



# Every Student Succeeds Act

## Implementation Toolkit

Improving Education Outcomes for  
Children and Youth in Foster Care



LEGAL CENTER FOR  
FOSTER CARE & EDUCATION

# Every Student Succeeds Act (ESSA) Toolkit

## TABLE OF CONTENTS

- 1 **Q&A – How Will ESSA Support Students in Foster Care**
- 3 **Highlights of Joint Federal Guidance to Ensure School Success for Students in Foster Care under the ESSA**
- 7 **Implementation Checklist 1**
- 12 **Implementation Checklist 2**
- 14 State Level Memorandum of Understanding: Implementing the School Stability Provisions of ESSA
- 21 Model Directive from State Education Agency to Local Educational Agencies About ESSA Compliance
- 26 Q&A – Points of Contact: How They Can Help Students in Foster Care
- 30 Best Interest Determination Guide
- 33 Implementing ESSA’s Transportation Procedures: How Local Education Agencies Can Work with Child Welfare to Ensure School Stability
- 39 *Template 1 – Local Transportation Procedures*
- 42 *Template 2 – Individual Student Transportation Plan*
- 44 **Appendix—Where to Find Federal ESSA Laws, Policy, and Guidance**



Several key tools are downloadable from within this document. Look for this symbol and select it to download the tool.

For additional links to individual resources contained within this toolkit, please visit:

<http://www.fostercareandeducation.org/AreasofFocus/EducationStability.aspx>

# How Will the Every Student Succeeds Act (ESSA) Support Students in Foster Care?

## Q: What is the Every Student Succeeds Act (ESSA)?

On December 10, 2015, President Obama signed the Every Student Succeeds Act (ESSA), amending the Elementary and Secondary Education Act. For the first time, ESSA embeds in federal education law provisions that promote school stability and success for youth in care and collaboration between education and child welfare agencies to achieve these goals.

## Q: Why are protections for students in foster care included in the ESSA?

Children in foster care are some of the country's most educationally disadvantaged students.

Studies show that students in foster care experience: school suspensions and expulsions at higher rates than their peers not in foster care, lower standardized test scores in reading and math, high levels of grade retention and drop-out, and far lower high school and college graduation rates.

## Q: What are the specific protections for students in foster care contained in the ESSA?

### **Remain in the Same School When in the Child's Best Interest**

Children in foster care frequently change schools – when they first enter foster care, when they move from one foster care living arrangement to another, or when they return home. Research shows that children who change schools frequently make less academic progress than their peers and fall farther behind with each school change. Additionally, school instability makes it difficult for children to develop supportive relationships with teachers or peers.

Under the ESSA, state education agencies must include in their state plans the steps that the agencies will take to ensure—in collaboration with the state child welfare agencies—school stability for youth in care including assurances that children enroll or remain in their “school of origin” unless a determination is made that it not in their best interest. That determination must be based on all factors relating to

the child's best interest including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement. Federal child welfare law already requires child welfare agencies to collaborate with education agencies to ensure school stability when it is in the child's best interest; this law creates reciprocal obligations on education agencies.

### **Immediate Enrollment in School and Transfer of School Records**

Children in foster care frequently face delays in school enrollment or are placed in the wrong classes or schools, often due to missing, incomplete, or delayed school records and documentation.

Under the ESSA, state plans must now include the steps the state will take to ensure that when a school change is warranted, children in foster care can enroll immediately in a new school even if the child cannot produce normally required enrollment documents and school records. Additionally, enrolling schools must immediately contact the school last attended by the child to obtain relevant academic and other education records.

### **School Transportation when Necessary**

For some students in foster care, transportation is needed to allow them to remain in the same school. By December 10, 2016, local education and child welfare agencies must collaborate, and the education agencies must include in their local plans, assurances that they have developed and implemented clear written procedures governing how transportation to ensure school stability will be provided, arranged, and funded for the duration of the children's time in foster care in a cost effective manner and in accordance with the provisions of child welfare law that permit the use of certain Title IV-E funds for school stability transportation.

### **Point of Contact Designated Within State Educational Agency**

Under the new law, every state education agency must include in its state plan the steps it will take to ensure collaboration with the state child welfare agency, including designating an employee to serve as a point

of contact for child welfare agencies and to oversee implementation of the foster care provisions of the ESSA. The point person should also identify best practices and ensure effective implementation at the local educational agency level and with public charter schools. The point person must be someone other than the state's McKinney-Vento Act Coordinator.

### **Local Educational Agency (LEA) Point of Contact**

LEAs (typically a school district, but it could also be a charter school or other LEA) must include in their local plans assurances that they will collaborate with local child welfare agencies and that, when a child welfare agency notifies the LEA that it has a point of contact for the education of children in foster care, the LEA must designate a similar point of contact.

LEA and child welfare "points of contact" can streamline interagency communication, help implement the new law, and, if a school change is warranted, help connect students with their new school communities.

### **Removal of "Awaiting Foster Care Placement" from McKinney-Vento Homeless Assistance Act**

Because of these new ESSA protections for students in foster care, and in recognition of the need for additional resources for students who are homeless, this law removes "awaiting foster care placement" from the definition of "homeless" for purposes of the McKinney-Vento Act by December 10, 2016. (For certain states that define or describe "awaiting foster care placement" in their state statutes, this provision will go into effect by December 10, 2017.)

### **Required Data Collection and Reporting**

For the first time, state educational agencies will be required to report annually on student achievement and graduation rates for students in foster care. To implement this requirement, education and child welfare agencies will need to work together to ensure effective, appropriate, and confidential data and information sharing between systems.

### **Charter Schools**

Any state entity (including a state educational agency, a state charter school board, a governor of a state, or a charter school support organization) receiving charter school grants under Title IV Part C of the new law must work with charter schools on recruitment and enrollment practices to promote inclusion of all students. This includes eliminating any barriers to enrollment for youth in foster care.

### **Q: Where can I learn more about the ESSA and how to implement it in my own jurisdiction?**

ESSA marks an important step forward in supporting school stability and success for students in foster care. To ensure smooth implementation of the law, state and local child welfare and education agencies will need to work together. The Legal Center for Foster Care and Education looks forward to working to support successful implementation of these important provisions. To stay up-to-date with the latest news and receive updates and materials follow us on Twitter @FosterEdSuccess.

## Highlights of Joint Federal Guidance to Ensure School Success for Students in Foster Care Under the ESSA

On June 23, 2016, the U.S. Departments of Education (ED) and Health and Human Services issued the first guidance on the 2015 Every Student Succeeds Act. The two Dear Colleague Letters and a comprehensive Q and A (Guidance) focuses on students in foster care and signals this is a top priority of ED. The Guidance explains how state and local education and child welfare agencies must collaborate to implement the ESSA's provisions to ensure school stability, prompt school enrollment, and school success for children in foster care. The Guidance makes clear that plans for all states to implement school stability provisions must be in place by December, 2016—requiring states and local jurisdictions to focus on these requirements now.

### The First Dear Colleague Letter on Timelines

clarifies that the effective date of the ESSA's school stability provisions is December 10, 2016. This tracks the statutory language that requires LEAs to develop school stability transportation procedures and remove "awaiting foster care placement" from the McKinney Vento Act (in most states<sup>1</sup>) by that date. This letter further explains that ED is also using its orderly transition authority under the Act to require that the other foster care school stability provisions—identification of SEA points of contact, SEA assurances related to collaboration and school stability, and the LEA Points of Contact provisions—are implemented by December 2016. The letter further makes clear ED's intent to make these requirements, along with LEAs development of written transportation procedures, a condition on the FY 2016 Title I grant award. For more information, see the full letter: <http://www2.ed.gov/policy/elsec/leg/essa/edhhseffectivedatesdcl.pdf>.

The Second Dear Colleague Letter at <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercaredcl.pdf>, is directed to Chief State School Officers and Child Welfare Directors and highlights the new foster care provisions in the ESSA, stresses the December 2016 timeline, encourages timely collaboration, and introduces the 28-page Non Regulatory Guidance (Guidance) as a tool to support timely implementation.

*Below are highlights from the Guidance. While this summary provides an overview, we encourage everyone to read the full document at <http://www2.ed.gov/policy/elsec/leg/essa/index.html> to ensure full and effective implementation.*

### Key Terms Defined

**"Foster care"** is defined as "24 hour substitute care for children placed away from their parents or guardians for whom the child welfare agency has placement and care responsibility." This includes children in foster family homes, shelters, relative foster homes, group homes, and residential facilities—regardless of whether the foster care facility is licensed or whether payments are made by the state. Guidance Page 6, Q1

**"School of origin"** means the school in which a child is enrolled at the time of placement in foster care. If a child's foster care placement changes, the school of origin would then be considered the school in which the child is enrolled at the time of the placement change. Guidance Page 11, Q10

### Guiding Principles

**SEA Responsibilities:** The Guidance recognizes the responsibility of SEAs to implement the ESSA, collaborate to ensure education stability of children in foster care, align its implementation with the overlapping requirements of the federal Fostering Connections Act, and monitor and oversee the many local education and child welfare agencies engaged in the effort. The Guidance urges states to develop uniform statewide policies and procedures to achieve these goals. Guidance Page 7, Q3

**LEA Responsibilities:** LEAs and child welfare agencies must collaborate to develop local processes and procedures, e.g., identify the documents or records to be shared, identify the criteria to be used in decision making, and determine what processes (such as regular meetings) should be used. Guidance Page 7, Q4.

**Child Welfare Responsibilities:** Under Fostering Connections, child welfare agencies must develop a plan for ensuring education stability for children in foster care as part of the child’s case plan (a written part of the case record created within 60 days of the child entering care, and every 6 months thereafter). The plan must include, at initial and subsequent placements, assurances that: 1) the placement takes into account the appropriateness of the education setting and the proximity to the school in which the child was enrolled at the time of placement; and 2) the child welfare agency coordinated with the LEA to ensure the child can remain in the school, or if not in the child’s best interest, is enrolled immediately in a new school. Guidance Page 8, Q5 and Q6

**Children Covered:** The Guidance makes clear that, in addition to applying to all children in foster care enrolled in schools in the SEA, children attending public preschools and charter schools in states that consider charter schools to be LEAs are entitled to these protections. Guidance Page 6, Q1 and Page 8, Q7

**Duration of Protections:** The ESSA states that children are entitled to school stability and prompt school enrollment protections for the duration of the child’s time in foster care. The Guidance recommends that state and local education agencies adopt policies that allow children to remain in the same school through at least the end of the academic year, even if they have already exited foster care. Guidance Page 11, Q11

## Best Interest Decisions

**Factors to Consider:** The statute lists the appropriateness of the current educational setting and the proximity of the placement as factors in making best interest determinations. Other factors include: the child’s preference, the views of the parents or the person with education decision-making rights; the child’s attachment to school and staff; the placement of the child’s siblings; the availability and quality of services in the current and potential schools to meet the child’s educational and social/emotional needs; school climate/safety; the impact of a school transfer, including the commute; and the child’s special needs (*e.g.*, disability, English Language Learners). Of note, transportation costs cannot be a factor in determining a child’s best interest. Guidance, Page 11, Q12

**Participants in Decision:** The Guidance stresses the importance of gathering meaningful input from relevant parties, including the child, foster parents, bio-

logical parents (when appropriate), education decision makers, other relatives with relevant information, and school staff. The Guidance notes that some eligible children may have disabilities that qualify for protections under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. Others are “English Language Learners” who are entitled to special supports. Staff knowledgeable about students’ needs and available programs should also participate as these rights must be protected and considered as “best interest” factors. Guidance Pages 12-13 Q 13-14, 16-17

**Process for Decision Making, Including Resolving Disputes:** Clear state and local policies and protocols for each element of the process are essential. SEAs are urged to collaborate with child welfare agencies to establish guidelines for local agencies to guide the decision-making process. LEAs should make decisions quickly to prevent educational discontinuity. To the extent feasible and appropriate, the LEA must ensure the child remains in his or her school of origin while the decision is being made. SEAs and LEAs are also urged to develop a dispute resolution process for parents and families to address disagreements about school placement decisions. State and local Points of Contact (POC) can play essential roles throughout the decision-making process. SEAs and LEAs should share decisions with all relevant parties *in writing*. While interagency collaboration and compromise are urged, the Guidance makes clear that if an agreement cannot be reached the final decision regarding a child’s best interest should rest with the child welfare agency (unless state law or policy dictates otherwise). Guidance Page 12-15, Q13-20

## School of Origin Transportation: Arranged, Provided, and Funded

**LEAs’ role:** LEAs receiving Title I funds must collaborate with child welfare agencies to ensure transportation for children in foster care is provided, arranged, and funded. By December 10, 2016, LEAs must develop and implement clear written procedures—developed with the relevant child welfare agencies—that ensure prompt and cost-effective transportation to ensure school stability. LEAs must ensure that transportation is provided for children in foster care even if it does not transport other students. These procedures must include provisions for students in care who move from one district to another or across state lines. Children are entitled to school stability transportation

for the duration of their time in foster care. LEAs are urged to continue to prioritize school stability even when students exit care and to continue ensuring transportation through the end of that school year. Guidance Page 16, Q22, Q24-28

**Cost-effective transportation:** The Guidance gives several examples of what would constitute a cost-effective approach, in some instances avoiding any “additional costs.” Guidance Page 17, Q26

**Defining and funding “additional costs” of school stability transportation:** LEAs must continue to cover the regular costs of transporting a child in foster care to the school of origin. Only the “additional costs” incurred to ensure school stability are to be addressed through the joint procedures developed by the LEA, in collaboration with the local child welfare agency. The Guidance defines “additional costs” as:

[T]he difference between what an LEA otherwise would spend to transport a student to his or her assigned school and the cost of transporting a child in foster care to his or her school of origin. For example, if the LEA provides transportation through an established bus route, there is no additional cost. If, however, the LEA must re-route busses to transport a child in foster care to one of its schools, the cost of this re-routing can be considered additional cost.

