

Under the Congressional Review Act, Congress has passed, and the President has signed, a resolution of disapproval of the accountability and State plans final regulations that were published on November 29, 2016 (81 FR 86076). This guidance document is unaffected by that resolution and remains applicable.



# **Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care**

U.S. Department of Education and U.S. Department of Health and Human Services  
Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act  
of 1965, as Amended by the Every Student Succeeds Act of 2015

June 23, 2016

## Table of Contents

<i>Introduction</i> .....	3
<i>Purpose of the Guidance</i> .....	3
Frequently Asked Questions .....	6
<i>Educational Stability</i> .....	6
<i>School of Origin</i> .....	11
<i>Best Interest Determination</i> .....	11
<i>Dispute Resolution</i> .....	14
<i>Transportation</i> .....	15
<i>Immediate Enrollment and Records Transfer</i> .....	20
<i>State and Local Points of Contact</i> .....	21
<i>Student Data and Privacy</i> .....	23
<i>Collaboration</i> .....	25
<i>Appendix: Sample POC Notification Letter</i> .....	28

*The U.S. Department of Education and U.S. Department of Health and Human Services do not mandate or prescribe practices, models, or other activities in this non-regulatory guidance document. This guidance contains examples of, adaptations of, and links to resources created and maintained by other public and private organizations. This information, informed by research and gathered in part from practitioners, is provided for the reader's convenience and is included here to offer examples of the many resources that educators, parents, advocates, administrators, and other concerned parties may find helpful and use at their discretion. The U.S. Departments of Education and Health and Human Services do not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Further, the inclusion of links to items and examples do not reflect their importance, nor are they intended to represent or be an endorsement by the U.S. Departments of Education and Health and Human Services of any views expressed, or materials provided.*

## ***Purpose of the Guidance***

*The U.S. Department of Education and U.S. Department of Health and Human Services have determined that this guidance is significant guidance under the Office of Management and Budget's, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). See [www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf](http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf). Significant guidance is non-binding and does not create or impose new legal requirements. The Departments are issuing this guidance to provide State and local educational agencies with information to assist them in meeting their obligations under the Elementary and Secondary Education Act.*

*If you are interested in commenting on this guidance, please email us your comment at [OESEGuidanceDocument@ed.gov](mailto:OESEGuidanceDocument@ed.gov) or write to us at the following address:*

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*For further information about the Department's guidance processes, please visit [www2.ed.gov/policy/gen/guid/significant-guidance.html](http://www2.ed.gov/policy/gen/guid/significant-guidance.html).*

## ***Introduction***

Children and youth in foster care represent one of the most vulnerable student subgroups in this country. Of the approximately 415,000 children in foster care in 2014, nearly 270,000 were in elementary and secondary schools.<sup>1</sup> Studies find that children in foster care are much more likely than their peers to struggle academically and fall behind in school. Students in foster care at age 17 are also less likely to graduate from high school, with only 65 percent graduating by age 21<sup>2</sup> compared to 86 percent among all youth ages 18 to 24.<sup>3</sup> A recent study found that children in foster care in California scored lower on assessments and showed less progress in scores over time compared to peers of similar backgrounds who were not in foster care.<sup>4</sup>

Children in foster care experience much higher levels of residential and school instability than their peers; one study showed that 75 percent of children in foster care made an unscheduled school change in one school year, compared to less than 40 percent for children not in foster care.<sup>5</sup> Unplanned school changes may be associated with delays in children's academic progress, leaving highly mobile students potentially more likely to fall behind their less mobile peers academically.<sup>6</sup> Children experiencing this type of

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<sup>1</sup> Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2014 data.

<sup>2</sup> National Youth in Transition Database. Unpublished analyses (April 2016). Administration on Children, Youth and Families, HHS.

<sup>3</sup> National Center for Education Statistics (2014). Digest of education statistics, 2014 - table 104.40. Retrieved from [https://nces.ed.gov/programs/digest/d15/tables/dt15\\_104.40.asp?current=yes](https://nces.ed.gov/programs/digest/d15/tables/dt15_104.40.asp?current=yes).

<sup>4</sup> Frerer, K.; Sosenko, L.D.; Pellegrin, N.; Manchik, V.; & Horowitz, J. (2013). Foster youth stability: A study of California foster youths' school and residential changes in relation to education outcomes. Retrieved from <http://www.iebcnow.org/IEBCPublicFiles/iebc.public/67/67e52ff2-4b46-4afa-8133-ba223aa80c33.pdf>.

<sup>5</sup> Ibid.

<sup>6</sup> National Working Group on Foster Care and Education. (2014.) Fostering success in education: National factsheet on the educational outcomes of children in foster care. Retrieved from <http://www.fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx>.

instability, including many students in foster care, are thus more likely to face a variety of academic difficulties.<sup>7</sup>

Recognizing the unique needs of children in foster care, States and the Federal government have launched efforts in recent years to increase the educational stability of and to improve educational outcomes for these youth. The passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act) was a significant step towards supporting the importance of school stability for children in foster care in Federal law. The legislation requires child welfare agencies to collaborate with educational agencies to keep children in foster care in the same school when living placements change, if remaining in that school is in their best interest. The Fostering Connections Act also requires child welfare agencies to ensure that children in foster care who do change schools are promptly enrolled in a new school, with the relevant school records. The U.S. Department of Health and Human Services (HHS) issued [guidance](#) on the Fostering Connections Act in July 2010.<sup>8</sup>

HHS and the U.S. Department of Education (ED) have worked together over the years to assist agencies in improving their policies and programs in order to better serve children in foster care. In November 2011, HHS and ED hosted a [national convening](#)<sup>9</sup> on the education of children in foster care, entitled *Child Welfare, Education and the Courts: A Collaboration to Strengthen Educational Successes of Children and Youth in Foster Care*. Leaders from the State and tribal child welfare agencies, State educational agencies (SEAs) and the State juvenile courts created State action plans to strengthen educational supports and services for children in foster care.

HHS and ED also issued a joint [Dear Colleague Letter](#) (DCL)<sup>10</sup> in May 2014 to Chief State School Officers and Child Welfare Directors on implementing the Fostering Connections Act. The DCL reiterated the role of local educational agencies (LEAs) in collaborating and coordinating with child welfare agencies to meet the educational stability requirements in the Fostering Connections Act. ED has a [webpage](#) providing relevant laws, guidance, and technical assistance for students in foster care.<sup>11</sup>

In January 2013, Congress passed the Uninterrupted Scholars Act (USA), which amended the Family Educational Rights and Privacy Act (FERPA) to permit educational agencies and institutions to disclose, without parental consent or the consent of an eligible student, education records of students in foster care to State and tribal child welfare agencies. The statute also amended the requirement that educational agencies and institutions notify parents before complying with judicial orders and subpoenas in certain situations. This legislation helps to ensure privacy protections for children and families and to facilitate more efficient data-sharing pertaining to children in foster care between child welfare and educational agencies, a critical component to ensuring school stability for these youth. ED issued [guidance](#) on the USA amendments to FERPA in May 2014. The ED guidance clarifies that the USA amendments to FERPA also affect the confidentiality of information provisions in the Individuals with Disabilities

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<sup>7</sup> Courtney, M., Roderick, M., Smithgall, C., Gladden, R. & Nagaoka, J. (2004). The educational status of foster children. Retrieved from [https://www.researchgate.net/profile/Cheryl\\_Smithgall/publication/268053940\\_The\\_Educational\\_Status\\_of\\_Foster\\_Children/links/54e4c0320cf22703d5bf415e.pdf](https://www.researchgate.net/profile/Cheryl_Smithgall/publication/268053940_The_Educational_Status_of_Foster_Children/links/54e4c0320cf22703d5bf415e.pdf).

<sup>8</sup> HHS guidance on the Fostering Connections Act is available at: <http://www.acf.hhs.gov/programs/cb/resource/pi1011>.

<sup>9</sup> More information on the national convening is available at: <http://sites.ed.gov/oese/2011/10/national-meeting-on-improving-educational-stability-for-children-in-foster-care/>.

