.

20 (2) In the case of a child placed in a resource family home on or  
21 after the effective date of P.L. , c. (C. ) (pending before the  
22 Legislature as this bill), the district of residence shall be the present  
23 district of residence of the parent or guardian with whom the child  
24 lived prior to the most recent placement in a resource family home.

25 b. The district of residence for children who are in residential  
26 State facilities, or who have been placed by State agencies in group  
27 homes, skill development homes, private schools or out-of-State  
28 facilities, shall be the present district of residence of the parent or  
29 guardian with whom the child lived prior to his most recent  
30 admission to a State facility or most recent placement by a State  
31 agency.

32 **[If this cannot be determined, the district of residence shall be**  
33 **the district in which the child resided prior to such admission or**  
34 **placement.]**

35 c. The district of residence for children whose parent or  
36 guardian temporarily moves from one school district to another as  
37 the result of being homeless shall be the district in which the parent  
38 or guardian last resided prior to becoming homeless. For the  
39 purpose of this amendatory and supplementary act, "homeless" shall  
40 mean an individual who temporarily lacks a fixed, regular and  
41 adequate residence.

42 d. If the district of residence cannot be determined according to  
43 the criteria contained herein, or if the criteria contained herein

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Assembly AHU committee amendments adopted March 11, 2010.

<sup>2</sup>Assembly AAP committee amendments adopted March 18, 2010.

<sup>3</sup>Senate SBA committee amendments adopted May 27, 2010.

1 identify a district of residence outside of the State, the State shall  
2 assume fiscal responsibility for the tuition of the child. The tuition  
3 shall equal the approved per pupil cost established pursuant to  
4 section 24 of P.L.1996, c.138 [(C.18A:7F-1 et al.)] (C.18A:7F-24).  
5 This amount shall be appropriated in the same manner as other State  
6 aid under this act. The Department of Education shall pay the  
7 amount to the Department of Human Services, the Department of  
8 Children and Families, the Department of Corrections or the  
9 Juvenile Justice Commission established pursuant to section 2 of  
10 P.L.1995, c.284 (C.52:17B-170) or, in the case of a homeless child  
11 or a child in a family resource home, the Department of Education  
12 shall pay to the school district in which the child is enrolled the  
13 weighted base per pupil amount calculated pursuant to section 7 of  
14 P.L.2007, c.260 (C.18A:7F-49) and the appropriate security  
15 categorical aid per pupil and special education categorical aid per  
16 pupil.

17 e. If the State has assumed fiscal responsibility for the tuition  
18 of a child in a private educational facility approved by the  
19 Department of Education to serve children who are classified as  
20 needing special education services, the department shall pay to the  
21 Department of Human Services, the Department of Children and  
22 Families or the Juvenile Justice Commission, as appropriate, the aid  
23 specified in subsection d. of this section and in addition, such aid as  
24 required to make the total amount of aid equal to the actual cost of  
25 the tuition.

26 (cf: P.L.2007, c.260, s.27)

27

28 2. Section 26 of P.L.1951, c.138 (C.30:4C-26) is amended to  
29 read as follows:

30 26. a. Whenever the circumstances of a child are such that his  
31 needs cannot be adequately met in his own home, the division may  
32 effect his placement in a resource family home, with or without  
33 payment of board, in a group home, or in an appropriate institution  
34 if such care is deemed essential for him. The division shall make  
35 every reasonable effort to select a resource family home, a group  
36 home or an institution of the same religious faith as the parent or  
37 parents of such child.

38 b. Whenever the division **[shall place]** places any child, as  
39 provided by this section, in any municipality and county of this  
40 State, the child shall be deemed a resident of such municipality and  
41 county for all purposes except school funding, and he shall be  
42 entitled to the use and benefit of all health, recreational, vocational  
43 and other facilities of such municipality and county in the same  
44 manner and extent as any other child living in such municipality  
45 and county.

46 c. Whenever the division shall place any child, as provided by  
47 this section, in any school district, the child shall be entitled to the  
48 educational benefits of **[such]** the district determined pursuant to

1 section 3 of P.L. ,c. (C. )(pending before the Legislature as this  
2 bill); provided, however, that the district of residence, as  
3 determined by the Commissioner of Education pursuant to law,  
4 shall be responsible for paying, as applicable, tuition and  
5 transportation costs for such child to the district in which he is  
6 placed.

7 d. No municipality shall enact a planning or zoning ordinance  
8 governing the use of land by, or for, single family dwellings which  
9 shall, by any of its terms or provisions or by any rule or regulation  
10 adopted in accordance therewith, discriminate between children  
11 who are members of such single families by reason of their  
12 relationship by blood, marriage or adoption, children placed with  
13 such families in such dwellings by the division or other entity  
14 designated by the Commissioner of Children and Families, and  
15 children placed pursuant to law with families in single family  
16 dwellings known as group homes.

17 Any planning or zoning ordinance, heretofore or hereafter  
18 enacted by a municipality, which violates the provisions of this  
19 section, shall be invalid and inoperative.

20 (cf: P.L.2006, c.47, s.130)

21

22 3. (New section) a. Whenever the Division of Youth and  
23 Family Services in the Department of Children and Families places  
24 any child in a resource family home, including a change in a  
25 placement following the initial placement, there shall be a  
26 presumption that the child shall remain in the school currently  
27 attended by the child and the child shall remain in that school,  
28 pending a best interest determination as set forth in subsection c. of  
29 this section, unless the division determines that the circumstances  
30 provided in subsection b. of this section are present.

31 b. If the division determines<sup>1</sup> [, based on a preponderance of  
32 the evidence,]<sup>1</sup> that remaining in the present school is not in the  
33 best interest of the child upon consideration of the best interest  
34 factors listed in subsection <sup>1</sup>[e.] f.<sup>1</sup> of this section, and would  
35 present significant safety concerns or otherwise be a significant and  
36 immediate detriment to the child, the child may be immediately  
37 enrolled in the school district in which the resource family home is  
38 located. <sup>1</sup>If the division enrolls the child in the school district in  
39 which the resource family home is located, pursuant to this  
40 subsection, the division shall, within <sup>2</sup>[three] two<sup>2</sup> business days  
41 of taking such action, <sup>2</sup>[notify] provide notice to<sup>2</sup> the child's law  
42 guardian and <sup>3</sup>[, at the discretion of the division,]<sup>3</sup> a parent or  
43 legal guardian, of the new school placement and the basis for such  
44 action. <sup>3</sup>If the division determines there exists a credible safety  
45 issue for the child if the location of the school in the resource  
46 family's district is disclosed to the parent or legal guardian, the  
47 division shall not include the location of that school or other

1 information about the identity of the school in the notice to the  
2 parent or legal guardian.<sup>3</sup>

3 [No later than three days after the child has been removed from  
4 the present school, the division shall make application to the court  
5 as provided in subsection d. of this section.]<sup>1</sup>

6 c. [Within one week] Except as provided in subsection b. of  
7 this section, within five business days<sup>1</sup> of placement in a resource  
8 family home, the division shall [determine] make a  
9 [preliminary]<sup>2</sup> determination<sup>1</sup>, upon consideration of the best  
10 interest factors listed in subsection [e.] f.<sup>1</sup> of this section, whether  
11 the presumption that the child continue to attend the school that the  
12 child currently attends is outweighed by the best interest factors  
13 supporting placement in the school district in which the resource  
14 family home is located.

15 In making [that] [any preliminary]<sup>1</sup> that<sup>2</sup> determination, the  
16 division shall make reasonable efforts to consult with a parent or  
17 guardian of the child, the child [or]<sup>1</sup> the child's law guardian, a  
18 representative from the school the child attended at the time of  
19 removal, and any school district under consideration for placement.  
20 [If the division determines that the child should attend the school  
21 district in which the resource family home is located, the division  
22 shall make an application to the court for an order changing the  
23 child's school district placement as provided in subsection d. of this  
24 section, unless the division obtains the consent of the child's parent  
25 or guardian and the child.]<sup>1</sup>

26 d. [At any time during placement in a resource family home,  
27 the division, the child, or a parent or guardian of the child may  
28 make an application to the court before whom the division's  
29 complaint for custody or guardianship is pending, for an order  
30 changing the child's school district placement. The court shall  
31 make its determination as soon as possible, but no later than 21  
32 days after the application is made. The court shall consider only  
33 material and relevant evidence and shall grant the application upon  
34 a showing by the petitioner, at a summary hearing, that the change  
35 in school district placement is in the child's best interest.

36 Any party who makes an application pursuant to this section  
37 shall provide notice to all parties in interest] [If the division's  
38 determination, pursuant to subsection c. of this section, is that it is  
39 in the best interest of the child to enroll the child in the school  
40 district in which the resource family home is located, the  
41 determination shall remain preliminary pending the completion of  
42 the requirements of this subsection. If the division's determination  
43 is consistent with the presumption established pursuant to  
44 subsection a. of this section, the determination shall be deemed  
45 conclusive at the time the determination is made.]<sup>2</sup>

1       (1) <sup>2</sup>["If the division's preliminary determination is that it is in  
2 the best interest of the child to enroll the child in the school district  
3 in which the resource family home is located, the] <sup>2</sup>The <sup>2</sup>division  
4 shall immediately <sup>2</sup>[send] transmit<sup>2</sup> a written notice <sup>2</sup>to the  
5 child's law guardian and a parent or legal guardian of the child: (a)  
6 advising<sup>2</sup> of the preliminary determination <sup>2</sup>[to the child's law  
7 guardian and a parent or legal guardian of the child] ; (b) providing  
8 the basis for the preliminary determination; and (c) that the  
9 preliminary determination shall be deemed conclusive if the  
10 division does not receive notice that an application pursuant to this  
11 subsection has been made with the court by the date indicated on  
12 the notice, which date shall be five business days from the date the  
13 notice is transmitted by the division<sup>2</sup>.

14       <sup>2</sup>["The notice shall inform the parties that an application may be  
15 filed with the court, within five business days of the postmark date  
16 of the notice, seeking review of the preliminary determination, the  
17 reasons for the preliminary determination, and that the preliminary  
18 determination shall be deemed conclusive and shall be implemented  
19 if the division does not receive timely notice that an application for  
20 review has been made to the court within the prescribed time.]"<sup>2</sup>  
21 The child shall remain enrolled in his current school at least until  
22 the time allotted to seek a court review of the preliminary  
23 determination is exhausted.

24       (2) <sup>2</sup>["Within five business days of the postmark date of the  
25 division's notice, the child's law guardian or a parent or legal  
26 guardian of the child] Any party<sup>2</sup> may make an application with  
27 the court seeking a review of whether the division's preliminary  
28 determination is in the best interest of the child upon consideration  
29 of the best interest factors listed in subsection f. of this section <sup>2</sup>[.  
30 The provisions of this paragraph shall not apply if the division  
31 obtains the consent of the] within the time allotted by the division  
32 as specified in the division's notice, which date shall be five  
33 business days from the date the notice is transmitted by the division,  
34 unless the<sup>2</sup> child's law guardian, <sup>2</sup>on behalf of the child,<sup>2</sup> and  
35 <sup>2</sup>[the] a<sup>2</sup> parent or legal guardian of the child <sup>2</sup>agrees, in writing,  
36 to waive the opportunity for a court review of the preliminary  
37 determination pursuant to this subsection, in which case the  
38 determination becomes conclusive<sup>2</sup>.

39       Any party who makes an application for court review of the  
40 preliminary determination pursuant to this subsection shall provide  
41 simultaneous notice to the division and all other parties involved in  
42 the division's complaint for custody and guardianship. The court  
43 shall hear and decide such application in an expedited manner. <sup>2</sup>In  
44 any such proceedings, the division shall bear the burden of proof,  
45 based on a preponderance of the evidence, that its determination to



1 enroll the child in the school district in which the resource family  
2 home is located is in the best interest of the child.<sup>2</sup>

3 If a party makes an application for court review of the division's  
4 preliminary determination pursuant to this subsection, the child  
5 shall continue to attend his current school while the court hears and  
6 decides the application.