The Guidance urges LEAs and child welfare agencies to work together and to use, and maximize, all available funding sources, including federal funds, to pay additional transportation costs and ensure costs do not unduly burden any one agency. However, since disputes are still possible, “the transportation procedures should address how this requirement will be met even if the relevant agencies cannot reach agreement on how to fund any additional transportation costs. For example, the procedures could include a local dispute resolution process that the agencies would follow in the event of such disagreement.” Since the ESSA requires prompt transportation, “the LEA must provide or arrange for adequate and appropriate transportation to and from the school of origin while any disputes are being resolved.” Guidance Page 17-18, Q27-28

**Funding sources for additional transportation costs:** Title IV-E federal child welfare funds are available to assist with added costs for children eligible for IV-E foster care maintenance payments. (In FY 2015 this was only roughly 50% of children in foster care). Title IV-E foster care administrative costs can also be used for this purpose. In addition, LEAs can use Title I

funds (but not funds reserved for comparable services for homeless children). Guidance Page 19, Q30

**SEA’s role:** While the ESSA places the requirement to develop and implement written transportation procedures at the local level, the Guidance urges state education and child welfare agencies to jointly develop *statewide* guidelines or procedures to address transportation. Procedures should include how added costs of such transportation will be funded and a mechanism or policy for resolving interagency disputes. The SEA’s duties also include monitoring and oversight of the local transportation procedures. Guidance Page 15-16, Q21

### “Immediate Enrollment” and Records Transfer Protections

When a school change is needed, the new school district cannot decline enrolling a child because the child cannot produce documents normally needed for school enrollment. Moreover, the new school district must immediately contact the prior school to secure the student’s school records (and that school must immediately forward those records). The Guidance urges SEAs and LEAs to review their policies and practices to remove barriers to immediate enrollment and records transfers. Immediate enrollment means “enrollment as soon as possible in order to prevent educational discontinuity.” The Guidance states that LEAs must ensure the children are regularly attending, fully participating, and their needs are met. Guidance Page 20, Q 33

### SEA and LEA (and child welfare) Point of Contact (POC)

By December 10, 2016, each SEA must appoint a state-level POC to collaborate with the state child welfare agency to implement the ESSA’s foster care requirements. That person cannot be the State Coordinator for the Education of Homeless Children and Youth. At the local level, LEAs must designate POCs when notified in writing by local child welfare agencies that they have done so. The Guidance also recommends LEAs immediately appoint POCs to ensure compliance with school stability requirements. The Guidance notes the persons appointed must have the capacity and resources to guide implementing the ESSA’s requirements for children in foster care.

The Guidance also lists potential roles and responsibilities for state and local POCs. For example, state

POCs could coordinate with state child welfare agencies to issue joint state guidance; facilitate data sharing consistent with privacy laws; monitor LEAs to ensure compliance at the local level; and provide professional development opportunities and technical assistance for LEA POCs and others regarding school stability and educational supports for children in foster care. LEA POCs could coordinate with local child welfare agencies; develop and coordinate local transportation procedures; lead efforts to develop a process for making best interest determinations and documenting those determinations; facilitate the transfer of school records and the sharing of data; facilitate immediate enrollment and ensuring children are enrolled and regularly attending class; manage disputes over transportation costs and best interest determinations; and provide professional development to school staff on the ESSA's requirements and students' special needs.

Although not required by the ESSA, the Guidance specifically urges state and local child welfare agencies to appoint POCs. It delineates potential roles and responsibilities for POCs, such as serving as primary contacts between children in care and school staff, district personnel, and other service providers; coordinating with the LEA POCs; establishing a process to notify LEAs when the child is placed in care or when a foster care placement change will occur; establishing a process for coordinating with LEAs regarding best interest determinations; facilitating records transfers including medical, educational, and special education records; working with LEAs to facilitate immediate enrollment and coordinate transportation services; managing best interest and transportation cost agreements; providing training to LEA and child welfare staff on children's needs and relevant state and local policies; coordinating data sharing; coordinating services so children in foster care can access a full range of educational services and supports; and informing parents, education decision makers, and community stakeholders about children's rights. Guidance Page 21-23, Q34-37

## Student Data Sharing and Privacy Protections

The Guidance urges SEAs and LEAs to work with their child welfare partners "to build capacity to collect and use data to ensure children in foster care are properly supported throughout their education in a way that respects student privacy" and complies with federal privacy laws such as FERPA. Child welfare agencies "that elect to develop a CCWIS<sup>2</sup> are required, to the extent practicable, to include bi-directional data

exchanges with educational agencies." The Guidance states that there is no legally mandated way to share information, but to carry out the ESSA's requirements LEAs must at least know which children are in foster care. Thus, LEAs must work with relevant child welfare agencies to establish formal mechanisms to ensure they are promptly notified when a child enters care or needs a placement change. Other information may also need to be shared. Guidance Page 23-24, Q38

## Achieving Effective Collaboration

The Guidance emphasizes training to ensure school staff "are sensitive to the complex needs of foster youth, are informed about the impact that trauma has on a child's ability to learn, and that the appropriate interventions and strategies are in place to support them to succeed in school." Cross training may also be useful. Consideration should be given to establishing a structure on the local level, such as an interagency committee, before the effective date of the ESSA's requirements to assist with implementation. Guidance Page 25-26, Q39-40

## Special Considerations

*Children in Foster Care with Disabilities* have added protections under the Individuals with Disabilities in Education Act (IDEA). These provisions must be considered when making best interest decisions and education placement decisions. Guidance Page 8, Q8; Page 13, Q16

*Children in Foster Care who are English Language Learners* have added protections through Title VI and the Equal Educational Opportunities Act (EEOA). These provisions must be considered when making best interest decisions and education placement decisions. Guidance Page 10, Q9; Page 13, Q17

### Endnotes

1. "Awaiting foster care placement" will be removed from the McKinney Vento Act on December 10, 2017 for states that have defined the term in state statute or regulations.
2. A Comprehensive Child Welfare Information System (CCWIS) is a case management information system that state and tribal title IV-E agencies may develop to support their child welfare program needs. If a title IV-E agency elects to build a CCWIS, the federal government will provide a more favorable reimbursement than provided for non-CCWIS systems as long as the system meets federal requirements and is designed to support social workers' needs to organize and record quality case information about the children and families receiving child welfare services. For more information: [http://www.acf.hhs.gov/sites/default/files/cb/ccwis\\_faqs.pdf](http://www.acf.hhs.gov/sites/default/files/cb/ccwis_faqs.pdf).





# Implementation Checklists

## ESSA & Fostering Connections

### Overview

- **The Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) was enacted in October 2008.** This law amends parts B and E of Title IV of the Social Security Act. In addition to other key areas, it requires child welfare agencies to include assurances in every child's case plan that the child will remain in the same school unless a school change is in the child's best interest. In that case, the child must be immediately enrolled in the new school with all school records.
- **The Every Student Succeeds Act (ESSA) was enacted in December 10, 2015.** It reauthorized the Elementary and Secondary Education Act (ESEA). ESEA was enacted in 1965 and last reauthorized as the No Child Left Behind Act in 2002. The ESSA contains key protections for students in foster care, imposing new requirements on education agencies relating to school stability and prompt school enrollment like those the Fostering Connections Act imposes on child welfare agencies. Under ESSA, school agencies must collaborate with their child welfare partners to ensure school stability and success for these youth, including reporting on the academic outcomes of students in foster care.
- Together, ESSA and Fostering Connections **envision dual agency responsibility; these laws require state and local education and the child welfare agencies *jointly*** to ensure school stability and prompt school enrollment.
- While quality implementation of these provisions will take time, some ESSA requirements have **short implementation timelines**—therefore advocacy from child welfare and education communities on the state and local level should start now.
- ✓ **Checklist Part 1** focuses on the role of specific agencies and stakeholders, outlines key steps to consider based on those roles, and provides a starting point for action.
- ✓ **Checklist Part 2** provides an outline of key actions and tools that state and local agency leaders can use to further support implementation of the ESSA foster care provisions. The materials include templates and tools to support collaboration, including the creation of required transportation procedures. These tools are intended to guide conversations in your state—within and among the involved agencies and entities—and ensure thoughtful implementation of these new protections.

### Acronyms:

#### ESSA

Every Student Succeeds Act

#### ESEA

Elementary and Secondary Education Act

#### SEA

State Education Agency

#### LEA

Local Education Agency

#### POC

Point of Contact

## Checklist 1: System Roles and Responsibilities

### KEY STEPS for STATE EDUCATION AGENCIES:

- ✓ Make sure staff **understand the requirements of Fostering Connections and ESSA** relating to school stability and prompt school enrollment and that children in care are legally entitled to these protections.
- ✓ **Designate a state Point of Contact (POC)** to focus on needs of children in foster care. This person cannot be the same person who serves as the McKinney-Vento Coordinator.
  - Develop clear roles and responsibilities for the state POC.
  - Help the POC convene the relevant staff/leaders within the state Child Welfare agency so these agencies can start identifying next steps and each agency's role in implementing ESSA's foster youth provisions.
- ✓ **Alert LEAs that they must appoint POCs within their agencies whenever they are notified in writing by corresponding child welfare agencies that child welfare POCs have been appointed.** If in your state all child welfare agencies are required to have POCs, inform all LEAs in the state of their duty to appoint. Consider asking LEAs to send contact information of POCs so that the SEA POC can maintain communication to ensure smooth implementation of the law.
- ✓ **Alert LEAs of the need to develop and implement clear written transportation procedures by the December 2016 deadline** with state and local child welfare agencies. To support LEAs, develop clear state-wide policies **governing how transportation to maintain children in their school of origin when in their best interests will be provided, arranged, and funded** for the duration of their time in foster care. Such guidance should follow existing state law and definitively allocate responsibility for additional transportation costs.
  - Explain that transportation must be provided in a cost-effective manner, including collaborating to ensure children in foster care can use existing bus routes without incurring additional costs.
  - Explain that options for *funding any additional costs* include an agreement governing when child welfare will pay, the LEA agrees to pay, or both agree to share costs.
  - Develop *templates or model agreements or plans* to ensure uniformity across districts.
  - *Gather information about current transportation agreements and cost-sharing practices* among LEAs and child welfare agencies in the state and identify promising practices and gaps.
- ✓ **Review state policies and procedures** to determine if any change needs to be made to comply with ESSA's new requirement for children in care.
  - *Review any policies created to implement Fostering Connections* and revise as necessary.
  - *Review any state policies relating to "awaiting foster care placement"* through the McKinney Vento Act. Revise them to ensure that, when "awaiting foster care placement" is removed from McKinney Vento in December 2016 (or December 2017 for certain states that define or describe "awaiting foster care placement" in their state statutes), any child in foster care currently protected under that category will still have school stability and prompt school enrollment and that this transition is made seamlessly for the child.
  - *Determine if new policies, regulations, or state laws are needed* to ensure full implementation of both Fostering Connections and ESSA's new requirements.
- ✓ **Alert SEA data personnel about new annual disaggregated reporting requirements for children in foster care (including graduation rates and academic achievement data).** Connect SEA personnel to their child welfare data counterparts on the state and local levels so this information can be reported accurately.

Determine if other data elements should be collected and whether they should be part of any sharing taking place across systems.

- ✓ **Conduct outreach to charter schools** in the state to alert them to new law changes and their duties related to children in foster care and children experiencing homelessness.

### **KEY STEPS for LOCAL EDUCATION AGENCIES:**

- ✓ **Consider appointing LEA POCs** even before you have been notified in writing that a child welfare agency has made such an appointment. This is a best practice in many states. When you are notified of a child welfare POC, you must appoint a school-based POC.
- ✓ Even if you have not yet appointed a POC, **contact your local child welfare agencies to establish the relationships** needed to implement Fostering Connections and ESSA's school stability and prompt school enrollment requirements.
- ✓ **Develop clear roles and responsibilities for your POC**, including the person's role in developing and implementing the local transportation procedures and helping child welfare agencies make "best interest" determinations for children in care.
- ✓ Make sure that **relevant instructional and administrative school staff understand their responsibilities under ESSA and Fostering Connections**, including how best to work with child welfare agencies to make "best interest" determinations.
- ✓ **Develop clear written transportation procedures in collaboration with each child welfare agency that has custody of children attending the LEA. Make sure the transportation procedures include the extent to which the LEA agrees to pay or share the costs of transportation with the child welfare agency.**
- ✓ **Make sure your school district is collecting information** for your state to meet its duty to provide U.S. Department of Education mandated data on children in care, including academic achievement and graduation rates.
- ✓ **Ensure your school district makes student I.D. numbers available** to child welfare representatives responsible for children in foster care, as permitted under the 2013 amendment to the Family Educational Rights and Privacy Act (FERPA). This will support smooth transitions for students and help with data matching across agencies.
- ✓ **Reach out to local or state child welfare contacts** to determine information about the number of children in care in your district. Remember, children in care in your district may be in the custody of a number of different local (and nonlocal) child welfare agencies. **Develop a process for maintaining ongoing and accurate information** about the number of children in care in your district as children enter and exit care frequently.

### **KEY STEPS for STATE CHILD WELFARE AGENCIES:**

- ✓ Provide to local child welfare agencies clear direction that the **education of children in their care is critical** and a required part of addressing the child's well-being while in care.
- ✓ Make sure all relevant child welfare staff **understand the requirements of Fostering Connections and ESSA as they relate to school stability and prompt school enrollment** and that children in care are legally entitled to these protections.
- ✓ Provide local child welfare agencies **clear guidance on how to implement ESSA and Fostering Connections requirements.**
- ✓ Strongly encourage appointing **Points of Contact (POCs) within child welfare agencies at the local/regional and/or state level**, with written notice of these appointments to all Local Educational Agencies (LEAs) (i.e. all school districts and public charter schools where children in care are enrolled). This notice

triggers the ESSA requirement that LEAs designate school-based POCs to work with child welfare agencies, including developing written procedures for transporting children for school stability.

