United States Senate

WASHINGTON, DC 20510

May 5, 2016

The Honorable Sylvia Matthews Burwell
Secretary of Health and Human Services
US Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Dr. John King
Secretary of Education
US Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Burwell and Secretary King,

Children in foster care face many unique educational challenges. Most notably, high mobility rates and a lack of educational stability make it difficult for foster children to connect with caring, supportive adults and succeed in school.

For the past decade on a bipartisan, bicameral basis, Congress enacted key reforms to the child welfare system. In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act, which included reforms to adoption assistance, allowed for guardian assistance, and made positive changes to the foster care system, one of which was to require states to allow children in foster care to attend the school they were in enrolled in prior to each placement. Congress made this critical change because the data has demonstrated that children who repeatedly change schools do poorly. Additionally, Members of Congress have heard from current and former foster youth that oftentimes their school offered the only safe place for them while they were in foster care.

With the passage of the bipartisan Every Student Succeeds Act (ESSA), Congress committed to improving supports for foster children to enhance their educational success. Many of ESSA's provisions are designed to align with existing requirements and responsibilities for child welfare agencies under the Fostering Connections to Success and Increasing Adoptions Act of 2008. In the past several years, Congress recognized that a dual agency response was critical, and with the passage of ESSA, updated federal law to make that coordination a reality. Furthermore, reporting requirements on this unique group of students will bolster data regarding the educational outcomes of students in foster care and better inform this coordination.

Much work still remains to be done, as the real promise of these important bipartisan provisions rests in implementation and a commitment at the local level. Ensuring that Congressional intent is carried out will require strong communication and collaboration between child welfare agencies, state educational agencies, and local educational agencies. Importantly, the expedited timeline for the removal of "awaiting foster care placement" as a designated status under the McKinney-Vento Act and the creation of local transportation plans for foster children make it all the more urgent that your agencies coordinate in a timely manner to ensure education agencies and child welfare agencies are able to comply with this new law.

During the summer and early school year, child welfare agencies and local educational agencies will be tasked with developing a plan to ensure that children in foster care have transportation to their school of origin. The statute provides three options when there are additional associated transportation costs:

"(I) the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation;
(II) the local educational agency agrees to pay for the cost of such transportation; or
(III) the local educational agency and the local child welfare agency agree to share the cost of such transportation."

Child welfare agencies and local educational agencies need to begin collaborating as soon as possible. This collaboration must start at the top. As Chairs and Ranking Members of the relevant committees tasked with increasing the educational success of children in foster care and authors of these bipartisan provisions, we urge you to recognize the need for further information, directions, and guidance in this area and to take leadership to ensure that states and school districts are supported in this effort.

Specifically, we ask you to, in consultation with a diversity of stakeholders who will be responsible for implementation at the state and local level –

1. Implement the awaiting foster care provision in section 9101(a)(1)(B) and the provisions of 1112(c)(5)(B) by December 10, 2016.
2. Collaborate and issue joint guidance by mid-summer, consistent with the requirements and limits of the law, explaining the requirements related to educational stability for children in foster care, including requirements related to school stability, local transportation plans, points of contact, and reporting. This guidance should include multiple examples of how child welfare agencies and local educational agencies collaborate to meet the requirements of section 1112(c)(5) and protect the local discernment to establish an appropriate funding plan.
3. Use the same definition for foster care currently used in Health and Human Services regulations (45 CFR Sec. 1355.20) to define the term "child in foster care".
4. Provide technical assistance to state and local educational agencies to ensure that requirements related to children in foster care are carried out with fidelity.

As partners in this effort, we stand ready and able to assist in any way that we can. Thank you for this attention to this matter.

Sincerely,

Patty Murray
U.S. Senator

Orrin G. Hatch
U.S. Senator

Ron Wyden
U.S. Senator

Charles E. Grassley
U.S. Senator

Al Franken
U.S. Senator