<sup>10</sup> The DCL is available at: <http://www2.ed.gov/about/inits/ed/foster-care/fostering-connections-letter.doc>

<sup>11</sup> Visit ED's students in foster care webpage at: <http://www2.ed.gov/about/inits/ed/foster-care/index.html>

Education Act (IDEA) by permitting the nonconsensual disclosure of the education records of children with disabilities under the circumstances set forth in the USA.<sup>12</sup>

Over the last several years, particularly following the passage of the Fostering Connections Act, progress has been made at the State and local levels to better support the education of children in foster care through increased collaboration between child welfare agencies and educational agencies. To date, a majority of States have passed laws pertaining to school stability for children in foster care. Many of these laws allow children to stay in their schools of origin, clarify how to determine if staying in the school of origin is in the best interest of a child, and address immediate enrollment and records transfer. A smaller number of State laws specifically address the provision of transportation to maintain children in foster care in their schools of origin, including how such transportation is to be funded. Several States have required LEAs to appoint local foster care liaisons to support students in foster care and a handful have created shared data systems to allow the efficient exchange of information.

In December 2015, Congress passed the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), and built on the legislative successes outlined above by instituting new protections for children in foster care. These provisions, which take effect on December 10, 2016,<sup>13</sup> complement those in the Fostering Connections Act and require SEAs and LEAs to work with child welfare agencies to ensure the educational stability of children in foster care. Accordingly, ED and HHS collaborated on this guidance in order to ensure coherence across implementation of both laws.

The foster care provisions of Title I, Part A (Title I) of the ESEA emphasize the importance of collaboration and joint decision-making between child welfare agencies and educational agencies. While these provisions do not create new requirements for child welfare agencies, they mirror and enhance similar provisions in the Fostering Connections Act. Considered together, these laws make clear that the educational stability of children in foster care is a joint responsibility of educational and child welfare agencies, and to successfully implement these provisions, these entities will need to collaborate continuously. As previously mentioned, partnerships are already well underway between child welfare and educational agencies in many States and localities. We hope that this guidance is a useful tool that helps SEAs, LEAs, and child welfare agencies to build on this success. Finally, we encourage educational and child welfare agencies, as they work together to ensure educational stability for foster youth and implement these new provisions, to consider other ways to support better outcomes for these students, including by providing [supports](#) to youth to facilitate a successful transition from the elementary and secondary education to college and careers.<sup>14</sup>

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<sup>12</sup> ED's guidance on the USA amendments to FERPA is available at:

<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>

<sup>13</sup> The June 23, 2016 ED/HHS DCL on the effective dates of the foster care provisions is available at:

<http://www2.ed.gov/policy/elsec/leg/essa/index.html>.

<sup>14</sup> ED released a *Foster Care Transition Toolkit* in May 2016 to inspire and support current and former foster youth pursuing college and career opportunities. The toolkit includes tips and resources intended to help foster youth access and navigate social, emotional, educational and skills barriers as they transition into adulthood. The Toolkit is available at: <http://www2.ed.gov/about/inits/ed/foster-care/youth-transition-toolkit.pdf>

## **Frequently Asked Questions**

### ***Educational Stability***

New requirements under Title I of the ESEA, as amended by the ESSA, highlight the need to provide educational stability for children in foster care, with particular emphasis on collaboration between SEAs, LEAs, and child welfare agencies to ensure that students in foster care have the opportunity to achieve at the same high levels as their peers. These provisions emphasize the importance of limiting educational disruption by keeping children who move in foster care (due to entering the foster care system or changing placements) in their schools of origin, unless it is determined to be in their best interest to change schools. These provisions also ensure that, if it is not in their best interest to remain in their schools of origin, children in foster care are enrolled in their new schools without delay. In implementing these provisions, SEAs, LEAs, and child welfare agencies must ensure compliance with other applicable laws, such as Title VI of the Civil Rights Act of 1964 (Title VI), the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504), among others.

Taken in totality, these provisions promote greater stability for children in foster care so that they can continue their education without disruption, maintain important relationships with peers and adults, and have the opportunity to achieve college- and career-readiness.

#### **1. To which children do the new Title I requirements to ensure the educational stability of children in foster care apply?**

The requirements for ensuing educational stability for children in foster care under section 1111(g)(1)(E) apply to all children<sup>15</sup> in foster care enrolled in schools in the SEA. Consistent with the Fostering Connections Act, “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. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made. (45 C.F.R. § 1355.20(a)).

#### **2. By when must an SEA and LEA meet the Title I educational stability requirements?**

The Title I educational stability provisions take effect on December 10, 2016. As such, we encourage SEAs and LEAs to begin planning for the implementation of these provisions, in collaboration with child welfare agencies, as soon as possible. For more information on the effective dates of the foster care provisions, please see the June 23, 2016 joint ED/HHS DCL on this topic.<sup>16</sup>

The ESSA also amended section 725 of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), removing children “awaiting foster care placement” from the definition of “homeless children and youths” for purposes of the Education for Homeless Children and Youths (EHCY) program. This change takes effect for covered States—i.e., those that have defined the term “awaiting foster care placement” in statute or regulations—on December 10, 2017; the change takes effect for non-covered States on December 10, 2016. Thus, starting on December 10, 2016, an SEA and LEA must meet the Title I requirements for children in foster care, including those awaiting foster care placement.

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<sup>15</sup> Under Title I, the term “children” includes children through age 21 who are entitled to a free public education through grade 12. (34 C.F.R. § 200.103(a)(1)).

<sup>16</sup> The DCL is available at: <http://www2.ed.gov/policy/elsec/leg/essa/index.html>.

### **3. What are the responsibilities of an SEA in ensuring the educational stability of children in foster care?**

An SEA must collaborate with the State agency responsible for administering State plans under parts B and E of Title IV of the Social Security Act (the State or tribal child welfare agency)<sup>17</sup> to ensure the educational stability of children in foster care. (ESEA section 1111(g)(1)(E)).<sup>18</sup> Thus, in coordination with State and tribal child welfare agencies, an SEA must ensure that its LEAs implement the Title I educational stability requirements for children in foster care, including ensuring that:

- A child in foster care remains in his or her school of origin, unless it is determined that remaining in the school of origin is not in that child’s best interest;
- If it is not in the child’s best interest to stay in his or her school of origin, the child is immediately enrolled in the new school even if the child is unable to produce records normally required for enrollment; and
- That the new (enrolling) school immediately contacts the school of origin to obtain relevant academic and other records. (ESEA section 1111(g)(1)(E)(i)-(iii)).

In fulfilling this role, the SEA should coordinate with the State or tribal child welfare agency to develop and disseminate uniform guidelines for implementing the Title I educational stability provisions. Developing uniform statewide policies and procedures for ensuring educational stability for children in foster care, as many States have already done under the Fostering Connections Act, will facilitate successful implementation at the local level. This is particularly important given the shared agency responsibility for educational stability under Title I and the Fostering Connections Act, and because a single LEA or local child welfare agency will likely have to collaborate with multiple partner agencies in implementing these provisions. Due to the high mobility of children in foster care, State guidance is crucial for consistency across school districts.

Additionally, the SEA must conduct regular monitoring and oversight to guarantee appropriate implementation of these provisions at the local level. (See 2 C.F.R. §§ 200.331(d), 200.328(a); 34 C.F.R. § 76.770).

### **4. What are the responsibilities of an LEA in ensuring the educational stability of children in foster care?**

An LEA must collaborate with State and tribal child welfare agencies to implement the Title I educational stability provisions. (ESEA section 1111(c)(5)). LEAs should work closely with child welfare agency counterparts to tailor processes and procedures to the unique local context. For example, the LEA should decide with the State or local child welfare agency what documentation or records should be shared, establish criteria to be used in any decision-making process, and identify a structure, such as regularly scheduled meetings, in which relevant individuals can participate in a particular process.

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<sup>17</sup> Because both States and tribes may operate Title IV-B and IV-E programs, the term “State agency responsible for administering State plans under parts B and E of Title IV of the Social Security Act” as used in ESEA section 1111(g)(1)(E) includes both States and tribes responsible for administering plans under Titles IV-B and IV-E. Therefore, the term “the State or tribal child welfare agency” as used in this guidance means both State and tribal agencies responsible for administering plans under Titles IV-B and IV-E.