- Create *clear, written roles and responsibilities for any POC* at the state, regional, or local level, and clearly communicate them to the appropriate education partners.
  - *Promote connections and collaboration among POCs* in the local/regional child welfare offices to provide support, share knowledge, identify needs, and provide assistance and resources.
- ✓ Reach out to the state education agency to learn who will be identified as the **State Education Agency (SEA) POC** for children in foster care (now an ESSA requirement). Consider designating a POC within the state child welfare agency to meet with the SEA POC to ensure a common understanding of how the state agencies can work together to improve educational success for youth in care. A state level interagency agreement is one useful strategy. The SEA POC cannot be the state McKinney-Vento coordinator.
- ✓ Consider trying to connect with the state’s McKinney-Vento Coordinator. Although this person cannot be the SEA POC for foster care, he or she has expertise on how to support the school stability and success of students that are homeless, and may have advice about how to support the school stability and success of students in foster care. **Understand and develop revisions to state-level education and child welfare policy or practice as needed** to ensure ESSA school stability requirements are implemented in a way that **aligns with implementation of companion Fostering Connections** requirements. Pay attention to how your agency, together with the SEA, can support collaborative efforts at the local level relating to school stability and effective local transportation plans.
- Strongly encourage your state’s education agency to work with your agency to develop *an interagency agreement or joint protocol* to specify each agency’s implementation responsibilities and support local efforts.
  - Strongly encourage your state’s education agency to work with your agency to release *joint guidance on school stability requirements and transportation* to help local jurisdictions develop and implement *transportation policies*, including how to address transportation costs to avoid confusion and delay and resolve disagreements regarding costs. Another area to clarify is how LEAs can assist local child welfare agencies make *quality best interest determinations* for students.
  - Review existing *Fostering Connections’ school stability policies and case planning processing* to ensure *they are in line with the new ESSA requirements* and evolving SEA policies and practices.
- ✓ Alert your agency’s data team about the **new SEA disaggregated data requirements** related to children in care. Ensure they work with the SEA’s data personnel to identify next steps and actions needed.
- Ensure you have a way to regularly *share information with your SEA* about who is in foster care throughout the state.
  - Develop a mechanism to match data on current children in foster care with their SEA education data. Consider adopting a policy whereby a child welfare agency includes a child’s unique student identifier as part of its demographic information and then provides that list of student I.D. numbers to the SEA.
  - If you have not already begun cross-system data sharing, *use the ESSA’s required data points as a starting point* for conversations with SEAs.
- ✓ Work with the SEA to ensure adequate **outreach to public charter schools** in your state so they understand they must implement the new ESSA requirements for children in care and children experiencing homelessness enrolled in their schools.

## KEY STEPS for LOCAL CHILD WELFARE AGENCIES:

- ✓ Quickly determine where (i.e., in which LEAs) children in your agency's custody are enrolled in school.
- ✓ Strongly consider **designating a Point of Contact (POC)** for education related issues. **Notify all of the appropriate LEAs in writing that your agency has a POC and who that person is.** The written notice triggers the LEA's duty to appoint someone in the LEA to be a POC for youth in care. Remember that charter schools may be considered their own LEA and that some children in your custody may attend schools outside your jurisdiction or state.
- ✓ Develop **clear written roles and responsibilities** for your agency's POC.
- ✓ **Work with LEAs to develop their transportation plans according to state law and guidance.** *Note:* By December 2016, ALL LEAs must have clear written procedures addressing how transportation to a school of origin will be provided, arranged, and funded so each child who needs such transportation to support school stability receives it promptly. **Make sure the transportation procedures include the extent to which the child welfare agency agrees to pay or share the costs of transportation with the LEA, including, if appropriate, a mechanism to reimburse school districts.**

## KEY STEPS for COURT LEADERS:

- ✓ **Educate judges, judicial officers, and legal advocates** about the foster care protections in ESSA and the education provisions in Fostering Connections.
- ✓ **Ensure judges inquire about school stability and immediate enrollment** at every stage of the court process.
- ✓ If needed, **develop guidance, training, and/or court rules, model orders, or protocols for judges on their role in making education decisions for children** whose cases they are reviewing. Decisions may include school stability/best interest decisions and transportation to maintain school stability.
- ✓ **Make sure judges regularly review whether child welfare agencies have considered the appropriateness of the current school setting and proximity of the living placement** to the child's school when a change in living placement is proposed.
- ✓ **Ensure attorneys collect, review, and present to the court appropriate education information** and submit this information in court reports before hearings.
- ✓ **Consider revising juvenile court rules** to require judges to address school stability, the appointment of education decision makers, and a child's need for educational services and supports.
- ✓ **Develop court data systems to collect and share information** relating to educating children in care, and develop ways to allow courts to have access to key education data during a court case.

## KEY STEPS for STATE LEGISLATORS

- ✓ **Consider amendments to education laws to ensure school stability and immediate enrollment** for children in foster care.
- ✓ **Consider amendments to child welfare laws to improve education outcomes** for children in care and to align with federal and state requirements.
- ✓ **Consider amendments to state laws governing your dependency court system** to address education issues related to children in foster care.



# Implementation Checklist Part II: ESSA & Fostering Connections

*Tools for Implementation by Substantive Issue*

## Overview

The Every Student Succeeds Act (ESSA) was enacted in December 2015. ESSA provides key protections for students in foster care which impose new requirements on educational agencies relating to school stability and prompt school enrollment. These protections are similar to child welfare agency requirements for school stability and immediate enrollment found in the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) which was enacted in 2008. Together, ESSA and Fostering Connections envision dual agency responsibility; these laws require state and local education the child welfare agencies to jointly ensure school stability and prompt school enrollment.

**Checklist Part II** provides a quick guide to the issue areas that must be addressed to support meaningful and successful implementation of ESSA. Checklist Part II also directs jurisdictions to helpful tools that may be used in your state—within and among the involved agencies and entities—to aid timely implementation. This is of utmost importance given that several ESSA requirements have implementation deadlines of December 10, 2016.

- ✓ **Collaboration Between Child Welfare and Education Agencies.** ESSA requires state and local education and child welfare agencies to collaborate when implementing the requirements of ESSA. Due to the short implementation timeline, advocacy from child welfare and education communities on the state and local level should start now.  
To guide this collaboration at the state level we have provided a **Model MOU** and an **SEA Directive** to LEAs. The Model MOU provides a template agreement for state education and child welfare agencies to ensure collaboration on key ESSA requirements and procedures. The SEA Directive to LEAs provides suggested guidance to LEAs on how to implement ESSA at the local level and how LEAs should collaborate with local child welfare agencies to support students in foster care.
- ✓ **Identified Points of Contact at the State and Local Level.** ESSA requires a point of contact (POC) at the state education level, and if the child welfare agency notifies the LEA in writing of a POC, the LEA must appoint a POC.

## Acronyms:

### ESSA

Every Student Succeeds Act

### ESEA

Elementary and Secondary Education Act

### SEA

State Education Agency

### LEA

Local Education Agency

### POC

Point of Contact

We have included a **Q&A—Points of Contact: How They Can Help Students in Foster Care**. This Q&A includes information on the roles of a POCs and sample POC notification language.

- ✓ **Established Best Interest Decision Making Process.** When a child is placed into foster care, or changes placement, Fostering Connections and ESSA require child welfare and education agencies to collaborate to make a determination if it is in the child’s best interest to remain in their school of origin.

We have provided a **Best Interest Procedures Guide** which outlines key areas to address when developing this process collaboratively between child welfare and education agencies. This includes factors to consider, who should participate in the process, and how to document decision. The guide also includes model best interest determination tools.

- ✓ **Created Written Transportation Procedures.** If, after a best interest determination is made, a student will remain in their school of origin the LEA is required to work with the child welfare agency to ensure transportation is provided, arranged, and funded.

We have provided **Tips on Developing LEA Transportation Procedures** which includes tips and sample language for developing joint procedures at the school district level. This also includes a sample agreement with the child welfare agency and an individual student transportation plan template.

## State Level Memorandum of Understanding: Implementing the School Stability Provisions of ESSA

**WHEREAS**, ensuring school stability and academic success for students in foster care is an important joint responsibility of state and local child welfare and education agencies;

**WHEREAS**, on October 7, 2008, the Fostering Connections to Success and Increasing Adoptions Act of 2008,<sup>1</sup> (Fostering Connections Act) went into effect requiring states to ensure that child welfare and education agencies collaborate to guarantee school stability and school attendance for all children in foster care;

**WHEREAS**, the Fostering Connections Act specifically mandates that in making decisions regarding a child's placement child welfare agencies take into account the proximity to the child's school and the appropriateness of the child's current educational placement;

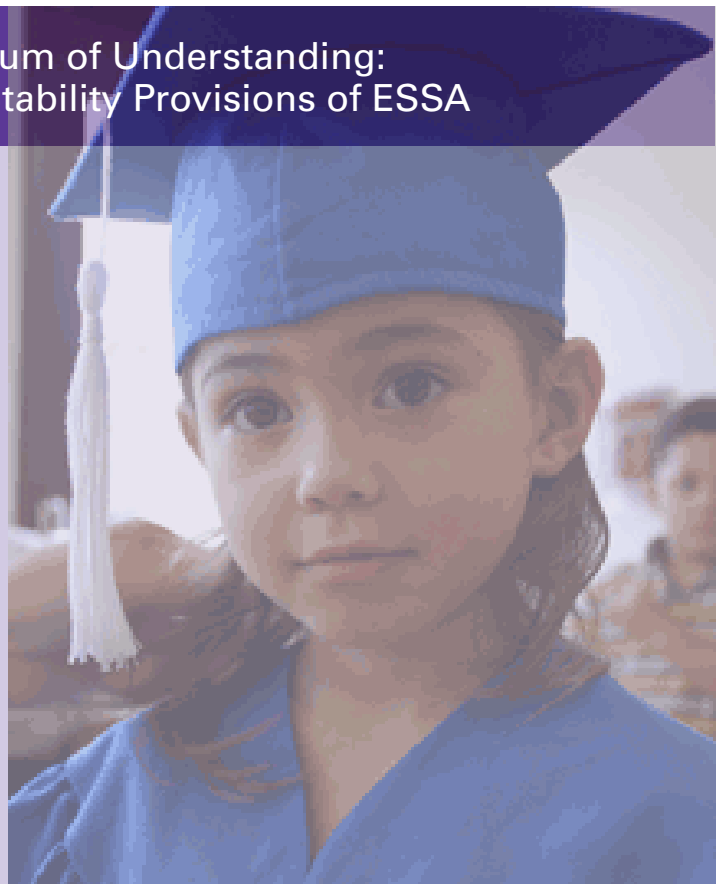
**WHEREAS**, the Fostering Connections Act further requires that a child's foster care case plan include assurances that a child remains in his current school or, if this is not in the child's best interest, that the child is immediately and appropriately enrolled in a new school with all school records;

**WHEREAS**, the Fostering Connections Act clarifies that Title IV-E funds may be used by child welfare agencies to reimburse for some costs of transportation to support school stability for eligible children;

**WHEREAS**, the Fostering Connections Act also requires, as a condition of federal Title IV-E funding, that all children of compulsory school age are enrolled in school;

**WHEREAS**, on December 10, 2015, the Every Student Succeeds Act (ESSA) was signed into law;

**WHEREAS**, ESSA aligns with the Fostering Connections Act to clarify the obligations of state and local education agencies, in collaboration with child welfare agencies, to ensure school stability with necessary transportation and immediate school enrollment in a new school when in a child's best interest;



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**WHEREAS**, on June 23, 2016, The U.S., Departments of Education and Health and Human Services issued *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* (the *Guidance*) to clarify the legal obligations and help states and localities effectively implement these important new requirements, including encouraging State Departments of Education and Child Welfare to issue joint guidance for the implementation of these Title I provisions, and allowing LEAs to use Title I funds to pay for additional costs needed to transport children in foster care to their school of origin;<sup>2</sup>

**WHEREAS**, on November 30, 2016 the U.S. Department of Education issued regulations implementing the ESSA<sup>3</sup> which, *inter alia*, clarify requirements relating to transportation to ensure school stability.<sup>4</sup>

**WHEREAS**, the effective date of ESSA's key foster care requirements is December 10, 2016;

**THEREFORE**, the undersigned Parties do hereby agree to the following:



## I. Parties

The Parties to this Memorandum of Understanding are \_\_\_\_\_ (Child Welfare) and \_\_\_\_\_ (Education).<sup>5</sup>

## II. Introduction and Purpose of the Memorandum of Understanding

The Parties enter into this Memorandum of Understanding to ensure [name of state]’s compliance with ESSA and the Fostering Connections Act and to guarantee that the state’s Departments of Child Welfare and Education fulfill their obligations to address the educational needs of children in foster care. The Parties will regularly monitor local educational and child welfare agencies to ensure compliance with ESSA, the Fostering Connections Act, and this Memorandum of Understanding.

The Parties hereby commit to the following principles:

- For the duration of their time in foster care and until the end of the school year in which the children exit care,<sup>6</sup> children in foster care in the state shall remain in the “school of origin” when initially placed and when a placement change occurs unless a determination is made that remaining in the same school is not in the children’s best interest.<sup>7</sup>
- Each local educational agency in the state, in collaboration with the relevant local child welfare agencies, shall develop and implement clear written cost-effective transportation procedures. Those procedures shall ensure that, for the duration of their time in foster care and until the end of the school year in which the children exit care,<sup>8</sup> transportation necessary to ensure school stability is promptly arranged, provided, and funded so that these children do not experience gaps in their education programs even when disputes arise as to which agency or agencies will fund any additional costs incurred. The procedures will also describe which agency or agencies shall initially fund such additional costs pending resolution of funding disputes.<sup>9</sup>
- If a school change is needed, a child in foster care must be immediately enrolled in the new school even if the child is unable to produce records or documents normally required for school enrollment. Immediate enrollment means a child in

foster care should be enrolled in a new school as soon as possible to prevent educational discontinuity. The enrolling schools shall immediately contact the schools of origin to obtain relevant academic and other records and those records will be promptly transferred.

- When initially placing a child in foster care and in all subsequent placement changes, child welfare agencies shall consider the proximity of the placement to the child’s school of origin and the appropriateness of the child’s current educational placement. Whenever appropriate, child welfare agencies shall make reasonable efforts to place the child within the boundaries of the schools of origin and if that is not possible within reasonable driving distance from those schools. State and local education and child welfare agencies shall work collaboratively on activities such as caregiver recruitment to ensure sufficient living placement options within the child’s school district.