7 (3) If the division does not receive timely notice<sup>2</sup>pursuant to  
8 paragraph (2) of this subsection<sup>2</sup> that an application has been made  
9 for court review within five business days of the<sup>2</sup>[postmark]  
10 transmittal<sup>2</sup> date of the notice of the preliminary determination, the  
11 preliminary determination shall be deemed conclusive and the  
12 division shall implement its determination as provided in subsection  
13 g. of this section.

14 e. (1) At any time during placement of a child in a resource  
15 family home, the court may, upon application by any party to the  
16 division's complaint for custody or guardianship, review the child's  
17 school placement upon consideration of the best interest factors  
18 listed in subsection f. of this section, and make appropriate orders  
19 regarding school placement.

20 (2) At any time during placement in a resource family home, the  
21 division may reconsider the child's school placement and make a  
22 new<sup>2</sup>[preliminary]<sup>2</sup> determination in accordance with  
23 [subsection] subsections b. or<sup>2</sup>c.<sup>2</sup> and d.<sup>2</sup> of this section, upon  
24 consideration of the best interest factors listed in subsection f. of  
25 this section<sup>1</sup>.

26 <sup>1</sup>[e.] f.<sup>1</sup> The factors the division and the court shall consider  
27 in making a best interest determination <sup>1</sup>, as provided in this  
28 section,<sup>1</sup> shall include<sup>1</sup>, but not be limited to<sup>1</sup>:

29 (1) safety considerations;

30 (2) the proximity of the resource family home to the child's  
31 present school;

32 (3) the age and grade level of the child as it relates to the other  
33 best interest factors listed in this subsection;

34 (4) the needs of the child, including social adjustment and  
35 wellbeing;

36 (5) the child's preference;

37 (6) the child's performance, continuity of education, and  
38 engagement in the school the child presently attends;

39 (7) the child's special education programming if the child is  
40 classified;

41 (8) the point of time in the school year;

42 (9) the child's permanency goal <sup>1</sup>[,] and<sup>1</sup> the likelihood of  
43 reunification<sup>1</sup>[, the anticipated duration of the current placement;  
44 and]<sup>1</sup>;

45 (10) <sup>1</sup>the anticipated duration of the current placement; and

1       (11)<sup>1</sup> such other factors as provided by regulation of the  
2 Commissioner of Children and Families.

3       <sup>1</sup>[f. Whenever a determination is made by the division or the  
4 court pursuant to this section that the child will change the school  
5 district he is attending, the child shall be enrolled in the new school  
6 district within three school days]

7       g. At the time a <sup>2</sup>[preliminary]<sup>2</sup> determination becomes  
8 conclusive or upon any subsequent decision by the court, the child  
9 shall either continue to be enrolled in his current school or shall be  
10 immediately enrolled in the new school district<sup>1</sup>, and the mandated  
11 student record shall be provided to the new school district in  
12 accordance with applicable regulations of the State Board of  
13 Education.

14       <sup>1</sup>[g.] h.<sup>1</sup> The division shall provide transportation for the child  
15 to attend school during the time that a determination is being made  
16 <sup>2</sup>or while a court review is pending<sup>2</sup> as to where the child will  
17 attend school and for the subsequent five school days. At such time  
18 as a determination is made by the division or <sup>2</sup>a decision is rendered  
19 by<sup>2</sup> the court, the division shall immediately notify the school  
20 district where the child is currently attending school, the school  
21 district of residence, and the school district where the resource  
22 family home is located, as applicable.

23       The district of residence shall be responsible for transportation  
24 for the child to attend school, within five days of being notified by  
25 the division where the child will attend school.

26       <sup>1</sup>[h.] i.<sup>1</sup> Nothing in this section shall be construed to require  
27 any public entity to fund students placed in nonpublic schools by  
28 their parents or guardians.

29       <sup>2</sup>j. Notwithstanding the provisions of this section, the division  
30 shall not be required to identify the school where the child is or will  
31 be enrolled to a parent or legal guardian, if the release of such  
32 information would pose a risk to the safety of the child.<sup>2</sup>  
33

34       4. (New section) Notwithstanding any provision of P.L.1968,  
35 c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of  
36 Education shall adopt, immediately upon filing with the Office of  
37 Administrative Law, such regulations as the commissioner deems  
38 necessary to implement the provisions of this act which regulations  
39 shall be effective for a period not to exceed six months and shall,  
40 thereafter, be amended, adopted, or readopted by the commissioner  
41 in accordance with the requirements of P.L.1968, c.410 (C.52:14B-  
42 1 et seq.).  
43

44       5. The Commissioner of Children and Families may adopt rules  
45 and regulations pursuant to the "Administrative Procedure Act,"  
46 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of  
47 this act.

A2137 [3R] CONNERS, CONAWAY

9

1       6. This act shall take effect ~~'[on March 1, 2010]~~ immediately<sup>1</sup>  
2 and shall apply to resource family home placements made on or  
3 after ~~'[that]~~ the effective<sup>1</sup> date.

# ASSEMBLY, No. 2137

## STATE OF NEW JERSEY

### 214th LEGISLATURE

INTRODUCED FEBRUARY 11, 2010

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**Assemblyman JACK CONNERS**

**District 7 (Burlington and Camden)**

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**SYNOPSIS**

Provides for educational stability of children placed in resource family homes and that school district of residence for the child shall be present district of residence of parent or guardian.

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As introduced.



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15 **children in resource family homes]** shall be the district in which the  
16 resource family parents reside. If such a child in a resource family  
17 home is subsequently placed in a State facility or by a State agency,  
18 the district of residence of the child shall then be determined as if  
19 no such resource family placement had occurred.

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23 district of residence of the parent or guardian with whom the child  
24 lived prior to the most recent placement in a resource family home.

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26 State facilities, or who have been placed by State agencies in group  
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28 facilities, shall be the present district of residence of the parent or  
29 guardian with whom the child lived prior to his most recent  
30 admission to a State facility or most recent placement by a State  
31 agency.

32 **[If this cannot be determined, the district of residence shall be**  
33 **the district in which the child resided prior to such admission or**  
34 **placement.]**

35 c. The district of residence for children whose parent or  
36 guardian temporarily moves from one school district to another as  
37 the result of being homeless shall be the district in which the parent  
38 or guardian last resided prior to becoming homeless. For the  
39 purpose of this amendatory and supplementary act, "homeless" shall  
40 mean an individual who temporarily lacks a fixed, regular and  
41 adequate residence.

42 d. If the district of residence cannot be determined according to  
43 the criteria contained herein, or if the criteria contained herein  
44 identify a district of residence outside of the State, the State shall  
45 assume fiscal responsibility for the tuition of the child. The tuition

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

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15 e. If the State has assumed fiscal responsibility for the tuition  
16 of a child in a private educational facility approved by the  
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21 specified in subsection d. of this section and in addition, such aid as  
22 required to make the total amount of aid equal to the actual cost of  
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6 governing the use of land by, or for, single family dwellings which  
7 shall, by any of its terms or provisions or by any rule or regulation  
8 adopted in accordance therewith, discriminate between children  
9 who are members of such single families by reason of their  
10 relationship by blood, marriage or adoption, children placed with  
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15 Any planning or zoning ordinance, heretofore or hereafter  
16 enacted by a municipality, which violates the provisions of this  
17 section, shall be invalid and inoperative.

18 (cf: P.L.2006, c.47, s.130)

19

20 3. (New section) a. Whenever the Division of Youth and Family  
21 Services in the Department of Children and Families places any  
22 child in a resource family home, including a change in a placement  
23 following the initial placement, there shall be a presumption that the  
24 child shall remain in the school currently attended by the child and  
25 the child shall remain in that school, pending a best interest  
26 determination as set forth in subsection c. of this section, unless the  
27 division determines that the circumstances provided in subsection b.  
28 of this section are present.

29 b. If the division determines, based on a preponderance of the  
30 evidence, that remaining in the present school is not in the best  
31 interest of the child upon consideration of the best interest factors  
32 listed in subsection e. of this section, and would present significant  
33 safety concerns or otherwise be a significant and immediate  
34 detriment to the child, the child may be immediately enrolled in the  
35 school district in which the resource family home is located.

36 No later than three days after the child has been removed from  
37 the present school, the division shall make application to the court  
38 as provided in subsection d. of this section.

39 c. Within one week of placement in a resource family home, the  
40 division shall determine, upon consideration of the best interest  
41 factors listed in subsection e. of this section, whether the  
42 presumption that the child continue to attend the school that the  
43 child currently attends is outweighed by the best interest factors  
44 supporting placement in the school district in which the resource  
45 family home is located. In making that determination, the division  
46 shall make reasonable efforts to consult with a parent or guardian of  
47 the child, the child or the child's law guardian, a representative  
48 from the school the child attended at the time of removal, and any

1 school district under consideration for placement. If the division  
2 determines that the child should attend the school district in which  
3 the resource family home is located, the division shall make an  
4 application to the court for an order changing the child's school  
5 district placement as provided in subsection d. of this section,  
6 unless the division obtains the consent of the child's parent or  
7 guardian and the child.

8 d. At any time during placement in a resource family home, the  
9 division, the child, or a parent or guardian of the child may make an  
10 application to the court before whom the division's complaint for  
11 custody or guardianship is pending, for an order changing the  
12 child's school district placement. The court shall make its  
13 determination as soon as possible, but no later than 21 days after the  
14 application is made. The court shall consider only material and  
15 relevant evidence and shall grant the application upon a showing by  
16 the petitioner, at a summary hearing, that the change in school  
17 district placement is in the child's best interest.

18 Any party who makes an application pursuant to this section  
19 shall provide notice to all parties in interest.

20 e. The factors the division and the court shall consider in  
21 making a best interest determination shall include:

22 (1) safety considerations;

23 (2) the proximity of the resource family home to the child's  
24 present school;

25 (3) the age and grade level of the child as it relates to the other  
26 best interest factors listed in this subsection;

27 (4) the needs of the child, including social adjustment and  
28 wellbeing;

29 (5) the child's preference;

30 (6) the child's performance, continuity of education, and  
31 engagement in the school the child presently attends;

32 (7) the child's special education programming if the child is  
33 classified;

34 (8) the point of time in the school year;

35 (9) the child's permanency goal, the likelihood of reunification,  
36 and the anticipated duration of the current placement; and

37 (10) such other factors as provided by regulation of the  
38 Commissioner of Children and Families.

39 f. Whenever a determination is made by the division or the court  
40 pursuant to this section that the child will change the school district  
41 he is attending, the child shall be enrolled in the new school district  
42 within three school days, and the mandated student record shall be  
43 provided to the new school district in accordance with applicable  
44 regulations of the State Board of Education.

45 g. The division shall provide transportation for the child to  
46 attend school during the time that a determination is being made as  
47 to where the child will attend school and for the subsequent five  
48 school days. At such time as a determination is made by the



1 division or the court, the division shall immediately notify the  
2 school district where the child is currently attending school, the  
3 school district of residence, and the school district where the  
4 resource family home is located, as applicable.

5 The district of residence shall be responsible for transportation  
6 for the child to attend school, within five days of being notified by  
7 the division where the child will attend school.

8 h. Nothing in this section shall be construed to require any  
9 public entity to fund students placed in nonpublic schools by their  
10 parents or guardians.