<sup>18</sup> Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

**5. What responsibilities does a child welfare agency have in ensuring the educational stability of children in foster care?**

A child welfare agency administering plans under Title IV-E and IV-B of the Social Security Act is required to include a plan for ensuring the educational stability of a child in foster care in the child's case plan (the educational stability plan). This plan must include: 1) an assurance that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child was enrolled at the time of placement; and 2) an assurance that the child welfare agency has coordinated with the LEA(s) to ensure the child can remain in that school, or if remaining in that school is not in the child's best interest, an assurance that the child will be enrolled immediately in a new school and that the new school obtains relevant academic and other records. These assurances relate to the circumstances at the time of the child's initial placement into foster care, as well as each time a child moves to a different foster care placement. (See Section 475(1)(G) of the Social Security Act.)

The educational stability plan must be a written part of the child's case record, which is jointly developed with the child's parents<sup>19</sup> no later than 60 days after a child's removal from the home, and every six months thereafter. The child welfare agency has the flexibility to determine which factors will be examined in determining whether remaining in the school of origin is in the child's best interest, but the cost of school transportation should not be a factor in determining the best interest of the child for the purposes of school selection.

**6. How do the Title I educational stability provisions impact the requirements pertaining to educational stability under the Fostering Connections Act?**

While the Title I educational stability provisions do not create any new requirements for child welfare agencies, they offer an opportunity for child welfare agencies to better coordinate with SEAs and LEAs to create more effective educational stability plans for children in foster care, as required under the Fostering Connections Act. In light of the new Title I provisions, we encourage child welfare agencies to revisit how they are coordinating with SEAs and LEAs to meet their Title IV-E plan assurance.

**7. Do the Title I educational stability provisions apply to preschool-age children in foster care?**

If an LEA offers a public preschool education, an 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 or her preschool of origin, unless a determination is made that it is not in the child's best interest. (See ESEA section 1111(g)(1)(E)).

**8. What special considerations and legal requirements should SEAs and LEAs take into account when implementing the educational stability provisions for children with disabilities under the IDEA and students with disabilities under Section 504?**

A significant percentage of children in foster care are receiving special education services; several studies show that children in foster care are between 2.5 and 3.5 times more likely to be receiving special education services than their peers not in foster care.<sup>20</sup> Research also suggests that children in foster care

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<sup>19</sup> The definition of "parent" in the ESEA includes "a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare)." (See ESEA section 8101(38)).

<sup>20</sup> National Working Group on Foster Care and Education. (2014.) Fostering success in education: National factsheet on the educational outcomes of children in foster care. Retrieved from <http://www.fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx>



who are receiving special education services tend to change schools more frequently than children receiving special education services who are not in foster care.<sup>21</sup>

The IDEA Part B (IDEA or Part B) is the Federal law that assists States, and through them, local school districts in providing special education and related services to children with disabilities. Under Part B States and school districts must make a free appropriate public education (FAPE) available to all eligible children with disabilities in the least restrictive environment (LRE). FAPE under IDEA includes the provision of special education and related services at no cost to the parents in accordance with a properly-developed individualized education program (IEP). (34 C.F.R. §§ 300.101, 300.201 and 300.17). LRE means that to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that the child cannot be educated satisfactorily in regular classes with the provision of supplementary aids and services. (34 C.F.R. § 300.114(a)). While IDEA presumes that the first placement option considered for each child with a disability is the regular classroom with appropriate supplementary aids and services, there is no one size fits all approach. School districts must make available a range of placement options to meet the needs of children with disabilities for special education and related services, including regular classes, special classes, separate schools, home instruction, and instruction in hospitals and institutions. (34 C.F.R. § 300.115).

Under the IDEA, each child's placement decision must be made by a group of knowledgeable persons, including the child's parents.<sup>22</sup> This group may also include staff from a child welfare agency.

The IDEA requires that the educational placement of each eligible child with a disability, including children with disabilities in foster care, be determined at least annually, and be based on the child's IEP in accordance with the child's individual needs. Unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if not disabled.

In 2013, ED's Office of Special Education and Rehabilitation Services released a [DCL](#)<sup>23</sup> on highly mobile children with disabilities, which highlighted several important issues that are relevant to educational stability for children in foster care. The DCL emphasized timely and expedited evaluations and eligibility determinations for highly mobile children with disabilities, and clarified that such children must have access to comparable services (including summer and other extended school year services, if applicable).

Students with disabilities who are eligible for services under the IDEA are also protected by Section 504, a Federal law that prohibits discrimination on the basis of disability by recipients of Federal financial assistance, including public schools.<sup>24</sup> School districts also must provide FAPE under Section 504 to students who have disabilities, regardless of whether they are eligible for services under the IDEA. FAPE under Section 504 includes the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met, and that include adherence to specific procedural requirements.<sup>25</sup> An IEP developed and implemented in accordance with the IDEA is one means of meeting the Section

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<sup>21</sup> Ibid.

<sup>22</sup> Parent is defined in the IDEA at 34 C.F.R. § 300.30. Note that this definition includes a child's foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent.

<sup>23</sup> The DCL is available at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-0392dclhighlymobile.pdf>

<sup>24</sup> 29 U.S.C. § 794, 34 C.F.R. part 104. Students with disabilities who are in foster care are also protected by Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits disability discrimination by public entities, including public schools, regardless of whether they receive Federal financial assistance (42 U.S.C. §§ 12131-12134, 28 C.F.R. part 35).

<sup>25</sup> 34 C.F.R. § 104.33-104.36.

504 FAPE standard. School districts often develop written plans, commonly referred to as Section 504 Plans, for students with disabilities who receive services under Section 504. Even if a student does not require special education services and does not have an IEP, he or she may nevertheless be a student with a disability under Section 504 and be entitled to receive related aids and services under a Section 504 Plan.

As is true under the IDEA, Section 504 also requires that, to the maximum extent appropriate, students with disabilities be educated in the regular educational environment, unless they cannot be educated satisfactorily in that environment with the use of supplementary aids and services.<sup>26</sup>

### **9. What special considerations and legal requirements should SEAs and LEAs take into account when implementing the educational stability provisions for children who are English learners?**

Some children in foster care are also English learners (ELs)—students identified as having limited English proficiency in speaking, listening, reading, or writing English through procedures established by school districts. Title VI<sup>27</sup> and the Equal Educational Opportunities Act of 1974 (EEOA)<sup>28</sup> require public schools to ensure that all EL students, including EL students in foster care, can participate meaningfully and equally in educational programs. In order to meet their obligations under Title VI and the EEOA, LEAs must:

- Identify and assess all potential EL students in a timely, valid, and reliable manner
- Provide EL students with a language assistance program that is educationally sound and proven successful
- Sufficiently staff and support the language assistance programs for EL students
- Ensure that EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities
- Avoid unnecessary segregation of EL students
- Ensure that EL students with disabilities are evaluated in a timely and appropriate manner for special education and disability-related services and that their language needs are considered in these evaluations and delivery of services
- Meet the needs of EL students who opt out of language assistance programs
- Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level core content, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied.
- Evaluate the effectiveness of a school district's language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program was reasonably calculated to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time
- Ensure meaningful communication with limited English proficient (LEP) parents

Additional information about States' and school districts' legal obligations under Title VI and the EEOA can be found in a [DCL about EL students and LEP parents](#) jointly released by the Department of Education and Department of Justice.

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<sup>26</sup> 34 C.F.R. § 104.34(a). For additional information on Section 504 see the document entitled *Protecting Students with Disabilities*, available on the website for the Office for Civil Rights, U.S. Department of Education, at: <http://www2.ed.gov/about/offices/list/ocr/504faq.html>.

<sup>27</sup> 42 U.S.C. § 2000d to d-7, 34 C.F.R. part 100.

<sup>28</sup> 20 U.S.C. § 1703(f).

