

Key Federal Laws Supporting Students in Foster Care

ABA Center on Children and the Law

January 2022

Over the past two decades, new federal laws, policies, and administrative rules have established stronger rights and protections to support the education of students in foster care. This summary of federal law and guidance provides a brief overview of the relevant federal provisions that support these rights of children and families, and that allow or require cross-system collaboration and information and data sharing between child welfare and education agencies. This summary outlines key provisions found in *either* child welfare and education law and policy. Most state laws and policies that address the education needs of students in foster care build from these foundational federal provisions. However, some predate the federal law changes while others exceed what is required in federal law. It is important for all who work at the state level to understand the federal requirements that, when coupled with nuances in law and policy in a state, serve to support students in foster care.

FEDERAL CHILD WELFARE LAW

A primary source of federal child welfare law can be found in **Title IV-E of the Social Security Act (Title IV-E or IV-E)**, and various other child welfare laws and regulations issued by the U.S. Department of Health and Human Services (HHS). Title IV-E of the Social Security Act details federal requirements related to child welfare services, including requirements for federal reimbursement of foster care and adoption assistance payments. Title IV-E has been amended many times over the last several decades. Through those amendments several provisions related to the educational needs of children in the child welfare system have been established.

Education Records¹ (provisions of Title IV-E)

- The child's case plan must include the child's education provider, grade level performance, school record, and any other relevant education information. The education information in the child's case plan must be reviewed and updated. As with all elements of the case plan, the dependency court has ultimate oversight and must ensure the elements of the case plan are up-to-date and accurate.
- A copy of the education record in the child's case plan must be supplied to the foster parent when the child is placed in foster care. The education record in the case plan must also be provided to the child, at no cost, if the child is exiting foster care due to reaching the age of majority.

School Stability² (Codified in Title IV-E through the Fostering Connections to Success and Increasing Adoptions Act (2008)³

- Added provisions to Title IV-E relating to collaborating with schools, education stability and success of students in foster care.
- Requires child welfare agencies and schools to collaborate to ensure school stability.
- Requires education stability plan to be part of the case plan including assurances of coordination with local education agencies (LEAs) for remaining in the school of origin unless it is not in the child's best interest, or immediate and appropriate enrollment if changing schools.

- Requires that the child’s case plan include an assurance that the living placement of the child consider the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.
- Creates an allowable use of federal funding to reimburse education-related transportation costs for IV-E eligible children in foster care.⁴

**For additional information about implementing the education provisions of the Fostering Connections Act, please see [Fostering Connections State Implementation Toolkit](#).

School Enrollment (also codified in Title IV-E through the Fostering Connections to Success and Increasing Adoptions Act (2008))⁵

- **Immediate Enrollment:**⁶ Fostering Connections presumes students should remain in the same school when entering foster care, or when living placements change. However, if it is in the child’s best interest to move, Fostering Connections requires immediate and appropriate enrollment in a new school, with all of the educational records provided to the school.
- **Enrollment and Attendance in School:**⁷ States must provide assurances in their Title IV-E state plans that every school-age child in foster care, and every school-age child receiving an adoption assistance or subsidized guardianship payment, is a full-time elementary or secondary school student or has completed secondary school.

Normalcy⁸ (codified in Title IV-E through the Sex Trafficking and Strengthening Families Act of 2014)

- Title IV-E provisions were added requiring caregivers to use a “reasonable and prudent parent standard” when determining whether to allow a child in foster care to participate in age-related extracurricular, enrichment, cultural, and social activities. For children who reside in congregate care, a “caregiver” must be appointed to apply the reasonable and prudent standard.⁹

Older Youth and Education¹⁰

For several decades, federal child welfare law has increased protections and opportunities for older youth in foster care related to education. States have also increasingly recognized the importance of prioritizing the educational needs of youth and young adults.