11

12 4. (New section) Notwithstanding any provision of P.L.1968,  
13 c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of  
14 Education shall adopt, immediately upon filing with the Office of  
15 Administrative Law, such regulations as the commissioner deems  
16 necessary to implement the provisions of this act which regulations  
17 shall be effective for a period not to exceed six months and shall,  
18 thereafter, be amended, adopted, or readopted by the commissioner  
19 in accordance with the requirements of P.L.1968, c.410 (C.52:14B-  
20 1 et seq.).

21

22 5. The Commissioner of Children and Families may adopt rules  
23 and regulations pursuant to the "Administrative Procedure Act,"  
24 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of  
25 this act.

26

27 6. This act shall take effect on March 1, 2010 and shall apply to  
28 resource family home placements made on or after that date.

29

30

31

#### STATEMENT

32

33 This bill establishes a system to support educational stability for  
34 children placed in resource family homes, in accordance with the  
35 provisions of the federal "Fostering Connections to Success and  
36 Increasing Adoptions Act of 2008," Pub.L.110-351.

37 The bill: revises the method for determining a child's district of  
38 residence; establishes the presumption that whenever the Division  
39 of Youth and Family Services (DYFS) places a child in a resource  
40 family home, the child shall remain in the school the child currently  
41 attends, pending a best interest determination; and sets forth a  
42 procedure for making a best interest determination for the purposes  
43 of deciding what school the child should attend while in a resource  
44 family home placement.

45 Specifically, the bill provides as follows:

- 46 • Section 19 of P.L.1979, c.207 (C.18A:7B-12) concerning  
47 school funding, is amended to provide that in the case of a  
48 child placed in a resource family home on or after the

- 1 effective date of this bill, the district of residence shall be  
2 the present district of residence of the parent or guardian  
3 with whom the child lived prior to the most recent placement  
4 in a resource family home. Current law provides that the  
5 district of residence is the district in which the resource  
6 family parents reside.
- 7 • Section 26 of P.L.1951, c.138 (C.30:4C-26) concerning the  
8 school district placement of a child placed in a resource  
9 family home, is amended to provide that the district of  
10 residence, as determined by the Commissioner of Education,  
11 is responsible for paying, as applicable, transportation costs  
12 (as well as tuition, as the law currently provides) for the  
13 child to the school district in which the child is placed.
  - 14 • Whenever the DYFS in the Department of Children and  
15 Families places any child in a resource family home,  
16 including a change in a placement following the initial  
17 placement, there shall be a presumption that the child shall  
18 remain in the school currently attended by the child and the  
19 child shall remain in that school, pending a best interest  
20 determination as set forth in the bill, unless DYFS  
21 determines, based on a preponderance of the evidence, that  
22 remaining in the present school is not in the best interest of  
23 the child and would present significant safety concerns or  
24 otherwise be a significant and immediate detriment to the  
25 child, in which case the child may be immediately enrolled  
26 in the school district in which the resource family home is  
27 located. No later than three days after the child has been  
28 removed from the child's present school, DYFS shall make  
29 application to the court for an order changing the child's  
30 school district placement, as provided in the bill.
  - 31 • Within one week of placement in a resource family home,  
32 DYFS shall determine, upon consideration of the best  
33 interest factors listed in the bill, whether the presumption  
34 that the child continue to attend the school that the child  
35 currently attends is outweighed by the best interest factors  
36 supporting placement in the school district in which the  
37 resource family home is located. In making that  
38 determination, DYFS shall make reasonable efforts to  
39 consult with a parent or guardian of the child, the child or  
40 the child's law guardian, a representative from the school the  
41 child attended at the time of removal, and any school district  
42 under consideration for placement.
  - 43 • If DYFS determines that the child should attend the school  
44 district in which the resource family home is located, DYFS  
45 shall make an application to the court for an order changing  
46 the child's school district placement, unless DYFS obtains  
47 the consent of the child's parent or guardian and the child to  
48 change the school district placement.

- 1       • At any time during placement in a resource family home,  
2       DYFS, the child, or a parent or guardian of the child may  
3       make an application to the court for an order changing the  
4       child's school district placement.
- 5       • With respect to an application to the court by DYFS, the  
6       child, or a parent or guardian of the child to change a child's  
7       school district placement, the court shall make its  
8       determination as soon as possible, but no later than 21 days  
9       after the application is made. The court shall consider only  
10      material and relevant evidence and shall grant the  
11      application upon a showing by the petitioner, at a summary  
12      hearing, that the change in school district placement is in the  
13      child's best interest. Any party who makes an application to  
14      the court shall provide notice to all parties in interest.
- 15      • The factors DYFS and the court shall consider in making a  
16      best interest determination shall include:  
17      -- safety considerations;  
18      -- the proximity of the resource family home to the child's  
19      present school;  
20      -- the age and grade level of the child as it relates to the  
21      other best interest factors;  
22      -- the needs of the child, including social adjustment and  
23      wellbeing;  
24      -- the child's preference;  
25      -- the child's performance, continuity of education, and  
26      engagement in the school the child presently attends;  
27      -- the child's special education programming if the child is  
28      classified;  
29      -- the point of time in the school year;  
30      -- the child's permanency goal, the likelihood of  
31      reunification, and the anticipated duration of the current  
32      placement; and  
33      -- such other factors as provided by regulation of the  
34      Commissioner of Children and Families.
- 35      • Whenever a determination is made by DYFS or the court  
36      that the child will change the school district he is attending,  
37      the child shall be enrolled in the new school district within  
38      three school days, and the mandated student record shall be  
39      provided to the new school district in accordance with  
40      applicable regulations of the State Board of Education.
- 41      • DYFS shall provide transportation for the child to attend  
42      school during the time that a determination is being made as  
43      to where the child will attend school and for the subsequent  
44      five school days. At such time as a determination is made  
45      by DYFS or the court, DYFS shall immediately notify the  
46      school district where the child is currently attending school,  
47      the school district of residence, and the school district where  
48      the resource family home is located, as applicable.

A2137 CONNERS, CONAWAY

- 1       • The district of residence shall be responsible for  
2       transportation for the child to attend school, within five days  
3       of being notified by DYFS where the child will attend  
4       school.
- 5       • Nothing in this bill shall be construed to require any public  
6       entity to fund students placed in nonpublic schools by their  
7       parents or guardians.
- 8       • The Commissioner of Education is authorized to adopt,  
9       immediately upon filing with the Office of Administrative  
10      Law, such regulations as the commissioner deems necessary  
11      to implement the provisions of this bill, which regulations  
12      shall be effective for a period not to exceed six months and  
13      shall, thereafter, be amended, adopted, or readopted by the  
14      commissioner in accordance with the requirements of  
15      P.L.1968, c.410 (C.52:14B-1 et seq.).
- 16     • The Commissioner of Children and Families may adopt rules  
17     and regulations pursuant to the “Administrative Procedure  
18     Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the  
19     purposes of the bill.
- 20     • The bill takes effect on March 1, 2010 and applies to  
21     resource family home placements made on or after that date.

# ASSEMBLY HUMAN SERVICES COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 2137**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 11, 2010

The Assembly Human Services Committee reports favorably and with committee amendments Assembly Bill No. 2137.

As amended by the committee, this bill establishes a system to support educational stability for children placed in resource family homes, in accordance with the provisions of the federal “Fostering Connections to Success and Increasing Adoptions Act of 2008,” Pub.L.110-351.

The bill: revises the method for determining a child’s district of residence; establishes the presumption that whenever the Division of Youth and Family Services (DYFS) places a child in a resource family home, the child shall remain in the school the child currently attends, pending a best interest determination; and sets forth a procedure for making a best interest determination for the purposes of deciding what school the child should attend while in a resource family home placement.

Specifically, the bill provides as follows:

- Section 19 of P.L.1979, c.207 (C.18A:7B-12), concerning school funding, is amended to provide that in the case of a child placed in a resource family home on or after the effective date of this bill, the district of residence shall be the present district of residence of the parent or guardian with whom the child lived prior to the most recent placement in a resource family home. Current law provides that the district of residence is the district in which the resource family parents reside.
- Section 26 of P.L.1951, c.138 (C.30:4C-26), concerning the school district placement of a child placed in a resource family home, is amended to provide that the district of residence, as determined by the Commissioner of Education, is responsible for paying, as applicable, transportation costs (as well as tuition, as the law currently provides).
- Whenever DYFS places any child in a resource family home, including a change in a placement following the initial placement, there shall be a presumption that the child shall

remain in the school currently attended by the child and the child shall remain in that school, pending a best interest determination as set forth in the bill, unless DYFS determines that remaining in the present school is not in the best interest of the child and would present significant safety concerns or otherwise be a significant and immediate detriment to the child, in which case the child may be immediately enrolled in the school district in which the resource family home is located.

- If the division enrolls the child in the school district in which the resource family home is located, the division, within three business days of taking such action, shall notify the child's law guardian, and at the division's discretion, a parent or legal guardian, of the new school placement and the basis for the action.
- Except when the division determines that emergent action is necessary, within five business days of placement in a resource family home, DYFS shall:
  - make a preliminary determination, upon consideration of the best interest factors listed in the bill, whether the presumption that the child continue to attend the school that the child currently attends is outweighed by the best interest factors supporting placement in the school district in which the resource family home is located; and
  - make reasonable efforts to consult with a child, the child's law guardian, a parent or legal guardian of the child, a representative from the school the child attended at the time of removal, and any school district under consideration for placement.
- If DYFS' preliminary determination is that it is in the best interest of the child to enroll the child in the school district in which the resource family home is located, DYFS shall immediately send written notification of the preliminary determination to the child's law guardian, and parent or guardian of the child. The notice shall inform the parties that an application may be filed with the court, within five business days of the postmark date of the notice, seeking review of the determination, the reasons for the determination, and that the determination shall be deemed conclusive and be implemented, if DYFS does not receive timely notice that an application for review has been made within the prescribed time. The child shall remain enrolled in his current school at least until the time allotted to seek a court review is exhausted.
- Within five business days of the postmark date of the division's notice, the child's law guardian or a parent or guardian of the child may file an application with the court seeking a review of whether the division's preliminary determination is in the best interest of the child. These provisions shall not apply if the

consent of the child's law guardian and a parent or legal guardian of the child is obtained.

- Any party who makes an application for court review shall provide simultaneous notice to the division and all other parties involved in the division's complaint for custody and guardianship, and the court shall hear and decide the application in an expedited manner.
- If a party makes an application for court review of DYFS' preliminary determination, the child shall continue to attend the current school while the court hears and decides the application.
- If DYFS does not receive timely notice that an application for court review has been made within five business days, the preliminary decision shall be deemed conclusive and the division shall implement its determination.
- At any time during placement of a child in a resource family home, the court may, upon application by any party to DYFS' complaint for custody or guardianship, review the child's placement upon consideration of the best interest factors listed in the bill.
- At any time during placement in a resource family home, DYFS may reconsider the child's school placement and make a new determination upon consideration of the best interest factors.
- The factors DYFS and the court shall consider in making a best interest determination shall include:
  - safety considerations;
  - the proximity of the resource family home to the child's present school;
  - the age and grade level of the child as it relates to the other best interest factors;
  - the needs of the child, including social adjustment and wellbeing;
  - the child's preference;
  - the child's performance, continuity of education, and engagement in the school the child presently attends;
  - the child's special education programming if the child is classified;
  - the point of time in the school year;
  - the child's permanency goal and the likelihood of reunification;
  - the anticipated duration of the current placement; and
  - such other factors as provided by regulation of the Commissioner of Children and Families.
- At the time a preliminary determination becomes conclusive or upon any subsequent court decision, the child shall either continue to be enrolled in his current school or shall be

immediately enrolled in the new school district, and the mandated school record shall be provided to the new school district in accordance with State Board of Education regulations.

