BULLETIN NO. 01-16

TO: School District Superintendents
    School District Title I, Part A Directors
    Homeless Area Liaisons

FROM: Melina Wright, Division Administrator, Title Grants
      Administration Division, ISBE
      TBD, DCFS

RE: Education Stability of Foster Care Students under the Every
    Student Succeeds Act (ESSA)

ESSA Sections: 1111(g)(1)(E); §1111(c)(5); §1111(g)(1)(E); and
               §1112(c)(5)(A-B)

CONTACT: (217)-524-4832, foster@isbe.net

Guidelines for Determination of Best Interests and Transportation and
Procedures for Dispute Resolution.

PURPOSE:

The Illinois State Board of Education, (ISBE) with cooperation from the Illinois
Department of Children and Family Services (DCFS), have developed the following non-
regulatory guidance in order to support Local Education Agencies (LEAs) in meeting
compliance with the reauthorized Elementary and Secondary Education Act of 1965
(ESEA) as amended by the Every Student Succeeds Act (ESSA).

Under ESSA, upon receiving written notification from the respective child welfare
agency (CWA) of their point of contact (POC), which was provide to LEA on December
6th, each LEA is to designate a POC at the LEA level. When a POC is identified at the
LEA level, each LEA should register this individual via the ISBE Entity Profile System

ESSA also requires that each LEA plan provide assurances that the LEA collaborate with
CWAs to develop and implement clear written procedures governing how transportation
will be provided, arranged, and funded for students in foster care, in order to maintain

1 20 U.S.C.A.§ 6312(c)(5)(A)

This e-bulletin contains basic information on ESSA provisions. It is meant to provide a ready reference for school administrators, teachers, and the public on ESSA implementation. It is not intended as a comprehensive source of information on the rules and regulations that govern ESSA.
students in their school of origin, should that be in their best interests. Such procedures should be in place as soon as possible, and both ISBE and DCFS will provide technical assistance to LEAs in the course of developing these procedures.

The following guidance emphasizes the joint responsibility of both educational and child welfare agencies, to provide guidance on the implementation of practices intended to support foster care students.

**BACKGROUND:**

States and the federal government recognize the unique needs of students in foster care and have launched efforts in recent years to improve educational outcomes and increase educational stability for these students. The passage of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act) was a significant step toward supporting the importance of school stability for students in foster care. The legislation requires child welfare agencies to collaborate with educational agencies to allow for students in foster care to remain in their school of origin (SOO), the same school the student was in when living placements change, if remaining in that school is in the students’ best interest. The Fostering Connections Act also requires child welfare agencies to ensure that students in foster care who do change schools are promptly enrolled in a new school, and that the relevant school records immediately follow the transfer of the student.

ESSA, passed by Congress in December 2015, includes provisions that institute new protections for students in foster care

These provisions, effective on December 10, 2016, complement the Fostering Connections Act and require SEAs and LEAs to work with child welfare agencies to ensure the educational stability of students in foster care.

Under ESSA requires LEAs to:

1. Ensure that a student in foster care remains in his or her school of origin, unless it is determined not to be in the student’s best interest; and
2. Develop in partnership, consistent with the SEA and child welfare agencies, procedures that ensure that transportation is provided, arranged, and funded for students in foster care.

The law applies to ISBE, LEAs and DCFS in order to support students who are in Illinois foster care.

---

2 20 U.S.C.A.§ 6312(c)(5)(b)
3 P. L. 110-351, §204.
4 Id.
5 Id.
BEST INTERESTS GUIDELINES

New requirements under Title I of ESEA, as amended by ESSA, emphasize the importance of limiting educational disruption by keeping students who are 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 the best interest of a student to change schools.

If it is not in the best interest of a student to remain in his or her school of origin, a student in foster care should be enrolled in his or her new school without delay.

An SEA, in collaboration with the State or tribal child welfare agency, must ensure that an LEA takes into consideration all factors relating to a student’s best interest in determining whether the student should remain in his or her school of origin.

Best Interest Determination Factors/Considerations:

- Appropriateness of the current educational setting and proximity of placement;\(^6\)
- Preferences of the student;\(^8\)
- Preferences of the student’s parent(s) or education decision-maker(s);\(^9\)
- The student’s attachment to the school, including meaningful relationships with staff and peers;\(^10\)
- Placement of the student’s sibling(s);\(^12\)
- Influence of the school climate on the student, including safety;\(^13\)
- The availability and quality of the services in the school to meet the student’s educational and socioemotional needs;\(^14\)

---

\(^6\) 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.

