

Considerations for Local Educational Agencies (LEAs) in Developing Transportation Procedures for Students in Foster Care Under the Every Student Succeeds Act of 2015

In the United States, there are approximately 260,000 children in foster care who attend a K-12 school system.¹

National research shows that children in foster care are at high-risk of dropping out of school and are unlikely to attend or graduate from college. The frequent mobility of students in foster care (both in and out of the foster care system and from one home or placement to another) has been identified as a major barrier to their academic success. Under the Every Student Succeeds Act (ESSA) school districts have a host of new responsibilities for educating students who are in the foster care system. In particular, ESSA includes a new section aimed at improving the educational stability of students in the foster care system and tracking their academic progress.² Of particular interest to school district leaders and the school personnel who work most closely with students in foster care are new LEA requirements in ESSA related to transportation for students in foster care.

ESSA amended Title I, Part A of the Elementary and Secondary Education Act to require that LEAs receiving Title IA funds collaborate with state or local child welfare agencies on local procedures for transportation for students in foster care. ESSA also amended the McKinney-Vento Act to remove the phrase “awaiting foster care placement” from the definition of homelessness. In contrast to the majority of assessment, accountability and funding provisions in ESSA which are effective beginning the 2017-2018 school year, ESSA’s foster care transportation changes and the removal of “awaiting foster care placement” from the McKinney-Vento Act take effect on December 10, 2016.³

¹ “Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care,” January 2014, www.fostercareandeducation.org.

² See <http://www.aasa.org/content.aspx?id=39549> for more information on the requirements pertaining to students in foster care in ESSA.

³ In Arkansas, Delaware, and Nevada, children “awaiting foster care placement” will be deleted from the McKinney-Vento Act on December 10, 2017 (two years after enactment, instead of one year).

[AASA](#) and [NAEHCY](#) produced this document to help school personnel understand the responsibilities of both child welfare agencies and LEAs for transporting children in foster care, specifically which aspects are optional and which aspects are requirements. In addition, we provide a series of questions to guide the development of local transportation procedures, including tips to evaluate community needs, available resources, and collaborative opportunities.

LEAs that receive ESSA Title IA funds must contain an assurance in their local Title I plans that the LEA will, by December 10, 2016:

Collaborate with the state or local child welfare agency to develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin⁴ when in their best interest will be provided, arranged and funded for the duration of time in foster care.

Transportation procedures must:

- Ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with the child welfare agency's authority to use child welfare funding for school of origin transportation.
- Ensure that, **if** there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the LEA will provide transportation to the school of origin **if**:
 - 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; **or**
 - the LEA and the local child welfare agency **agree** to share the cost of such transportation.

Note that Title IA's new transportation procedures apply to all children in foster care for the duration of their time in foster care.⁵ The McKinney-Vento Act's

⁴ Non-Regulatory Guidance issued on June 23, 2016 by the U.S. Departments of Education and Health and Human Services defines school of origin for children in foster care as "the school in which a child is enrolled at the time of placement in foster care.... If a child's foster care placement changes, the school of origin would then be considered the school in which the child is enrolled at the time of the placement change." U.S. Departments of Education and Health and Human Services (2016). *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, Question 10.

⁵ Non-Regulatory Guidance defines the term "foster care" as follows: 24-hour substitute care for children placed away from their parents or guardians and for whom the child welfare agency has

transportation requirements apply to all homeless children and youth for the duration of their homelessness and until the end of the academic year in which they move into permanent housing.⁶

Questions to Guide Development of ESSA’s Local Transportation Procedures

1. Who should be involved in developing the transportation procedures?

The procedures governing school of origin transportation for children in foster care are part of the LEA Title I Part plan. Therefore, the LEA Title I Director is responsible for developing the procedures. Since ESSA requires the LEA to collaborate with the state or local child welfare agency, the Title I Director should document efforts to collaborate.

Federal child welfare law requires child welfare agencies to coordinate with LEAs on providing school stability for children in foster care. Therefore, the collaboration requirements are reciprocal.

To ensure the procedures are appropriate and reasonable, the Title I Director should consult and coordinate with other federal program staff, including special education and McKinney-Vento staff, as well as the transportation director. It also may be appropriate to involve LEA leadership, including the superintendent and school board.

2. What are the legal requirements for child welfare agencies to ensure educational stability of children in foster care? What systems do child welfare agencies in your state use to comply with these legal requirements?

The Fostering Connections to Success and Increasing Adoptions Act of 2008 requires child welfare agencies to plan for ensuring the educational stability of every child in foster care. This school stability plan must be part of each child’s individual case plan. Fostering Connections also requires child welfare agencies to ensure the placement of children in foster care takes into account the proximity of the placement to the child’s school and to coordinate with LEAs to ensure the child can remain in the school of origin if it is in the child’s best interest.

placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made....” *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, Question 1.

⁶ The McKinney-Vento Act’s transportation requirements are included in Appendix A.

Conversations between education and child welfare agencies should begin with an assessment of processes in place to promote school stability and placement proximity, as well as a discussion of additional steps child welfare agencies and schools could take together to develop placement options close to schools and minimize separations of children from their communities and the need for long commutes.

