

Implementing ESSA's Transportation Procedures: How Local Education Agencies Can Work with Child Welfare to Ensure School Stability

Overview

Children and youth in foster care experience higher levels of home and school instability than their peers. The federal Every Student Succeeds Act (ESSA) addresses this instability by requiring local education agencies (LEAs) and local child welfare agencies to work together to maintain children in foster care in their school of origin, unless it is not in the child's best interest. This document helps LEAs:

- understand their transportation duties under ESSA;
- develop transportation procedures and collaborate with child welfare to ensure transportation when needed; and
- use tools to implement ESSA's transportation requirements.

ESSA's Transportation Requirements

ESSA requires LEAs, in collaboration with local child welfare agencies, "to ensure that transportation for children in foster care is provided, arranged, and funded."¹ LEAs must have written transportation procedures in place by **December 10, 2016** that explain the process for arranging and funding transportation when needed.² On November 28, 2016, final federal regulations were issued by the U.S. Department of Education that clarifies what must be included in transportation plans and the duty of the State Education Agency (SEA) to ensure compliance.³ LEAs' transportation plans must explain how transportation will be provided in the event of a dispute over which agency or agencies will pay for additional costs incurred in transporting a student to the school of origin and which agency or agencies will pay the

initial additional costs so that transportation is provided promptly during the pendency of the dispute.

Joint Federal Guidance

Joint agency federal guidance provides additional assistance. It states that "LEAs should work closely with child welfare agency counterparts to tailor processes and procedures to their unique local context."⁴ LEAs should create an agreement or memorandum of understanding with each child welfare agency that provides services within its catchment area that includes what documentation or records to share, the criteria to use in any decision-making process, and the process to follow in making decisions. This concrete agreement between the LEA and child welfare agency should set the principles to facilitate prompt and conflict-free transportation procedures for individual students and prevent delays or gaps in transportation that could interrupt students' school stability.

Transportation Agreement Templates

Two templates are included here:

1. A sample agreement between local agencies
2. A template of a student's transportation arrangements offering a way to document how to provide transportation for a child



LEA and CHILD WELFARE AGREEMENTS: Step by Step

The following steps are recommended when an LEA is creating the written transportation procedures required by ESSA.

STEP 1: Identify your staff POC, partners, and how procedures will be documented collaboratively between LEA and child welfare agencies.

- Appoint a staff person as the point of contact (POC) within the LEA. This person will be responsible for collaborating with the child welfare agencies and assisting the LEA's children in foster care.⁵
 - Set clear roles and responsibilities for the POC, including: coordinate with child welfare agencies to establish agreements, implement transportation plans and otherwise assist children in foster care attend school, maintain or increase involvement in career and technical, and extracurricular and nonacademic courses.⁶
 - Report the LEA's POC to the state education agency (SEA); identify the SEA's POC that should be available for guidance and technical support.
 - List publicly the contact information for the LEA's POC.
- Identify all child welfare agencies with children in their custody attending schools within the LEA.
- Document each child welfare agency POC, upon notification.
- Decide how written procedures will be recorded (e.g., interagency agreement) between the LEA and each child welfare agency to document how transportation will be provided, arranged, and funded for children in foster care attending the LEA.
- Decide who else, from within and outside your agency, needs to be part of conversations when documenting procedures. It often helps to have third party advocates, court leaders, or others who can help the agencies address all issues and reach agreement.

STEP 2: Create clear channels of communication with child welfare agency partners at key points in the process to meet the education needs of students in foster care.

ESSA requires that the LEA ensure school stability when a student enters foster care and changes living placements while in care. Child welfare agencies must communicate with schools to make sure the stability and needs of students in foster care are met. First, it is important to have a process to notify schools which children are in foster care, and a process that protects the privacy of that information (i.e., ensures information is shared with only school officials who need to know). Examples include the use of a special school enrollment form, or regular (daily/weekly) data feed between the child welfare agency and the school.

Specific to school stability decisions, child welfare agencies must also communicate with school personnel to participate in a best interest decision-making process. Finally, child welfare agencies must inform LEAs of a final best interest decision to keep a child in the school of origin (and the need to address transportation). When establishing channels of communication about best interest decisions and subsequent transportation needs, consider the following:

- Child welfare agencies and LEAs need a clear process for making a best interest decision about the school placement. These processes, as well as tools to support agencies in making that decision, have existed in many states since the passage of *Fostering Connections*.⁷ LEAs and child welfare agencies should work together to review these existing processes to determine what if any changes may be needed to comply with new provisions of ESSA.
- After involving all relevant parties, including representatives from the current LEA, and weighing all factors, unless state law states otherwise, the child welfare agency should have the final say on the best interest decision. See *Best Interest Decision Making: Key Considerations* for more information about developing a best interest decision-making process to guide these decisions.
- If it is in the child's best interest to enroll in a new school, the child welfare agency will promptly

complete the paperwork to withdraw the child from the prior school, or school of origin, and request that the new school enroll or let the child start attending the school immediately. The LEA must permit the child to enroll and start at the school even if all necessary documentation is not available, to avoid gaps in the child's school attendance.