\(^7\) 20 U.S.C.A. \(\S\) 6311(g)(1)(E)(i)


\(^9\) “Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian” 34 C.F.R. \$99.3; and “A person who is the natural parent of the student or other person who has the primary responsibility for the care and upbringing of the student.” 105 ILCS 10/2(g).

\(^10\) Non-Regulatory Guidance, supra note 8 at 12; The Education Decision-Maker for foster care students is defined, based on the type of consent or release sought, in DCFS School Enrollment and Placement Guidelines for Children and Youth in DCFS Care, found at www.illinois.gov/dcms/brighterfutures/independence/Documents/School_Enrollment_and_Placement_Guidance_7-2015.pdf

\(^11\) Non-Regulatory Guidance, supra note 8 at 12.

\(^12\) Id.

\(^13\) Id.

\(^14\) Id.
- History of school transfers and how they have impacted the student;\textsuperscript{15}
- How the length of the commute would impact the student, based on the student’s developmental stage;\textsuperscript{16}
- Whether the student has a disability under the IDEA, and is receiving special education and related services, or whether the student has 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;\textsuperscript{17}
and
- Whether the student is an English Learner 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 Equal Educational Opportunities Act (EEOA).\textsuperscript{18}

\textit{Transportation costs should not be considered when determining a student’s best interest.} Some students in foster care will need transportation to remain in their school of origin when it is in their best interest. An LEA receiving Title I funds must collaborate with the child welfare agency or agencies to ensure that transportation for students in foster care is provided, arranged, and funded.\textsuperscript{19} SEAs and state or tribal child welfare agencies also play a key role in ensuring the adequate provision of transportation for students in foster care as part of their overall responsibilities under Title I and the Fostering Connections Act to provide educational stability for these students.

\textbf{Process for Determining Best Interests:}

While the law is not explicit about how this is done, LEAs and child welfare agencies should collaborate to develop a joint process for making best interest determinations.\textsuperscript{20} By way of example, federal guidance states that “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.”\textsuperscript{21} Federal guidance further recommends that SEAs and LEAs consider establishing a mechanism through which relevant parties can meaningfully participate in the best interest determination, and that once a determination is made, written notice of the decision be provided to all relevant parties.\textsuperscript{22} LEAs should work expeditiously on making this determination to prevent educational discontinuity for the student.\textsuperscript{23}

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item 20 U.S.C.A. § 6312(c)(5)(B).
\item Non-Regulatory Guidance, \textit{supra} note 8 at 12.
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.} at 13.
\end{enumerate}
\end{footnotesize}
Additional Considerations:

Federal guidance provides that “if there is a disagreement regarding school placement for a student in foster care, the child welfare agency should be considered the final decision-maker in the making the best interest determination.” Further, federal guidance also states that “to the extent feasible and appropriate, an LEA must ensure that a student 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.”

Disputes for Best Interest Determination

DCFS, specifically the LEA DCFS Liaison and his or her team (including the ISBE POC), provides written notification to all parties (the student and the guardian administrator, the parent(s) and his/her legal representative, and the school) of its best interest determination with supporting justification within [a time frame specified by the district] after making the decision.

Any party may challenge the decision within [a time frame specified by the district] of receiving the determination by providing written notice to the child welfare agency.

The LEA DCFS Liaison should then schedule a meeting within [a time frame specified by the district] after receiving the written challenge. The meeting is to be conducted [a time frame specified by the district from the date the written challenge was received and is to be held at the school of origin. The LEA should coordinate with DCFS to arrange space for the meeting.

At the meeting, all parties may present facts and statements relevant to the student’s best interest. The LEA DCFS Liaison will consider all statements and evidence presented at the hearing and issue a written final determination within [a time frame specified by the district]. This decision is final and will be based upon the guidelines set forth in the Best Interest Guidelines.

TRANSPORTATION GUIDANCE

The frequent mobility of students in foster care poses a tremendous barrier to these students’ ability to pursue and finish a higher-level education. Therefore, transportation is a central component in ensuring the educational stability of students and is necessary in order to fulfill the requirements that both LEAs and child welfare agencies owe to students in foster care.