## III. Key Terms

**“Child in Foster Care”** Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the child welfare agency has placement and care responsibility. Note that the legal right to school stability extends to ALL children in foster care, regardless of whether they are eligible for Title IV-E funding from child welfare agencies that may be used to reimburse transportation costs. A “child in foster care” under ESSA also includes children in foster care attending a public preschool.

**“Immediate Enrollment”** means attending and fully participating in school and that the children’s educational needs, including, for example, special education or English Language Learners (ELL) services if appropriate, are being met.

**“Local Educational Agency”** (LEA) means school districts and public charter schools.

**“School of origin”** means the school in which the child was enrolled at the time of initial placement. If the child’s foster care placement changes or the child returns home, the school of origin is the school in which the child is enrolled at the time of the placement change.

## IV. Designating Points of Contact (POCs)

**A. State POCs:** The Departments of Education<sup>10</sup> and Child Welfare<sup>11</sup> each agree immediately to appoint persons to serve as Points of Contact (POC) to collaborate in implementing ESSA's requirements. The persons appointed shall have sufficient capacity and resources to fulfill their duties. The role of the State Education and Child Welfare POCs shall include coordinating to do the following:

- Assist the Parties to develop and issue statewide guidance, policies, and tools as set forth above in Section IX and in this Memorandum of Understanding.
- Facilitate data sharing between state agencies consistent with federal and state privacy laws, regulations, and policies and support the data reporting requirements in ESSA as they relate to students in foster care.
- Monitor LEAs' compliance with the Title I requirements at the local level.
- Promptly develop and notify local child welfare agencies and LEAs concerning joint professional development opportunities and technical assistance for LEA POCs, child welfare POCs, school and child welfare staff, and other professionals regarding school stability and educational supports for children in foster care.
- Establish and staff a state interagency group, with membership from state and local child welfare and education agencies, parents, youth, the courts, and attorneys for child welfare agencies and children in foster care. This group will: provide ongoing support and guidance and technical assistance on how best to accomplish the goals of school stability, prompt school enrollment, and other matters to improve education outcomes for children in foster care.

**B. LEA POCs:** Each LEA in the state shall be required immediately to appoint a POC<sup>12</sup> to cooperate with the appropriate local child welfare agencies to implement ESSA's educational stability requirements, and develop and implement, by December 10, 2016, written school stability transportation procedures. The staff appointed must have sufficient capacity and the necessary resources to fulfill their duties. Those duties include:

- Coordinating with corresponding child welfare agencies' POCs to implement ESSA's

requirements.

- Participating in the development or revision of a process for making best interest determinations.
- Documenting best interest determinations.
- Facilitating the transfer of records and immediate enrollment.
- Facilitating data sharing with the child welfare agencies consistent with the FERPA and other privacy laws and policies.
- Developing, coordinating, and ensuring implementation of written transportation procedures in collaboration with the child welfare agency.
- Following dispute resolution processes when issues arise, including ensuring children are promptly transported to their school of origin even when there is a dispute regarding which agency will fund additional costs incurred and that the agency (or agencies) identified in the written transportation procedures pays any additional costs pending resolution of the disputes.
- Ensuring that children in foster care are enrolled in and regularly attending school.
- Providing professional development and training to school staff on ESSA's provisions and the educational needs of children in foster care.

**C. Child Welfare POCs:**<sup>13</sup> Each local child welfare agency shall be required immediately to appoint a POC to cooperate with the appropriate LEAs to implement the ESSA's educational stability requirements, and develop and implement, by December 10, 2016, written school stability transportation procedures. The staff appointed must have sufficient capacity and necessary resources to fulfill their duties. Those duties include:

- Serving as one of the primary contacts between children in foster care and school staff, district personnel, and other service providers.
- Coordinating with the corresponding LEA POCs on ESSA implementation including immediate enrollment.
- Establishing a process to notify the LEA when a child has been placed in foster care in the LEA or when there has been a foster care placement change.
- Establishing or revising a process for best interest determinations in coordination with the LEA.

- Facilitating transfer of records including immunizations, medical records, and copies of IEPs and 504 Plans.
- Working with LEAs to ensure children in foster care are immediately enrolled in school and to coordinate transportation services.
- Coordinating best interest determinations and transportation costs agreements with LEAs.
- Following dispute resolution processes when issues arise and working with the LEA POC to ensure children receive prompt school stability transportation even when the agencies are disputing payment of additional costs.
- Providing training to LEA and child welfare staff on the educational needs of children in foster care including state and local policies.
- Coordinating with the LEA regarding data sharing for children in foster care, consistent with FERPA and the confidentiality provisions in the IDEA as well as any state confidentiality laws.
- Coordinating services so children in foster care can access early educational services for which they are eligible, including Head Start and Early Head Start, home visiting and preschool programs administered by the state educational agency or the LEA, screening and referral to health, mental health, dental, and other appropriate services.
- Informing parents or education decision makers of the child's education rights and providing public notice of the education rights of these children to community stakeholders.

## V. Best Interest Determinations

**A. Principle:** All LEAs shall permit a child in foster care to remain in his or her school of origin unless it is determined that remaining in that school is not in the child's best interest. LEAs and child welfare agencies should make every effort to make this determination jointly with input from all relevant parties. If the agencies cannot reach agreement, unless state law dictates otherwise, the child welfare agency, which has legal responsibility for the well-being of the child, makes the final decision. If that decision is that the child is to remain in the same school, the LEA must collaborate with the child welfare agency to provide necessary transportation according to the LEA's transportation plan.

**B. Participants in making best interest determinations:** Participants can include but are not limited to the child's family and foster family, other relatives, knowledgeable child welfare staff, the child (when age appropriate), school staff (including persons knowledgeable about the child's special education needs if appropriate), and any legally appointed education decision makers (EDMs) such as surrogate parents or general education EDMs. The representative from the school of origin should be knowledgeable about the child and able to provide feedback on significant relationships that the child may have formed with staff and peers and how changing schools would impact his or her academic, social, and emotional well-being. Based on the individual situation, this person could be a teacher, counselor, or coach, of another meaningful person in the child's life.

**C. Factors to consider in making best interest determinations:** Best interest determinations must be child-centered and deference should be accorded to the views of the youth, the child's or youth's parent, guardian, surrogate parent, or other authorized educational decision maker. Teams should consider the child's attachment to the current school and meaningful relationships with staff and peers, the placement of siblings, the impact of the school environment on the child, including safety, the availability and quality of the services in the school to meet the child's educational and social/emotional needs, the history of school transfers, and how the length of the commute would affect the child given the child's developmental age. A child's need for and entitlement to special services such as special education or ELL supports are also important factors to consider. The child should remain in the school of origin while the best interest determination is being made, to the extent feasible and appropriate. The cost of transportation cannot be a factor in a best interest determination.

**D. Process for making best interest determinations:** The LEA and the local child welfare agency can incorporate this decision into previously established meetings such as a family team meeting, placement hearing, or it may occur at a separate meeting. In an emergency, the meeting may take place through phone or email.

**E. Documenting the placement decision:** The child welfare agency shall immediately notify the child, the child's education decision maker, the school of origin LEA, and the child's attorney (if known) in writing

of the decision. This notification should include the basis for the decision and the new school in which the child will be enrolling. Documentation of the decision, the persons participating in the decision, and the rationale shall be maintained in the child's case file.

## VI. Immediate School Enrollment with all School Records.

A. *Principle:* If a decision is made that it is in the best interest of a child in foster care to change schools, the child must be immediately enrolled in the new school. Enrollment of children in foster care cannot be denied or delayed because documents normally required for school enrollment such as proof of immunizations, residence, or age have not been provided.

B. *Duties of enrolling LEAs and schools of origin:* All LEAs in the state must immediately review their policies and procedures and revise them to eliminate any barriers to immediate enrollment and attendance of children in foster care. Immediately upon enrollment of a child in foster care, the enrolling LEA shall contact the child's school of origin to request the child's academic and other records and the previous LEA shall promptly transfer those records.

C. *Duties of child welfare agencies:* Child welfare agencies shall routinely request all school records from the child's current school and maintain those records in the child's case file. Child welfare agencies should also document the name and address of the child's current education decision maker and surrogate parent if one has been appointed. LEAs shall promptly forward education records to the requesting child welfare agency.<sup>14</sup> Educational information shall be reviewed and updated each time a child's placement changes, or at each permanency review hearing if no placement change has occurred.

## VII. Transportation to Support School Stability

A. *Principle:* All LEAs in the state, in collaboration with the State or local child welfare agency,



shall develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of their time in foster care and until the end of the School Year in which they exit care<sup>15</sup> and shall ensure that children in foster care needing transportation promptly receive this support in a cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act (42 U.S.C. 675(4)(A)).

B. *Additional costs:* LEAs must continue to pay what they would otherwise spend to transport the child in foster care to school. Only "additional costs" necessary to transport the child to the school of origin can be the subject of a funding agreement or dispute with the responsible child welfare agency. Moreover, if the LEA in which the school of origin is located can arrange or provide transportation at no or minimal cost, that LEA shall arrange, fund, and provide that transportation. Examples include adding an additional stop to an existing bus route.

C. *Funding the additional costs of school stability transportation:* Additional costs shall be funded according to the statewide policy issued by the Parties. Child welfare agencies can use Title IV-E funds and LEAs can use Title I funds to assist with funding school stability transportation. Following that policy,

LEAs' written transportation plans must describe how school stability transportation will be ensured in the event of a dispute over which agency or agencies will pay any additional costs incurred and which agency or agencies will initially pay the additional costs so transportation is provided promptly during pendency of the dispute.<sup>16</sup>

## VIII. Children "Awaiting Foster Care Placement" under the McKinney-Vento Act

*A. Principle:* LEAs must continue to accord children who are considered "awaiting foster care placement" under the federal McKinney-Vento Act with all of the protections of that Act until December 9, 2016. As of that date, all students previously recognized as entitled to school stability under the McKinney-Vento Act shall be entitled to the same school stability and immediate school enrollment protections under ESSA. LEAs must ensure a seamless transition from McKinney-Vento to ESSA for these students. In addition, some children in foster care will still be considered "homeless" under other provisions of McKinney-Vento if they are, for example, living in a shelter, doubled up, or runaways. Children and youth who were recognized as "awaiting foster care placement" under the McKinney-Vento Act before December 10, 2016, but exited to permanence before that date, are entitled to remain in the same school with transportation costs covered until the end of the school year. Children who remain in care after December 10th, will transfer over to the foster care ESSA protections in Title 1, Part A.

## IX. Guidance to the Field<sup>17</sup>

Within XX days following the signing of this Memorandum of Understanding, and as needed in the future, the Parties shall issue to the field appropriate guidelines and policies to implement their commitments in this Memorandum of Understanding and meet the state's duty to ensure school stability for children in foster care. To the extent appropriate, the guidelines and policies shall align with policies and procedures already in place to comply with the Fostering Connections Act. Guidelines to the field reflecting this agreement will include at minimum:

*A. Best interest processes:* Guidelines establishing uniform factors to be used in making best interest determinations, setting out the procedures to be used, providing tools, and otherwise assisting local educa-

tional and child welfare agencies to jointly make such determinations for children in foster care.

*B. Transportation Plans:* Guidelines stating what to include in local transportation procedures, including how local educational and child welfare agencies shall collaborate to develop cost-effective, clear, written procedures on how school stability transportation shall be arranged, promptly provided, and funded, including when necessary transporting children in foster care across district and state lines.

1. Funding "additional costs" of transportation:<sup>18</sup> A statewide policy setting out how the additional costs of school stability transportation shall be funded. The policy shall include the requirement that LEAs' written transportation plans must describe how school stability transportation will be ensured if a dispute over which agency or agencies will pay any additional costs arises.
2. Dispute Resolution Mechanism: Guidelines concerning the interagency dispute resolution mechanism by which transportation funding disputes (including inter-district and interstate disputes) and other disputes arising under this Memorandum of Understanding can be resolved. LEAs' written transportation plans must describe which agency or agencies will initially pay the additional costs of school stability transportation so the transportation is provided promptly during pendency of any funding dispute.

*C. Sharing student data:* A directive to LEAs and local child welfare agencies that, consistent with applicable privacy laws, local child welfare agencies shall share with LEAs crucial data (including which children are in foster care and when a change in the child's placement is proposed that will move the child into another LEA or attendance area); that local child welfare agencies shall share only information needed to ensure school stability, immediate school enrollment, or that is relevant to a child's safety or need for an accommodation in school; and that LEAs shall share child welfare data among school staff only on a "need to know" basis.

*D. Collecting and reporting student data:* Guidelines explaining how LEAs should report information so the state can disaggregate by "status as a child in foster

care” data regarding student achievement on academic assessments at each mandated level; performance on the state’s other academic indicator for elementary and middle schools; and high school graduation rates (or at the state’s discretion extended year adjusted cohort graduation rates).

*E. Duties of Points of Contact (POCs):* Guidelines regarding the appointment and duties of LEA and local child welfare agencies’ POCs consistent with this Memorandum of Understanding.

*F. Directive to LEAs:* A directive to all LEAs comprehensively setting out their duties under ESSA and this Memorandum of Understanding.

#### Endnotes

1. Fostering Connections to Success and Increasing Adoptions Act of 2008 (hereinafter “Fostering Connections Act”), Pub. L. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 42 U.S.C.).
2. The Guidance can be found at [http://www.acf.hhs.gov/sites/default/files/cb\\_ed\\_hhs\\_foster\\_care\\_guidance.pdf](http://www.acf.hhs.gov/sites/default/files/cb_ed_hhs_foster_care_guidance.pdf). This model MOU relies heavily on language from that Guidance.
3. These regulations can be found at: <http://www2.ed.gov/policy/elsec/leg/essa/essaaccountstplans1129.pdf>.
4. 34 C.F.R §299.13(c)(1)(ii).
5. This agreement is intended to govern the agencies directly involved in caring

for children. In states with county-based systems, state agencies should further support the collaboration sought through this agreement through joint directives or other statewide policy guidance.