- The LEA must immediately contact the student's prior school to request copies of any missing records and expedite efforts to access those records.
- If the best interest decision is made for the child to remain in their school of origin, the child welfare agency will relay that decision, and all necessary information to the LEA. Child welfare agencies should document the best interest decision and their notice to the LEA. This will also serve as the notice for needing to address transportation.

STEP 3: Clearly define the scope of the agreement and children being served by the LEA and child welfare partners.

- **Definitions:** LEAs should look to federal law and guidance (and any state law or policies) for key terms important to successful implementation. These definitions should be incorporated into the final written agreement to ensure clarity for all parties. Cross referencing state or local guidance offering clear information about key terms is also helpful. See Appendix A for definitions requiring attention.
- **Duration and Changes in Transportation Needs:** Transportation to the school of origin must be provided as long as the child is in foster care and it is in the child's best interest to attend that school or until the child exits foster care.⁸
 - Establish procedures for the child welfare agency POC to promptly notify the LEA POC if there is a change in the best interest determination, or a change in the student's placement requires adjusting transportation needs.⁹
 - If a student exits foster care (i.e., is reunified with a parent, adoption is finalized), agencies should work together to ensure the student remains in the school of origin until the end of the academic year.¹⁰ Transportation agreements must address how transportation will be provided, arranged, and funded in these circumstances.

- **Preschool Students within the LEA:** If an LEA offers public preschool education, the 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/her preschool of origin, unless a determination finds it is not in the child's best interest.¹¹

STEP 4: Document how transportation will be provided, arranged, and funded.

Where transportation is required to support school stability for children in foster care, ESSA mandates that LEAs ensure children will promptly receive transportation in a most cost-effective manner.

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.¹² A new federal regulation clarifies that the written transportation procedures that must be developed collaboratively by the LEA and local child welfare agencies must explain how students will be ensured prompt school of origin transportation even if the agencies cannot reach agreement regarding how to pay for additional costs, including the initial payment of such costs while the dispute is being resolved.¹³ When determining whether transportation is "cost effective" an LEA must consider the reasonableness of the costs, which may include factors like expense, distance, length of travel, and whether the mode of transportation is developmentally appropriate for the child.¹⁴



- If a student can be served by an existing bus route, there should be no delay.
- If, however, a new bus route or other transportation provider is required that will not be available immediately, an interim plan must be identified so there is no gap in the child’s school attendance.

STEP 4-A: Clarify LEA’s duty to provide transportation when minimal or no additional costs will be incurred.

ESSA requires the LEA to provide transportation when it can be done at no “additional cost.” If transportation is available with no cost or minimal cost based on the LEA’s existing procedures, then the LEA must provide transportation.

Written procedures should address the following:

- **State law, if any:** Does your state law or policy provide any direction beyond the federal requirements for transportation?
- **When the LEA does not provide transportation for other students:** An LEA must ensure that transportation is provided for children in foster care. These requirements apply whether or not the LEA already provides transportation for children who are not in foster care.¹⁵
- **Other duties:** ESSA does not modify the LEA’s separate duties to provide transportation for:
 - Children in foster care who meet the definition of “homeless” under McKinney-Vento Act. (Children and youth who are homeless include children living in emergency or transitional shelters, children abandoned in hospitals, unaccompanied homeless youth.)
 - Children who have transportation written into their IEPs because of legitimate special education needs. When an LEA must provide transportation as part of the child’s IEP as a “related service” under the IDEA, this duty is not altered by ESSA.
- **Interim transportation provision:** Determine how quickly transportation from a child’s new placement to the school of origin can begin and identify any gap services required in the interim, including if necessary the funding of additional costs during payment disputes.