## ***School of Origin***

### **10. What is a school of origin?**

The school of origin is the school in which a child is enrolled at the time of placement in foster care. An SEA and its LEAs must ensure that a child in foster care enrolls or remains in his or her school of origin unless a determination is made that it is not in the child's best interest. (ESEA section 1111(g)(1)(E)(i)). 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.

For example, a student enters foster care and changes residences, meaning that she now lives ten miles away from her school of origin (school A) and the closest school is school B. The child welfare agency and LEA determine that it is in this student's best interest to attend school B. One year later, this same student changes foster care placement (and therefore changes residences). She now lives five miles away from the school she is currently enrolled in (school B) and the closest school is school C. For the purposes of determining which school is in this child's best interest, the child welfare agency and LEA should now consider school B (the school she is currently enrolled in) as the school of origin.

### **11. What is the duration of time that a child is protected under the school of origin provision? What happens once a child exits foster care?**

SEAs and LEAs must collaborate with State and local child welfare agencies to ensure that each child in foster care remains in his or her school of origin if it determined to be in their best interest for the duration of the child's time in foster care (see ESEA sections 1111(g)(1)(E)(i) and 1112(c)(5)), consistent with the educational stability requirements under the Fostering Connections Act. While these requirements no longer apply once a student has exited foster care, we encourage SEAs and LEAs to prioritize educational stability for these children. In addition to benefitting academically from school continuity, during times of transition out of foster care, it is important for youth to be able to maintain connections with their peers, teachers, and other supportive adults at school. For example, SEAs and LEAs should consider adopting policies that allow a child that exited foster care during the school year to continue in the school of origin through at least the end of the academic year, if appropriate.

## ***Best Interest Determination***

### **12. What factors should be considered in determining whether remaining in a child's school of origin is in his or her best interest, as it relates to ensuring school stability?**

An SEA, in collaboration with the State or tribal child welfare agency, must ensure that in determining whether it is in a child's best interest to remain in his or her school of origin, an LEA takes into consideration all factors relating to a child's best interest. These factors include the appropriateness of the current educational setting and proximity of placement. (ESEA section 1111(g)(1)(E)(i)).

SEAs, LEAs, and child welfare agencies have flexibility in determining which factors should be considered as part of evaluating the appropriateness of the current educational setting, as well as any additional factors that pertain to a child's best interest. Though the specific factors may vary depending on context, in order to make a holistic and well-informed determination, a variety of student-centered factors should be considered. These factors may include:

- Preferences of the child;

- Preferences of the child’s parent(s) or education decision maker(s)<sup>29</sup>;
- The child’s attachment to the school, including meaningful relationships with staff and peers;
- Placement of the child’s sibling(s);
- Influence of the school climate on the child, including safety;
- The availability and quality of the services in the school to meet the child’s educational and socioemotional needs;
- History of school transfers and how they have impacted the child;
- How the length of the commute would impact the child, based on the child’s developmental stage;
- Whether the child is a student with a disability under the IDEA who is receiving special education and related services or a student with a disability under Section 504 who is receiving special education or related aids and services and, if so, the availability of those required services in a school other than the school of origin; and
- Whether the child is an EL and is receiving language services, and, if so, the availability of those required services in a school other than the school of origin, consistent with Title VI and the EEOA.

Transportation costs should not be considered when determining a child’s best interest, which is consistent with the [program instruction](#) released by HHS subsequent to the passage of the Fostering Connections Act.

### **13. What process should SEAs and LEAs use when making the best interest determination?**

The law does not prescribe a specific process, but we encourage SEAs to work with the State or tribal child welfare agencies to establish guidelines to be used by LEAs and schools in coordination with local child welfare agencies to guide the decision making process. For example, LEAs could use a checklist to guide the discussion of the advantages and disadvantages of staying in the school of origin or moving to a new school.

We encourage the SEAs and LEAs to consider establishing a mechanism through which relevant parties can meaningfully participate in the best interest determination. This structure could be incorporated into previously established meetings, such as family team meetings or at placement hearings, or may occur during a separate new meeting. Once a determination is made, SEAs and LEAs should provide the decision in writing to all relevant parties, in collaboration with child welfare agencies.

### **14. Who should be involved in making a best interest determination?**

If they have not already done so, the SEA and LEA should work with child welfare agencies to develop a clear policy or protocol on how to make best interest determinations, including making every effort to gather meaningful input from relevant parties, in addition to required child welfare and school representatives, in deciding what school placement is in a child’s best interest. State and local foster care points of contact (POCs) can play an important role in establishing these policies and protocols and

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<sup>29</sup> State laws and practices vary in if and how they define an “educational rights holder,” “education decision maker,” or other individual legally authorized by the court to make educational decisions for a child in foster care. Generally, the education decision maker is the person with the right to make education decisions for a child in foster care related to special education evaluation, eligibility, planning, and services. Unless someone else has been appointed by the court, or in some places by the school, the legal decision maker for a child in foster care is most likely the child’s parent.

facilitating the process (see the POC section of this guidance, starting on page 21, for more information). 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, coach, or other meaningful person in the child's life.

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. If a child has an IEP or a Section 504 plan, then the relevant school staff members would also need to participate in the best interest decision process. If the child is an EL, this may also affect the relevant school staff members who would need to participate in the best interest decision process.

**15. How long do LEAs have to make the best interest determination?**

Although Title I does not prescribe a specific timeline for making a best interest determination, the LEA should make this determination as quickly as possible in order to prevent educational discontinuity for the child. To the extent feasible and appropriate, the LEA must ensure that a child remains in his or her school of origin while this determination is being made. (See ESEA section 1111(g)(1)(E)(i)).

**16. What special considerations and legal requirements must be taken into account when making a best interest determination for students with disabilities?**

As noted in answer to Question 8, eligible students with disabilities retain their right to receive a free appropriate public education in the least restrictive environment. When making decisions regarding the educational placement of students with disabilities under IDEA and Section 504, the LEA must ensure that all required special educational and related services and supports are provided in the least restrictive placement where the child's unique needs, as described in the student's IEP or Section 504 plan, can be met.

**17. What special considerations and legal requirements must be taken into account when making a best interest determination for English learner students who are required to receive language services under Title VI and the EEOA?**

As noted in the answer to Question 9, school districts must identify and assess all potential EL students, and provide all EL students, including EL students in foster care, with a language assistance program that is educationally sound and proven successful. When a best-interest determination is made for an EL student in foster care, the LEA must ensure that it complies with its obligations under Title VI and the EEOA, as described in the answer to Question 9.

### ***SPOTLIGHT FROM THE FIELD: BEST INTEREST DETERMINATION***

There are a number of examples from the field that illustrate how dual agency collaboration at the State level can facilitate successful implementation at the local level through uniform statewide standards. In one State, the SEA and State child welfare agency issued joint guidance on school placement for children in foster care. The guidance directs how the local child welfare agency and a representative of the school in which the child was enrolled prior to the change in residence must work together to determine the child's best interest for school placement.

Their best interest determination process includes the following steps:

- The child welfare agency notifies the child's current school that the child will be moving to a new residence and the necessary timeframe for determining the child's most appropriate school placement.
- The school provides the child welfare agency information on the appropriateness of the current educational setting and the child welfare agency takes into account this information and the distance from potential placements to the child's current school in the decision making process.
- The child welfare agency and the child's current school jointly determine the child's best interest for school placement, in consultation with the child and other key partners.
- The best interest determination for school placement is completed as quickly as possible (e.g., within three business days) after the child welfare agency notifies the school of the decision of the child's new residence; the child remains in the same school during that time, unless contrary to the child's best interest.
- The child welfare agency arranges for transportation and payment of transportation expenses for the child to remain in the school of origin.

### ***Dispute Resolution***

#### **18. If parties cannot come to an agreement regarding the best interest determination, which entity should be the final decision maker?**

Child welfare agencies, SEAs, and LEAs each bring valuable perspectives to the best interest determination. Recognizing this, both the Fostering Connections Act and Title I require coordination among agencies at the State and local level to ensure the educational stability of children in foster care.