24 Id. at 14.
25 Id. at 15.
26 Id.
Under ESSA, each LEA must submit a plan providing the following assurances:

- That they have developed and implemented clear written procedures for how transportation to maintain students in foster care in their SOO when in their best interest will be provided, arranged, and funded for the duration of time students are in foster care;
- That these students will receive prompt and cost-effective transportation in accordance with the Fostering Connections Act; and
- That, if there are additional costs incurred in providing transportation to maintain students in foster care in their SOO, the LEA will provide transportation to the SOO if:
  - the local CWA agrees to reimburse the LEA for the cost of such transportation;
  - the LEA agrees to pay for the cost of such transportation; or
  - the LEA and the local CWA agree to share the cost of such transportation.\(^\text{28}\)

In the course of developing this plan, below are individuals to consider including in the discussion around transportation for students in foster care.

<table>
<thead>
<tr>
<th>Title/Role of Participant in Procedures Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>LEA Title I Director/Coordinator</td>
</tr>
<tr>
<td>LEA Point of Contact (POC)(^\text{29})</td>
</tr>
<tr>
<td>LEA DCFS Liaison, as permitted by 105 ILCS 5/10-20.58, if any</td>
</tr>
<tr>
<td>LEA representative that oversees student transportation</td>
</tr>
<tr>
<td>CWA Point of Contact</td>
</tr>
<tr>
<td>Other (i.e. representative from social services, student services/pupil services, special education, etc.)</td>
</tr>
</tbody>
</table>

Multiple factors should be considered when identifying transportation options for foster care students, including the following:

- Safety;
- Duration;
- Time of placement change;


\(^{29}\) 20 U.S.C.A. §6312(c)(5)(A).
The following considerations should be taken into account when determining transportation options for foster care students:

- Type of transportation available;
- Traffic patterns;
- Flexibility in school schedule;
- Impact of extracurricular activities on transportation options; and
- Maturity and behavioral capacity.\(^{30}\)

The following low cost/no cost options should be considered when providing transportation to foster care students:

- A pre-existing transportation route;
- A new transportation route;
- Route-to-route hand-offs;
- District-to-district boundary hand-offs;
- Eligibility of the child for transportation through other services such as:
  - Special education students (Individuals with Disabilities Education Act);
  - Homeless students (McKinney-Vento Act);
- Alternatives not directly provided by the LEA such as:
  - Contracted services: taxis, student transport companies, uber, lyft, etc.;
  - Public transportation such as city buses, rails, etc. ; and
  - Carpoools; or
- Options explored by the CWA worker outside of those provided by the school district, such as reimbursing the foster parents for transportation costs, or including transport in contracts with licensed child placing agencies or group homes.\(^{31}\)

The following are some funding sources to consider when supporting transportation for students in foster care.

- Title IV-E (however, consider that all children in foster care may not be eligible, tribal foster children may be eligible, and the State CWA is responsible for the non-federal portion);\(^{32}\)
- Title I (but funds reserved for comparable services for homeless children & youth may not be used for transportation);\(^{33}\)
- Students with Individual Educational Programs (IEP):
  a. If the IEP already includes the provision of specialized transportation, the school district is responsible for the provision of these services in order to provide the student with a Free Appropriate Public Education (FAPE). Based on Illinois’ special education regulations, any alternative special education placement, whether public or private, assumes specialized

\(^{30}\) Ensuring Education Stability, supra note 27 at 17, 28.

\(^{31}\) Id. at 12, 23, 24.

\(^{32}\) Id. at 13.

\(^{33}\) Id.
transportation is part of the IEP and must be provided for the student to receive FAPE.\textsuperscript{34}

Further, an LEA should ensure that such transportation is received promptly in both a safe and cost-effective manner.\textsuperscript{35}

**Safety:**

Safety considerations include utilizing contracted transportation services that require background checks to be completed by employees engaged in these services.

Additionally, students in foster care may have experienced some sort of trauma with lingering effects that impacts their daily lives and educational spaces. Therefore, safety considerations may also include attention to the effects of trauma on the lives of individual students.

An LEA should take the following considerations into place to ensure safe and appropriate transportation services:

- The age and history of the student;
- Whether a minor should travel in a private service unaccompanied;
- Language that makes the distinction between “daily transportation” (e.g., extracurricular activities) and transportation that must be provided due to irregular circumstances (e.g., sickness, suspension, extracurricular activities);
- Safety features of the transportation services, which may include, but are not limited to, GPS tracking, video cameras, specialized training, and/or additional adult riders.