- Codified in IV-E through the **Fostering Connections Act (2008)**:
 - ▷ States have the option to extend foster care beyond age 18.¹¹ Research shows that allowing foster care to continue beyond age 18 is critical to help young adults pursue and persist in postsecondary programs.
 - ▷ Beginning at age 14, the case plan must include “a written description of the programs and services which will help such a child prepare for the transition from foster care to a successful adulthood” which should include education related planning.¹² Additionally, transition planning must occur during the 90-day period before a child turns 18 (or older if state law allows). Transition plans must be completed by a caseworker on the staff of the state agency. Additionally, youth may identify up to two additional individuals to participate. As appropriate, other representatives of the child must assist and support the child in developing a transition plan that is personalized and directed by the child. The transition plan should include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services.¹³
- Codified in IV-E through the **John H. Chafee Foster Care Program (Chafee) (1999)**:¹⁴
 - ▷ The Chafee program allows states to provide services and supports to older youth to support attendance in a postsecondary education or training program. States can use Chafee funding for various purposes, including providing education assistance, career supports and services, and mentoring. States can also use program funding toward housing for youth in extended foster care.
 - ▶ Chafee also includes authorization and funding for Education and Training

Voucher program (ETV). Youth are eligible to receive up to \$5,000 per year.¹⁵

Medicaid until age 26 and is also critical for applying for and receiving financial aid.

- ▶ Chafee requires HHS to submit a report using data from the National Youth in Transition Database (NYTD) that reflects outcomes and experiences for current and former foster youth (see more below).
- ▶ **The Preventing Sex Trafficking and Strengthening Families Act (Strengthening Families Act),** enacted in 2014.
 - ▷ While not directly referencing educational issues, it has several provisions that impact the educational stability and success of older youth in care. For example, it requires more meaningful consultation of youth in case planning and court related to their permanency and transition planning (including educational planning), and their ability to participate in normal, age-appropriate activities like extracurriculars for school, getting a driver’s license, and getting a job.
 - ▷ Additionally, it requires that youth be provided a list of their rights as part of the case planning process, and must include a signed acknowledgement that the list of rights has been received and “explained to the child in age-appropriate way.”¹⁶
 - ▷ The importance of youth engagement in case planning and court hearings has been in place for many years, including the requirement that courts consult with the child in an age-appropriate manner about the proposed permanency and transition plans.¹⁷
- ▶ Codified in IV-E through the **Family First Prevention Services Act (2018)**¹⁸
 - ▷ Allows states to expand eligible age for Chafee services to 14-23
 - ▷ Allows states to extend ETV eligibility to age 26 (previously 23)—there is a five-year limit on ETV participation.
 - ▷ Requires child welfare agencies to provide youth official documentation to prove they were in foster care. This official documentation is necessary for accessing resources such as

Other federal child welfare laws include important education-related provisions, including:

Early Childhood and Education

- ▶ The **Child Abuse Prevention and Treatment Act (CAPTA)** requires states to have procedures in place to refer children who are found to be substantiated victims of child abuse or neglect for screening under the Part C early intervention services program that is part of the Individuals with Disabilities Education Act (IDEA) (this requirement is also found in IDEA Part C, see more below).¹⁹
- ▶ All children in foster care are categorically eligible for Early Head Start and Head Start.²⁰ To implement this requirement, some states have created procedures to ensure priority enrollment, and waive deadlines or application timelines for children in foster care.

Data Systems and Sharing

- ▶ **Adoption and Foster Care Analysis and Reporting System Regulations—AFCARS Final Rule (2020).**²¹
 - ▷ State child welfare systems must report on school enrollment, education level, and special education status as part of the Adoption and Foster Care Analysis and Reporting System (AFCARS) reported to HHS.
 - ▶ School enrollment – whether the child is a full-time student at and enrolled in (or in the process of enrolling in), “elementary” or “secondary” education, or is a full or part-time student at and enrolled in a “postsecondary education or training” or “college.”
 - ▶ Educational level – the highest educational level from kindergarten to college or post-secondary education/training completed by the child.
 - ▶ Special Education—if the child has either an Individual Education Program (IEP) or an Individual Family Service Plan (IFSP).

