



THE STATE EDUCATION DEPARTMENT /
THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234



Office of Children
and Family Services

TO: District Superintendents
Superintendents of Public Schools
Charter School LEA Administrators
Local Department of Social Services
Voluntary Authorized Agencies

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SUBJECT: Educational Stability and Transportation Provisions for Students in Foster Care in Title I, Part A as amended in the Every Student Succeeds Act of 2015

DATE: December 2, 2016

This Field Memo is being jointly issued by the New York State Education Department (NYSED or “the Department”) and the New York State Office of Children and Family Services (OCFS) to provide important information about the changes to Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the federal Every Student Succeeds Act (ESSA) of December 2015¹ regarding students in foster care.

In general, ESSA requires that school districts and charter schools (also referred to as local educational agencies or “LEAs”) and local departments of social services (also referred to as “LDSSs” or child welfare agencies²) begin implementing the new requirements related to

¹ On June 23, 2016, the U.S. Department of Education and the U.S. Department of Health and Human Services issued “Ensuring Educational Stability for Children in Foster Care” (Non-Regulatory Guidance), which is available at <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>.

² Voluntary agencies are also considered child welfare agencies. Nevertheless school districts are only required to collaborate on transportation plans with the LDSS. They are not expected to collaborate on

students in foster care by December 10, 2016. These new federal requirements in ESSA are critical to protecting the rights of students in foster care, and we recognize that these changes must be implemented quickly. We also recognize that there are a series of steps that are required as the State, school districts and LDSSs begin to implement these changes. This Field Memo is being issued so that school districts and LDSSs are aware of the changes that must be implemented by December 10, 2016. We will provide further updates to the field as we move through the implementation process. School districts and LDSSs are advised to consult with their attorneys to ensure compliance with the new provisions related to students in foster care.

Background

Studies have shown that children and youth in foster care are much more likely to struggle in school and are less likely to graduate from high school than their peers. One reason for this is that children and youth frequently are required to transfer schools. The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) was enacted to increase educational stability and reduce school transfers for children and youth in foster care. Fostering Connections requires child welfare agencies to collaborate with school districts to keep children in foster care in the same school in which they are enrolled when entering foster care or changing foster care placements, unless the child welfare agency determines that it is in the best interest of the child to transfer schools. In making the best interest determination, the child welfare caseworker must take into consideration all factors relating to the child's best interest, including, but not limited to, consideration of the appropriateness of the current educational setting and the child's proximity to the school in which the child is enrolled at the time of the placement. In 2012, NYSED issued a Field Memo titled "Education Stability Guidance" ("The Memo") in conjunction with OCFS and the New York State Office of Court Administration (OCA). This Memo explains the responsibilities of child welfare agencies, LEAs and the courts to ensure school stability for students in foster care (http://www.nysteachs.org/media/INF_SED_EdStabilityGuidance2012.pdf). The Memo advised school districts to maintain enrollment of a student who has been placed in foster care, consistent with the best interest of the student, even if that foster care placement is outside of the school district boundaries.

In 2015, the Department published another Field Memo titled "School Transportation for Students in Foster Care," available here: http://www.p12.nysed.gov/accountability/homeless/docs/FCandSchoolTransportation_082715.pdf. This 2015 Field Memo addressed how transportation should be arranged in various scenarios for students placed in foster care, including situations involving a student being placed in a foster care setting that is located in a different school district than where the student attended school at the time of placement. In particular this Field Memo stated:

[Where the child is in a foster care placement outside of the school district boundaries,] the child welfare agency is responsible for developing a plan to ensure school stability and this should include a plan for how the student is to get to and from school. School districts are encouraged to collaborate with the child welfare agency in implementing the child's school stability plan. For example, a school district could accommodate the student on an existing school bus route where possible and/or enter into a contract with the child welfare agency to

transportation plans with each of the voluntary agencies (see "Foster Care Provisions in ESSA: School District Requirements" section below). But voluntary agencies must designate a point of contact for school districts (see "Points of Contact at the State and Local Child Welfare Agencies" section below).

provide the transportation for the student. In a joint letter issued in May 2014, available here: <http://www2.ed.gov/about/inits/ed/foster-care/fostering-connections-letter.doc>, the U.S. Departments of Education and Health and Human Services specifically stated that school districts have an obligation to "collaborate and coordinate" with social service districts to ensure school stability for students in foster care.

Foster Care Provisions in ESSA: State Education Department Requirements

ESSA includes amendments to Title I, Part A designed to complement and enhance the school stability provisions in Fostering Connections. ESSA (§ 1111 [g][1][E]) requires that the Education Department collaborate with the OCFS to ensure that:

1. Children or 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.
2. When a determination is made that 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 if the child is unable to produce records normally required for enrollment.
3. The enrolling school must immediately contact the school last attended by a youth in foster care to obtain relevant academic and other records.
4. The Education Department will designate a Foster Care point of contact for LDSSs, who will oversee implementation of the Department's responsibilities.

The NYSED point of contact on matters concerning implementation of foster care provisions is Karen Hollowood in the Office of Student Support Services. District or school staff with questions may call (518) 486-6090 or email StudentSupportServices@nysed.gov.