- DYFS shall provide transportation for the child to attend school during the time that a determination is being made as to where the child will attend school and for the subsequent five school days. At such time as a determination is made by DYFS or the court, DYFS shall immediately notify the school district where the child is currently attending school, the school district of residence, and the school district where the resource family home is located, as applicable.
- The district of residence shall be responsible for transportation for the child to attend school, within five days of being notified by DYFS where the child will attend school.
- Nothing in this bill shall be construed to require any public entity to fund students placed in nonpublic schools by their parents or guardians.
- The Commissioner of Education is authorized to adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of this bill, which regulations shall be effective for a period not to exceed six months and shall, thereafter, be amended, adopted, or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).
- The Commissioner of Children and Families may adopt rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of the bill.
- The bill takes effect immediately upon enactment and applies to resource family home placements made on or after that date.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- require DYFS, in the case of an emergent action, to notify the child's law guardian, and at the division's discretion, a parent or legal guardian, of the new school placement and the basis for the action, within three business days;
- in the case of a non-emergent action, require DYFS to make a preliminary determination to change the child's school placement, within five business days of placement in a resource family home;
- require DYFS to immediately send written notification of the preliminary determination to the child's law guardian and parent or legal guardian, and inform the parties that an application for review of the determination may be filed with



the court within five business days of the postmark date of the notice seeking review, the reasons for the determination, and that the determination shall be deemed conclusive and be implemented, if timely notice of an application for a review is not received;

- require a child to remain enrolled in his current school at least until the time allotted to seek a court review is exhausted or the court makes a decision on an application;
- allow the child's law guardian or parent or legal guardian, within five business days of the postmark date of the division's notice, to file an application seeking court review of the determination (except that if DYFS obtains consent from the child's law guardian and the child's parent or legal guardian, these provisions do not apply);
- require any party who makes an application for court review to simultaneously provide notice to all parties;
- require the court to hear and decide the application in an expedited manner;
- allow the court to review the child's placement upon consideration of the best interest factors, and make appropriate orders regarding the placement;
- allow DYFS also to reconsider the child's school placement and make a new determination upon consideration of the best interest factors;
- mandate that at the time a preliminary determination becomes conclusive or upon any subsequent court decision, the child shall either continue to be enrolled in his current school or shall be immediately enrolled in the new school district; and
- change the effective date from March 1, 2010, to immediately upon enactment.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

### **ASSEMBLY, No. 2137**

with Assembly committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 18, 2010

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2137 (1R), with committee amendments.

The bill, as amended, establishes a system to support educational stability for children placed in resource family homes, in accordance with the provisions of the federal “Fostering Connections to Success and Increasing Adoptions Act of 2008,” Pub.L.110-351.

The bill: revises the method for determining a child’s district of residence; establishes the presumption that whenever the Division of Youth and Family Services (DYFS) places a child in a resource family home, the child shall remain in the school the child currently attends, pending a best-interest determination; and sets forth a procedure for making a best-interest determination for the purposes of deciding what school the child should attend while in a resource family home placement.

The bill amends section 19 of P.L.1979, c.207 (C.18A:7B-12), concerning school funding to provide that in the case of a child placed in a resource family home on or after the effective date of this bill, the district of residence shall be the present district of residence of the parent or guardian with whom the child lived prior to the most recent placement in a resource family home. Current law provides that the district of residence is the district in which the resource family parents reside.

The bill amends section 26 of P.L.1951, c.138 (C.30:4C-26), concerning the school district placement of a child placed in a resource family home, is amended to provide that the district of residence, as determined by the Commissioner of Education, is responsible for paying, as applicable, transportation costs (as well as tuition, as the law currently provides).

The bill establishes a presumption that whenever DYFS places any child in a resource family home, including a change in a placement following the initial placement, the child shall remain in the school currently attended by the child and the child shall remain in that school, pending a best-interest determination as set forth in the bill, unless DYFS determines that remaining in the present school is not in

the best interest of the child and would present significant safety concerns or otherwise be a significant and immediate detriment to the child, in which case the child may be immediately enrolled in the school district in which the resource family home is located.

The bill requires that if DYFS enrolls the child in the school district in which the resource family home is located, DYFS, within two business days of taking such action, shall provide notice to the child's law guardian, and at DYFS' discretion, a parent or legal guardian, of the new school placement and the basis for the action.

Except when DYFS determines that emergent action is necessary, within five business days of placement in a resource family home, the bill requires DYFS to:

- make a determination, upon consideration of the best interest factors listed in the bill, whether the presumption that the child continue to attend the school that the child currently attends is outweighed by the best interest factors supporting placement in the school district in which the resource family home is located; and

- make reasonable efforts to consult with a child, the child's law guardian, a parent or legal guardian of the child, a representative from the school the child attended at the time of removal, and any school district under consideration for placement.

Under the bill, if DYFS' determination is that it is in the best interest of the child to enroll the child in the school district in which the resource family home is located, the determination shall remain preliminary pending the completion of the requirements listed in the bill. The requirements are as follows:

- DYFS shall immediately transmit written notification of the preliminary determination to the child's law guardian, and parent or guardian of the child: advising of the preliminary determination; providing basis for the determination; and that the determination shall be deemed conclusive if DYFS does not receive notice that an application for review has been made with the court by the date indicated on the notice, which shall be five days from the date the notice is transmitted by DYFS. The child shall remain enrolled in the child's current school at least until the time allotted to seek a court review is exhausted;

- Any party may make an application with the court seeking a review of whether DYFS' preliminary determination is in the best interest of the child within the time allotted by DYFS as specified in DYFS', unless the child's law guardian, on behalf of the child, and a parent or legal guardian of the child agrees, in writing, to waive the opportunity for a court review, in which case the determination becomes conclusive;

- any party who makes an application for court review shall provide simultaneous notice to DYFS and all other parties

involved in DYFS' complaint for custody and guardianship, and the court shall hear and decide the application in an expedited manner;

-- DYFS shall bear the burden of proof, by a preponderance of the evidence, that its determination to enroll the child in the school district in which the resource family is located is in the best interest of the child.

-- if a party makes an application for court review of DYFS' preliminary determination, the child shall continue to attend the current school while the court hears and decides the application; and

-- if DYFS does not receive timely notice that an application for court review has been made within five business days of the transmittal date of the notice, the preliminary decision shall be deemed conclusive and the division shall implement its determination.

If DYFS' determination is consistent with the presumption that the child stay in the child's current school, the determination shall be deemed conclusive at the time the determination is made.

At any time during placement of a child in a resource family home, the court may, upon application by any party to DYFS' complaint for custody or guardianship, review the child's placement upon consideration of the best interest factors listed in the bill.

At any time during placement in a resource family home, DYFS may reconsider the child's school placement and make a new determination upon consideration of the best interest factors.

The factors DYFS and the court shall consider in making a best interest determination shall include:

- safety considerations;
- the proximity of the resource family home to the child's present school;
- the age and grade level of the child as it relates to the other best interest factors;
- the needs of the child, including social adjustment and wellbeing;
- the child's preference;
- the child's performance, continuity of education, and engagement in the school the child presently attends;
- the child's special education programming if the child is classified;
- the point of time in the school year;
- the child's permanency goal and the likelihood of reunification;
- the anticipated duration of the current placement; and
- such other factors as provided by regulation of the Commissioner of Children and Families.

At the time a preliminary determination becomes conclusive or upon any subsequent court decision, the child shall either continue to be enrolled in his current school or shall be immediately enrolled in the new school district, and the mandated school record shall be provided to the new school district in accordance with State Board of Education regulations.

DYFS shall provide transportation for the child to attend school during the time that a determination is being made as to where the child will attend school and for the subsequent five school days. At such time as a determination is made by DYFS or the court, DYFS shall immediately notify the school district where the child is currently attending school, the school district of residence, and the school district where the resource family home is located, as applicable.

The district of residence shall be responsible for transportation for the child to attend school, within five days of being notified by DYFS where the child will attend school.

The bill provides that nothing in it shall be construed to require any public entity to fund students placed in nonpublic schools by their parents or guardians.

The bill provides that, notwithstanding the provisions of the bill, DYFS is not required to identify the school where the child is or will be enrolled to a parent or legal guardian, if the release of the information would pose a risk to the safety of the child.

The bill authorizes the Commissioner of Education to adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of this bill, which regulations shall be effective for a period not to exceed six months and shall, thereafter, be amended, adopted, or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

The bill authorizes the Commissioner of Children and Families to adopt rules and regulations to carry out the purposes of the bill.

The bill takes effect immediately upon enactment and applies to resource family home placements made on or after that date.

**FISCAL IMPACT:**

The Office of Legislative Services has not received any information that would allow it to estimate the costs of the increased duties required of the Commissioner of Children and Families or the Division of Youth and Family Services in the Department of Children and Families under the bill.

However, the New Jersey Office of the Child Advocate has testified that the federal “Fostering Connection to Success and Increasing Adoptions Act of 2008” Pub.Law 110-351, makes receipt of federal funding contingent upon meeting that federal act’s many mandates. This bill brings New Jersey in line with the federal requirement for method for determining a child’s district of residence

for school attendance purposes school. New Jersey stands to lose approximately \$125 million in federal funding if it fails to comply with the federal requirement.

COMMITTEE AMENDMENTS:

The amendments:

- require DYFS, in the case of an emergent action, to provide notice to the child's law guardian, and at DYFS' discretion, a parent or legal guardian, of the new school placement and the basis for the action, within two business days, rather than three business days, as the bill originally provided;
- in the case of a non-emergent action, require DYFS to make a determination to change the child's school placement, within five business days of placement in a resource family home, rather than week as the bill originally provided;
- specify that the determination shall remain preliminary pending the completion of the requirements listed in the bill, and, if DYFS' determination is consistent with the presumption that the child shall remain in his current school, the determination shall be deemed conclusive at the time it is made;
- specify that DYFS shall immediately transmit a written notice advising of preliminary determination, the basis for the determination, and that the determination shall be deemed conclusive if DYFS does not receive notice that an application for review has been made with the court by the date the notice is transmitted by DYFS, which is five days from the date of the transmittal;
- allow any party to make an application for court review of DYFS' determination within the allotted time as specified in the notice;
- specify that an application for court review may not be filed if the child's law guardian, on behalf of the child, and a parent or legal guardian of the child, agrees, in writing, to waive the opportunity for such review, in which case the determination becomes conclusive;
- If a court review is requested, DYFS shall bear the burden of proof, by a preponderance of the evidence, that its determination is in the best interest of the child;
- clarify that DYFS shall provide transportation for the child to attend school while a court review is pending, and that at the time a court decision is rendered, DYFS shall notify all applicable school districts; and
- specify that DYFS shall not be required to identify the school where the child is or will be enrolled to a parent or legal guardian if the release of such information would pose a risk to the safety of the child.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[Second Reprint]

## **ASSEMBLY, No. 2137**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MAY 27, 2010

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2127 (2R) with committee amendments.

Assembly Bill No. 2137 (2R), with committee amendments, establishes a system to support educational stability for children placed in resource family homes, in accordance with the provisions of the federal "Fostering Connections to Success and Increasing Adoptions Act of 2008," Pub.L.110-351.

The bill revises the method for determining such a child's district of residence. The bill establishes the presumption that whenever the Division of Youth and Family Services (DYFS) places a child in a resource family home, the child shall remain in the school the child currently attends, pending a best-interest determination; and sets forth a procedure for making a best-interest determination for the purposes of deciding what school the child should attend while in a resource family home placement.

The bill amends section 19 of P.L.1979, c.207 (C.18A:7B-12), concerning school funding to provide that in the case of a child placed in a resource family home on or after the effective date of this bill, the district of residence shall be the present district of residence of the parent or guardian with whom the child lived prior to the most recent placement in a resource family home. Current law provides that the district of residence is the district in which the resource family parents reside.