6. ESSA mandates school stability and transportation necessary to ensure school stability until students exit foster care. The *Guidance* strongly urges states to extend these rights until the end of the school year in which the child exits foster care.
7. See *Guidance* at Q: 11.
8. See endnote 4.
9. See 34 C.F.R §299.13(c)(1)(ii); *Guidance* at Q: 25.
10. The person appointed cannot be the person the state has designated as the state’s Coordinator for the Education of Homeless Children and Youth under the McKinney-Vento Act.
11. ESSA mandates the appointment of a state level Department of Education POC. The *Guidance* also strongly recommends that state Child Welfare agencies appoint POCs to collaborate with the Education POCs to implement ESSA’s requirements. *Guidance* at Q: 36.
12. As this MOU requires child welfare agencies to appoint a POC, LEAs will therefore be required under federal law to also make such appointments.
13. The *Guidance* strongly recommends that child welfare agencies designate staff who can fulfill these functions. *Guidance* at Q: 36.
14. This is allowable under the Uninterrupted Scholars Act. FERPA permits LEAs to release the school records of a child in foster care to a representative of a child welfare agency with care and placement responsibility of the child without first obtaining parental consent as would otherwise be required by FERPA. 20 U.S.C. §1233(g); 34 C.F.R. Part 99.
15. See endnotes 4 and 5.
16. 34 C.F.R §299.13(c)(1)(ii).
17. Statewide directives are highly recommended for effective and uniform implementation. *Guidance* at Q: 3.
18. *Guidance* at Q: 21. Guidance also urges that transportation for school stability policies include transportation for extracurricular and academic activities that extend beyond the school year.

# Model Directive from State Education Agency to Local Educational Agencies About ESSA Compliance

TOPIC: Implementation of ESSA's Requirements Ensuring School Stability for Children in Foster Care

DATE OF ISSUE:

EFFECTIVE DATE:



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## PURPOSE

This directive informs local educational agencies (LEAs) in this state about recent changes in federal law that expand legal protections for students in foster care. The *Every Student Succeeds Act* (ESSA) mandates that LEAs and child welfare agencies collaborate to ensure students in foster care remain in the same schools with necessary transportation when their living placements change, can immediately enroll in new schools when that is in their best interest, and that the enrolling school districts immediately notify the prior schools to transfer all school records. The State Department of Education (the Department) will provide technical assistance to support LEAs in the effective implementation of these requirements, including the development and implementation of local transportation plans. *The Department will also conduct regular monitoring and oversight to ensure compliance with these requirements.*

## WHY SCHOOL STABILITY MATTERS

It is well documented that children in foster care frequently change schools—when they are initially removed from home, when they move from one foster care placement to another, and when they exit foster care. School mobility has negative effects on academic achievement and is associated with dropping out and poor academic outcomes. Research shows that children who are highly mobile, including children in foster care and children experiencing homelessness, perform significantly worse on standardized tests than their stably housed peers.

School stability helps. School stability means that a child in care remains in the same school when the child's placement changes – even when the child is moving to another school catchment area or district – unless a school change is in the child's "best interest."

Recognizing the importance of school stability, in

2008 Congress enacted the *Fostering Connections to Success and Increasing Adoptions Act*. That law requires child welfare agencies to collaborate with LEAs to provide school stability for children and youth in foster care and to ensure prompt enrollment if remaining in the same school is not in the student's best interest. It also requires child welfare agencies to factor the appropriateness of the child's current educational program and the proximity to the current school into placement decisions. ESSA aligns with the Fostering Connections Act and for the first time requires state and local educational agencies to collaborate with child welfare agencies to ensure these protections for all children and youth in foster care.

## OVERVIEW OF LEGAL REQUIREMENTS

ESSA requires all states and LEAs to ensure children in foster care remain in their "school of origin" unless a determination is made that a school change is in the child's "best interest." Cost-effective transportation must be provided if needed for a child in foster care to remain in the "school of origin."

The new law further provides that, when a school change is needed, children in foster care must be immediately enrolled in the new school even without normally required enrollment documents, and that the enrolling LEAs must immediately contact the former LEAs to obtain the students' school records. Accordingly, LEAs are directed to review and change their policies and practices to accord with these new requirements.

On June 23, 2016, The U.S., Departments of Education and Health and Human Services issued *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* (the *Guidance*) to help states and localities effectively implement these important new requirements. This *Guidance* can be found at: [http://www.acf.hhs.gov/sites/default/files/cb/ed\\_hhs](http://www.acf.hhs.gov/sites/default/files/cb/ed_hhs)

[foster\\_care\\_guidance.pdf](#). On November 28, 2016, the U.S. Department of Education issued final regulations implementing ESSA which can be found at: <http://www2.ed.gov/policy/elsec/leg/essa/essaaccountst-plans1129.pdf>. These regulations provide further clarification on education agencies' duty to transport children to ensure school stability and help the Department collect and report disaggregated data on children in foster care.

The obligations in this directive apply to all LEAs, meaning all school districts and public charter schools. The school stability protections apply to every child in foster care in public education, including those in public preschool programs. *Foster care* is defined as 24-hour substitute care for children placed away from their parents or guardians for whom the child welfare agency has placement and care responsibility. This includes children in foster family homes, shelters, relative foster homes, group homes, preadoptive homes, and residential facilities (regardless of whether the foster family facility is licensed or whether payments are made by the state).

*School of origin* means the school in which a child is enrolled at the time of placement in foster care. If a child's foster care placement changes, the school of origin would then be the school in which the child is enrolled at the time of the placement change. For example, a student who enters foster care and then changes residence is entitled to remain in the then-current school even if the student no longer resides in that school district and it is not the home school district. If the child's foster care placement changes or the child returns home,<sup>1</sup> the school of origin is the school in which the child is enrolled at the time of the placement change.

## OBLIGATION TO APPOINT POINTS OF CONTACT (POCs)

The Department has appointed a State Education POC. In collaboration with the State Department of Child Welfare,<sup>2</sup> the State Education POC will oversee the implementation of ESSA's requirements and issue joint state guidance. The contact information for that individual is [            ].

Each LEA in the state must immediately take steps to appoint a local POC if the local child welfare agency has provided notice in writing that it has appointed a staff member to perform this function. It is

recommended that all LEAs in the state appoint POCs regardless of whether the local child welfare agency has done so. These staff are critical to the effective implementation of the ESSA requirements including the timely development of local transportation plans.

In collaboration with the relevant local child welfare agencies, the LEA POC is charged with implementing ESSA's requirements and with acting as the point person for children in foster care in that LEA. The LEA POC must have sufficient capacity and the necessary resources to fulfill these duties. Immediately upon appointment, the LEA POC should contact all appropriate child welfare agencies to identify their POCs and to begin planning for ESSA implementation.

LEA and child welfare POCs play a critical role in the best interest decision-making process. They should document best interest determinations, facilitate the transfer of school records, and assist inter-agency data sharing consistent with the Family Educational Rights and Privacy Act (FERPA) and state privacy laws. These POCs should also develop, coordinate, and implement transportation procedures for school stability, manage transportation cost disputes, and ensure that children in foster care are enrolled and regularly attend school. They should also provide professional development and training to school staff on ESSA's requirements and how to meet the needs of children in foster care.

LEA POCs should also collaborate with local child welfare agencies to facilitate collecting disaggregated data regarding the academic achievement of students in foster care including their achievement in academic assessments at designated levels, [the state's other academic indicator for elementary and middle school students], and graduation rates. They are also strongly encouraged to assist students who change schools to integrate fully in the new school environment. For example, they can help students identify the right courses, transition smoothly with special education services and 504 Plan accommodations, receive academic credit for past work done, make plans to ensure timely graduation, gain access to remedial and credit recovery programs, and participate in extracurricular programs, nonacademic school events, and career/technical offerings.

## MAKING BEST INTEREST DECISIONS

A child in foster care must remain in his or her school



of origin unless it is determined that remaining in that school is not in the child’s “best interest.” LEAs and the child welfare agencies should make every effort to make this determination jointly with input from all relevant parties, including the child’s family and foster family, knowledgeable child welfare staff, the child (when age appropriate), school staff (including persons knowledgeable about the child’s special education needs if appropriate), and any legally appointed education decision makers such as surrogate parents or court appointed “educational decision-makers.” Best interest decisions have been required since the passage of Fostering Connections and many child welfare agencies have already established processes to ensure that these decisions are made. If the agencies cannot reach agreement, unless state law dictates otherwise, the child welfare agency, which has legal responsibility for the well-being of the child, makes the final decision. If the decision is that the child is to remain in the same school, the LEA must permit the child to remain and must collaborate with the child welfare agency to provide necessary transportation.

Best interest determinations must be child-centered and deference should be accorded to the views of the youth and the child’s or youth’s parent, guardian, surrogate parent, or other authorized educational decision maker. Teams should consider the child’s attachment to the current school and meaningful relationships with staff and peers; the placement of siblings; the impact of the school environment on the child, including safety; the availability and quality of the services in the school to meet the child’s educational and social/emotional needs; the history of school transfers; and how the length of the commute would affect the child given the child’s developmental age. *The cost of transportation cannot be a factor in a best interest determination.* A child’s need for and entitlement to special services such as special education or ELL supports are also important factors to consider. The LEA must ensure that a child remains in his or her school of origin while the disputes are being resolved to the extent feasible and appropriate.

A careful review of the child’s school records is critical. Under the *Uninterrupted Scholars Act*, an amendment to the *Family Educational Rights and Privacy Act* (FERPA), child welfare agencies are permitted to access a child’s education records without LEAs first obtaining the parental consent normally required by FERPA.

Child welfare agencies must share critical information with LEAs regarding the identity of a child in foster care so LEAs can fulfill their responsibilities effectively. For example, when a student in foster care is enrolling in a school district and when a proposed placement change is anticipated the LEA must be informed so the LEA can promptly comply with the school stability and immediate enrollment requirements. However, it is important that both child welfare agencies and LEAs exercise caution in sharing information about children in care between agencies and among education staff. Information about which children are in foster care should be shared with school personnel only on a need-to-know basis and with an understanding of the need for confidentiality to protect the privacy rights of students and families in accordance with federal and state confidentiality laws.

## TRANSPORTATION FOR CHILDREN TO REMAIN IN THEIR SCHOOL OF ORIGIN:

LEAs must collaborate with child welfare agencies to ensure that transportation for children in foster care to their schools of origin is arranged, provided, and funded. By December 10, 2016, all LEAs must develop and implement clear written procedures that ensure prompt and cost-effective transportation to support school stability. These procedures must include provisions for eligible children in foster care who move from one school to another, including across school districts and state lines. Children are entitled to transportation to support school stability for the duration of their time in foster care and until the end of the school year in which they exit foster care.<sup>3</sup>

LEAs must cover the standard cost of transporting a child in foster care to the school of origin. Only the “additional costs” incurred to ensure school stability are to be addressed through the joint procedures. “Additional costs” are defined by federal Guidance as:

[T]he difference between what an LEA otherwise would spend to transport a student to his or her assigned school and the cost of transporting a child in foster care to his or her school of origin. For example, if the LEA provides transportation through an established bus route, there is no additional cost. If the LEA provides special transportation only for the child in foster care (e.g., through a private vehicle or transportation company), the difference between the special transportation costs and the usual transportation costs can be

considered additional. If the LEA must reroute busses to transport a child in foster care to one of its schools, the cost of this rerouting can be considered additional cost.

Every effort must be made to ensure the transportation adopted by the LEA for a child in foster care is cost-effective. To this end, LEAs shall consider whether transportation can be provided by using the LEA's own preexisting bus routes (*e.g.*, adding a bus stop on an existing route). LEAs should explore the district's routes in combination with those of surrounding districts to determine if transportation can be provided at no or minimal cost. Working with the child welfare agency, LEAs shall consider whether the child's caretakers or foster parents could transport the child, including mileage reimbursement. Additionally, nothing in these procedures supersedes students receiving transportation if otherwise legally required (*i.e.*, transportation written into an IEP as a related service under the IDEA).

When transporting a child to the school of origin will result in additional costs, the LEA and the local child welfare agency should make every effort to agree on how these costs should be funded. Child welfare agencies may use Title IV-E maintenance payment for IV-E eligible students to offset some costs and LEAs can use Title I funds to support transportation costs as well. To ease the burden of establishing local plans and to ensure uniformity across the state, the Departments of Education and Child Welfare have developed a statewide policy on how to allocate costs when agreement cannot be reached.<sup>4</sup>

The new federal regulations state that state education agencies like the Department must ensure that LEAs' written transportation procedures describe how school stability transportation will be promptly provided to children in foster care even when there is a dispute over which agency or agencies will pay any additional costs incurred and which agency or agency will initially pay additional costs pending resolution of any funding disputes.<sup>5</sup>

## DISPUTE RESOLUTION PROCESS

The Departments of Education and Child Welfare have established a joint system for resolving disputes regarding transportation to ensure school stability including the funding of any additional

costs. That dispute resolution system is as follows:<sup>6</sup>

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## IMMEDIATE SCHOOL ENROLLMENT

If it is in the child's best interest to change schools, the new LEA must immediately enroll the child in the new school regardless of whether the student can produce the documents normally required for school enrollment. Therefore, as is the case with children experiencing homelessness, immediate enrollment cannot be delayed or denied because the student cannot provide documents such as proof of age, residency, or immunization records required to enroll other students. LEAs are directed to review and revise their enrollment procedures and practices to the extent that they are inconsistent with this ESSA requirement. "Immediate enrollment" means the child must be enrolled and admitted to classes and other school-based activities and be receiving all appropriate services including special education.

In addition, the new LEA must immediately request the child's school records from the prior LEA, and that LEA should transfer the records promptly.

## ELIMINATION OF "AWAITING FOSTER CARE PLACEMENT" IN MCKINNEY-VENTO HOMELESS ASSISTANCE ACT:

LEAs must continue to give children who are "awaiting foster care placement" under the federal McKinney-Vento Act all protections of that Act until December 9, 2016.<sup>7</sup> As of that date, all students in foster care previously recognized as entitled to school stability under the McKinney-Vento Act shall be entitled to the same school stability and immediate school enrollment protections under ESSA -- there should be no disenrollment or drop-in services. LEAs must ensure this transition from McKinney-Vento to ESSA is seamless for these students. In addition, some children in foster care will still be considered "homeless" under other provisions of McKinney-Vento if they are, for example, living in a shelter, doubled up or runaways.