The LEA and child welfare agencies will need to examine existing transportation options within the district for a no-or low-cost solution. Examples include:

- A stop may be added or an already-existing bus route may be modified.
- The child may be dropped off at a school bus stop near the existing transportation system for the school of origin.
- No-cost public transportation options exist and the child is old enough or has the skills to use such options.
- The foster parents or other family member(s) are willing and able to transport the child to school at no additional cost (e.g., on the adult’s existing commute).
- The child may use pre-existing bus routes or stops close to the new foster care placement that cross district boundaries, such as bus routes for magnet schools or transportation for homeless students required by the McKinney Vento Act.
- The child is eligible for transportation under another entitlement such as the IDEA.¹⁶

Step 4-B: Document in procedures how “Additional costs” will be addressed.

When “additional costs” are incurred in providing transportation to maintain children in foster care in their school of origin, and the state has no statewide law or policy mandating how additional costs are to be funded, each written agreement between an LEA and

a child welfare agency must specify how costs will be covered or shared including, in the event of a payment dispute, which agency or agency will initially pay additional costs while the dispute is being resolved.¹⁷

Federal guidance clarifies that “additional costs” are the difference between what an LEA would otherwise spend to transport a student to his/her assigned school and the cost of transporting a child in foster care to his/her school of origin.¹⁸

If the transportation would require “additional costs” from the LEA, the agencies must determine the most cost-effective strategy in each case. Consider:

- What fiscal options does the LEA have to cover or share “additional costs”?
 - Federal guidance permits using Title I funds.¹⁹
 - Are there other state or local funds available for this purpose?
- Can the child welfare agency recover costs through Title IV-E maintenance and/or administrative dollars for this child’s transportation?
 - Are there other state or local child welfare funds available for this purpose?
- What other options does the child welfare agency have to cover or share “additional costs”?
 - Can the foster parents provide transportation, with mileage reimbursement by the child welfare agency?
 - Does the child have a relationship with an adult whose commute complements the child’s transportation need?
 - Can the child welfare agency provide the youth or caretaker with bus passes or public transportation vouchers?
 - Can the agency contract with a private transportation company to provide a bus/van/car service?
 - Can the distance be divided between LEA and child welfare transportation efforts? Consider, for example, whether the child welfare agency can drop the child off at a bus stop near the existing transportation system for the LEA.
- Consider establishing a state or regional “contingency fund” created and funded by both education and child welfare agencies to support school stability.

- Consider establishing a standard division of responsibility based on common factors, allowing for a more efficient processing of individual cases. As an example, some jurisdictions divide responsibility based on an agreed upon mile radius. For instance, the LEA is responsible for transportation if the child is placed within five miles of the LEA’s catchment area; however, if the child is placed more than five miles from the LEA’s catchment area the child welfare agency is responsible. Another example of division could be the length of time a child needs transportation. The LEA could take responsibility for the first six months of a child’s placement, the child welfare agency after the initial six months.

STEP 4-C: Develop dispute resolution for transportation issues

The LEA and child welfare agency should make every effort to agree how to arrange, provide, and fund transportation. Both agencies must collaborate to develop written procedures that ensure educational stability for children in foster care, including how to fund necessary additional costs for providing school of origin transportation. State agencies may have (or be developing) further guidance on resolving transportation disputes. Communicate with the state education POC for details about the state dispute resolution process.

- Written transportation procedures should describe how disputes will be resolved, how prompt school of origin transportation will be ensured in the event of an inter-agency dispute, and how any additional costs will be funded during the resolution such a dispute.²⁰ When no other cost-effective solution exists, and all funding sources have been assessed and applied, consider splitting evenly the remaining cost between the LEA and child welfare agency.

STEP 5: Prepare to coordinate with other jurisdictions.

Coordination When Other LEAs are Involved (both inter-district and interstate)

LEAs must determine how to share costs between LEAs when children are being transported between school districts. Like their arrangement with child welfare partners, written procedures should address how LEAs should work out cost-sharing agreements and include a default if resolution cannot be reached (i.e., the LEAs will split costs evenly).

Coordination with Other Child Welfare Agencies with Students Attending the LEA

An LEA must determine if they will address all children in foster care (including those from other custodial child welfare agencies) in one set of written procedures. This would help with consistency across the LEA for all students in foster care, since often schools won't know which local or county agency has custody of a child. However, it may not be practical to address students in foster care from various child welfare agencies in one agreement. Therefore, LEAs may need to enter into multiple agreements to ensure they address the transportation needs of all children in foster care in their schools.

Endnotes

¹ See U.S. Dep't Ed. and U.S. Dep't Health & Human Svcs. *Non Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, Jun. 23, 2016, at 15, available at <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf> (hereinafter "Joint Guidance") (citing ESEA § 1112(c)(5)(B)).

² Joint Guidance at 16, Q24.