The bill amends section 26 of P.L.1951, c.138 (C.30:4C-26), concerning the school district placement of a child placed in a resource family home, to provide that the district of residence, as determined by the Commissioner of Education, is responsible for paying, as applicable, transportation costs (as well as tuition, as the law currently provides).

The bill establishes a presumption that whenever DYFS places any child in a resource family home, including a change in a placement following the initial placement, the child shall remain in the school currently attended by the child and the child shall remain in that

school, pending a best-interest determination as set forth in the bill, unless DYFS determines that remaining in the present school is not in the best interest of the child and would present significant safety concerns or otherwise be a significant and immediate detriment to the child, in which case the child may be immediately enrolled in the school district in which the resource family home is located.

The bill requires that if DYFS enrolls the child in the school district in which the resource family home is located, DYFS, within two business days of taking such action, shall provide notice to the child's law guardian, and at DYFS' discretion, a parent or legal guardian, of the new school placement and the basis for the action.

Except when DYFS determines that emergent action is necessary, within five business days of placement in a resource family home, the bill requires DYFS to:

- make a determination, upon consideration of the best interest factors listed in the bill, whether the presumption that the child continue to attend the school that the child currently attends is outweighed by the best interest factors supporting placement in the school district in which the resource family home is located; and

- make reasonable efforts to consult with a parent or guardian of the child, the child, the child's law guardian, a representative from the school the child attended at the time of removal, and any school district under consideration for placement.

Under the bill, if DYFS' determination is that it is in the best interest of the child to enroll the child in the school district in which the resource family home is located, the determination shall remain preliminary pending the completion of the requirements listed in the bill. The requirements are as follows:

- DYFS shall immediately transmit written notification of the preliminary determination to the child's law guardian, and parent or guardian of the child: advising of the preliminary determination; providing basis for the determination; and that the determination shall be deemed conclusive if DYFS does not receive notice that an application for review has been made with the court by the date indicated on the notice, which shall be five days from the date the notice is transmitted by DYFS. The child shall remain enrolled in the child's current school at least until the time allotted to seek a court review is exhausted;

- Any party may make an application with the court seeking a review of whether DYFS' preliminary determination is in the best interest of the child within the time allotted by DYFS as specified in DYFS' notice, unless the child's law guardian, on behalf of the child, and a parent or legal guardian of the child agrees, in writing, to waive the opportunity for a court review, in which case the determination becomes conclusive;



-- any party who makes an application for court review shall provide simultaneous notice to DYFS and all other parties involved in DYFS' complaint for custody and guardianship, and the court shall hear and decide the application in an expedited manner;

-- DYFS shall bear the burden of proof, by a preponderance of the evidence, that its determination to enroll the child in the school district in which the resource family is located is in the best interest of the child.

-- if a party makes an application for court review of DYFS' preliminary determination, the child shall continue to attend the current school while the court hears and decides the application; and

-- if DYFS does not receive timely notice that an application for court review has been made within five business days of the transmittal date of the notice, the preliminary decision shall be deemed conclusive and the division shall implement its determination.

If DYFS' determination is consistent with the presumption that the child stay in the child's current school, the determination shall be deemed conclusive at the time the determination is made.

At any time during placement of a child in a resource family home, the court may, upon application by any party to DYFS' complaint for custody or guardianship, review the child's placement upon consideration of the best interest factors listed in the bill.

At any time during placement in a resource family home, DYFS may reconsider the child's school placement and make a new determination upon consideration of the best interest factors.

The factors DYFS and the court shall consider in making a best interest determination shall include, but not be limited to:

- safety considerations;
- the proximity of the resource family home to the child's present school;
- the age and grade level of the child as it relates to the other best interest factors;
- the needs of the child, including social adjustment and wellbeing;
- the child's preference;
- the child's performance, continuity of education, and engagement in the school the child presently attends;
- the child's special education programming if the child is classified;
- the point of time in the school year;
- the child's permanency goal and the likelihood of reunification;
- the anticipated duration of the current placement; and

-- such other factors as provided by regulation of the Commissioner of Children and Families.

At the time a determination becomes conclusive or upon any subsequent court decision, the child shall either continue to be enrolled in his current school or shall be immediately enrolled in the new school district, and the mandated school record shall be provided to the new school district in accordance with State Board of Education regulations.

DYFS shall provide transportation for the child to attend school during the time that a determination is being made or while a court review is pending as to where the child will attend school and for the subsequent five school days. At such time as a determination is made by DYFS or a decision is rendered by the court, DYFS shall immediately notify the school district where the child is currently attending school, the school district of residence, and the school district where the resource family home is located, as applicable.

The district of residence shall be responsible for transportation for the child to attend school, within five days of being notified by DYFS where the child will attend school.

The bill provides that nothing in it shall be construed to require any public entity to fund students placed in nonpublic schools by their parents or guardians.

The bill provides that if DYFS determines there exists a credible safety issue for the child if the location of the school in the resource family's district is disclosed to the parent or legal guardian, the division shall not include the location of that school or other information about the identity of the school in the notice to the parent or legal guardian.

The bill authorizes the Commissioner of Education to adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of this bill, which regulations shall be effective for a period not to exceed six months and shall, thereafter, be amended, adopted, or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

The bill authorizes the Commissioner of Children and Families to adopt rules and regulations to carry out the purposes of the bill.

The bill takes effect immediately upon enactment and applies to resource family home placements made on or after that date.

As amended and reported, this bill is identical to Senate Bill No. 1333 (1R), as amended and reported by the committee.

#### COMMITTEE AMENDMENTS:

The amendments provide that if DYFS determines there exists a credible safety issue for the child if the location of the school in the resource family's district is disclosed to the parent or legal guardian, the division shall not include the location of that school or other

information about the identity of the school in the notice to the parent or legal guardian.

FISCAL IMPACT:

The Department of Children and Families (DCF) has estimated the costs to the department under the provisions of the bill to be \$1.69 million annually (\$1.52 million in State funding and \$0.169 million from federal Title IV-E program funding). The estimate assumes that 25% of the 250 school-aged children entering out-of-home placement each month, or approximately 63 children, will require transportation from their resource family homes to their school district of residence, at a cost of \$150 a day. Actual cost to the State will depend on the actual number of children entering out-of-home placement who will require transportation services under the new federal requirements, and the cost of such transportation. Thus, the actual cost may be more or less than the \$1.69 million.

Additionally, school districts may incur transportation costs which cannot be determined. Such costs may depend on the distance that children are to be transported, and whether State aid provisions impact a school district's State transportation aid support.

The New Jersey Office of the Child Advocate has indicated that the federal "Fostering Connection to Success and Increasing Adoptions Act of 2008," Pub.L.110-351, makes receipt of federal funding contingent upon meeting that federal act's many mandates. This bill brings New Jersey in line with the federal requirement for determining a child's district of residence for school attendance purposes. New Jersey claims approximately \$125 million annually in federal Title IV-E funds to support resource family homes and adoptive placements, and DCF suggests all or part of this funding could be lost if the State fails to comply with the educational stability provisions of the federal law.

**FISCAL NOTE**  
 [Third Reprint]  
**ASSEMBLY, No. 2137**  
**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

DATED: JUNE 15, 2010

**SUMMARY**

- Synopsis:** Provides for educational stability of children placed in resource family homes and that school district of residence for the child shall be present district of residence of parent or guardian.
- Type of Impact:** Possible General Fund expenditure increase
- Agencies Affected:** Departments of Children and Families and Education, and local school districts.

**Executive Estimate**

| <b>Fiscal Impact</b> | <b><u>Year 1</u></b> | <b><u>Year 2</u></b> | <b><u>Year 3</u></b> |
|----------------------|----------------------|----------------------|----------------------|
| <b>State Cost</b>    | \$1.52 million       | \$1.52 million       | \$1.52 million       |
| <b>Local Cost</b>    | Unable to determine  | Unable to determine  | Unable to determine  |

**Office of Legislative Services Estimate**

| <b>Fiscal Impact</b>    | <b><u>Year 1</u></b> | <b><u>Year 2</u></b> | <b><u>Year 3</u></b> |
|-------------------------|----------------------|----------------------|----------------------|
| <b>State/Local Cost</b> | Unable to determine  | Unable to determine  | Unable to determine  |

- The Executive estimate is reasonable, however, the Office of Legislative Services (OLS) has no independent information to either verify or refute the Executive estimate.

**BILL DESCRIPTION**

Assembly Bill No. 2137 (3R) of 2010 establishes a system to support educational stability for children placed in resource family homes, in accordance with the provisions of the federal “Fostering Connections to Success and Increasing Adoptions Act of 2008,” Pub.L.110-351. The bill provides that in the case of a child placed in resource family care on or after the effective date of the bill, the child’s district of residence shall be the present district of residence of the

parent or guardian with whom the child lived prior to the most recent placement in a resource family home, pending a best interest determination. The bill also provides that the child's school district of residence shall be responsible for paying, as applicable, transportation costs for that child from the resource family home to the child's school.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Department of Children and Families (DCF) has estimated the total cost of the legislation at \$1.69 million annually (\$1.52 million State and \$0.169 million federal).

The estimate assumes that 25 percent of the 250 school-aged children entering out-of-home placement each month, or approximately 63 children, will require transportation from their resource family homes to their school districts of residence, at a cost of \$150 per day. The DCF indicates that under the provisions of the bill, the department's share of the transportation costs would be \$1.52 million each year, and federal claims under the Title IV-E program will provide \$0.169 million federal funding. The DCF is unable to determine the potential costs to the Department of Education and the school districts that will be responsible for paying transportation costs for such children.

The DCF estimates that 20 percent of all children requiring transportation from resource family homes to their school districts of residence are eligible for federal Title IV-E funds, and the transportation costs associated with these children are claimable at a rate of 50 percent. Each year, DCF calculates the State's share of estimated transportation costs for children in out-of-home care, and does not request an additional appropriation if the legislation is enacted during the current fiscal year.

The DCF claims approximately \$125 million annually in federal Title IV-E funds to support children in resource family homes and adoptive placements, and has stated that if the State fails to implement the educational stability provisions of the federal "Fostering Connections to Success and Increasing Adoptions Act of 2008," the federal government could determine that DCF is not in compliance with the Title IV-E state plan, leading to a loss of all or part of the \$125 million.

### ***OFFICE OF MANAGEMENT AND BUDGET***

The Office of Management and Budget (OMB) has estimated that the total cost of the legislation could range from \$1.69 million to \$3.4 million annually, depending on the number of children entering out-of-home placement who require transportation services.

The estimate assumes that between 25 percent and 50 percent of the 250 school-aged children entering out-of-home placement each month, or approximately 63 to 125 children, will require transportation from their resource family homes to their school districts of residence, at a cost of \$150 per day. The OMB indicates that the potential costs to local school districts will also increase since local school districts will be responsible for paying transportation costs for such children.

### ***OFFICE OF LEGISLATIVE SERVICES***

Though the OLS believes the estimate provided by the DCF of \$1.52 million annually is reasonable, that the cost to the State will depend on the actual number of children entering out-

of-home placement who will require transportation services under the provisions of the new federal requirements, and the cost of such transportation. Thus, the actual State cost may be more than or less than \$1.52 million. It is noted that OLS cannot verify or refute the estimates used DCF or OMB to develop the fiscal estimate. Further, costs school districts may incur cannot be determined.