Children and youth who were recognized as "awaiting foster care placement" under the McKinney-Vento Act before December 10, 2016, but exited to permanence before that date, are entitled to remain in the same school with transportation costs covered until the end of the school year. Children who remain in care after

December 10<sup>th</sup>, will transfer over to the foster care ESSA protections in Title 1, Part A.

#### **Endnotes**

1. ESSA mandates school stability and transportation necessary to ensure school stability until students exit foster care. The Guidance strongly urges states to extend these rights until the end of the school year in which the child exits foster care.
2. Although not mandated, the Guidance urges states to also appoint a Child Welfare POC.
3. See footnote 1.
4. While we urge states to establish statewide procedures to help local agencies develop local transportation plans and provide uniform guidance on how “additional costs” are to be funded, we do not believe there is a single model for funding these costs that is appropriate for all states. Some models to consider are state or regional contingency funds, or standard division of cost responsibility based on common factors such as distance or time in care. We also urge that transportation for school stability policies include transportation for extracurricular and academic activities that extend beyond the normal school day and for summer programs. For some students, participating in these activities is key to retaining them in school and helping them graduate.
5. 34 C.F.R. § 299.13(c)(1)(ii).
6. States must develop joint dispute resolution procedures for resolving transportation disputes and students are entitled to remain in the same school pending resolution of such disputes. However, there is not one dispute resolution model that is appropriate for all states. Some models include having the state agencies resolve individual disputes, or setting a default cost split when agreement can’t be reached at local level.
7. In state (Delaware, Nevada, and Arkansas) that define or describe “awaitin foster care placement” in their state statute this provision goes into effect December 10th, 2017.

# Points of Contact: How They Can Help Students in Foster Care

## Q: What is the ESSA and what does it say about students in foster care?

In December, 2015, the Every Child Succeeds Act (ESSA), a new federal education law, was enacted. This legislation includes important protections for youth in foster care. The ESSA aligns with the Fostering Connections Act of 2008 (Fostering Connections) and requires school stability protections for youth in care. To learn more, please see the Q&A Factsheet on ESSA. <http://www.fostercareandeducation.org/Portals/0/documents/QA%20ESSA%202015%20FINAL%205%2010%2016.pdf>. Also, to learn about effective implementation of these two laws, please see the 28 page joint federal guidance issued by the U.S. Departments of Education and Health and Human Services (Joint Guidance, POCs are addressed in Questions 34 through 37) <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>. Read our brief summary here: <http://www.fostercareandeducation.org/Portals/0/pdfs/ESSA%20Guidance%20Final2.pdf>.

## Q: What does the ESSA say about state education agency “points of contact” (POCs)?

The ESSA requires each state education agency (SEA) to include in the Title I plan it submits to the federal government the steps it will take to ensure collaboration with the state child welfare agency to ensure educational stability for students in foster care. As part of this responsibility, every SEA must designate an employee to serve as a “point of contact” (POC) for foster care. The designated employee cannot be the State’s Coordinator for Education of Homeless Children and Youths under the McKinney-Vento Act.

## Q: What should be the role of a SEA POC?

The state level POC is responsible for ensuring that there is sufficient collaboration with the state child welfare agency and for overseeing implementation of the ESSA’s protections for youth in foster care. So, for example, the state POC should assist with the development of joint state guidance or an interagency agreement that could clarify how the state will support local educational agencies’ (LEA) development of transportation plans or their appointment of school-

based POCs. They can also facilitate data sharing, monitor LEA compliance, and provide training and technical assistance to LEA POCs. See Joint Guidance for more information.

## Q: What does the ESSA say about school-based POCs?

In addition to requiring each SEA to identify a state POC, the ESSA requires each local educational agency (which includes school districts and public charter schools) (LEA) in every state to provide assurances that the agency will collaborate with the state or local child welfare agency to designate a “point of contact” if the corresponding child welfare agency notifies the LEA in writing that the child welfare agency has designated an employee to serve as a POC for the LEA. See Attachment #1 for tips for child welfare agencies to provide this written notification and sample language to use.

In some states, like Pennsylvania, where every child welfare agency is already required to have an education liaison, this will mean that every school district in the state is required to appoint a school-based point of contact. In other jurisdictions this will be a local decision.

## Q: What does law or guidance say about child welfare-based POCs?

Neither ESSA nor Fostering Connections require child welfare agencies to appoint POCs, but it is a very good thing to do. HHS is strongly urging child welfare agencies to appoint the POCs at both the state and local levels. And, unless child welfare appoints POCs and notifies the LEAs in writing, LEAs are not required to appoint local POCs. See Joint Guidance and ACF letter to child welfare directors for more information <https://www.acf.hhs.gov/programs/cb/resource/childwelfare-leaders-educational-stability-letter>.

## Q: How can state and local POCs in both agencies help?

School-based and child welfare agency-based POCs can help the adults in these systems by clarifying who to contact when questions about the education of children in foster care arise. But, more importantly, they

can help children directly by being available to them, focusing on their needs, and making it easier for staff in and across systems to work together.

### Q: Who is best qualified to be a POC?

POCs can come from a variety of professional backgrounds. While training can help, the most effective POCs or liaisons have had experience in both the education and the child welfare systems—for example, the child welfare-based liaison has worked as a teacher or the education-based liaison has been a child welfare caseworker.

School-based POCs need the authority to advocate effectively for children in foster care within the school and to ensure that their special needs are met. They should have an understanding of child welfare laws and practices. They should be familiar with the special needs of youth in care and the approaches (e.g., trauma-informed instructional and school discipline practices) that can benefit these youth. Since youth in care often experience several living placement and school changes, the liaison must be familiar with the importance of school stability, as well as enrollment and records transfer procedures, and the range of school and community student support services.

Child welfare-based POCs should have a basic understanding of federal and state education law and practice, especially those laws with particular impact on children in care. Previous experience working or collaborating with school staff is also very helpful. For many years, the federal McKinney-Vento Act has mandated a State level Coordinator and school-based liaisons for children experiencing homelessness. The ESSA explicitly prohibits appointing the McKinney-Vento State Coordinator as the state level

POC for children in foster care. There is no such prohibition at the local level. But to be effective, the school-based POC must have enough time and resources to collaborate effectively with the local child welfare agency and to provide direct support to students. This is an important factor to take into account in determining which employee to designate.

### Q: What have we learned from states that have already required child welfare and/or education liaisons?

Designating foster care and education liaisons in the education and child welfare systems had been a growing trend, even before the passage of ESSA. More than a dozen states had passed legislation requiring some kind of foster care education liaisons; some require school-based liaisons, while others require child welfare-based liaisons. Many other jurisdictions have created these positions by policy or practice. What many jurisdictions have found is it helped to improve communication between agencies, streamline services and supports, and increase understanding of all staff about the educational needs of children in foster care. For additional information from two states, see:

1. Texas Systems Working Together to Transform Education Outcomes. (Includes a chapter on school district based Education Liaisons) <http://www.tea.state.tx.us/FosterCareStudentSuccess/resource-guide.pdf>
- and
2. Allegheny County's Implementation of the Child Welfare Education Screen (Explains the trainings and responsibilities of a child welfare agency-based education liaison.) [http://www.foster-careandeducation.org/portals/0/dmx/2013/09/file\\_20130923\\_140716\\_fMZBu\\_0.pdf](http://www.foster-careandeducation.org/portals/0/dmx/2013/09/file_20130923_140716_fMZBu_0.pdf).

## Attachment #1

### Tip Sheet: Drafting Letter from Child Welfare Agency to Local Education Agencies (LEAs) Informing of the Child Welfare Point of Contact

The purpose of this letter being sent from the child welfare agency to the local education agencies:

- To provide information about who the point of contact is in the child welfare agency, including important contact information (i.e., email, phone, address, title); to provide clarity on the roles and responsibilities of the point of contact within the child welfare agency, both in their relationship with the school district and their position within the child welfare agency
- To trigger the appointment of a point of contact within the school district (and seek clarity about the roles and responsibilities assigned to that individual(s))
  - Reference ESSA language so clear that this is stemming from requirements built into federal education law
  - Encourage timely appointment of school district POCs since work needs to begin on cross agency collaboration, in particular local transportation plans, also a requirement of ESSA.
- Establish/Build/Enhance the relationship between the agencies (including shaping the relationship expectations)
- Create an opportunity to begin or continue conversations about children in care (i.e. request for a phone call; in person meeting, add topic to existing agenda or collaboration)

**Local Education Agencies (LEAs)** include local school districts and public charter schools that are considered their own LEA. Each LEA must receive its own written notice to trigger the required appointment of a point of contact from that school.

### Sample POC Notification Letter (from Joint Federal Guidance, page 28)

[Date]

[Local Educational Agency]

Dear Colleagues,

Pursuant to Section 1112(c)(5)(a) of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act, this letter serves to notify you that we have designated a point of contact (POC) to coordinate with your agency on the implementation of the school stability provisions of ESEA.

The contact information for our POC is as follows:

[Name of Child Welfare Agency POC]

[Mailing Address]

[Email address]

[Phone number]

We look forward to working together to ensure the educational stability of children in foster care. To that end, kindly provide us with the contact information of your designated POC as soon as possible.

Sincerely,

[Child Welfare Agency]

## **“Enhanced” Sample POC Notification Letter**

Dear [school district contact],

I am writing to introduce myself and provide some key information to help both of our agencies meet the education needs of some of the most vulnerable students—namely the children in the care and custody of the child welfare system. Currently we know we have students enrolled in your school district in the custody of our agency. [Note: may choose to provide further detail on numbers if known]. As children enter and leave the foster care system every day, and it is intended to be a temporary support, the number of students in foster care will increase and decrease throughout the school year.

In an effort to ensure appropriate collaboration between our agency and your district, and to serve these children in the most efficient manner, we have designated staff within our agency to serve as a point of contact for education related issues.

Below is the contact information for our agency’s Point of Contact:

Name

Title

Address

Phone Number

Email address

This point of the contact works with staff throughout our agency to promote educational success including work on issues such as school stability and access to resources. Our point of contact will be available to assist with education matters regarding students in our custody including school placement, information sharing, transportation, and [insert other important areas that POC will work on with the schools].

As I believe you are aware, the Every Student Succeeds Act (ESSA) passed in December 2015, and includes key provisions related to school stability and success of children in foster care. Specifically, the ESSA (20 U.S.C. § 1112), requires all LEAs, no later than December 2016, to also identify a point of contact once written notice is received from the child welfare agency POC. We are hopeful that you will be able to identify this person quickly so we can begin working together. We would like to set up a meeting or phone call with your POC as soon as possible to discuss other actions we can take to collaboratively support the implementation of ESSA’s new provisions. [Insert sentence or two about a particular item you would like to discuss with LEA soon, such as transportation plans.]

We look forward to working with you.

Sincerely,

[Child Welfare Agency Director]

## Best Interest Decision Making Procedures

The Every Student Succeeds Act (ESSA) was enacted in December 2015. ESSA provides key protections for students in foster care, and requires educational agencies to support school stability and prompt school enrollment. These protections are similar to child welfare agency requirements for school stability and immediate enrollment found in the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) which was enacted in 2008. Together, ESSA and Fostering Connections envision dual agency responsibility; these laws require state and local education the child welfare agencies to jointly ensure school stability and prompt school enrollment. Both laws require students in foster care to remain in the “school of origin” unless a decision is made that it is not in the child’s best interest.

Many child welfare agencies already have a process for making best interest decisions, created after the passage of the Fostering Connection Act. Child welfare agencies are responsible for the placement and care of students in foster care, and are therefore typically the agency guiding the decision making process about whether it is in the child’s best interest to change schools. Joint federal guidance directs that child welfare agencies seek input from others involved with the child, including relevant school personnel. When agreement cannot be reached, joint guidance clarifies that child welfare agencies should make the final decision about best interest, unless your state law or policy dictates otherwise.

As you develop or re-establish a process for making these decisions, be sure to address these key considerations:

### Resources

[Legal Center for Foster Care and Education Checklist](#)

[Legal Center for Foster Care and Education Best Interest Issue Brief \(2010\)](#)

[Ohio Best Interest Determination Form](#)

[California Procedure and Worksheet](#)

[Hawaii Checklist](#)

[Virginia Checklist](#)

### Timing and Frequency of Initiating the Best Interest Process

- How will best interest decisions be made timely? Both at initial entry into care and when any subsequent school move may be contemplated?
- How will best interest decisions be revisited? On a particular time interval (i.e. every 6 months) or before the beginning of a new school year?

### Gather Current/Demographic Information

- How will accurate information be gathered in a timely way to contribute to the best interest decision (i.e., current school placement, grade level)

### Identify Participants in Decision

- Who should be involved or consulted about the decision? According to joint federal guidance: The SEA, LEA, and child welfare agencies should consult other relevant parties, such as the child, depending on age, foster parents, biological parents when appropriate, education decision maker(s), and other relatives for their perspectives on which school the child should attend during his or her time in foster care, consistent with the child’s case plan.

### Identify Factors To Consider

- Joint federal guidance<sup>1</sup> suggests the following factors to consider when making a best interest decision:
  - The child’s preference;
  - The views of the parents or the person with



education decision-making rights;

- The child’s attachment to school and staff;
  - The placement of the child’s siblings;
  - The availability and quality of services in the current and potential schools to meet the child’s educational and social/emotional needs;
  - School climate/safety;
  - The impact of a school transfer, including the commute; and
  - The child’s special needs.
- Joint federal guidance also makes special note that transportation costs cannot be a factor in determining the child’s best interest.

### Require Supporting Documentation

- What information should be reviewed and/or included in the documentation? For example: report cards, progress reports, test scores, attendance data, IEP or 504 Plan, emails from people consulted

### Document and Provide Notice of Decision

- Where will this tool be kept for both child welfare agency and education agency?
- Must be documented in the case plan.