3. Is the child welfare agency accessing federal and state child welfare funds to provide transportation to the school of origin? If it is not, what needs to happen for those funds to be accessed?

The Fostering Connections to Success and Increasing Adoptions Act of 2008 made reasonable transportation to the school of origin an allowable use of foster care maintenance payments (sometimes called Title IV-E payments), which are federal payments made for eligible children properly placed in licensed foster homes or child care institutions. School of origin transportation also is an allowable administrative cost under Title IV-E.⁷ ESSA specifically mentions the availability and use of these funds and related state funds.

4. Does the state have laws or policies in place regarding transportation responsibilities for children in foster care?

State laws and policies may need to be revised in light of ESSA's new requirements and the removal of "awaiting foster care placement" from the McKinney-Vento Act. However, some policies will meet the new law appropriately. For example, Connecticut state law makes the child welfare agency responsible for any additional or extraordinary costs of transportation.

5. What are the transportation needs of all children in foster care in the LEA?

- Is the state child welfare agency providing the SEA with data about the number of children in foster care by LEA? How often?
- Is the local child welfare agency providing the LEA with data about the number of children attending school and/or living in the LEA? How often?
- If the child welfare agency is not providing this information, how can systems be established to ensure data is shared in a timely manner and kept

⁷ The Department of Health and Human Services, Administration on Children, Youth and Families explained child welfare agencies' responsibilities for school stability and transportation in Program Instruction ACYF-CB-PI-10-11 (July 9, 2010), Section E: Enrolling Children in School, Educational Stability and Payments for School Transportation, available at <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf>.

- current?
- How many children in foster care attend school in the LEA? Is that number growing?
 - How many children in foster care are placed in the LEA? Is that number growing?

6. ESSA's transportation provisions do not come into play unless remaining in the school of origin is in the student's best interest. How will these best interest determinations be conducted?

ESSA requires State Title I Plans to include assurances for best interest decisions that are based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement. Non-Regulatory Guidance suggests that SEAs and LEAs work with child welfare agencies to develop a clear policy or protocol on how to make best interest determinations.⁸ LEAs should consider:

- What additional factors should be part of best interest decisions? Non-Regulatory Guidance suggests consideration of such factors as: preferences of the child, child's parents and/or education decision-maker; safety; the child's attachment to the school; placement of siblings; special needs; history of school transfers; and the effect of the commute on the child's well-being and education.⁹
- Who will be involved in best interest decisions? The LEA, child welfare agency, student, and the student's biological and foster family may have valuable information to contribute to the decision. The child's preference should receive strong consideration.
- How will disagreements over best interest be resolved? Non-Regulatory Guidance suggests SEAs and LEAs collaborate with child welfare agencies to develop dispute resolution processes at the local level, as well as to ensure a child remains in the school of origin to the extent feasible and appropriate while disputes are resolved.¹⁰
- If the LEA is not involved in the best interest decision, how will the decision be communicated to the LEA? Will the LEA have an opportunity to dispute the decision?

⁸ *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, Question 14.

⁹ *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, Question 12.

¹⁰ *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, Questions 19, 20.

- ESSA does not address transportation to summer school or extra-curricular activities. Does the State Title I Plan address those issues? If not, what procedures will the child welfare agency and LEA agree on?

7. How well is the LEA meeting applicable federal and state legal requirements to provide and pay for school transportation? ?

Before agreeing to pay to transport children in foster care to their schools of origin when there are additional costs, the LEA should review its compliance with existing laws to ensure it is meeting federal and state obligations. For example:

- How well is the LEA meeting the transportation needs of children and youth experiencing homelessness, particularly in light of ESSA amendments to the definition of “school of origin” and the identification of homeless children and youth? How many students currently are receiving school of origin transportation under the McKinney-Vento Act?
- Is the LEA currently providing comparable transportation services to all McKinney-Vento students to attend their neighborhood schools, magnet/charter/alternative learning programs, and extra-curricular activities?
- How well is the LEA meeting the transportation needs of children and youth with disabilities?

8. What is the current availability of transportation resources in the LEA?

- Does the LEA have enough buses and bus drivers to provide services to McKinney-Vento students and students with disabilities currently?
- Does the LEA have enough buses and bus drivers to add children in foster care to their transportation procedures for the duration of time in foster care?
- Does the LEA have sufficient contracts in place with cab or other transportation companies to provide services to McKinney-Vento students and students with disabilities currently?
- Does the LEA have sufficient contracts in place with cab or other transportation companies to add children in foster care remaining to their transportation procedures for the duration of time in foster care?

9. ESSA defines when an LEA must provide transportation to the school of origin if there are additional costs incurred. How will it be determined whether there are additional costs?

Non-Regulatory Guidance defines “additional costs” as “the difference between what an LEA otherwise would spend to transport a student to his or her assigned

school and the cost of transporting a child in foster care to his or her school of origin.”¹¹ Considerations in making this calculation should include:

- Under what circumstances does the LEA typically provide transportation to students?
- Is the student in foster care eligible for transportation from the LEA for some other reason, such as having a disability?
- How can the LEA calculate a standard cost of transportation for students who are not otherwise eligible for transportation, in order to calculate additional costs?
- How can the LEA estimate administrative costs involved in the logistics of providing transportation, such as additional staff time in coordinating transportation and informing other students on the bus when new bus stops change pick-up and drop-off times.