*Section: Human Services*

*Analyst: Michele Leblanc  
Senior Research Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# SENATE, No. 1333

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 8, 2010

**Sponsored by:**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Senator M. TERESA RUIZ**

**District 29 (Essex and Union)**

**SYNOPSIS**

Provides for educational stability of children placed in resource family homes and that school district of residence for the child shall be present district of residence of parent or guardian.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/19/2010)**

S1333 VITALE, RUIZ

2

1 AN ACT concerning children placed in resource family homes,  
2 amending P.L.1979, c.207, and amending and supplementing  
3 P.L.1951, c.138.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 19 of P.L.1979, c.207 (C.18A:7B-12) is amended to  
9 read as follows:

10 19. For school funding purposes, the Commissioner of  
11 Education shall determine district of residence as follows:

12 a. **[The]** (1) In the case of a child placed in a resource family  
13 home prior to the effective date of P.L. , c. (C. ) (pending  
14 before the Legislature as this bill), the district of residence **[for**  
15 **children in resource family homes]** shall be the district in which the  
16 resource family parents reside. If such a child in a resource family  
17 home is subsequently placed in a State facility or by a State agency,  
18 the district of residence of the child shall then be determined as if  
19 no such resource family placement had occurred.

20 (2) In the case of a child placed in a resource family home on or  
21 after the effective date of P.L. , c. (C. ) (pending before the  
22 Legislature as this bill), the district of residence shall be the present  
23 district of residence of the parent or guardian with whom the child  
24 lived prior to the most recent placement in a resource family home.

25 b. The district of residence for children who are in residential  
26 State facilities, or who have been placed by State agencies in group  
27 homes, skill development homes, private schools or out-of-State  
28 facilities, shall be the present district of residence of the parent or  
29 guardian with whom the child lived prior to his most recent  
30 admission to a State facility or most recent placement by a State  
31 agency.

32 **[If this cannot be determined, the district of residence shall be**  
33 **the district in which the child resided prior to such admission or**  
34 **placement.]**

35 c. The district of residence for children whose parent or  
36 guardian temporarily moves from one school district to another as  
37 the result of being homeless shall be the district in which the parent  
38 or guardian last resided prior to becoming homeless. For the  
39 purpose of this amendatory and supplementary act, "homeless" shall  
40 mean an individual who temporarily lacks a fixed, regular and  
41 adequate residence.

42 d. If the district of residence cannot be determined according to  
43 the criteria contained herein, or if the criteria contained herein  
44 identify a district of residence outside of the State, the State shall

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**



1 assume fiscal responsibility for the tuition of the child. The tuition  
2 shall equal the approved per pupil cost established pursuant to  
3 section 24 of P.L.1996, c.138 [(C.18A:7F-1 et al.)] (C.18A:7F-24).  
4 This amount shall be appropriated in the same manner as other State  
5 aid under this act. The Department of Education shall pay the  
6 amount to the Department of Human Services, the Department of  
7 Children and Families, the Department of Corrections or the  
8 Juvenile Justice Commission established pursuant to section 2 of  
9 P.L.1995, c.284 (C.52:17B-170) or, in the case of a homeless child  
10 or a child in a family resource home, the Department of Education  
11 shall pay to the school district in which the child is enrolled the  
12 weighted base per pupil amount calculated pursuant to section 7 of  
13 P.L.2007, c.260 (C.18A:7F-49) and the appropriate security  
14 categorical aid per pupil and special education categorical aid per  
15 pupil.

16 e. If the State has assumed fiscal responsibility for the tuition  
17 of a child in a private educational facility approved by the  
18 Department of Education to serve children who are classified as  
19 needing special education services, the department shall pay to the  
20 Department of Human Services, the Department of Children and  
21 Families or the Juvenile Justice Commission, as appropriate, the aid  
22 specified in subsection d. of this section and in addition, such aid as  
23 required to make the total amount of aid equal to the actual cost of  
24 the tuition.

25 (cf: P.L.2007, c.260, s.27)

26

27 2. Section 26 of P.L.1951, c.138 (C.30:4C-26) is amended to  
28 read as follows:

29 26. a. Whenever the circumstances of a child are such that his  
30 needs cannot be adequately met in his own home, the division may  
31 effect his placement in a resource family home, with or without  
32 payment of board, in a group home, or in an appropriate institution  
33 if such care is deemed essential for him. The division shall make  
34 every reasonable effort to select a resource family home, a group  
35 home or an institution of the same religious faith as the parent or  
36 parents of such child.

37 b. Whenever the division ~~shall place~~ places any child, as  
38 provided by this section, in any municipality and county of this  
39 State, the child shall be deemed a resident of such municipality and  
40 county for all purposes except school funding, and he shall be  
41 entitled to the use and benefit of all health, recreational, vocational  
42 and other facilities of such municipality and county in the same  
43 manner and extent as any other child living in such municipality  
44 and county.

45 c. Whenever the division shall place any child, as provided by  
46 this section, in any school district, the child shall be entitled to the  
47 educational benefits of ~~such~~ the district determined pursuant to  
48 section 3 of P.L. ,c. (C. )(pending before the Legislature as this

S1333 VITALE, RUIZ

1 bill); provided, however, that the district of residence, as  
2 determined by the Commissioner of Education pursuant to law,  
3 shall be responsible for paying, as applicable, tuition and  
4 transportation costs for such child to the district in which he is  
5 placed.

6 d. No municipality shall enact a planning or zoning ordinance  
7 governing the use of land by, or for, single family dwellings which  
8 shall, by any of its terms or provisions or by any rule or regulation  
9 adopted in accordance therewith, discriminate between children  
10 who are members of such single families by reason of their  
11 relationship by blood, marriage or adoption, children placed with  
12 such families in such dwellings by the division or other entity  
13 designated by the Commissioner of Children and Families, and  
14 children placed pursuant to law with families in single family  
15 dwellings known as group homes.

16 Any planning or zoning ordinance, heretofore or hereafter  
17 enacted by a municipality, which violates the provisions of this  
18 section, shall be invalid and inoperative.

19 (cf: P.L.2006, c.47, s.130)

20

21 3. (New section) a. Whenever the Division of Youth and  
22 Family Services in the Department of Children and Families places  
23 any child in a resource family home, including a change in a  
24 placement following the initial placement, there shall be a  
25 presumption that the child shall remain in the school currently  
26 attended by the child and the child shall remain in that school,  
27 pending a best interest determination as set forth in subsection c. of  
28 this section, unless the division determines that the circumstances  
29 provided in subsection b. of this section are present.

30 b. If the division determines, based on a preponderance of the  
31 evidence, that remaining in the present school is not in the best  
32 interest of the child upon consideration of the best interest factors  
33 listed in subsection e. of this section, and would present significant  
34 safety concerns or otherwise be a significant and immediate  
35 detriment to the child, the child may be immediately enrolled in the  
36 school district in which the resource family home is located.

37 No later than three days after the child has been removed from  
38 the present school, the division shall make application to the court  
39 as provided in subsection d. of this section.

40 c. Within one week of placement in a resource family home,  
41 the division shall determine, upon consideration of the best interest  
42 factors listed in subsection e. of this section, whether the  
43 presumption that the child continue to attend the school that the  
44 child currently attends is outweighed by the best interest factors  
45 supporting placement in the school district in which the resource  
46 family home is located. In making that determination, the division  
47 shall make reasonable efforts to consult with a parent or guardian of  
48 the child, the child or the child's law guardian, a representative

1 from the school the child attended at the time of removal, and any  
2 school district under consideration for placement. If the division  
3 determines that the child should attend the school district in which  
4 the resource family home is located, the division shall make an  
5 application to the court for an order changing the child's school  
6 district placement as provided in subsection d. of this section,  
7 unless the division obtains the consent of the child's parent or  
8 guardian and the child.

9 d. At any time during placement in a resource family home, the  
10 division, the child, or a parent or guardian of the child may make an  
11 application to the court before whom the division's complaint for  
12 custody or guardianship is pending, for an order changing the  
13 child's school district placement. The court shall make its  
14 determination as soon as possible, but no later than 21 days after the  
15 application is made. The court shall consider only material and  
16 relevant evidence and shall grant the application upon a showing by  
17 the petitioner, at a summary hearing, that the change in school  
18 district placement is in the child's best interest.

19 Any party who makes an application pursuant to this section  
20 shall provide notice to all parties in interest.

21 e. The factors the division and the court shall consider in  
22 making a best interest determination shall include:

- 23 (1) safety considerations;
- 24 (2) the proximity of the resource family home to the child's  
25 present school;
- 26 (3) the age and grade level of the child as it relates to the other  
27 best interest factors listed in this subsection;
- 28 (4) the needs of the child, including social adjustment and  
29 wellbeing;
- 30 (5) the child's preference;
- 31 (6) the child's performance, continuity of education, and  
32 engagement in the school the child presently attends;
- 33 (7) the child's special education programming if the child is  
34 classified;
- 35 (8) the point of time in the school year;
- 36 (9) the child's permanency goal, the likelihood of reunification,  
37 and the anticipated duration of the current placement; and
- 38 (10) such other factors as provided by regulation of the  
39 Commissioner of Children and Families.

40 f. Whenever a determination is made by the division or the  
41 court pursuant to this section that the child will change the school  
42 district he is attending, the child shall be enrolled in the new school  
43 district within three school days, and the mandated student record  
44 shall be provided to the new school district in accordance with  
45 applicable regulations of the State Board of Education.

46 g. The division shall provide transportation for the child to  
47 attend school during the time that a determination is being made as  
48 to where the child will attend school and for the subsequent five

1 school days. At such time as a determination is made by the  
2 division or the court, the division shall immediately notify the  
3 school district where the child is currently attending school, the  
4 school district of residence, and the school district where the  
5 resource family home is located, as applicable.

6 The district of residence shall be responsible for transportation  
7 for the child to attend school, within five days of being notified by  
8 the division where the child will attend school.

9 h. Nothing in this section shall be construed to require any  
10 public entity to fund students placed in nonpublic schools by their  
11 parents or guardians.

12

13 4. (New section) Notwithstanding any provision of P.L.1968,  
14 c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of  
15 Education shall adopt, immediately upon filing with the Office of  
16 Administrative Law, such regulations as the commissioner deems  
17 necessary to implement the provisions of this act which regulations  
18 shall be effective for a period not to exceed six months and shall,  
19 thereafter, be amended, adopted, or readopted by the commissioner  
20 in accordance with the requirements of P.L.1968, c.410 (C.52:14B-  
21 1 et seq.).

22

23 5. The Commissioner of Children and Families may adopt rules  
24 and regulations pursuant to the "Administrative Procedure Act,"  
25 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of  
26 this act.

27

28 6. This act shall take effect on March 1, 2010 and shall apply to  
29 resource family home placements made on or after that date.

30

31

32

#### STATEMENT

33

34 This bill establishes a system to support educational stability for  
35 children placed in resource family homes, in accordance with the  
36 provisions of the federal "Fostering Connections to Success and  
37 Increasing Adoptions Act of 2008," Pub.L.110-351.

38 The bill: revises the method for determining a child's district of  
39 residence; establishes the presumption that whenever the Division  
40 of Youth and Family Services (DYFS) places a child in a resource  
41 family home, the child shall remain in the school the child currently  
42 attends, pending a best interest determination; and sets forth a  
43 procedure for making a best interest determination for the purposes  
44 of deciding what school the child should attend while in a resource  
45 family home placement.

