



Every Student Succeeds Act: Advancing School Stability for Children in Foster Care



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- Collaboration of
 - American Bar Association Center on Children and the Law
 - Education Law Center (PA)
 - Juvenile Law Center

- A national technical assistance resource and information clearinghouse on legal and policy matters affecting the education of children and youth in foster care

- Listserv, Training Materials, Conference Calls and Webinars, Publications, Searchable Database (includes state laws & policies)

- Website: www.fostercareandeducation.org



Our Theory of Change

Improve Well-Being through a Focus on Education

- **Work at all levels (federal, state and local)**
- **Facilitate multisystem conversations and collaboration to align policy and practices across systems** -- in schools, child welfare agencies and courts.
- **Create timely tools and resources, and provide technical assistance** to child welfare, education and court professionals.
- **Support needed law and policy changes** at the federal, state, and local levels.
- **Support data collection, sharing and use** to raise awareness, measure progress and impact of policies, and drive evidence-based decisions.

Foster Youth and Education

Compared to other students, foster youth experience:

- Higher rates of school suspensions
- Lower standardized test scores in reading and math
- High levels of grade retention and drop-out
- Far lower high school and college graduation rates

See [National Fact Sheet on Foster Care and Education](#) from January 2014.

Foster Youth and Education

Fast Facts from national and multi-state studies	
Number of school aged foster children (Sept 30, 2012)	249,107
Average number of living arrangements during first foster care stay	2.8
Likelihood of being absent from school	2x higher
% of foster youth who change school when first entering care	56-75%
% of 17-18 year olds in care who have experienced 5+ school changes	34%
Average reading level of 17-18 year olds in foster care	7 th grade
Likelihood of youth receiving special education	2.5-3.5x higher

Foster Care & Special Education Data

- Research indicates that children in foster care experience far higher rates of emotional and behavioral problems impacting their education than their peers.
- Several studies show that **children and youth in foster care are between 2.5 and 3.5 more likely to be receiving special education services** than their non-foster care peers.
- Research also suggests that **children in foster care who are in special education tend to change schools more frequently**, be placed in more restrictive educational settings, and have poorer quality education plans than their non-foster care peers in special education.



Fostering Connections to Success and Increasing Adoptions Act

- Will refer to this as “Fostering Connections”
- (P.L. 110-351) signed into law on October 7, 2008 Amends Title IV-E and Title IV-B of the Social Security Act
- Most significant federal reform for abused and neglected children in more than a decade
- Addresses issues of guardianship and kinship care, tribal provisions, health, older youth **and education**

School Stability in Fostering Connections

Must include an **Education Stability Plan** as part of each child's case plan including assurances that:

- Each placement takes into account the **appropriateness of the current education setting** and the **proximity to the school** in which the child is enrolled at the time of placement
- Child welfare agency has **coordinated with appropriate local education agencies** ... to **ensure** that the **child remains enrolled in the school** in which the child was enrolled at the time of placement.
- **If not in best interest to remain**, child welfare agency must ensure **immediate and appropriate enrollment** in a new school, **with all of the education records** of the child provided to the school.



Every Student Succeeds Act

New federal law

- Enacted December 10, 2015
- Reauthorized the Elementary and Secondary Education Act (ESEA) of 1965 – last reauthorized as the No Child Left Behind Act in 2002
- Includes protections for students in foster care

Key Themes for ESSA Implementation

- This law, paired with the **2008 Fostering Connections to Success and Increasing Adoptions Act**, envisions *dual-agency* responsibility.
- There are **short timelines for implementation**, so advocacy is needed immediately.
- This law presents an **important step forward**, but **state and local action is essential to ensure protections** for students in foster care.

What do the ESSA Foster Care Provisions Address?

- **School stability protections**
- **Transportation**
- **Points of Contact**
- **Removal of “awaiting foster care placement”**
from McKinney Vento Homeless Assistance
Act

ESSA: School Stability

State Title I Plans must describe the steps the State Education Agency (SEA) will take to **ensure collaboration** with the State child welfare agency to **ensure the educational stability** of children or youth in foster care.

Federal child welfare law, through the Fostering Connections Act, already requires child agencies to collaborate with education agencies to ensure school stability; ESSA **creates reciprocal obligations on education agencies.**



ESSA: Remaining in the School of Origin

The state plan must include assurances that:

Youth in foster care are **enrolled or remain in their school of origin unless** a determination is made that it is **not in their best interest**

ESSA: Best Interest Determination

The best interest determination will be based on factors including:

- the **appropriateness** of the current educational setting; and
- the **proximity** to the school in which the child is enrolled at the time of placement

not the cost of transportation

Who Makes the School Stability Decision?

- The child welfare agency has ultimate responsibility to make the “school stability” decision
 - State practices vary on what the agency determines to be protocol (i.e. VA makes it a shared decision between the school district and local social services; in Oregon it is a court decision).
- Regardless of who makes the decision, many people could have critical information to share (the school staff, the IDEA parent, and the IEP team may have information on the child’s needs)

ESSA: Transportation

- **By December 10, 2016**, Local Title I plans must contain an assurance that LEAs will collaborate with the state or local child welfare agency to:
 - **Develop and implement clear written procedures for how transportation** to maintain youth in foster care in their schools of origin, when in their best interest, will be **provided, arranged, and funded** for the duration of the time in foster care.