### Evaluate Transportation Needs

- Consider adding a section (or cross referencing a separate form or tool) to identify a transportation plan if the decision is made to move the child to a new school.

### Establish Dispute Resolution Process

- Clarify that the dependency court, or another decision-making process, will resolve any disputes.
- Establish where the child goes to school pending the dispute resolution process.
- Provide a written explanation to parties/stakeholders—or at a minimum to the education decision-maker for the child.

#### Endnotes

1. See *Non Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, U.S. Dep’t Ed. and U.S. Dep’t Health & Human Servs., Jun. 23, 2016.

### The Legal Center for Foster Care and Education

The Legal Center is a collaboration between the American Bar Association Center on Children and the Law, Education Law Center–PA, and Juvenile Law Center. The Legal Center for Foster Care and Education provides:

- **A strong voice** at the national level for the education of children in foster care
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# Implementing ESSA's Transportation Procedures: How Local Education Agencies Can Work with Child Welfare to Ensure School Stability

## Overview

Children and youth in foster care experience higher levels of home and school instability than their peers. The federal Every Student Succeeds Act (ESSA) addresses this instability by requiring local education agencies (LEAs) and local child welfare agencies to work together to maintain children in foster care in their school of origin, unless it is not in the child's best interest. This document helps LEAs:

- understand their transportation duties under ESSA;
- develop transportation procedures and collaborate with child welfare to ensure transportation when needed; and
- use tools to implement ESSA's transportation requirements.

## ESSA's Transportation Requirements

ESSA requires LEAs, in collaboration with local child welfare agencies, "to ensure that transportation for children in foster care is provided, arranged, and funded."<sup>1</sup> LEAs must have written transportation procedures in place by **December 10, 2016** that explain the process for arranging and funding transportation when needed.<sup>2</sup> On November 28, 2016, final federal regulations were issued by the U.S. Department of Education that clarifies what must be included in transportation plans and the duty of the State Education Agency (SEA) to ensure compliance.<sup>3</sup> LEAs' transportation plans must explain how transportation will be provided in the event of a dispute over which agency or agencies will pay for additional costs incurred in transporting a student to the school of origin and which agency or agencies will pay the

initial additional costs so that transportation is provided promptly during the pendency of the dispute.

## Joint Federal Guidance

Joint agency federal guidance provides additional assistance. It states that "LEAs should work closely with child welfare agency counterparts to tailor processes and procedures to their unique local context."<sup>4</sup> LEAs should create an agreement or memorandum of understanding with each child welfare agency that provides services within its catchment area that includes what documentation or records to share, the criteria to use in any decision-making process, and the process to follow in making decisions. This concrete agreement between the LEA and child welfare agency should set the principles to facilitate prompt and conflict-free transportation procedures for individual students and prevent delays or gaps in transportation that could interrupt students' school stability.

## Transportation Agreement Templates

Two templates are included here:

1. A sample agreement between local agencies
2. A template of a student's transportation arrangements offering a way to document how to provide transportation for a child



## LEA and CHILD WELFARE AGREEMENTS: Step by Step

The following steps are recommended when an LEA is creating the written transportation procedures required by ESSA.

### **STEP 1: Identify your staff POC, partners, and how procedures will be documented collaboratively between LEA and child welfare agencies.**

- Appoint a staff person as the point of contact (POC) within the LEA. This person will be responsible for collaborating with the child welfare agencies and assisting the LEA's children in foster care.<sup>5</sup>
  - Set clear roles and responsibilities for the POC, including: coordinate with child welfare agencies to establish agreements, implement transportation plans and otherwise assist children in foster care attend school, maintain or increase involvement in career and technical, and extracurricular and nonacademic courses.<sup>6</sup>
  - Report the LEA's POC to the state education agency (SEA); identify the SEA's POC that should be available for guidance and technical support.
  - List publicly the contact information for the LEA's POC.
- Identify all child welfare agencies with children in their custody attending schools within the LEA.
- Document each child welfare agency POC, upon notification.
- Decide how written procedures will be recorded (e.g., interagency agreement) between the LEA and each child welfare agency to document how transportation will be provided, arranged, and funded for children in foster care attending the LEA.
- Decide who else, from within and outside your agency, needs to be part of conversations when documenting procedures. It often helps to have third party advocates, court leaders, or others who can help the agencies address all issues and reach agreement.

### **STEP 2: Create clear channels of communication with child welfare agency partners at key points in the process to meet the education needs of students in foster care.**

ESSA requires that the LEA ensure school stability when a student enters foster care and changes living placements while in care. Child welfare agencies must communicate with schools to make sure the stability and needs of students in foster care are met. First, it is important to have a process to notify schools which children are in foster care, and a process that protects the privacy of that information (i.e., ensures information is shared with only school officials who need to know). Examples include the use of a special school enrollment form, or regular (daily/weekly) data feed between the child welfare agency and the school.

Specific to school stability decisions, child welfare agencies must also communicate with school personnel to participate in a best interest decision-making process. Finally, child welfare agencies must inform LEAs of a final best interest decision to keep a child in the school of origin (and the need to address transportation). When establishing channels of communication about best interest decisions and subsequent transportation needs, consider the following:

- Child welfare agencies and LEAs need a clear process for making a best interest decision about the school placement. These processes, as well as tools to support agencies in making that decision, have existed in many states since the passage of *Fostering Connections*.<sup>7</sup> LEAs and child welfare agencies should work together to review these existing processes to determine what if any changes may be needed to comply with new provisions of ESSA.
- After involving all relevant parties, including representatives from the current LEA, and weighing all factors, unless state law states otherwise, the child welfare agency should have the final say on the best interest decision. See *Best Interest Decision Making: Key Considerations* for more information about developing a best interest decision-making process to guide these decisions.
- If it is in the child's best interest to enroll in a new school, the child welfare agency will promptly

complete the paperwork to withdraw the child from the prior school, or school of origin, and request that the new school enroll or let the child start attending the school immediately. The LEA must permit the child to enroll and start at the school even if all necessary documentation is not available, to avoid gaps in the child's school attendance.

- The LEA must immediately contact the student's prior school to request copies of any missing records and expedite efforts to access those records.
- If the best interest decision is made for the child to remain in their school of origin, the child welfare agency will relay that decision, and all necessary information to the LEA. Child welfare agencies should document the best interest decision and their notice to the LEA. This will also serve as the notice for needing to address transportation.

### STEP 3: Clearly define the scope of the agreement and children being served by the LEA and child welfare partners.

- **Definitions:** LEAs should look to federal law and guidance (and any state law or policies) for key terms important to successful implementation. These definitions should be incorporated into the final written agreement to ensure clarity for all parties. Cross referencing state or local guidance offering clear information about key terms is also helpful. See Appendix A for definitions requiring attention.
- **Duration and Changes in Transportation Needs:** Transportation to the school of origin must be provided as long as the child is in foster care and it is in the child's best interest to attend that school or until the child exits foster care.<sup>8</sup>
  - Establish procedures for the child welfare agency POC to promptly notify the LEA POC if there is a change in the best interest determination, or a change in the student's placement requires adjusting transportation needs.<sup>9</sup>
  - If a student exits foster care (i.e., is reunified with a parent, adoption is finalized), agencies should work together to ensure the student remains in the school of origin until the end of the academic year.<sup>10</sup> Transportation agreements must address how transportation will be provided, arranged, and funded in these circumstances.

- **Preschool Students within the LEA:** If an LEA offers public preschool education, the LEA must meet the Title I requirements for children in foster care in preschool, including ensuring that a child in foster care remains in his/her preschool of origin, unless a determination finds it is not in the child's best interest.<sup>11</sup>

### STEP 4: Document how transportation will be provided, arranged, and funded.

Where transportation is required to support school stability for children in foster care, ESSA mandates that LEAs ensure children will promptly receive transportation in a most cost-effective manner.

If there are additional costs incurred in providing transportation to the school of origin, the LEA will provide such transportation if (1) the local child welfare agency agrees to reimburse the LEA for the cost



of such transportation; (2) the LEA agrees to pay for the cost; or (3) the LEA and local child welfare agency agree to share the cost.<sup>12</sup> A new federal regulation clarifies that the written transportation procedures that must be developed collaboratively by the LEA and local child welfare agencies must explain how students will be ensured prompt school of origin transportation even if the agencies cannot reach agreement regarding how to pay for additional costs, including the initial payment of such costs while the dispute is being resolved.<sup>13</sup> When determining whether transportation is "cost effective" an LEA must consider the reasonableness of the costs, which may include factors like expense, distance, length of travel, and whether the mode of transportation is developmentally appropriate for the child.<sup>14</sup>



- If a student can be served by an existing bus route, there should be no delay.
- If, however, a new bus route or other transportation provider is required that will not be available immediately, an interim plan must be identified so there is no gap in the child’s school attendance.

**STEP 4-A: Clarify LEA’s duty to provide transportation when minimal or no additional costs will be incurred.**

ESSA requires the LEA to provide transportation when it can be done at no “additional cost.” If transportation is available with no cost or minimal cost based on the LEA’s existing procedures, then the LEA must provide transportation.

Written procedures should address the following:

- **State law, if any:** Does your state law or policy provide any direction beyond the federal requirements for transportation?
- **When the LEA does not provide transportation for other students:** An LEA must ensure that transportation is provided for children in foster care. These requirements apply whether or not the LEA already provides transportation for children who are not in foster care.<sup>15</sup>
- **Other duties:** ESSA does not modify the LEA’s separate duties to provide transportation for:
  - Children in foster care who meet the definition of “homeless” under McKinney-Vento Act. (Children and youth who are homeless include children living in emergency or transitional shelters, children abandoned in hospitals, unaccompanied homeless youth.)
  - Children who have transportation written into their IEPs because of legitimate special education needs. When an LEA must provide transportation as part of the child’s IEP as a “related service” under the IDEA, this duty is not altered by ESSA.
- **Interim transportation provision:** Determine how quickly transportation from a child’s new placement to the school of origin can begin and identify any gap services required in the interim, including if necessary the funding of additional costs during payment disputes.

The LEA and child welfare agencies will need to examine existing transportation options within the district for a no-or low-cost solution. Examples include:

- A stop may be added or an already-existing bus route may be modified.
- The child may be dropped off at a school bus stop near the existing transportation system for the school of origin.
- No-cost public transportation options exist and the child is old enough or has the skills to use such options.
- The foster parents or other family member(s) are willing and able to transport the child to school at no additional cost (e.g., on the adult’s existing commute).
- The child may use pre-existing bus routes or stops close to the new foster care placement that cross district boundaries, such as bus routes for magnet schools or transportation for homeless students required by the McKinney Vento Act.
- The child is eligible for transportation under another entitlement such as the IDEA.<sup>16</sup>

**Step 4-B: Document in procedures how “Additional costs” will be addressed.**

When “additional costs” are incurred in providing transportation to maintain children in foster care in their school of origin, and the state has no statewide law or policy mandating how additional costs are to be funded, each written agreement between an LEA and

a child welfare agency must specify how costs will be covered or shared including, in the event of a payment dispute, which agency or agency will initially pay additional costs while the dispute is being resolved.<sup>17</sup>

Federal guidance clarifies that “additional costs” are the difference between what an LEA would otherwise spend to transport a student to his/her assigned school and the cost of transporting a child in foster care to his/her school of origin.<sup>18</sup>

If the transportation would require “additional costs” from the LEA, the agencies must determine the most cost-effective strategy in each case. Consider:

- What fiscal options does the LEA have to cover or share “additional costs”?
  - Federal guidance permits using Title I funds.<sup>19</sup>
  - Are there other state or local funds available for this purpose?
- Can the child welfare agency recover costs through Title IV-E maintenance and/or administrative dollars for this child’s transportation?
  - Are there other state or local child welfare funds available for this purpose?
- What other options does the child welfare agency have to cover or share “additional costs”?
  - Can the foster parents provide transportation, with mileage reimbursement by the child welfare agency?
  - Does the child have a relationship with an adult whose commute complements the child’s transportation need?
  - Can the child welfare agency provide the youth or caretaker with bus passes or public transportation vouchers?
  - Can the agency contract with a private transportation company to provide a bus/van/car service?
  - Can the distance be divided between LEA and child welfare transportation efforts? Consider, for example, whether the child welfare agency can drop the child off at a bus stop near the existing transportation system for the LEA.
- Consider establishing a state or regional “contingency fund” created and funded by both education and child welfare agencies to support school stability.

- Consider establishing a standard division of responsibility based on common factors, allowing for a more efficient processing of individual cases. As an example, some jurisdictions divide responsibility based on an agreed upon mile radius. For instance, the LEA is responsible for transportation if the child is placed within five miles of the LEA’s catchment area; however, if the child is placed more than five miles from the LEA’s catchment area the child welfare agency is responsible. Another example of division could be the length of time a child needs transportation. The LEA could take responsibility for the first six months of a child’s placement, the child welfare agency after the initial six months.

#### **STEP 4-C: Develop dispute resolution for transportation issues**

The LEA and child welfare agency should make every effort to agree how to arrange, provide, and fund transportation. Both agencies must collaborate to develop written procedures that ensure educational stability for children in foster care, including how to fund necessary additional costs for providing school of origin transportation. State agencies may have (or be developing) further guidance on resolving transportation disputes. Communicate with the state education POC for details about the state dispute resolution process.

- Written transportation procedures should describe how disputes will be resolved, how prompt school of origin transportation will be ensured in the event of an inter-agency dispute, and how any additional costs will be funded during the resolution such a dispute.<sup>20</sup> When no other cost-effective solution exists, and all funding sources have been assessed and applied, consider splitting evenly the remaining cost between the LEA and child welfare agency.

#### **STEP 5: Prepare to coordinate with other jurisdictions.**

*Coordination When Other LEAs are Involved (both inter-district and interstate)*

LEAs must determine how to share costs between LEAs when children are being transported between school districts. Like their arrangement with child welfare partners, written procedures should address how LEAs should work out cost-sharing agreements and include a default if resolution cannot be reached (i.e., the LEAs will split costs evenly).