46 Specifically, the bill provides as follows:

- 47 • Section 19 of P.L.1979, c.207 (C.18A:7B-12) concerning  
48 school funding, is amended to provide that in the case of a

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- 1 child placed in a resource family home on or after the  
2 effective date of this bill, the district of residence shall be  
3 the present district of residence of the parent or guardian  
4 with whom the child lived prior to the most recent placement  
5 in a resource family home. Current law provides that the  
6 district of residence is the district in which the resource  
7 family parents reside.
- 8 • Section 26 of P.L.1951, c.138 (C.30:4C-26) concerning the  
9 school district placement of a child placed in a resource  
10 family home, is amended to provide that the district of  
11 residence, as determined by the Commissioner of Education,  
12 is responsible for paying, as applicable, transportation costs  
13 (as well as tuition, as the law currently provides) for the  
14 child to the school district in which the child is placed.
  - 15 • Whenever the DYFS in the Department of Children and  
16 Families places any child in a resource family home,  
17 including a change in a placement following the initial  
18 placement, there shall be a presumption that the child shall  
19 remain in the school currently attended by the child and the  
20 child shall remain in that school, pending a best interest  
21 determination as set forth in the bill, unless DYFS  
22 determines, based on a preponderance of the evidence, that  
23 remaining in the present school is not in the best interest of  
24 the child and would present significant safety concerns or  
25 otherwise be a significant and immediate detriment to the  
26 child, in which case the child may be immediately enrolled  
27 in the school district in which the resource family home is  
28 located. No later than three days after the child has been  
29 removed from the child's present school, DYFS shall make  
30 application to the court for an order changing the child's  
31 school district placement, as provided in the bill.
  - 32 • Within one week of placement in a resource family home,  
33 DYFS shall determine, upon consideration of the best  
34 interest factors listed in the bill, whether the presumption  
35 that the child continue to attend the school that the child  
36 currently attends is outweighed by the best interest factors  
37 supporting placement in the school district in which the  
38 resource family home is located. In making that  
39 determination, DYFS shall make reasonable efforts to  
40 consult with a parent or guardian of the child, the child or  
41 the child's law guardian, a representative from the school the  
42 child attended at the time of removal, and any school district  
43 under consideration for placement.
  - 44 • If DYFS determines that the child should attend the school  
45 district in which the resource family home is located, DYFS  
46 shall make an application to the court for an order changing  
47 the child's school district placement, unless DYFS obtains

- 1 the consent of the child's parent or guardian and the child to  
2 change the school district placement.
- 3 • At any time during placement in a resource family home,  
4 DYFS, the child, or a parent or guardian of the child may  
5 make an application to the court for an order changing the  
6 child's school district placement.
  - 7 • With respect to an application to the court by DYFS, the  
8 child, or a parent or guardian of the child to change a child's  
9 school district placement, the court shall make its  
10 determination as soon as possible, but no later than 21 days  
11 after the application is made. The court shall consider only  
12 material and relevant evidence and shall grant the  
13 application upon a showing by the petitioner, at a summary  
14 hearing, that the change in school district placement is in the  
15 child's best interest. Any party who makes an application to  
16 the court shall provide notice to all parties in interest.
  - 17 • The factors DYFS and the court shall consider in making a  
18 best interest determination shall include:
    - 19 -- safety considerations;
    - 20 -- the proximity of the resource family home to the child's  
21 present school;
    - 22 -- the age and grade level of the child as it relates to the  
23 other best interest factors;
    - 24 -- the needs of the child, including social adjustment and  
25 wellbeing;
    - 26 -- the child's preference;
    - 27 -- the child's performance, continuity of education, and  
28 engagement in the school the child presently attends;
    - 29 -- the child's special education programming if the child is  
30 classified;
    - 31 -- the point of time in the school year;
    - 32 -- the child's permanency goal, the likelihood of  
33 reunification, and the anticipated duration of the current  
34 placement; and
    - 35 -- such other factors as provided by regulation of the  
36 Commissioner of Children and Families.
  - 37 • Whenever a determination is made by DYFS or the court  
38 that the child will change the school district he is attending,  
39 the child shall be enrolled in the new school district within  
40 three school days, and the mandated student record shall be  
41 provided to the new school district in accordance with  
42 applicable regulations of the State Board of Education.
  - 43 • DYFS shall provide transportation for the child to attend  
44 school during the time that a determination is being made as  
45 to where the child will attend school and for the subsequent  
46 five school days. At such time as a determination is made  
47 by DYFS or the court, DYFS shall immediately notify the  
48 school district where the child is currently attending school,

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- 1           the school district of residence, and the school district where  
2           the resource family home is located, as applicable.
- 3           • The district of residence shall be responsible for  
4           transportation for the child to attend school, within five days  
5           of being notified by DYFS where the child will attend  
6           school.
  - 7           • Nothing in this bill shall be construed to require any public  
8           entity to fund students placed in nonpublic schools by their  
9           parents or guardians.
  - 10          • The Commissioner of Education is authorized to adopt,  
11          immediately upon filing with the Office of Administrative  
12          Law, such regulations as the commissioner deems necessary  
13          to implement the provisions of this bill, which regulations  
14          shall be effective for a period not to exceed six months and  
15          shall, thereafter, be amended, adopted, or readopted by the  
16          commissioner in accordance with the requirements of  
17          P.L.1968, c.410 (C.52:14B-1 et seq.).
  - 18          • The Commissioner of Children and Families may adopt rules  
19          and regulations pursuant to the “Administrative Procedure  
20          Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the  
21          purposes of the bill.
  - 22          • The bill takes effect on March 1, 2010 and applies to  
23          resource family home placements made on or after that date.

SENATE HEALTH, HUMAN SERVICES AND SENIOR  
CITIZENS COMMITTEE

STATEMENT TO

**SENATE, No. 1333**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 4, 2010

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with amendments Senate Bill No. 1333.

As amended by committee, this bill establishes a system to support educational stability for children placed in resource family homes, in accordance with the provisions of the federal "Fostering Connections to Success and Increasing Adoptions Act of 2008," Pub.L.110-351.

The bill: revises the method for determining a child's district of residence; establishes the presumption that whenever the Division of Youth and Family Services (DYFS) in the Department of Children and Families places a child in a resource family home, the child shall remain in the school the child currently attends, pending a best interest determination; and sets forth a procedure for making a best interest determination for the purposes of deciding what school the child should attend while in a resource family home placement.

Specifically, the bill provides as follows:

- Section 19 of P.L.1979, c.207 (C.18A:7B-12) concerning school funding, is amended to provide that in the case of a child placed in a resource family home on or after the effective date of this bill, the district of residence shall be the present district of residence of the parent or guardian with whom the child lived prior to the most recent placement in a resource family home. Current law provides that the district of residence is the district in which the resource family parents reside.
- Section 26 of P.L.1951, c.138 (C.30:4C-26) concerning the school district placement of a child placed in a resource family home, is amended to provide that the district of residence, as determined by the Commissioner of Education, is responsible for paying, as applicable, the cost of the child's transportation (as well as tuition, as the law currently provides) to the school district in which the child is placed.



- Whenever DYFS places any child in a resource family home, including a change in a placement following the initial placement, there shall be a presumption that the child will remain in the school currently attended by the child and the child will remain in that school, pending a best interest determination as set forth in the bill, unless DYFS determines, based on a preponderance of the evidence, that remaining in the present school is not in the best interest of the child and would present significant safety concerns or otherwise be a significant and immediate detriment to the child, in which case the child may be immediately enrolled in the school district in which the resource family home is located. No later than three days after the child has been removed from the child's present school, DYFS shall make application to the court for an order changing the child's school district placement, as provided in the bill.
- Within one week of placement in a resource family home, DYFS shall determine, upon consideration of the best interest factors listed in the bill, whether the presumption that the child continue to attend the school that the child currently attends is outweighed by the best interest factors supporting placement in the school district in which the resource family home is located. In making that determination, DYFS shall make reasonable efforts to consult with a parent or guardian of the child, the child or the child's law guardian, a representative from the school the child attended at the time of removal, and any school district under consideration for placement.
- If DYFS determines that the child should attend the school district in which the resource family home is located, DYFS shall make an application to the court for an order changing the child's school district placement, unless DYFS obtains the consent of the child's parent or guardian and the child to change the school district placement.
- At any time during placement in a resource family home, DYFS, the child, or a parent or guardian of the child may make an application to the court for an order changing the child's school district placement.
- With respect to an application to the court by DYFS, the child, or a parent or guardian of the child to change a child's school district placement, the court shall make its determination as soon as possible, but no later than 21 days after the application is made. The court shall consider only material and relevant evidence and shall grant the application upon a showing by the petitioner, at a summary hearing, that the change in school district placement is in the child's best interest. Any party who makes an application to the court shall provide notice to all parties in interest.

- The factors DYFS and the court shall consider in making a best interest determination shall include:
  - safety considerations;
  - the proximity of the resource family home to the child's present school;
  - the age and grade level of the child as it relates to the other best interest factors;
  - the needs of the child, including social adjustment and wellbeing;
  - the child's preference;
  - the child's performance, continuity of education, and engagement in the school the child presently attends;
  - the child's special education programming if the child is classified;
  - the point of time in the school year;
  - the child's permanency goal, the likelihood of reunification, and the anticipated duration of the current placement; and
  - such other factors as provided by regulation of the Commissioner of Children and Families.
- Whenever a determination is made by DYFS or the court that the child will change the school district he is attending, the child shall be enrolled in the new school district within three school days, and the mandated student record shall be provided to the new school district in accordance with applicable regulations of the State Board of Education.
- DYFS shall provide transportation for the child to attend school during the time that a determination is being made as to where the child will attend school and for the subsequent five school days. At such time as a determination is made by DYFS or the court, DYFS shall immediately notify the school district where the child is currently attending school, the school district of residence, and the school district where the resource family home is located, as applicable.
- The district of residence shall be responsible for transportation for the child to attend school, within five days of being notified by DYFS where the child will attend school.
- Nothing in this bill shall be construed to require any public entity to fund students placed in nonpublic schools by their parents or guardians.
- The Commissioner of Education is authorized to adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of this bill, which regulations shall be effective for a period not to exceed six months and shall, thereafter, be amended, adopted, or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

- The Commissioner of Children and Families may adopt rules and regulations pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of the bill.
- The bill takes effect immediately upon enactment and applies to resource family home placements made on or after that date.

The committee amended the bill to change the effective date from March 1, 2010, to immediately upon enactment.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

### **SENATE, No. 1333**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MAY 27, 2010

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1333 (1R) with committee amendments.

Senate Bill No. 1333 (1R), with committee amendments, establishes a system to support educational stability for children placed in resource family homes, in accordance with the provisions of the federal “Fostering Connections to Success and Increasing Adoptions Act of 2008,” Pub.L.110-351.

The bill revises the method for determining such a child’s district of residence. The bill establishes the presumption that whenever the Division of Youth and Family Services (DYFS) places a child in a resource family home, the child shall remain in the school the child currently attends, pending a best-interest determination; and sets forth a procedure for making a best-interest determination for the purposes of deciding what school the child should attend while in a resource family home placement.

The bill amends section 19 of P.L.1979, c.207 (C.18A:7B-12), concerning school funding to provide that in the case of a child placed in a resource family home on or after the effective date of this bill, the district of residence shall be the present district of residence of the parent or guardian with whom the child lived prior to the most recent placement in a resource family home. Current law provides that the district of residence is the district in which the resource family parents reside.

The bill amends section 26 of P.L.1951, c.138 (C.30:4C-26), concerning the school district placement of a child placed in a resource family home, to provide that the district of residence, as determined by the Commissioner of Education, is responsible for paying, as applicable, transportation costs (as well as tuition, as the law currently provides).

The bill establishes a presumption that whenever DYFS places any child in a resource family home, including a change in a placement following the initial placement, the child shall remain in the school currently attended by the child and the child shall remain in that school, pending a best-interest determination as set forth in the bill,

unless DYFS determines that remaining in the present school is not in the best interest of the child and would present significant safety concerns or otherwise be a significant and immediate detriment to the child, in which case the child may be immediately enrolled in the school district in which the resource family home is located.

The bill requires that if DYFS enrolls the child in the school district in which the resource family home is located, DYFS, within two business days of taking such action, shall provide notice to the child's law guardian, and at DYFS' discretion, a parent or legal guardian, of the new school placement and the basis for the action.