Foster Care Provisions in ESSA: School District Requirements

Additionally, under ESSA (§1112 [c][5][A] and [B]), a school district receiving Title I funds must provide **assurances** that it will collaborate with the LDSS to:

1. Develop and implement clear written procedures for 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 the time in foster care. These procedures must ensure that:
 - a. children and youth in foster care who need transportation to the school of origin promptly receive it in a cost-effective manner; and
 - b. if there are additional costs incurred in providing transportation to the school of origin, school districts will provide transportation if:
 - i. The LDSS agrees to reimburse the school district;
 - ii. The school district agrees to pay the costs; or
 - iii. The school district and the LDSS agree to share the costs.
2. Designate a district Foster Care Point of Contact to work collaboratively with representatives from the local child welfare agency. The federal law requires school districts to designate a Foster Care point of contact, if the LDSS notifies the school district, in writing, that it has designated a point of contact for the LDSS. To this end, OCFS is requiring that all LDSS immediately designate a point of contact. OCFS and NYSED will provide all school districts with a complete list of the points of contact for each LDSS in the State, at which time, all local school districts will be

required to designate a point of contact in order to best meet the needs of foster care youth. When school districts have designated a school district Foster Care point of contact, they must submit the name and contact information for the school district Foster Care point of contact to NYSED, post the name and contact information for the school district Foster Care point of contact on the school district's website, and provide the name and contact information for the school district's Foster Care point of contact in writing to the point of contact for any LDSS known by the school district to have students in their custody.

Importance of Collaboration between School Districts and LDSSs in Developing Transportation Procedures

When determining responsibility for costs incurred when providing transportation, the U.S. Department of Education stated in its recently issued Non-Regulatory Guidance the following:

“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 the child’s best interest].”³

On November 29, 2016, the U.S. Department of Education issued final regulations on ESSA that echo the requirement that schools districts collaborate with child welfare agencies on transportation procedures consistent with the statutory requirements of ESSA (see section §299.13[c][ii]).⁴

Additionally, as described above, in 2015, the Department published a Field Memo titled “School Transportation for Students in Foster Care,” available at: http://www.p12.nysed.gov/accountability/homeless/docs/FCandSchoolTransportation_082715.pdf. This Field Memo provides guidance with regard to determining responsibility for transportation costs in a question and answer format.

Finally, NYSED and OCFS are working to develop guidance on transportation policies for students in foster care, which will be shared as soon as it is available. In the meantime, school districts must develop a transportation procedure in collaboration with the local LDSS by December 10, 2016. The listing of the social services districts across the State can be found at <http://ocfs.ny.gov/main/localdss.asp>.

³ U.S. Department of Education’s “Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care”, <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>.

⁴ U.S. Department of Education’s Final Regulations concerning the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act-Accountability and State Plans, <https://www.federalregister.gov/documents/2016/11/29/2016-27985/elementary-and-secondary-education-act-of-1965-as-amended-by-the-every-student-succeeds>.

Points of Contact at the State and Local Child Welfare Agencies

The New York State point of contact on education matters, for child welfare, is Lisa Gharthey Ogundimu at OCFS who can be reached Ocfs.sm.cwcs.essa@ocfs.ny.gov or 518-473-9447. Each LDSS must also designate a point of contact for school districts by, and preferably before, December 10, 2016. Each LDSS must email the name, phone number, and email address of the child welfare agency point of contact to Lisa Gharthey Ogundimu. This contact information will be maintained by OCFS. OCFS will post a statewide list of foster care child welfare points of contact by LDSSs. Additionally, each LDSS must post contact information for the point of contact on their respective websites. Finally, each LDSS must send the contact information for the point of contact to all school districts in the county.

Required Next Steps for School Districts and Local Child Welfare Agencies

To comply with the December 10, 2016 effective date of the foster care amendments to Title I, Part A, school districts must submit **Assurances** and point of contact information⁵ to the Department via the NYSED Application Business Portal by **5:00 pm on December 9, 2016** as follows:

- ✓ assurance that the school district, in collaboration with LDSSs, has/will develop(ed) transportation procedures, interim or final, in place for students in foster care in accordance with the provisions described above; and
- ✓ the name and contact information for the school district's designated Foster Care point of contact.

For further clarification regarding school district responsibilities, please see the recently distributed Field Memo entitled, "ESSA: Title I, Part A and Foster Care Assurances" at: <http://www.p12.nysed.gov/accountability/T1/fieldmemos/titlefostercareassurancesfieldmemo.pdf>.

In addition to the assurances, school districts must post the name, phone number, and email address of the school district's Foster Care point of contact on its website and provide the contact information for the school district's Point of Contact to the LDSS. NYSED will maintain a list of school district points of contact on the NYSED website at: <http://www.p12.nysed.gov/sss/>.

As previously noted, LDSSs and voluntary agencies must notify Lisa Gharthey Ogundimu at OCFS by e-mail at Ocfs.sm.cwcs.essa@ocfs.ny.gov or phone at 518-473-9447, with all school districts in the county and the name, phone number, and email address of their point of contact for school districts by December 9, 2016.

Additional Information and Guidance

For additional information and guidance, please see:

- Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care: <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>

⁵ NYSED Strongly encourages districts to designate a point of contact at this time and submit this information to the Department with the required assurance. As described in #2 above, all districts will be required to designate a point of contact when OCFS and NYSED distributes the complete list of LDSS points of contact.

- Final Regulations: ESSA Accountability and State Plans: <https://www.federalregister.gov/documents/2016/11/29/2016-27985/elementary-and-secondary-education-act-of-1965-as-amended-by-the-every-student-succeeds>
- NYSED Field Memo, “School Transportation for Students in Foster Care,” August 27, 2015: http://www.p12.nysed.gov/accountability/homeless/docs/FCandSchoolTransportation_082715.pdf
- NYSED Field Memo, “Education Stability Guidance,” 2012: http://nysteachs.org/media/INF_SED_EdStabilityGuidance2012.pdf

Thank you for your prompt attention to this important matter. If school districts have any questions, please contact Student Support Services at 518-486-6090, the Title I Office at 518-473-0295, or the Office of Pupil Transportation at 518-474-6541. If LDSSs or voluntary agencies have any questions, please contact OCFS at 518-473-9447.