



# Illinois State Board of Education

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## 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  
Tiffany Gholson, Associate Deputy of Education and Transition Services  
Division, 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)(B)

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

#### PURPOSE:

The Illinois State Board of Education, (ISBE) and the Department of Children and Family Services (DCFS) have jointly developed the following 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).

Each LEA plan shall provide assurances that the LEA will collaborate with state and local child welfare agencies to develop, and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of time in foster care.<sup>1</sup>

ESSA also requires that each Local Education Agency (LEA) designate a foster care point of contact. As such, each district must register via the ISBE Entity Profile System in IWAS at <https://sec1.isbe.net/iwas/asp/login.asp?js=true> by **January 16, 2017**. LEAs must also develop the policy referenced above by that date.

The following guidance emphasizes the joint responsibility of both educational and child welfare agencies, provides guidance for the implementation of continuous collaboration, and assists State Education Agencies (SEA), LEAs, and child welfare agencies in building on success.

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<sup>1</sup> 20 U.S.C.A. § 6312(c)(5)(b)

## BACKGROUND:

States and the federal government recognize the unique needs of children in foster care and have launched efforts in recent years to increase the educational stability and improve educational outcomes for these youth. 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 children in foster care. The legislation requires child welfare agencies to collaborate with educational agencies to allow for children in foster care to remain 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, 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 children 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 children in foster care.

ESSA requires LEAs to:

1. Ensure that a child in foster care remains in his or her school of origin, unless it is determined not to be in the child's best interest; and
2. Develop in partnership, consistent with the SEA and local 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 children who are in Illinois foster care.

The rate of school mobility for children in foster care is greater than for their non-foster care peers.<sup>2</sup> School instability has been shown to have negative effects on academic achievement and result in higher dropout rates for children in foster care.<sup>3</sup> Children who experience frequent school changes may also face challenges in developing and sustaining supportive relationships with teachers or with peers.<sup>4</sup> In a national study of 1,087 foster care alumni, youth who had even one fewer change in living arrangement per year were almost twice as likely to graduate from high school before leaving foster care.<sup>5</sup>

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<sup>2</sup> Smithgall, C., Jarpe-Ratner, E., & Walker, L. (2010). *Looking back, moving forward: Using integrated assessments to examine the educational experiences of children entering foster care*. Chicago: Chapin Hall: University of Chicago.

<sup>3</sup> Reynolds, A., Chen, C.-C., & Herbers, J. (2009). School mobility and educational success: A research synthesis and evidence on prevention. *National Research Council*. Washington, D.C.

<sup>4</sup> South, S., Haynie, D., & Bose, S. (2007). Student mobility and school dropout. (36), 68-94.

<sup>5</sup> Pecora, P., Williams, J., Kessler, R., Hiripi, E., O'Brien, K., Emerson, J., . . . Torres, D. (2006). Assessing the educational achievements of adults who formerly were placed in family foster care. (11), 220-231.

## BEST INTERESTS GUIDELINES

New requirements<sup>6</sup> under Title I of ESEA, as amended by ESSA, emphasize the importance of limiting educational disruption by keeping children 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 child to change schools.

If it is not in the best interest of a child to remain in his or her school of origin, a child 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 child's best interest in determining whether the child should remain in his or her school of origin.

### Best Interest Determination Factors/Considerations:

- Appropriateness of the current educational setting and proximity of placement;<sup>7</sup>
- Preferences of the child;
- Preferences of the child's parent(s) or education decision-maker(s);
- 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 socio-emotional 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; and
- Whether the child 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).

### Transportation and Best Interests:

Transportation costs should not be considered when determining a child's best interest. Some children 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 state or local child welfare agency or agencies to ensure that transportation for children in foster care is provided, arranged, and funded.<sup>8</sup> 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.

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<sup>6</sup> 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.