ESSA: Transportation

LEAs must:

- **Ensure that youth** in foster care who need transportation to the school of origin **promptly receive it**
 - **in a cost-effective manner**
 - **in accordance with the child welfare** agency's authority to use child welfare **IV-E funding** (allowable use for some of the costs for some of the children)
- **Ensure that, if additional transportation costs are incurred, LEAs will provide transportation if:**
 - LEA agrees to reimburse the child welfare agency
 - LEA agrees to pay; or
 - LEA and child welfare agree to share costs.

ESSA: “Awaiting Foster Care Placement”

- In most states, one year after enactment (December 10, 2016), the phrase **“awaiting foster care placement”** will be deleted from the definition of **“homeless child or youth”** in the McKinney-Vento Homeless Assistance Act.
- In states that define or describe **“awaiting foster care placement”** in statute, the phrase will be deleted in two years (December 10, 2017).

ESSA: Immediate Enrollment and Transfer of School Records

When it is ***not*** in the child's best interest to remain in the school of origin...

- the child will be **immediately enrolled in a new school**
- even without normally required records
- The enrolling school must contact the previous school to obtain academic and other records.

Seamless Transitions under IDEA: When a Child with an IEP Changes School Districts

Within the same state: If the child enrolls in another school district within the same school year, the new district must, in consultation with the IDEA parent, provide FAPE which includes services that are “comparable” to the services in the IEP developed by the old school district until the new district adopts the old IEP or develops a new IEP in accordance with IDEA procedures.

From another state: If a child enrolls in a school district in a different state within the same school year, the new district must, in consultation with the IDEA parent, provide FAPE, including services comparable to the services in the IEP developed by the old school district until (if the district chooses) it evaluates the child, adopts the old IEP or develops a new IEP.

Seamless Transitions under IDEA

What happens when the child transfers school districts before the initial evaluation is finished?

- Unless the state has adopted a different timeline, evaluations must be completed within 60 calendar days of receiving the IDEA parent's written consent for the evaluation.
- If the child moves before the evaluation has been completed, the timeline can be extended if:
 - The new school district is making sufficient progress to ensure prompt completion of the evaluation and
 - The IDEA parent and the school district have agreed to a specific new deadline.
- The old and new district must ensure that children's assessments are coordinated and that evaluations are prompt and complete.



Seamless Transitions: When Must the Child's Records be Available in the New District?

- **Under Fostering Connections:** Child must be immediately enrolled with all school records.
- **Under ESSA:** Child must be immediately enrolled, even without all typically required school records. Enrolling school must contact school last attended to obtain records.
- **Under IDEA:** No deadline for the transfer of school records, but states that the new school district must “take reasonable steps to promptly obtain the child’s records,” including special education records, and the previous district must take “reasonable steps to promptly respond to the request.”

ESSA: SEA Point of Contact

- SEA must designate a **point of contact** to work with child welfare agencies to oversee implementation of the new responsibilities for students in foster care.
- This point of contact **cannot be** the same person as the State Coordinator for homeless children and youth under the McKinney-Vento Act.

ESSA: LEA Point of Contact

- LEA (i.e. school districts; charter schools) must designate a **point of contact** for children in foster care, if...
 - The child welfare agency notifies the LEA it has designated a point of contact within the child welfare agency for the LEA.

IDEA Decisionmaker and Foster Care

Who makes IDEA decisions when a child is in foster care?

- Could still be the parent, even if the child does not live with them
- IDEA defines parent to include foster parents and others
- Birth or adoptive parents typically trump another person who meets the definition, but a court ultimately can trump that.
- IDEA allows for the appointment of surrogate parents in certain situations
 - The law allows them to be appointed by the school or court

IDEA Decisionmaker and Foster Care

Summary of Things You Should Know about Your State Law and Practices

- Are foster parents permitted to serve as the parent for IDEA purposes?
- Does your state define Ward of the State?
- When are surrogates determined to be needed in your state?
- Do judges appoint persons to be the IDEA parent (in addition to appointing surrogates)?

For more information see Special Education Decisionmakers: State Law Questions

http://www.fostercareandeducation.org/portals/0/dmx/2012/08/file_20120829_140904_BRE_0.pdf

New Joint Guidance

June 2016: New guidance from the U.S. Departments of Education and Health and Human Services about implementation of the foster care provisions of the Every Student Succeeds Act (ESSA).

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

Resources

Legal Center's ESSA and Children in Foster Care:

<http://www.fostercareandeducation.org/AreasofFocus/EducationStability.aspx>

Legal Center Series on Education Decision-Making for children in foster care under IDEA

<http://www.fostercareandeducation.org/AreasofFocus/SpecialEducation.aspx>

Dear Colleague Letter on Highly Mobile Students and IDEA: July 2013

<http://www2.ed.gov/policy/speed/guid/idea/memosdcltrs/12-0392dclhighlymobile.pdf>

Project Forum – 2009:

Surrogate Parents and Children with Disabilities: State Level Approaches

<http://www.projectforum.org/docs/SurrogateParentsandChildrenwDisabilitiesState-levelApproaches.pdf>



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