➤ **Comprehensive Child Welfare Information System (CCWIS) 2016 Final Rule**²²

- ▷ The Comprehensive Child Welfare Information Systems (CCWIS) final rule significantly changes federal requirements related to automated systems that collect and store child welfare data for state and tribal Title IV-E agencies. Among the requirements, the CCWIS final rule for the first time requires agencies building these systems to exchange data with other related child and family-serving agen-

cies, including health and human service agencies, education systems and child welfare courts, to the extent that is practical.

➤ **National Youth in Transition Database (NYTD)**²³

- ▷ The National Youth in Transition Database (NYTD) is managed through the Children’s Bureau and collects information from states on older youth in foster care, including outcomes of youth who have aged out of foster care.

FEDERAL EDUCATION LAW

The **Elementary and Secondary Education Act (ESEA)**, passed in 1965, was the first iteration of comprehensive education law. It continues to be reauthorized and updated by other laws, such as the No Child Left Behind Act of 2001 and most recently by the Every Student Succeeds Act of 2015 (ESSA). ESSA was the first time that rights and protections specifically for students in foster care were established in ESEA. For information and support on implementation of this law, see [State ESSA Implementation Toolkit](#).

School Stability and Success

➤ **Every Student Succeeds Act (2015)**²⁴

- ▷ First provisions in federal education law to specifically address school stability and success for students in foster care and require child welfare and education agencies to collaborate.
- ▷ School stability provisions include: the presumption that students will remain in their school of origin, immediate enrollment and

speedy records transfers if a student changes schools, creation of state and local points of contact to facilitate cooperation between agencies, and a requirement that local education collaborate with child welfare to implement written procedures for how transportation to schools of origin will be provided and funded.²⁵

- ▷ Requires disaggregated data on academic achievement and graduation rates for students in foster care.²⁶

Joint Federal Guidance on School Stability

[Joint Guidance](#) issued by the U.S. Department of Education and the U.S. Department of Health and Human Services, July 23, 2016 provides clarity around school stability and success and guidance on how child welfare and education law and systems can coordinate to support students in foster care. This guidance urges both systems to address the needs of children in foster care.

More resources:

- U.S. Department of Education’s [foster care page](#)
- January 2021 U.S. Department of Education guidance letter emphasizing the disparate impact of the COVID-19 pandemic on students in foster care and reminding State Education Agencies (SEAs) and Local Education Agencies (LEAs) about ESSA requirements. The letter emphasizes ongoing monitoring by the U.S., Department of Education, “We continue to formally monitor implementation of the ESEA’s foster requirements as part of OESE’s consolidated monitoring initiative and we look forward to learning more about your State’s implementation efforts through future rounds of monitoring.”

Data and Information Sharing

- ▶ **Family Education Rights and Privacy Act (FERPA)**, including the Uninterrupted Scholars Act (USA) amendment of 2013²⁷
 - ▷ The Family Educational Rights and Privacy Act (FERPA) prohibits schools from disclosing personally identifiable information from a student's education records to a third party without a parent's consent. FERPA was designed to protect students' privacy but did not consider the unique situation of students in foster care.
 - ▷ To facilitate information sharing between child welfare and education agencies, the Uninterrupted Scholars Act (USA) amended FERPA to allow child welfare agencies to access educational records for children in their custody without parental consent. Under the USA exception, schools can share a student's education records with an agency caseworker or other representative of the state or local child welfare agency if they are "legally responsible...for the care and protection of the student" and have the right to access a student's case plan.

Special Education

- ▶ **Individuals with Disabilities in Education Act (IDEA)**²⁸ - IDEA provides all children with disabilities that impact their ability to succeed in school with a free, appropriate, public education (FAPE) in the least-restrictive environment (LRE) possible.
- ▶ **Decision Making**²⁹
 - ▷ IDEA federal regulations identify other individuals who may be considered the IDEA parent for purposes of making education decisions, in addition to the biological or adoptive parent of a child. These include a foster parent, guardian, individual acting in place of a biological parent, or an appointed surrogate parent. If a biological parent is attempting to act, they will trump others who meet the parent definition unless a court has issued a decree determining another person to be the IDEA parent.
 - ▷ A surrogate parent is a person who has the

rights to make all the special education or early intervention decisions that are usually made by the child's parent. They do not have any rights outside of the special education system. Surrogate parents can be appointed by an education agency or the court, and state laws vary on when such appointments may occur.