<sup>7</sup> ESEA §111(g)(1)(E)(i)

<sup>8</sup> ESEA section 1112(c)(5)(B)

### Additional Considerations:

Federal guidance provides that “if there is a disagreement regarding school placement for a child in foster care, the child welfare agency should be considered the final decision-maker in the making the best interest determination.”<sup>9</sup> Further, federal guidance also states that “legislation addresses action that should be taken when parties are in disagreement about the best interest determination. 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.”<sup>10</sup> Such disagreements are to be resolved “expeditiously” and burden of proof is placed upon the child welfare system to show that its decision is in the child’s best interest.”<sup>11</sup>

### Disputes for Best Interest Determination<sup>12</sup>

DCFS, specifically the guardianship administrator or authorized agent and his or her team (including the ISBE point of contact), 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 three business days after making the decision.

Any party may challenge the decision within three business days of receiving the determination by providing written notice to the child welfare agency.

DCFS must schedule a meeting within three business days after receiving the written challenge. The meeting is to be conducted no later than 10 business days from the date the written challenge was received and is to be held at the school of origin. The LEA must 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 DCFS administrator will consider all statements and evidence presented at the hearing and issue a written final determination within three business days. This decision is final and will be based upon the guidelines set forth in the Best Interest Guidelines.

## TRANSPORTATION GUIDANCE

Transportation is a central component in ensuring the educational stability of students and may be needed in order to fulfill the requirements that both LEAs<sup>13</sup> and child welfare agencies owe to children in foster care.

The foster care provisions of Title I, Part A (Title I) of ESEA requires that LEAs receiving Title IA funds collaborate with state or local child welfare agencies regarding local procedures for

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<sup>9</sup> *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, 14 (June 23, 2016).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 15.

<sup>12</sup> The student must remain enrolled in his or her school of origin during the dispute resolution process and have transportation services arranged and other services rendered as appropriate.

<sup>13</sup> To the extent that a charter school is considered an LEA under the state’s charter school laws, it too must meet the transportation requirements as any other LEA.

transportation if necessary for students in foster care to remain in his or her school of origin, consistent with section 475(5)(G)(ii)(I) of the Social Security Act.

Further, an LEA must ensure that such transportation is received promptly in both a safe and cost-effective manner.<sup>14</sup>

#### 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 youth;
- 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 local child welfare agencies include:

- Public transportation options that transport a child from home to school and back, if the child 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 child 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 child 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
- In circumstances where the child 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 child’s Individualized Education Program team determines transportation is a related service required in order for a child with a disability in foster care to receive a free appropriate public education.

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<sup>14</sup> ESEA section 1112(c)(5)(B)(i)

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 child in foster care to his or her school of origin. If additional costs are incurred in the course of providing transportation to children in foster care to their schools of origin, the LEA shall provide the transportation in the following circumstances:

- The local 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;<sup>15</sup> or
- The LEA and the local 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 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.\**

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.

#### Additional Considerations

LEAs should also work with state or local 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.<sup>16</sup>

#### Disputes Concerning Transportation<sup>17</sup>

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.

Any party may challenge the plan within three business days of receiving the plan by providing written notice to the LEA POC. The LEA POC must schedule a meeting within three business days after receiving the written challenge. The meeting is to be conducted no later than 10

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<sup>15</sup> 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.

<sup>16</sup> *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, 16 (June 23, 2016).

<sup>17</sup> The student must remain enrolled in his or her school of origin during the dispute resolution process and the LEA must provide or arrange for adequate and appropriate transportation services to and from the school of origin while any disputes are being resolved.

business days from the date the written challenge was received by the LEA POC. The LEA POC must arrange space for the meeting.

The guardianship administrator or authorized agent 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 three business days after the conclusion of the meeting.

The guardianship administrator or authorized agent shall make a written determination on a form supplied by ISBE within 10 business days 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.

### CONCLUSION

These guidelines are not intended as, nor do they constitute, legal advice. They have been drafted to assist the SEA, LEAs, and child welfare providers as they strive to 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.