Given these coordination requirements, the relevant agencies should make every effort to reach agreement regarding the appropriate school placement of children in foster care. However, if there is disagreement regarding school placement for a child in foster care, the child welfare agency should be considered the final decision maker in making the best interest determination (unless State law or policy dictates otherwise). The child welfare agency is uniquely positioned to assess vital non-educational factors such as safety, sibling placements, the child's permanency goal, and the other components of the case plan. The child welfare agency also has the authority, capacity, and responsibility to collaborate with and gain information from multiple parties, including parents, children, schools, and the court in making these decisions.

**19. How should disagreements over the best interest determination among parents, education decision makers, and other important stakeholders be handled?**

We encourage SEAs and LEAs to collaborate with child welfare agencies to develop a dispute resolution process at the local level for parties to address disagreements over the best interest determination decision. Since the best interest determination process will ideally represent input from multiple parties, a clear dispute resolution process may help to clarify a complicated process and enable parents and families to address disagreements about school placement in an orderly manner.

The dispute resolution process should be fair to all parties and reached in an expeditious manner. Once the decision is made, a written explanation should be provided to all involved parties.

**20. Must a child remain in his or her school of origin while disputes are being resolved?**

To the extent feasible and appropriate, an LEA must ensure that a child remains in his or her school of origin while the disputes are being resolved to minimize disruptions and reduce the number of moves between schools. (See ESEA section 1111(g)(1)(E)(i)).

***SPOTLIGHT FROM THE FIELD: DISPUTE RESOLUTION***

Some States have already passed legislation that addresses the action that should be taken when parties are in disagreement about the best interest determination. For example, under one State law, the child welfare system must notify all parties (i.e., the child or child’s attorney and the parents or their attorney) of its decision and the reasons for it, in writing, within three business days after making the decision. Any party can challenge the decision within three business days of receiving the notice by using the dispute resolution process for a child welfare treatment plan: if a parent or child is aggrieved by a treatment plan provision, they may ask for an administrative hearing and, if still aggrieved after the hearing decision, to appeal to superior court.

Legislation requires disagreements to be resolved “expeditiously” and places the burden of proof on the child welfare system to show that its decision is in the child’s best interest. The child must be transported to the school of origin until the three days have passed or the disagreement is resolved. The school placement decision may be revisited at any time while the child is in out-of-home care, if circumstances change, to ensure the placement remains in his or her best interest.

***Transportation***

Some children in foster care will need transportation to remain in their school of origin when it is in their best interest. To facilitate transportation for these children, an LEA receiving Title I funds must collaborate with the State or local child welfare agency or agencies to ensure that transportation for children in foster care is provided, arranged, and funded. (ESEA section 1112(c)(5)(B)). SEAs and State or tribal child welfare agencies also play a key role in ensuring the adequate provision of transportation for children in foster care, as part of their overall responsibilities under Title I and the Fostering Connections Act to provide educational stability for these children.

**21. What is the SEA’s role with respect to the provision of transportation for a child in foster care to his or her school of origin?**

Transportation procedures can be complex and span multiple local child welfare agencies and LEAs, as well as multiple SEAs and State or tribal child welfare agencies. Although the development and implementation of transportation procedures for children in foster care are the responsibility of LEAs, the SEA should work collaboratively with the State or tribal child welfare agency to provide uniform statewide guidelines or procedures to LEAs for how the transportation provisions of the ESEA should be implemented by LEAs consistently throughout the State. We encourage SEAs to include guidelines for

how additional costs for transportation will be funded and to establish a mechanism or policy for LEAs to resolve interagency disputes related to transportation costs. SEA duties also include monitoring and oversight of local transportation procedures.

**22. What is an LEA’s role in providing transportation for a child in foster care to his or her school of origin?**

An LEA must collaborate with the State or local child welfare agency to develop and implement clear written procedures governing how transportation to maintain children in foster care in their schools of origin, when in their best interest, will be provided, arranged, and funded for the duration of the child’s time in foster care (the transportation procedures). These procedures must ensure that—

- Children in foster care needing transportation to their schools of origin will promptly receive that transportation in a cost effective manner and in accordance with section 475(4)(A) of the Social Security Act; and
- 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. (ESEA 1112(c)(5)(B)).

Since children may be placed in foster care placements across district, county, or State lines, coordination among multiple LEAs and child welfare agencies may be necessary. Thus, in developing the transportation procedures, LEAs should also work with the State or local child welfare agency to establish inter-district and inter-State procedures that address potential transportation issues that may arise as students in foster care move from one district to another or across State lines.

**23. What is the role of the child welfare agency in providing transportation for a child in foster care to his or her school of origin?**

A child welfare agency administering plans under Title IV-E and IV-B of the Social Security Act must ensure that the educational stability plan of each child in foster care includes an assurance that the child welfare agency has coordinated with the appropriate LEA(s) to ensure the child can remain in the school of origin, or if remaining in that school is not in the child’s best interest, an assurance that the child will be enrolled immediately in a new school. Given the shared responsibility of child welfare agencies and LEAs to ensure educational stability, we encourage child welfare agencies to continue to work with the appropriate LEA(s) in exploring the full range of options for providing and funding transportation to maintain a child in his or her school of origin, consistent with the child’s educational stability plan. (See Questions 5 and 30 for additional information.)

**24. By when must an LEA develop and implement its transportation procedures?**

An LEA must collaborate with the State or local child welfare agency to develop and implement local transportation procedures by December 10, 2016 (one year after the enactment of the ESSA). (ESEA section 1112(c)(5)(B)).

***SPOTLIGHT FROM THE FIELD: TRANSPORTATION***

A number of local child welfare and educational agencies have already partnered to ensure that students receive the transportation that they need to remain in their school of origin. One State passed legislation that requires the child welfare system and the school to collaborate on developing and implementing transportation plans. The child welfare agency is responsible for any additional or extraordinary costs of the transportation and must maximize federal reimbursements under Title IV-E. The child welfare agency and school consider cost-effective, reliable, and safe transportation options.



**25. What is the duration of time that the LEA must provide a child with transportation services under ESEA section 1112(c)(5)? What happens once a child exits foster care?**

An LEA must ensure that a child in foster care needing transportation to the school of origin receives such transportation for the duration of the time the child is in foster care. (ESEA section 1112(c)(5)(B)). When a child exits foster care, the LEA should continue to prioritize the child’s educational stability, consider each child’s best interest on a case-by-case basis, and, when possible, make every effort to continue to ensure transportation is provided through the end of the school year, if needed, when remaining in the school of origin would be in the child’s best interest.

**26. What does it mean to provide transportation to the school of origin in a “cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act” ?**

Section 475(4)(A) of the Social Security Act defines “foster care maintenance payments,”<sup>30</sup> which includes the cost of reasonable travel for children in foster care to their school of origin. As such, that means if a child is receiving a Title IV-E foster care maintenance payment, the Title IV-E agency is permitted to include the reasonable costs of transportation for that eligible child. Thus, in determining whether transportation is “cost-effective,” an LEA must consider the reasonableness of those costs. In doing so, an LEA should consider a variety of factors, including cost, distance, and length of travel, as well as whether the mode of transportation is developmentally appropriate for the child.

An LEA should also consider whether transportation can be provided for minimal or no additional costs. Examples of no-cost or low-cost options for transportation that LEAs and local child welfare agencies could explore include whether:

- The child may be dropped off at a school bus stop near the existing transportation system for the school of origin;
- Public transportation options exist, if the child is of an appropriate age and has or is able to acquire the skills to utilize such options;
- The foster parents or other family member(s) are willing and able to transport the child to school;
- There are pre-existing bus routes or stops close to the new foster care placement that cross district boundaries, such as bus routes for magnet schools and transportation for homeless students as required by the McKinney-Vento Act.; and
- The child is already eligible for transportation covered by other programs. For example, IDEA funds may be used to pay for transportation services if the child’s IEP Team determines transportation is a related service that is required in order for a child with disabilities in foster care to receive FAPE.