▶ Referral for Evaluations (Part C and B)

▷ IDEA Part B

- ▶ School districts must complete a child's special education evaluation within 60 calendar days of the IDEA parent's request. If a child changes school districts before the initial evaluation is completed, the new school district must still follow the 60-calendar day timeframe.³⁰
- ▶ If a child already has an IEP and moves from one school district to another within the same school year, the new district must provide a FAPE, including "services comparable to those described in the previously held IEP" until the new district formally adopts the old IEP or negotiates a new IEP. The new school district must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents, from the old school district. The old district must take reasonable steps to respond to the request promptly.³¹

▷ IDEA Part C

- ▶ Each state's child find system must ensure that all infants and toddlers with disabilities in the state who are eligible for early intervention services are identified, located, and evaluated and that an effective method is developed and implemented to identify children in need of early intervention services.
- ▶ All infants and toddlers for whom abuse and neglect has been substantiated, or who are identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, must be referred to the Part C system for screening and/or evaluation (34 C.F.R. §303.303(b)). (Similar requirement is

found in CAPTA, see more above).

➤ **IDEA, Part B Transition Planning**

- ▷ Requires for special education students, beginning no later than the first Individualized Education Program (IEP) in effect when the child is 16 and updated annually, “appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills.”³²

➤ **Older Youth/Postsecondary Education³³**

- ▷ **College Readiness. The 2008 Higher Education Opportunity Act** included several amendments to increase foster students’ access to postsecondary education.
 - ▶ Youth in foster care (including youth who have left foster care after reaching age 13) are automatically eligible for all TRIO programs. The federal TRIO programs support at-risk junior high and high school students to graduate from high school, enter college, and complete their degrees. These programs include Talent Search, Upward Bound, Student Support Services,

Educational Opportunity Centers, Staff Development Activities, and Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR-UP).

- ▶ Student Support Services funds can be used for securing temporary housing during breaks in the academic year for students in or aging out of foster care.

- ▷ **Financial Aid** - The Free Application for Federal Student Aid (FAFSA) is an application used by Federal Student Aid, an office in the U.S. Department of Education. The application is used to determine the type and amount of federal financial aid (grants, work-study, and loans) for which each student is eligible. If a youth is considered “independent,” only the youth’s income—not parent’s or guardian’s—is considered when determining the student’s eligibility for financial aid. In most cases, this means the youth will be eligible for the maximum financial aid available. Federal law makes clear that an “independent student” includes a youth who is “an orphan, in foster care, or a ward of the court at any time when the individual was 13 years of age or older.”

Conclusion

Both the child welfare and education systems have responsibilities to support education stability and success of students in foster care. The federal laws outlined above show different requirements for each system. It is only by working together that child welfare and education agencies can achieve the best results for students in foster care. Research makes clear that students in foster care have unique needs and require specific supports to achieve educational success. (See research summary and data at a glance for more information) We encourage all working in child welfare, education, and the courts to use these federal provisions, along with complimentary state laws and policies, to prioritize the educational needs of all students in foster care—from early education through postsecondary success.

Endnotes

1. 42 U.S.C. § 675(1)(C)
2. 42 U.S.C. §§ 670-679
3. For more information on Fostering Connections and the support it provides for the education of children in foster care, see the Legal Center for Foster Care and Education’s Q&A on Fostering Connections https://fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=1603&Command=Core_Download

4. For specifics and implementation suggestions, see: [Fostering Connections State Implementation Toolkit](#); A Transportation Brief can be found at page 78.
5. See footnote 3.
6. 42 U.S.C. § 675(1)(G)(ii)
7. 42 U.S.C. § 675(1)(C)
8. Pub. L. No. 113-183, the Preventing Sex Trafficking and

Strengthening Families Act (2014)