10. In circumstances when the LEA is providing transportation to children in foster care, how will the child welfare agency(s) inform the LEA about educational decision makers, changes in placement, changes in case worker, children needing to miss school for court-related and other reasons, and other logistical issues involved in providing transportation?

To facilitate timely sharing of information, LEAs and child welfare agencies may develop MOUs to establish procedures for information-sharing. The National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent, or At-Risk offers a practice guide on interagency communication and collaboration, available at http://www.neglected-delinquent.org/sites/default/files/docs/NDTAC_PracticeGuide_InteragencyCommunication_2011.pdf.

11. What are the cost-effective means of transportation available in the community that are appropriate for children in foster care of various ages, including:

- Case workers or foster parents providing transportation
- Existing public school bus routes
- Public transportation (and how will young children be accompanied if using public transportation)
- Taxis or other private transportation services
- Walking within a safe walk zone

¹¹ *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, Question 27.

12. Recognizing that often, children will be living in one LEA and attending their school of origin in another LEA, how are neighboring LEAs and local child welfare agencies involved in developing the procedures?

- Should there be unified procedures for all the LEAs and local child welfare agency(s) in a reasonable geographic region, such as within a single county or child welfare agency service area?
- If there are not unified procedures, how will it be determined which procedures apply to a particular student? Will it be based on where the student lives, attends school, or some other factor? Will the state provide guidance or regulations?

13. If the child welfare agency will reimburse the LEA for the cost of transportation, how and how often will that reimbursement occur?

- What procedures will be established to address any disputes about payment amount or timing?
- What procedures will be established to ensure students do not miss school due to disputes about payments?
- If the state offers transportation aid or reimbursement to the LEA, how that will that impact how the LEA determines the amount of reimbursement?

14. Can the LEA assume additional costs to transport a child in foster care absent a legal mandate?

In some states and LEAs, the LEA may need school board approval to assume additional transportation costs without a state or federal legal requirement. School boards themselves have a fiduciary responsibility that may limit their ability to approve expenses, such as non-mandated transportation expenses, depending on LEA finances and governance.

15. If the LEA makes the decision to agree to share the cost with the child welfare agency, what specific procedures will be followed?

- How will the relative share of costs be determined?
- Will one party pay the full amount, and the other party reimburse for its share?
- Will each party pay its share directly to the transportation vendor?
- What procedures will be established to address any disputes about payment amount or timing?
- What procedures will be established to ensure students do not miss school

due to disputes about payments?

16. How should the procedures address students who are identified as “awaiting foster care placement” prior to December 10, 2016?

Will the transportation procedures developed under the local Title I plan dictate the provision of transportation for children identified as awaiting foster care placement during the first months of the 2016-17 school year? Depending upon the details of the Title I plan, it may be in the best interest of those students to be included in the new plan, or to be transported as formerly homeless students under the McKinney-Vento Act. The LEA should consider the pros and cons of each approach.

17. How can the LEA and/or the child welfare agency ensure school stability for children who have been removed from the home by the child welfare agency, but who are not placed in foster care?

In many cases, child welfare agencies arrange for relatives to assume temporary custody of children after removal rather than place them in foster care. Some of these children may be eligible for services under the McKinney-Vento Act. However, to maximize educational stability for all children removed from home by the child welfare system, these children should be part of the discussion between LEAs and child welfare agencies.

APPENDIX A

Transportation Requirements in the McKinnev-Vento Act. as amended by ESSA (Apply to all homeless children and youth and all LEAs)

1. Transportation to the school of origin

“(iii) The State and the local educational agencies in the State will adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin (as determined under paragraph (3)), in accordance with the following, as applicable:

(I) If the child or youth continues to live in the area served by the local educational agency in which the school of origin is located, the child's or youth's transportation to and from the school of origin shall be provided or arranged by the local educational agency in which the school of origin is located.

(II) If the child's or youth's living arrangements in the area served by the local educational agency of origin terminate and the child or youth, though continuing his or her education in the school of origin, begins living in an area served by another local educational agency, the local educational agency of origin and the local educational agency in which the child or youth is living shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the local educational agencies are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally....” 42 U.S.C. 11432(g)(1)(J)(iii)

“(I) SCHOOL OF ORIGIN DEFINED- In this paragraph:

(i) IN GENERAL.-- The term `school of origin' means the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool.

(ii) RECEIVING SCHOOL.--When the child or youth completes the final grade level served by the school of origin, as described in clause (i), the term “school of origin” shall include the designated receiving school at the next grade level for all feeder schools.” 42 U.S.C. 11432(g)(3)(I)

2. Comparable transportation (in addition to and distinct from school of origin transportation)

“(4) COMPARABLE SERVICES- Each homeless child or youth to be assisted under this subtitle shall be provided services comparable to services offered to other students in the school selected under paragraph (3), including the following: (A) Transportation services....” 42 U.S.C. 11432(g)(4)