**Costs:**

An LEA should also consider whether transportation can be provided for minimal or no additional costs. Some no-cost or low-cost options for a transportation plan implemented by LEAs and child welfare agencies include:

- Public transportation options that transport a student from home to school and back, if the student is of an appropriate age and has or is able to acquire the skills to utilize such options;
- Access to transportation systems that involves a student being dropped off at a school bus stop near existing LEA transportation routes for the school of origin;
- Foster parents or other family member(s) willing and able to transport the student to school;
- 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

\textsuperscript{34} 105 ILCS 5/14-1.02 and 14-13.01(b); 23 Ill Admin Code, Section 226.750(b).
\textsuperscript{35} 20 U.S.C.A § 6312(c)(5)(B)(i).
In circumstances where the student is already eligible for transportation covered by other programs (e.g., the Individuals with Disabilities Education Act), program funds may be used to pay for transportation services if the student’s Individualized Education Program team determines transportation is a related service required in order for a student with a disability in foster care to receive a free appropriate public education.

As part of developing and implementing its transportation procedures, an LEA may incur costs in providing transportation to the student to his or her assigned school and/or costs in transporting a student in foster care to his or her school of origin. If additional costs are incurred in the course of providing transportation to students in foster care to their schools of origin, the LEA shall provide the transportation in the following circumstances:

- The child welfare agency agrees to reimburse the LEA for the cost of such transportation;
- The LEA agrees to pay for the cost of such transportation; or
- The LEA and the child welfare agency agree to share the cost of such transportation.

In addition to state and local funds that may be available for providing transportation, an LEA may use Title I funds to pay for additional costs needed to transport students in foster care to their schools of origin.

*Please note, however, that funds reserved for comparable services for homeless students and youth under section 1113(c)(3)(A)(i) of the ESEA may not be used to provide transportation needed to maintain students in foster care in their schools of origin.*

Maximizing all possible funding sources in this manner will help ensure that transportation costs for students in foster care do not become unduly burdensome on any one agency.

**Process to Consider if Agreement Cannot Be Reached**

The student must remain in his/her school of origin while any dispute regarding transportation costs are being resolved.

**Additional Considerations**

LEAs should also work with child welfare agencies to establish inter-district and interstate procedures that address potential transportation issues that may arise as students in foster care move from one district to another or across state lines.

36 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 reroute buses to transport a child in foster care to one of its schools, the cost of this rerouting can be considered additional cost.


38 *Id.*

39 Non-Regulatory Guidance, *supra* note 8 at 16.
Disputes Concerning Transportation\textsuperscript{40}

The LEA point of contact (LEA POC) for students in foster care will provide written notification to all parties (the student and the guardian administrator, the parent(s) and his/her legal representative, and DCFS point of contact [DCFS POC]) of the school’s transportation plan for the student.

Should any party wish to challenge the plan, they must provide such challenge within a time frame and manner (e.g. in writing) as prescribed by the LEA POC.

The LEA POC must then schedule a meeting upon receipt of the written challenge and conduct the meeting as soon as possible. It is recommended that each LEA POC provide requisite timelines for each part of this dispute process. The LEA POC must arrange the space for the meeting.

The LEA DCFS Liaison shall, as part of the meeting, allow for a complete presentation by both parties of all relevant facts and statements pertaining to the student’s transportation to and from the school of origin. The guardianship administrator or authorized agent will consider all statements and evidence presented at the meeting and issue a written final determination within [a specific time frame as prescribed by the LEA POC] after the conclusion of the meeting.

The LEA DCFS Liaison shall make a written determination on a form supplied by DCFS within [a specific time frame as prescribed by the POC] after the conclusion of the dispute resolution meeting. The form, at a minimum, shall include the following:

- Background and case-specific timelines;
- Detailed summary of the arguments made by each party;
- Findings of fact and an analysis of each argument and the specific reason(s) why the ombudsperson accepts or rejects each argument;
- A detailed discussion of all relevant findings of fact, arguments, and analysis of such arguments;
- An explanation and inclusion of any additional information considered in the course of the determination;
- Any inferences (positive or negative) reached in making the determination; and
- The final determination.

This determination is final and will be based upon the guidelines set forth in the Transportation and Best Interest Guidelines.

\textbf{CONCLUSION}

The above guidance has been drafted to assist the SEA, LEAs, and child welfare providers as they strive to promote greater stability for students 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.

\textsuperscript{40} Id. at 15.