**27. What constitutes “additional costs” incurred in providing transportation to maintain children in foster care in their schools of origin?**

As part of developing and implementing its transportation procedures, an LEA must address any additional costs incurred in providing transportation to maintain children in foster care in their schools of origin. (See ESEA section 1112(c)(5)(B)(ii)). Additional costs incurred in providing transportation to the

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<sup>30</sup> The term “foster care maintenance payments” is defined as: “payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child and reasonable travel to the child’s home for visitation and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence” (section 475(4)(A) of the Social Security Act). Child welfare agencies may claim federal reimbursement for these costs on behalf of eligible children.

school of origin should reflect the 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 re-route busses to transport a child in foster care to one of its schools, the cost of this rerouting can be considered additional cost.

**28. What steps should an LEA and local child welfare agency take to ensure that transportation is provided if they face difficulty reaching agreement on how to pay for additional transportation costs?**

Given the emphasis on shared agency responsibility to ensure educational stability in both the Fostering Connections Act and Title I, the LEA and the local child welfare agency should make every possible effort to reach agreement regarding how transportation should be funded if there are additional costs. Transportation is a central component of educational stability and may be needed in order to fulfill the requirements that both LEAs and child welfare agencies ensure educational stability for children in foster care; thus, both agencies must collaborate regarding transportation if it is necessary so that a child in foster care may remain in his or her school of origin, consistent with section 475(5)(G)(ii)(I) of the Social Security Act. We encourage the LEA and local child welfare agency to consider and utilize all allowable funding sources, including Federal funds, to cover additional transportation costs. Maximizing all possible funding sources in this manner will help ensure that transportation costs for children in foster care do not become unduly burdensome on any one agency.

We recognize that there may be rare occasions when an LEA and local child welfare agency face difficulties reaching agreement on how to fund any additional costs incurred to provide transportation to the school of origin. As discussed in Question 22, however, an LEA must collaborate with the State or local child welfare agency to develop transportation procedures that ensure that children in foster care promptly receive transportation, as needed, to their school of origin. (ESEA section 1112(c)(5)(B)(i)). Thus, 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. Additionally, we encourage the SEA, in partnership with State and tribal child welfare agencies and key decision-makers such as the governor, to develop a uniform State process for resolving such disputes, as part of its overall duties to ensure educational stability under section 1111(g)(1)(E) of the ESEA. An LEA must ensure that a child in foster care remains in his or her school of origin while any disputes regarding transportation costs are being resolved. (See ESEA sections 1111(g)(1)(E)(i) and 1112(c)(5)(B)(i)).<sup>31</sup>

**29. If an LEA does not provide transportation to children who are not in foster care, is it required to transport children in foster care to their schools of origin?**

Yes. An LEA must ensure that transportation is provided for children in foster care consistent with the procedures developed by the LEA in collaboration with the State or local child welfare agency under section 1112(c)(5)(B) of the ESEA. These requirements apply whether or not the LEA already provides transportation for children who are not in foster care.

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<sup>31</sup> Please note that this question may be revised following the 2016-2017 school year pending review of public comment and final rulemaking on proposed regulations regarding the transportation of children in foster care under ESEA section 1112(c)(5)(B). (See 81 FR 34540).

### **30. What funding sources may be used to pay for additional transportation costs?**

In addition to State and local funds that may be available for providing transportation, certain Federal funds may be available to cover additional transportation costs to maintain children in foster care in their schools of origin.

Title IV- E Federal funds are available to assist with additional transportation costs for children who are eligible for Title IV-E foster care maintenance payments (those children who meet the specific requirements set forth section 472 of the Social Security Act).<sup>32</sup> This is the primary source of federal funding available to child welfare agencies to use for this purpose, and in fiscal year 2015, more than half of youth in foster care were ineligible for Title IV-E foster care maintenance payments. Specifically, the cost of reasonable travel for a child in foster care to remain in his or her school of origin may be included in the Title IV-E foster care maintenance payment. Child welfare agencies receiving Title IV-E funds have discretion in determining what is considered reasonable travel, and may take into account factors such as cost, distance, and duration of travel. As with any cost enumerated in the definition of foster care maintenance payments, the child welfare agency may decide which of the enumerated costs to include in a child's foster care maintenance payment. In addition, transportation costs associated with the child's attendance at his or her school of origin are allowable foster care administrative costs under Title IV-E. Although Title IV-E reimbursement is available for the Federal portion of these costs, child welfare agencies receiving Title IV-E funds are responsible for the non-federal portion.<sup>33</sup> For more detailed guidance, please see page 20 of [ACYF-CB-PI-10-11](#).<sup>34</sup>

In addition, an LEA may use Title I funds to pay for additional costs needed to transport children in foster care to their schools of origin. Please note, however, that funds reserved for comparable services for homeless children and youth under section 1113(c)(3)(A)(i) of the ESEA may not be used to provide transportation needed to maintain children in foster care in their schools of origin.

### **31. Are charter school LEAs required to provide transportation for children in foster care?**

Yes, to the extent that a charter school is considered an LEA under a State's charter school law, it must meet the transportation requirements on the same basis as any other LEA.

### **32. Is an LEA required to transport children in foster care to and from their schools of origin while transportation cost disputes are being resolved?**

An LEA must ensure that children in foster care needing transportation to the school of origin promptly receive such transportation in a cost-effective manner. (ESEA section 1112(c)(5)(B)(i)). Therefore, the LEA must provide or arrange for adequate and appropriate transportation to and from the school of origin while any disputes are being resolved.

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<sup>32</sup> In fiscal year 2015, the eligibility rate for Title IV-E foster care maintenance payments was approximately 42 percent of all children in foster care.

<sup>33</sup> Child welfare agencies are reimbursed at the applicable Federal Medical Assistance Percentage for claims for Title IV-E foster care maintenance payments, and at 50 percent for claims for Title IV-E administrative costs (section 474 of the Social Security Act).

<sup>34</sup> Access ACYF-CB-PI-10-11 here: <http://www.acf.hhs.gov/programs/cb/resource/pi1011>.

### ***SPOTLIGHT FROM THE FIELD: TRANSPORTATION***

To effectively address transportation in a cost-effective way, one child welfare agency, LEA and court system have developed protocols to coordinate transportation so that children in foster care can remain in their school of origin whenever possible or can be transferred immediately without disrupting their education. The following example describes the joint guidance developed to effectively conduct this coordination.

- If the child's new placement address is located within a 1.5 mile radius of the school, the foster parent or designated group home staff person is responsible for taking the child to school of origin.
- If the child is placed outside of the 1.5 miles radius of the school, the LEA will implement an expedited process to address the transportation needs of children in foster care so that these children do not experience disruptions in their education due to lack of transportation.

In the case of any emergency, overnight, respite, or temporary placement, the child will continue attending the school of origin and transportation arrangements will be made by the LEA if the location of the emergency, overnight, respite, or temporary placement is beyond the 1.5 mile radius. There may be situations when a yellow bus route does not exist. In these cases, the child welfare agency and school need to communicate to make efforts to develop an alternate plan for the child.

### ***Immediate Enrollment and Records Transfer***

Children in foster care who change schools frequently may not have the documentation required to enroll in a new school. In addition, failure of schools to promptly transfer records to the new school can lead to further delays in enrollment. These delays can negatively impact attendance and lead to other adverse consequences, such as being incorrectly enrolled in classes and not receiving the necessary academic services. When a determination is made that remaining in the school of origin is not in a child's best interest, SEAs and LEAs must ensure that a child in foster care is immediately enrolled in his or her new school even if the student does not have the required documentation. The enrolling school must then contact the student's prior school for relevant records. (ESEA section 1111(g)(1)(E)(ii)-(iii)). SEAs and LEAs should review and revise policies and practices to remove any barriers to immediate enrollment and records transfer for children in foster care.

#### **33. What does it mean for a child to be "immediately enrolled" in a new school?**

Immediate enrollment means that a child in foster care should be enrolled in a new school as soon as possible in order to prevent educational discontinuity. In addition, enrollment must not be denied or delayed for any population of students (e.g., justice-involved youth in foster care, students with disabilities receiving special education and related services, or ELs receiving language services) because documents normally required for enrollment have not been provided. (See ESEA section 1111(g)(1)(E)).

