

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 guidance¹ 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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