9. For more information on the Reasonable and Prudent Parenting Standard see: Epstein, Lancour “Reasonable and Prudent Parenting Standard” ABA Center on Children and the Law, *Child Law Practice*, October 2016. https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/october-2016/the-reasonable-and-prudent-parent-standard/
10. For a summary of laws that support older youth in foster care, see: https://www.americanbar.org/content/dam/aba/administrative/child_law/youthengagement/quick-reference-guide-laws.pdf.
11. 42 U.S.C. § 675(8); For more information, see Juvenile Law Center’s National Extended Foster Care Review: 50-State Survey of Law and Policy: <https://jlc.org/resources/national-extended-foster-care-review-50-state-survey-law-and-policy>.
12. 42 U.S.C. § 675(1)(D)
13. 42 U.S.C. § 675(5)(H)
14. 42 U.S.C. § 677.
15. Note that the Consolidated Appropriations Act 2021 provided supplemental appropriations for the Chafee and ETV programs. Among other things, this supplement increased the maximum ETV award amount from \$5,000 to \$12,000 through September 30, 2022. For more information see: <https://www.cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=222§ionid=1&articleid=5725>.
16. 42 U.S.C.A. § 675a(b)(1) & (b)(2). For more information about the older youth provisions of the Strengthening Families Act, see: https://www.americanbar.org/content/dam/aba/administrative/child_law/youthengagement/SFA%20for%20Courts%20ABA%20February%202016.authcheckdam.pdf.
17. 42 U.S.C.A. § 675(5)(C)(iii).
18. 42 U.S.C. § 677.
19. This requirement was added during the last reauthorization of CAPTA (Pub. L. No. 108-36, 2003). A companion provision was also included in the 2004 reauthorization of IDEA (Pub. L. No. 108-446)
20. Pub. L. No. 110-134; 42 U.S.C. § 9801 ET SEQ.
21. Department of Health and Human Services, Administration for Children and Families, 45 C.F.R. pt. 1355, Adoption and Foster Care Analysis and Reporting System Final Rule (<https://www.govinfo.gov/content/pkg/FR-2020-05-12/pdf/2020-09817.pdf>)
22. Department of Health and Human Services, Administration for Children and Families, 45 C.F.R. pt., ch. II, Comprehensive Child Welfare Information System Final Rule (<https://www.govinfo.gov/content/pkg/FR-2016-06-02/pdf/2016-12509.pdf>)
23. <https://www.acf.hhs.gov/cb/research-data-technology/reporting-systems/nytd>
24. The full text of the Every Student Succeeds Act is available at: <https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf>.

For more details about ESSA and the provisions related to students in foster care, see the Legal Center for Foster Care



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This document was developed by the Legal Center for Foster Care and Education, a project of the American Bar Association Center on Children and the Law, Washington, DC. It was supported in part by the Los Angeles County Office of Education. To learn more about legal education issues for children in the foster care system, visit <https://www.fostercareandeducation.org/>

- and Education’s ESSA Q&A: https://fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=2004&Command=Core_Download.
25. 20 U.S.C. § 1111 (g)(1)(E)(i) (best interest), 20 U.S.C. § 1112(c)(5)(A) (points of contact), 20 U.S.C. § 1112(c)(5)(B) (transportation)
 26. 20 U.S.C. § 1111(h)(1)(C)(ii-iii)
 27. 20 U.S.C. § 1232(G); For more details on USA’s amendment to FERPA, see the Legal Center for Foster Care and Education’s “Q&A: How Do Recent Changes to FERPA Help Child Welfare Agencies Get Access to Education Records” found at https://fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=1833&Command=Core_Download
 28. 20 U.S.C. § 1400 et. seq.
 29. 20 U.S.C. § 1401
 30. 20 U.S.C. § 1414(a)(1)(C)
 31. 20 U.S.C. § 1414(d)(2)(C)(i)
 32. U.S.C. § 1414(D)(1)(A)(I)(VIII)(AA).
 33. For an article highlighting considerations for supporting students to graduate high school and obtain postsecondary education and relevant laws, see: https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/nov-dec-2017/how-attorneys-can-support-postsecondary-success/