The enrolling school must immediately contact a child's school of origin to obtain the relevant records and documentation (ESEA section 1111(g)(1)(E)(iii)), and the school of origin should immediately transfer those records. In addition to ensuring immediate enrollment, LEAs should also ensure that children in foster care are regularly attending and fully participating in school and that their educational needs are being met. SEAs and LEAs should also take affirmative steps to revise policies that are barriers to enrollment and attendance for children in foster care. For example, some LEAs require tuition reimbursement for children who have been placed in the LEA but are still under the jurisdiction of a child welfare agency in another State. LEAs are encouraged to develop policies and procedures around tuition reimbursement to avoid any barriers to immediate enrollment.

For more information on the IDEA requirements related to the transfer of records for students with disabilities in foster care, please see ED's [DCL](#) on highly mobile children with disabilities.<sup>35</sup>

### ***SPOTLIGHT FROM THE FIELD: IMMEDIATE ENROLLMENT***

Many States have instituted laws and policies to facilitate immediate enrollment for children in foster care. In one State, if the child welfare agency determines that it is not in the child's best interest to remain in his or her school of origin and either no objection to the change in school is filed or all objections have been resolved, the child welfare agency works with the school of origin and receiving school to ensure the child's immediate and appropriate enrollment in and attendance at the receiving school. The child may be enrolled in the receiving school by the child's foster parent or the child's caseworker. The school of origin is responsible under State law for sending all essential educational records to the receiving school within **one day** of receiving notice from the child welfare agency that the child will be changing schools. The caseworker verbally notifies both schools within one business day of making the decision and faxes the requisite documents to both schools within two business days of making the decision. The school of origin is required to transfer non-essential records to the receiving school within 10 days.

### ***State and Local Points of Contact***

Each SEA must designate a point of contact (POC) for child welfare agencies to oversee the implementation of the State responsibilities under the Title I educational stability provisions for children in foster care. This POC must not be the same person as the State Coordinator for the Education of Homeless Children and Youths under section 722(d)(3) of the McKinney-Vento Homeless Assistance Act. (ESEA section 1111(g)(1)(E)(iv)). The Title I foster care provisions emphasize the importance of collaboration between child welfare and educational agencies to ensure educational stability and improved outcomes for children in foster care. Identification of POCs at both the SEA and LEA level will ensure that the agencies can successfully work together on the implementation of Title I educational stability requirements. LEAs must designate a local POC for child welfare agencies if the corresponding child welfare agency notifies the LEA, in writing, that the agency has designated a POC. (ESEA section 1112(c)(5)(A)).

Because the educational stability requirements must be implemented and transportation procedures developed and implemented by December 10, 2016 (see ESEA section 1112(c)(5)(B)), SEAs should designate the SEA POC in an expedited manner. Given that these provisions will largely be implemented at the local level and involve multiple stakeholders, LEAs should also designate the LEA POC in an expedited manner, even if the child welfare agency has not yet notified them in writing of their corresponding POC. The contact information for both the SEA and LEA POCs should be made public so that child welfare agencies can easily reach them. Further, it is essential that the designated POCs have sufficient capacity and necessary resources to fulfill their duties, considering the roles and responsibilities of the POC to facilitate the implementation of the Title I foster care provisions.

#### **34. What are examples of potential roles and responsibilities of the SEA POC?**

Some of the roles and responsibilities of the SEA POC may include:

- Coordinating with the corresponding State and tribal child welfare agency POCs to issue joint State guidance for the implementation of the Title I provisions, which should include:
  - Establishment of uniform criteria around the best interest determination factors;

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<sup>35</sup> The DCL is available at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-0392dclhighlymobile.pdf>.

- Establishment of guidelines for transportation procedures, including how transportation will be addressed across district and State lines and what should be included in local transportation procedures;
- Facilitating data sharing with the State and tribal child welfare agencies, consistent with FERPA and other Federal or State privacy laws, regulations, and policies;
- Monitoring LEAs to ensure compliance with the Title I requirements at the local level; and
- Providing professional development opportunities and technical assistance for LEA POCs and other personnel regarding school stability and educational supports for children in foster care, as needed.

States should issue State-specific guidance that details the roles and responsibilities of the SEA POC.

### **35. What are examples of potential roles and responsibilities of the LEA POC?**

Some of the roles and responsibilities of the LEA POC may include:

- Coordinating with the corresponding child welfare agency POC on the implementation of the Title I provisions;
- Leading the development of a process for making the best interest determination;
- Documenting the best interest determination;
- Facilitating the transfer of records and immediate enrollment;
- Facilitating data sharing with the child welfare agencies, consistent with FERPA and other privacy protocols;
- Developing and coordinating local transportation procedures;
- Managing best interest determinations and transportation costs disputes;
- Ensuring that children in foster care are enrolled in and regularly attending school; and
- Providing professional development and training to school staff on the Title I provisions and educational needs of children in foster care, as needed.

States should issue State-specific guidance that details the roles and responsibilities of the LEA POC.

### **36. Are State and local child welfare agencies required to have POCs?**

Although Title IV-E does not require child welfare agencies to have POCs to coordinate with educational agencies, we highly encourage child welfare agencies to designate an equivalent POC at the State, tribal, and local level, depending on their agency structure. Both Title IV-E and Title I require coordination between the agencies so a designated point person in each agency would likely help to facilitate a successful, sustainable collaboration. If a child welfare agency identifies a POC, we encourage the child welfare agency to notify LEAs in writing about their corresponding POCs as soon as possible. See the sample letter in the Appendix.

### **37. What are some examples of the potential roles and responsibilities of a child welfare agency POC?**

If a child welfare agency identifies a POC, some examples of the possible roles and responsibilities of that child welfare agency POC 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 POC on implementation of the Title I provisions including immediate enrollment;
- Establishing a process to notify the educational agency when a child has been placed in foster care in the LEA or when there has been a foster care placement change;
- Establishing a process for coordinating on best interest determinations with the LEA;
- Facilitating transfer of records including immunizations, medical records, and copies of IEPs and Section 504 Plans;
- Working with LEAs to ensure that children in foster care are immediately enrolled in school, and to coordinate transportation services;
- Managing best interest determination and transportation costs agreements between the LEA and the child welfare agency;
- Providing training to LEA and child welfare agency staff on 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 of information provisions in the IDEA;
- Coordinating services so that 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 SEA or LEA, and screening and referrals to health, mental health, dental, and other appropriate services; and
- Informing parents or education decision makers of children in foster care of the child's education rights and providing public notice of the educational rights of children in foster care to community stakeholders.

### ***Student Data and Privacy***

Data sharing between child welfare agencies and educational agencies can play a critical role in improving communication and collaboration between agencies and be a driving force in improving the education outcomes for children in foster care. When caseworkers have access to a child's education records, they can monitor and support the educational success of the child, assist with transitions, and make sure the child is receiving appropriate services and interventions. Similarly, when an LEA is aware of which children are in foster care, school professionals have a better understanding of the child's unique needs and can better assist the child in reaching his or her full academic potential.

Given the importance of data sharing to improving the educational outcomes of children in foster care, the implementation of the Title I foster care provisions offers an excellent opportunity for SEAs and LEAs to work with child welfare agencies 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. In all cases, SEAs and LEAs must comply with all statutory requirements to protect student privacy, including FERPA and any other privacy requirements<sup>36</sup> under Federal, State, or local laws.

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<sup>36</sup> For students with disabilities, this also includes confidentiality of information provisions under the IDEA. (20 U.S.C. § 1417(c)). (34 C.F.R. §§ 300.611-300.626)

Child welfare agencies that elect to develop a Comprehensive Child Welfare Information System (CCWIS) are required, to the extent practicable, to include bi-directional data exchanges with educational agencies.<sup>37</sup>

**38. How will LEAs be notified regarding which students are in foster care? What other information may be useful for LEAs regarding children in foster care?**

Neither Title I nor the Fostering Connections Act specifies the manner in which LEAs should be notified regarding which students are in foster care. However, LEAs will need to identify which students are in foster care to comply with the Title I educational stability provisions. At the most basic level, we strongly encourage the child welfare agencies to notify LEAs, as they already are in many cases, when students enter foster care or change foster care placements. This information may need to be shared across districts and multiple local child welfare agencies. While some LEAs are already receiving this information from child welfare agencies, caseworkers, and foster parents, LEAs should coordinate with child welfare agencies to establish formal mechanisms to ensure that they are promptly notified when a child enters foster care or changes foster care placements. If LEAs are not sure how child welfare agencies currently notify them, we encourage LEAs to contact the child welfare agency to discuss this.