³ 34 C.F.R. §299.13(c)(1)(ii)

⁴ Joint Guidance at 7, Q4.

⁵ Joint Guidance at 21-22.

⁶ Other responsibilities of the LEA POC not related to transportation should include working with child welfare agency partners on developing and documenting the best interest determination process (including a process for resolving disputes related to that best interest determination), facilitating records transfer and data sharing, managing disputes, and providing professional development to staff. Joint Guidance at 22, Q35.

⁷ Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), 42 U.S.C.A. 675(1)(G)(ii).

⁸ ESEA § 1112(c)(5)(B); Joint Guidance at 17, Q25.

⁹ Joint Guidance at 23, Q37.

¹⁰ Joint Guidance at 17, Q25

¹¹ ESEA § 1111(g)(1)(E); Joint Guidance at 8, Q7.

¹² ESEA § 1112(c)(5)(B); Joint Guidance at 16, Q22.

¹³ 34 C.F.R. §299.13(c)(1)(ii).

¹⁴ Joint Guidance at 17, Q26.

¹⁵ Joint Guidance at 18, Q29.

¹⁶ Joint Guidance at 17, Q26.

¹⁷ ESEA § 1112(c)(5)(B)(ii); Joint Guidance at 17, Q27; .34 C.F.R. §299.13(c)(1)(ii).

¹⁸ Joint Guidance at 18, Q27.

¹⁹ Joint Guidance at 19, Q30.

²⁰ 34 C.F.R. §299.13(c)(1)(ii); Joint Guidance at 18, Q28.

Child in foster care

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.¹

- The legal right to school stability extends to ALL children in foster care, regardless of whether they are eligible for Title IV-E funding from child welfare agencies that may be used to reimburse transportation costs.
- A LEA must ensure a child in foster care receives any transportation needed to the school of origin for the duration the child is in foster care.² Upon entering foster care or changing foster care placement a child has the right to school stability, unless it is not in the child’s best interest. Federal guidance encourages agencies to “make every effort to continue to ensure transportation is provided through the end of the school year” in which a child exits foster care.³

School of origin

The school of origin is the school in which the child was enrolled before entering foster care. If a child’s foster care placement is changed, the school of origin is the school where the child was enrolled when the placement changed.⁴ LEAs must ensure a child in foster care remains in the school of origin unless it is not in the child’s best interest.

Immediate enrollment

When it is in the child’s best interest to change schools, a child should be enrolled—and not just technically enrolled, but attending and meaningfully participating.⁵ Enrollment cannot be denied or delayed because documents normally required for enrollment (proof of age, proof of residency, vaccination records) have not been submitted.⁶ School records, including an IEP, are never required for enrollment, but an enrolling school must immediately contact the school of origin to obtain relevant records.⁷

Title IV-E (of Social Security Act) funding

Child welfare agencies can receive federal reimbursement for some children in foster care. Specifically, school transportation to ensure school stability is allowable as either Title IV-E foster care maintenance payments or administrative costs. However, child welfare agencies may only claim reimbursement for students who are “Title IV-E eligible,” which varies by state.

Title I (Part A of the Elementary and Secondary Education Act) funding

Title I, Part A sets assessment and accountability requirements for SEAs and LEAs. Funding provided under Title I, Part A supports the education of disadvantaged students across the country. Federal guidance states the LEAs can use Title I funding for the additional costs of school stability transportation.

Point of Contact

Federal law provides for the designation of several points of contact (POC) to oversee and implement educational stability provisions for children in foster care.

- State Education Agencies (SEAs) must designate a POC to oversee implementation of state responsibilities.⁸
- LEAs are required by law to designate a POC once child welfare agencies notify the LEA that their agency has designated a POC.⁹ However, LEAs should designate their POC promptly because it is the LEA’s duty to establish written transportation procedures by December 10, 2016.

Endnotes

¹ See Joint Guidance at 6, Q1.

² ESEA § 1112(c)(5)(B); Joint Guidance at 17, Q25.

³ Joint Guidance at 17, Q25.

⁴ Joint Guidance at 11, Q10.

⁵ Joint Guidance at 20, Q33.

⁶ ESEA § 1111(g)(1)(E); Joint Guidance at 20.

⁷ ESEA § 1111(g)(1)(E)(iii); Joint Guidance at 20, Q33.

⁸ ESEA § 1111(g)(1)(E)(iv); Joint Guidance at 21. For more information see POC Q and A at http://fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=2067&Command=Core_Download.

⁹ ESEA § 1112(c)(5)(A); Joint Guidance at 21.

¹⁰ Joint Guidance at 21.