

Foster Care & Education

Federal Update

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 states¹) 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, biological 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 CCWIS² 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

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.