When working to ensure the educational stability of children in foster care, child welfare agencies may need to share additional information with the LEA. Depending on State and tribal child welfare laws, and the purpose of sharing the information, it may include: name of the child, type of living arrangement, number of placement changes, and name of the education decision maker. Child welfare agencies may also determine what other child specific information should be shared with the LEAs, as well as the procedures for notification.

For additional guidance on privacy protections related to data sharing between educational institutions and child welfare agencies for children in foster care, please see ED's [guidance](#) on the USA amendments to FERPA in May 2014.<sup>38</sup> Additional technical assistance on student data and privacy is forthcoming.

***SPOTLIGHT FROM THE FIELD: INTEGRATED DATA SYSTEM***

Recognizing the importance of agencies sharing critical information on a child's education needs, a county in one State has created an integrated data sharing system, allowable through an interagency agreement. An LEA has partnered with child welfare agencies, organizations and other LEAs to create a web-based information sharing network for foster youth. It is designed to improve the educational outcomes of foster youth by gathering and transferring placement, health, and education records.

The integrated data system receives downloads of student information directly from the LEAs and child welfare agency. The child welfare agencies provide the names of the children in foster care, as well as the name and contact of person holding education rights; health (including immunizations) and education records (prior school placements, attendance, grades, etc.) to the LEA. The LEA provides the following information for all students in foster care: the names and addresses of the education agencies; the child's grade level performance; start date and leave date; current class schedule; home language survey results; high school exit exam results and attendance records.

All agencies that use the system must comply with relevant State and Federal law and other applicable local rules that relate to records use, security, confidentiality, privacy, dissemination, retention, and destruction.

<sup>37</sup> Comprehensive Child Welfare Information System Final Rule, 81 FR 35449, 35480 (June 2, 2016).

<sup>38</sup> ED's guidance on the USA amendments to FERPA is available at:

<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>



### ***SPOTLIGHT FROM THE FIELD: DATA SHARING***

In one county, the educational agency provides information on the child's educational needs to the child welfare agency by creating an Education Passport. Information contained in the Passport is subject to confidentiality laws. Pursuant to provisions in FERPA, the child's social services worker may request copies of education records listed on this form. The school must waive all fees, per State law.

The Education Passport includes all records provided to the receiving school applicable to that student. This information includes: name, student ID, birthdate, student withdrawal date, transferring school, total days enrolled at transferring school, emergency contact information, and whether an education advocate is available. Records may include immunizations, psychological evaluation, physical exam, birth certificate, 504 plan, IEP, achievement tests, vocational tests, graduation plan/transition plan, transcript record, current report card, attendance record, current classes, and withdrawal date. The Passport includes information to assess the student's progress in school such as: type of school setting, teacher's name, number of school changes not related to grade promotion and reasons for change, chronic absenteeism and reasons for absenteeism, information on the student's success in school, any behavior/motivation strategies that a student best responds to, student's involvement in extracurricular activities or barriers to involvement, and an assessment of the socio-emotional and environmental issues impeding the student's school performance.

### ***Collaboration***

Even though they serve the same children and have a shared goal of improved educational outcomes, in some cases child welfare and educational agencies may not have formal collaborative processes in place to ensure the educational stability of children in foster care. Child welfare and educational agencies can work together to make informed decisions about children jointly and remove barriers that may hinder the implementation of the Title I foster care provisions. The questions below provide some ideas for establishing and maintaining this collaborative work.

#### **39. How can child welfare and educational agencies work collaboratively to raise awareness and improve staff capacity to meet the unique educational needs of children in foster care?**

Children and youth in foster care are often exposed to a multitude of challenges throughout their childhood, including homelessness, domestic violence, abuse and neglect, chronic poverty, and other adverse childhood experiences. In addition, being separated from their families, even for a short time, is disruptive and potentially traumatizing, with damaging effects that may impact social and emotional development. LEAs should collaborate with child welfare and other relevant agencies to ensure that all 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.

Agencies may consider opportunities to cross-train both child welfare agency and education staff on the importance of educational stability for children in foster care. Agencies may provide training to school staff including principals, teachers, school counselors, school social workers, and school enrollment personnel about the needs of children in foster care and background information about the child welfare system. Possible areas for training include understanding the importance of maintaining children in their schools of origin, understanding the process and factors involved in making a best interest determination, coordinating transportation plans, protecting student privacy, and maintaining accurate education records for children in foster care.

Agencies can work collaboratively to raise awareness and increase knowledge about child welfare policy such as case plan requirements, and related legislation including the Fostering Connections Act, USA, and other laws, including state laws, that pertain to the education of children in foster care.

**40. What models or structures for collaboration should educational and child welfare agencies consider as part of the implementation of the new Title I foster care provisions?**

Educational and child welfare agencies can choose to establish a structure to facilitate their collaboration, such as a working group, taskforce, or interagency committee, customized to the needs of the local community. When identifying which entities should be represented as part of this collaboration, we encourage SEAs, LEAs, tribes, and child welfare agencies to work across State and district lines; it is likely that, when implementing these provisions, an LEA or local child welfare agency will have to work with many partners. As such, establishing regional, inter-district, and interstate collaborations prior to the effective dates of these provisions is critical. SEAs and State or tribal child welfare agencies may also consider vehicles, such as interstate agreements, to ensure consistent implementation and shared understandings.

Under this collaboration, the educational and child welfare agencies could engage community stakeholders, such as representatives from the court, community providers, tribal leaders, education advocacy groups, and parent mentor groups; create an open and transparent process, and work towards a shared vision of supporting the educational well-being of children in foster care. The agencies could define the roles and responsibilities of member entities, including who will facilitate collaboration meetings, the frequency of such meetings (e.g., monthly or quarterly), resources to support the collaboration including the meeting location, and an effective process for communicating results with leadership and stakeholders. Ideally, this collaboration would be ongoing and outlast the initial implementation of ESSA, as appropriate, so that agencies can continuously improve their efforts to meet the academic needs of children in foster care.

### ***SPOTLIGHT FROM THE FIELD: COLLABORATION***

Since the passage of the Fostering Connections Act, a number of States have created strong, ongoing collaborations with the purpose of improving the educational outcomes for foster youth. One county's collaboration includes a partnership between the city's public school, the child welfare agency, the juvenile court, and the legal aid society that represents children in care. Key components of the partnership are as follows:

- There is a high-level commitment from all partners who serve on a dedicated Leadership Team that meets monthly. The leadership team creates the core infrastructure that supports effective communication among partners to resolve problems, data-driven interventions and strategies to develop and expand, and the quality of the program to improve and flourish.
- A liaison is identified by each school. The individual school liaison communicates regularly with the child welfare education specialist assigned to that school.
- Two child welfare agency education specialists liaison with the child welfare agency caseworker assigned to the child's case and assist in education-related issues.
- The integrated real-time data dashboard, maintained by the child welfare agency, incorporates data from both child welfare and education and allows for quality case management decisions using up-to-date education information. The dashboard allows the partnership to track trends and overall progress of the program and its participants. The data system has allowed up-to-date information to be included in the court report. A customized Judicial Bench Card for Education Success is used by all eight Juvenile Court Magistrates who preside over abuse and neglect cases.
- The Partnership conducts yearly trainings to hundreds of professionals, including Magistrates, supervisors, caseworkers, Guardian ad Litem, Court Appointed Special Advocates, mentors, foster parents, school psychologist and social workers, and principals. The child welfare agency also conducts trainings on the partnership.

*Appendix: Sample POC Notification Letter*

[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]