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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: [Insert date]

EFFECTIVE DATE: [Insert date]

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\_foster\_care\_guidance.pdf](https://www.acf.hhs.gov/sites/default/files/cb/ed_hhs_foster_care_guidance.pdfhttp:/www.acf.hhs.gov/sites/default/files/cb/ed_hhs_). 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/essaaccountstplans1129.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,1 the school of origin is the school in which the child is enrolled at the time of the placement change.

OBLIGATIONTO APPOINT POINTS OF CONTACT (POCs)

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

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.3

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. “Ad- ditional 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.4

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.5

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:6 [ Detail dispute resolution process here. ]

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, 2016.7 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 10th, 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 “awaiting foster care placement” in their state statute this provision goes into effect December 10th, 2017.