Except when DYFS determines that emergent action is necessary, within five business days of placement in a resource family home, the bill requires DYFS to:

- make a determination, upon consideration of the best interest factors listed in the bill, whether the presumption that the child continue to attend the school that the child currently attends is outweighed by the best interest factors supporting placement in the school district in which the resource family home is located; and
- make reasonable efforts to consult with a parent or guardian of the child, the child, the child's law guardian, a representative from the school the child attended at the time of removal, and any school district under consideration for placement.

Under the bill, if DYFS' determination is that it is in the best interest of the child to enroll the child in the school district in which the resource family home is located, the determination shall remain preliminary pending the completion of the requirements listed in the bill. The requirements are as follows:

- DYFS shall immediately transmit written notification of the preliminary determination to the child's law guardian, and parent or guardian of the child: advising of the preliminary determination; providing basis for the determination; and that the determination shall be deemed conclusive if DYFS does not receive notice that an application for review has been made with the court by the date indicated on the notice, which shall be five days from the date the notice is transmitted by DYFS. The child shall remain enrolled in the child's current school at least until the time allotted to seek a court review is exhausted;
- Any party may make an application with the court seeking a review of whether DYFS' preliminary determination is in the best interest of the child within the time allotted by DYFS as specified in DYFS' notice, unless the child's law guardian, on behalf of the child, and a parent or legal guardian of the child agrees, in writing, to waive the opportunity for a court review, in which case the determination becomes conclusive;
- any party who makes an application for court review shall provide simultaneous notice to DYFS and all other parties

involved in DYFS' complaint for custody and guardianship, and the court shall hear and decide the application in an expedited manner;

-- DYFS shall bear the burden of proof, by a preponderance of the evidence, that its determination to enroll the child in the school district in which the resource family is located is in the best interest of the child.

-- if a party makes an application for court review of DYFS' preliminary determination, the child shall continue to attend the current school while the court hears and decides the application; and

-- if DYFS does not receive timely notice that an application for court review has been made within five business days of the transmittal date of the notice, the preliminary decision shall be deemed conclusive and the division shall implement its determination.

If DYFS' determination is consistent with the presumption that the child stay in the child's current school, the determination shall be deemed conclusive at the time the determination is made.

At any time during placement of a child in a resource family home, the court may, upon application by any party to DYFS' complaint for custody or guardianship, review the child's placement upon consideration of the best interest factors listed in the bill.

At any time during placement in a resource family home, DYFS may reconsider the child's school placement and make a new determination upon consideration of the best interest factors.

The factors DYFS and the court shall consider in making a best interest determination shall include, but not be limited to:

- safety considerations;
- the proximity of the resource family home to the child's present school;
- the age and grade level of the child as it relates to the other best interest factors;
- the needs of the child, including social adjustment and wellbeing;
- the child's preference;
- the child's performance, continuity of education, and engagement in the school the child presently attends;
- the child's special education programming if the child is classified;
- the point of time in the school year;
- the child's permanency goal and the likelihood of reunification;
- the anticipated duration of the current placement; and
- such other factors as provided by regulation of the Commissioner of Children and Families.

At the time a determination becomes conclusive or upon any subsequent court decision, the child shall either continue to be enrolled in his current school or shall be immediately enrolled in the new school district, and the mandated school record shall be provided to the new school district in accordance with State Board of Education regulations.

DYFS shall provide transportation for the child to attend school during the time that a determination is being made or while a court review is pending as to where the child will attend school and for the subsequent five school days. At such time as a determination is made by DYFS or a decision is rendered by the court, DYFS shall immediately notify the school district where the child is currently attending school, the school district of residence, and the school district where the resource family home is located, as applicable.

The district of residence shall be responsible for transportation for the child to attend school, within five days of being notified by DYFS where the child will attend school.

The bill provides that nothing in it shall be construed to require any public entity to fund students placed in nonpublic schools by their parents or guardians.

The bill provides that if DYFS determines there exists a credible safety issue for the child if the location of the school in the resource family's district is disclosed to the parent or legal guardian, the division shall not include the location of that school or other information about the identity of the school in the notice to the parent or legal guardian.

The bill authorizes the Commissioner of Education to adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of this bill, which regulations shall be effective for a period not to exceed six months and shall, thereafter, be amended, adopted, or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

The bill authorizes the Commissioner of Children and Families to adopt rules and regulations to carry out the purposes of the bill.

The bill takes effect immediately upon enactment and applies to resource family home placements made on or after that date.

As amended and reported, this bill is identical of Assembly Bill No. 2137 (2R), as also amended and reported by the committee.

#### COMMITTEE AMENDMENTS:

The amendments:

- require DYFS, in the case of an emergent action, to provide notice to the child's law guardian, and a parent or legal guardian, of the new school placement and the basis for the action, within two business days, rather than three business days, as the bill originally provided;

- in the case of a non-emergent action, require DYFS to make a determination to change the child's school placement, within five business days of placement in a resource family home, rather than week as the bill originally provided;
- specify that the determination shall remain preliminary pending the completion of the requirements listed in the bill, and, if DYFS' determination is consistent with the presumption that the child shall remain in his current school, the determination shall be deemed conclusive at the time it is made;
- specify that DYFS shall immediately transmit a written notice advising of preliminary determination, the basis for the determination, and that the determination shall be deemed conclusive if DYFS does not receive notice that an application for review has been made with the court by the date the notice is transmitted by DYFS, which is five days from the date of the transmittal;
- allow any party to make an application for court review of DYFS' determination within the allotted time as specified in the notice;
- specify that an application for court review may not be filed if the child's law guardian, on behalf of the child, and a parent or legal guardian of the child, agrees, in writing, to waive the opportunity for such review, in which case the determination becomes conclusive;
- If a court review is requested, DYFS shall bear the burden of proof, by a preponderance of the evidence, that its determination is in the best interest of the child;
- clarify that DYFS shall provide transportation for the child to attend school while a court review is pending, and that at the time a court decision is rendered, DYFS shall notify all applicable school districts; and
- require that if DYFS determines there exists a credible safety issue for the child if the location of the school in the resource family's district is disclosed to the parent or legal guardian, DYFS shall not include the location of that school or other information about the identity of the school in the notice to the parent or legal guardian.

FISCAL IMPACT:

The Department of Children and Families (DCF) has estimated the costs to the department under the provisions of the bill to be \$1.69 million annually (\$1.52 million in State funding and \$0.169 million from federal Title IV-E program funding). The estimate assumes that 25% of the 250 school-aged children entering out-of-home placement each month, or approximately 63 children, will require transportation from their resource family homes to their school district of residence, at a cost of \$150 a day. Actual cost to the State will depend on the



actual number of children entering out-of-home placement who will require transportation services under the new federal requirements, and the cost of such transportation. Thus, the actual cost may be more or less than the \$1.69 million.

Additionally, school districts may incur transportation costs which cannot be determined. Such costs may depend on the distance that children are to be transported, and whether State aid provisions impact a school district's State transportation aid support.

The New Jersey Office of the Child Advocate has indicated that the federal "Fostering Connection to Success and Increasing Adoptions Act of 2008," Pub.L.110-351, makes receipt of federal funding contingent upon meeting that federal act's many mandates. This bill brings New Jersey in line with the federal requirement for determining a child's district of residence for school attendance purposes. New Jersey claims approximately \$125 million annually in federal Title IV-E funds to support resource family homes and adoptive placements, and DCF suggests all or part of this funding could be lost if the State fails to comply with the educational stability provisions of the federal law.

**FISCAL NOTE**  
 [Second Reprint]  
**SENATE, No. 1333**  
**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

DATED: JUNE 15, 2010

**SUMMARY**

- Synopsis:** Provides for educational stability of children placed in resource family homes and that school district of residence for the child shall be present district of residence of parent or guardian.
- Type of Impact:** Possible General Fund expenditure increase
- Agencies Affected:** Departments of Children and Families and Education, and local school districts.

**Executive Estimate**

| <b>Fiscal Impact</b> | <b><u>Year 1</u></b> | <b><u>Year 2</u></b> | <b><u>Year 3</u></b> |
|----------------------|----------------------|----------------------|----------------------|
| <b>State Cost</b>    | \$1.52 million       | \$1.52 million       | \$1.52 million       |
| <b>Local Cost</b>    | Unable to determine  | Unable to determine  | Unable to determine  |

**Office of Legislative Services Estimate**

| <b>Fiscal Impact</b>    | <b><u>Year 1</u></b> | <b><u>Year 2</u></b> | <b><u>Year 3</u></b> |
|-------------------------|----------------------|----------------------|----------------------|
| <b>State/Local Cost</b> | Unable to determine  | Unable to determine  | Unable to determine  |

- The Executive estimate is reasonable, however, the Office of Legislative Services (OLS) has no independent information to either verify or refute the Executive estimate.

**BILL DESCRIPTION**

Senate Bill No. 1333 (2R) of 2010 establishes a system to support educational stability for children placed in resource family homes, in accordance with the provisions of the federal “Fostering Connections to Success and Increasing Adoptions Act of 2008,” Pub.L.110-351. The bill provides that in the case of a child placed in resource family care on or after the effective date of the bill, the child’s district of residence shall be the present district of residence of the parent or guardian with whom the child lived prior to the most recent placement in a resource

family home, pending a best interest determination. The bill also provides that the child's school district of residence shall be responsible for paying, as applicable, transportation costs for that child from the resource family home to the child's school.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Department of Children and Families (DCF) has estimated the total cost of the legislation at \$1.69 million annually (1.52 million State and 0.169 million federal).

The estimate assumes that 25 percent of the 250 school-aged children entering out-of-home placement each month, or approximately 63 children, will require transportation from their resource family homes to their school districts of residence, at a cost of \$150 per day. The DCF indicates that under the provisions of the bill, the department's share of the transportation costs would be \$1.52 million, each year, and federal claims under the Title IV-E program will provide \$0.169 million federal funding. The DCF is unable to determine the potential costs to the Department of Education and the local school districts that will be responsible for paying transportation costs for such children.

The DCF estimates that 20 percent of all children requiring transportation from resource family homes to their school districts of residence are eligible for federal Title IV-E funds, and the transportation costs associated with these children are claimable at a rate of 50 percent. Each year, the DCF calculates the State's share of estimated transportation costs for children in out-of-home care, and does not request an additional appropriation if the legislation is enacted during the current fiscal year.

The DCF claims approximately \$125 million annually in federal Title IV-E funds to support children in resource family homes and adoptive placements, and has stated that if the State fails to implement the educational stability provisions of the federal "Fostering Connections to Success and Increasing Adoptions Act of 2008," the federal government could determine that DCF is not in compliance with the Title IV-E state plan, leading to a loss of all or part of the \$125 million.

### ***OFFICE OF MANAGEMENT AND BUDGET***

The Office of Management and Budget (OMB) has estimated that the total cost of the legislation could range from \$1.69 million to \$3.4 million annually (\$1.52 to \$3.04 million State and \$0.169 to 0.34 million federal), depending on the number of children entering out-of-home placement who require transportation services.

The estimate assumes that between 25 percent to 50 percent of the 250 school-aged children entering out-of-home placement each month, or approximately 63 to 125 children, will require transportation from their resource family homes to their school districts of residence, at a cost of \$150 per day. The OMB indicates that the potential costs to local school districts will also increase since local school districts will be responsible for paying transportation costs for such children.

### ***OFFICE OF LEGISLATIVE SERVICES***

Though the OLS believes the estimate provided by the DCF of \$1.52 million annually is reasonable, the cost to the State will depend on the actual number of children entering out-of-

home placement who will require transportation services under the new federal requirements, and the cost of such transportation. Thus, the actual State cost may be more than or less than \$1.52 million. It is noted that OLS cannot verify or refute the estimates used by DCF or OMB to develop the fiscal estimate. Further, costs local school districts may incur cannot be determined.

*Section: Human Services*

*Analyst: Michele Leblanc  
Senior Research Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).