## *Coordination with Other Child Welfare Agencies with Students Attending the LEA*

An LEA must determine if they will address all children in foster care (including those from other custodial child welfare agencies) in one set of written procedures. This would help with consistency across the LEA for all students in foster care, since often schools won't know which local or county agency has custody of a child. However, it may not be practical to address students in foster care from various child welfare agencies in one agreement. Therefore, LEAs may need to enter into multiple agreements to ensure they address the transportation needs of all children in foster care in their schools.

### **Endnotes**

<sup>1</sup> See U.S. Dep't Ed. and U.S. Dep't Health & Human Svcs. *Non Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, Jun. 23, 2016, at 15, available at <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf> (hereinafter "Joint Guidance") (citing ESEA § 1112(c)(5)(B)).

<sup>2</sup> Joint Guidance at 16, Q24.

<sup>3</sup> 34 C.F.R. §299.13(c)(1)(ii)

<sup>4</sup> Joint Guidance at 7, Q4.

<sup>5</sup> Joint Guidance at 21-22.

<sup>6</sup> Other responsibilities of the LEA POC not related to transportation should include working with child welfare agency partners on developing and documenting the best interest determination process (including a process for resolving disputes related to that best interest determination), facilitating records transfer and data sharing, managing disputes, and providing professional development to staff. Joint Guidance at 22, Q35.

<sup>7</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), 42 U.S.C.A. 675(1)(G)(ii).

<sup>8</sup> ESEA § 1112(c)(5)(B); Joint Guidance at 17, Q25.

<sup>9</sup> Joint Guidance at 23, Q37.

<sup>10</sup> Joint Guidance at 17, Q25

<sup>11</sup> ESEA § 1111(g)(1)(E); Joint Guidance at 8, Q7.

<sup>12</sup> ESEA § 1112(c)(5)(B); Joint Guidance at 16, Q22.

<sup>13</sup> 34 C.F.R. §299.13(c)(1)(ii).

<sup>14</sup> Joint Guidance at 17, Q26.

<sup>15</sup> Joint Guidance at 18, Q29.

<sup>16</sup> Joint Guidance at 17, Q26.

<sup>17</sup> ESEA § 1112(c)(5)(B)(ii); Joint Guidance at 17, Q27; .34 C.F.R. §299.13(c)(1)(ii).

<sup>18</sup> Joint Guidance at 18, Q27.

<sup>19</sup> Joint Guidance at 19, Q30.

<sup>20</sup> 34 C.F.R. §299.13(c)(1)(ii); Joint Guidance at 18, Q28.

## APPENDIX A: Definition

### Child in foster care

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the child welfare agency has placement and care responsibility.<sup>1</sup>

- The legal right to school stability extends to ALL children in foster care, regardless of whether they are eligible for Title IV-E funding from child welfare agencies that may be used to reimburse transportation costs.
- A LEA must ensure a child in foster care receives any transportation needed to the school of origin for the duration the child is in foster care.<sup>2</sup> Upon entering foster care or changing foster care placement a child has the right to school stability, unless it is not in the child’s best interest. Federal guidance encourages agencies to “make every effort to continue to ensure transportation is provided through the end of the school year” in which a child exits foster care.<sup>3</sup>

### School of origin

The school of origin is the school in which the child was enrolled before entering foster care. If a child’s foster care placement is changed, the school of origin is the school where the child was enrolled when the placement changed.<sup>4</sup> LEAs must ensure a child in foster care remains in the school of origin unless it is not in the child’s best interest.

### Immediate enrollment

When it is in the child’s best interest to change schools, a child should be enrolled—and not just technically enrolled, but attending and meaningfully participating.<sup>5</sup> Enrollment cannot be denied or delayed because documents normally required for enrollment (proof of age, proof of residency, vaccination records) have not been submitted.<sup>6</sup> School records, including an IEP, are never required for enrollment, but an enrolling school must immediately contact the school of origin to obtain relevant records.<sup>7</sup>

### Title IV-E (of Social Security Act) funding

Child welfare agencies can receive federal reimbursement for some children in foster care. Specifically, school transportation to ensure school stability is allowable as either Title IV-E foster care maintenance payments or administrative costs. However, child welfare agencies may only claim reimbursement for students who are “Title IV-E eligible,” which varies by state.

### Title I (Part A of the Elementary and Secondary Education Act) funding

Title I, Part A sets assessment and accountability requirements for SEAs and LEAs. Funding provided under Title I, Part A supports the education of disadvantaged students across the country. Federal guidance states the LEAs can use Title I funding for the additional costs of school stability transportation.

### Point of Contact

Federal law provides for the designation of several points of contact (POC) to oversee and implement educational stability provisions for children in foster care.

- State Education Agencies (SEAs) must designate a POC to oversee implementation of state responsibilities.<sup>8</sup>
- LEAs are required by law to designate a POC once child welfare agencies notify the LEA that their agency has designated a POC.<sup>9</sup> However, LEAs should designate their POC promptly because it is the LEA’s duty to establish written transportation procedures by December 10, 2016.

#### Endnotes

<sup>1</sup> See Joint Guidance at 6, Q1.

<sup>2</sup> ESEA § 1112(c)(5)(B); Joint Guidance at 17, Q25.

<sup>3</sup> Joint Guidance at 17, Q25.

<sup>4</sup> Joint Guidance at 11, Q10.

<sup>5</sup> Joint Guidance at 20, Q33.

<sup>6</sup> ESEA § 1111(g)(1)(E); Joint Guidance at 20.

<sup>7</sup> ESEA § 1111(g)(1)(E)(iii); Joint Guidance at 20, Q33.

<sup>8</sup> ESEA § 1111(g)(1)(E)(iv); Joint Guidance at 21. For more information see POC Q and A at [http://fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=2067&Command=Core\\_Download](http://fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=2067&Command=Core_Download).

<sup>9</sup> ESEA § 1112(c)(5)(A); Joint Guidance at 21.

<sup>10</sup> Joint Guidance at 21.



# Template 1: INTERAGENCY AGREEMENT

## Transportation Plan to Ensure School Stability For Students in Foster Care

---

### Parties to the Agreement:

Local Education Agency (LEA): \_\_\_\_\_

- ESSA Point of Contact (Name and Contact Info): \_\_\_\_\_
- Transportation Office contact (Name and Contact Info): \_\_\_\_\_
- Other (Name and Contact Info): \_\_\_\_\_

Local Child Welfare Agency (CWA): \_\_\_\_\_

- ESSA Point of Contact (Name and Contact Info): \_\_\_\_\_
- Child Welfare Agency Director (Name and Contact Info): \_\_\_\_\_
- Other (Name and Contact Info): \_\_\_\_\_

### Notification to LEA of Best Interest Decision and Identifying Students Who Need Transportation

The parties agree to use the following mechanism for:

**Identification of Students in Foster Care:** The CWA will identify for the LEA when a child is attending or is to be enrolled at the LEA and is placed in foster care or changes a living placement in foster care as follows:

\_\_\_\_\_

**Request to Participate in Best Interest Determination:** The CWA will notify the LEA immediately upon learning that a student attending [LEA] has been placed in care or will be moved to a new home placement that is located outside the LEA catchment area and a best interest decision must be made.

**Notice of Final Best Interest Decision:** When it is determined that it is in a student's best interest to remain in his/her school of origin after changing foster care placement to a residence outside the LEA district, the CWA must notify the LEA of the final decisions. This notice triggers the need for the parties to collaborate under the agreement terms and procedures to establish the most cost-effective transportation procedures available for the student.

### Definitions and Scope

The parties agree to the following definitions as part of this agreement (see appendix A):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The parties agree to the following scope of this agreement:

### Duration of Transportation

1. Transportation will be provided for the duration of the child's time in foster care as long as it continues to be in the child's best interest.
2. If a child exits foster care before the end of a school year, the transportation arrangement will be maintained through the end of the school year to maintain the child's educational stability.

### Preschool Students within the LEA

Transportation needs of preschool students within the LEA will be addressed as follows \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



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## How Transportation Will Be Provided, Arranged, and Funded

In addition to ESSA and Fostering Connections, the following state law and/or policy provides guidance on addressing transportation in our jurisdiction: \_\_\_\_\_

---

### General

1. **Transportation Already Addressed through Other Means:** Transportation is already addressed through other laws/requirements (i.e., part of child’s IEP; eligible under McKinney Vento). The LEA will assess whether the child is entitled to transportation services under another entitlement, including experiencing homelessness or as a related service under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act. The LEA will provide transportation funded by the LEA if the student is eligible under the McKinney-Vento Act or the IDEA.
2. **Not Limited by What is Offered to Other Students:** The fact that an LEA does not provide transportation for children who are not in foster care does not exempt the LEA from ensuring transportation for children in foster care when in their best interest.
3. **Interim transportation** should be addressed to ensure no delays for the student in foster care while transportation is being worked out between the parties. Consider language such as: the LEA will have [x] days to put transportation in place. During those [x] days, the CWA will provide transportation during the interim.

### No- or Low-Cost Options

1. The LEA will examine existing transportation options available for the student, including incorporating the student into an existing bus route, modifying an existing bus route or other no-or low-cost options. Transportation will be provided and funded by the LEA if this type of solution is available.

### “Additional Costs”

When other options are exhausted, and transportation will require “additional cost,” develop written transportation procedures, which can include the following steps to address and minimize costs:

1. LEA and CWA will assess whether the child’s transportation expenses may be covered by other state or local funds.
  2. If the student is eligible for Title IV-E funds, the CWA will seek reimbursement for the allowable portion of those transportation costs.
  3. The CWA will assess whether resources are available for foster parents to provide transportation with mileage reimbursement or other adult ride share to the LEA or to a stop on an LEA existing route; provision of bus passes or public transportation vouchers; contract with private transportation service.
  4. LEA and CWA support establishing a fund jointly funded by the agencies [and local jurisdiction leaders] to support school stability. [Specify funding sources, amounts, dates]
  5. Other options as identified by the parties \_\_\_\_\_
- 

If remaining costs cannot be addressed above or through other cost-effective solution, one of the following options must be implemented:

\_\_\_ Child welfare agency agrees to pay additional costs.

\_\_\_ LEA agrees to pay additional costs.

\_\_\_ The CWA and LEA will share the additional costs in the following way. (Consider sharing based on distance or time, or splitting the costs evenly unless parties can agree to another cost-sharing arrangement.) \_\_\_\_\_

---

**Resolving Disputes**

1. If the LEA and CWA cannot resolve a dispute about transportation costs, the following mechanism will be used and these steps will be taken to ensure prompt School of Origin transportation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. While a dispute is pending, LEA must ensure transportation is provided or arranged for the child.

**Other Considerations**

**How Parties Will Coordinate When other School Districts are Involved**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**How this Agreement Applies to Other Child Welfare Agencies with Students in the LEA**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

These transportation procedures were agreed to on the following date: \_\_\_\_\_

Authorized Signature for [Local Education Agency] \_\_\_\_\_

Authorized Signature for [Child Welfare Agency] \_\_\_\_\_

**TEMPLATE 2: TRANSPORTATION TO ENSURE SCHOOL STABILITY**  
**Individual Student Form**

---

**Student (Name and Date of Birth):** \_\_\_\_\_

- Foster Parent/Guardian (Name and Contact Info): \_\_\_\_\_
- Education Decision Maker, if different) (Name and Contact Info): \_\_\_\_\_
- IEP Parent, if different (Name and Contact Info): \_\_\_\_\_

**Local Education Agency:** \_\_\_\_\_

- ESSA Point of Contact (Name and Contact Info): \_\_\_\_\_
- Foster Care Liaison (Name and Contact Info): \_\_\_\_\_
- Transportation Contact (Name and Contact Info): \_\_\_\_\_

**Local Child Welfare Agency:** \_\_\_\_\_

- Caseworker (Name and Contact Info): \_\_\_\_\_
- ESSA Point of Contact (Name and Contact Info): \_\_\_\_\_

The child welfare agency verifies that:

1. A best interest decision has been made and it is in the best interest of the child to remain in their school of origin.
2. It is in the child’s best interest to remain in their school of origin because (briefly describe the deciding factors):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The following efforts have been made to place the student in a home as close as possible to the school of origin \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The child is/is not eligible under Title IV-E
  - a. If child IS eligible, reimbursement for some funding of transportation costs  
\_\_\_ will be pursued  
\_\_\_ cannot be pursued for this reason \_\_\_\_\_

5. The following efforts were taken to identify a no- or low-cost transportation service: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The LEA verifies that:

6. There is /is not an existing transportation option that can maintain the student in the school of origin new living placement. If there is an existing option, explain below: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



The LEA and child welfare agency agree that:

7. The most cost-effective transportation option for this student will be: \_\_\_\_\_  
\_\_\_\_\_

8. Costs for this transportation will be covered as previously agreed upon procedures set by the LEA and CWA, except as parties have agreed to below: \_\_\_\_\_  
\_\_\_\_\_

These transportation procedures were agreed to on the following date: \_\_\_\_\_ and will be implemented within [XX] days, by the following date: \_\_\_\_\_.

Authorized Signature for [Child Welfare Agency] \_\_\_\_\_

Authorized Signature for [Local Education Agency] \_\_\_\_\_

# APPENDIX

## Fostering Connections References:

[Fostering Connections to Success and Increasing Adoptions Act \(10/8/2008\) – Education Sections Only](#)

## Every Student Succeeds Act (ESSA) References:

[Every Student Succeeds Act \(12/10/15\)](#)

[Final Federal Department of Education Regulations \(11/23/16\)](#)

## U.S. Departments of Health and Human Services and Education References:

[Joint Guidance on the Foster Care Provisions of ESSA \(6/23/16\)](#)

[Joint Dear Colleague Letter on Foster Care Guidance \(6/23/16\)](#)

[Joint Dear Colleague Letter on Foster Care Timelines \(6/23/16\)](#)

[HHS Letter on Education Stability \(7/20/16\)](#)

[Dear Colleague Letter on Foster Care Provisions of ESSA \(12/5/16\)](#)

## Federal Websites:

[Department of Education’s Website on Students in Foster Care](#)

[Child Welfare Information Gateway, Education Stability in Foster Care](#)