

November 29, 2016

Dear Colleague,

Consistent with Governor Wolf’s desire to improve coordination and efficiency in government, we are writing to you together to outline requirements relating to the educational stability of children in foster care under the Every Student Succeeds Act (ESSA) that will take effect beginning December 10, 2016. The Departments of Education (PDE) and Human Services (DHS) are committed to providing guidance and technical assistance to support local education and county children and youth agencies in meeting these requirements.

By way of background, ESSA’s provisions related to children in foster care largely mirror those first established for state and county children and youth agencies (CCYAs) through the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections). In 2013, the Uninterrupted Scholars Act¹ amended the Family Educational Rights and Privacy Act (FERPA) to authorize an agency caseworker or other representative of a state or local child welfare agency, or tribal organization to have access to the student’s educational records without having to obtain parental consent or a court order. This exception applies to children for whom a CCYA has legal responsibility for their care and protection, specifically those children in the legal custody of the CCYA who are placed in out-of-home care. While many Local Education Agencies (LEAs) and CCYAs throughout Pennsylvania have developed strong partnerships to meet the letter and spirit of the federally-required responsibilities under Fostering Connections, ESSA codifies these requirements for the first time.

This work is vitally important: Research is clear that foster youth represent one of the most vulnerable groups of students. Children in foster care are much more likely than their peers to struggle academically and fall behind in school, and students in foster care at age 17 are less likely to graduate from high school, with only 65 percent graduating by age 21, compared to 86 percent among all youth.

Collaborative, Dual Agency Framework

There are 67 CCYAs and more than 700 LEAs in Pennsylvania (including traditional public schools, charter schools, and Career and Technical Centers), each with their own context and structure. ESSA calls for state and local education and child welfare leaders to think creatively to overcome these differences, and to identify strategies for promoting stability and opportunity for students in foster care.

Over the past 11 months, PDE and DHS have worked to lead by example. Our collaborative efforts to date include examining the law’s requirements related to children in foster care, and developing and deploying resources for the field such as monthly planning meetings, informational briefings/webinars, updated toolkits, and new guidance. **PDE and DHS are issuing this latest guidance to further promote awareness among LEAs and CCYAs of key changes and requirements.** A summary of important provisions is below.

Changes Effective December 10, 2016:

- ESSA amended the McKinney-Vento Homeless Assistance Act of 1987 to remove the term “awaiting foster care placement,” meaning students in foster care will no longer automatically be considered “homeless” as defined by McKinney-Vento unless they meet additional criteria as defined by the law for transportation costs to be covered by McKinney-Vento.
- This changes the responsibility for the cost of transporting a student to the school of origin.

¹ <http://www.pafostercare.org/wp-content/uploads/sites/16/2016/11/Uninterrupted-Scholars-Act-Joint-Memo.pdf>



- “Best interest determinations” for school placement and school transportation arrangements will now be coordinated by the LEA Foster Care Liaison *in conjunction with* CCYA staff, and other relevant team members who support the child.

Actions That Must Take Place:

Local Education Agency (LEA):

- Identify and establish local-level Foster Care Point of Contact;
- Formalize Best Interest Determination Process *in conjunction* with local CCYA to align requirements of Fostering Connections and ESSA; and
- Provide and ensure school stability on a case by case basis until there is a formal transportation plan in place between the LEA and CCYA.

Local County Children and Youth Agency (CCYA):

- Formalize Best Interest Determination Process *in conjunction* with LEA to align requirements of Fostering Connections and ESSA; and
- Provide and ensure school stability on a case by case basis until there is a formal transportation plan in place between the LEA and CCYA.

Although ESSA does not require child welfare agencies to have points of contact to coordinate with LEAs, the practice is highly encouraged by the U.S. Departments of Health and Human Services and Education. Notably, Pennsylvania policy provides that each CCYA identify at least one staff member to be trained in educational issues; these Educational Liaisons may have other agency responsibilities, but must have sufficient time and opportunity to fulfill the requirements of this position.² In lieu of appointing an Education Liaison, a CCYA must provide documentation to their respective Office of Children, Youth and Families (OCYF) Regional Office of how they will otherwise meet the statutory and regulatory requirements associated with Fostering Connections.

Like Educational Liaisons, an LEA’s foster care Point of Contact is permitted to have other responsibilities, but should be well-suited and well-supported for their important role. LEAs’ foster care Points of Contact will serve as a bridge between state and local education and child welfare systems to ensure educational stability for students in foster care, and will be critical partners while planning implementation of ESSA. Points of Contact will facilitate implementation of, and compliance with, state and federal laws related to students in foster care, and collaborate with the local CCYA’s Educational Liaison to address educational barriers that prevent students in foster care from being identified, enrolling, attending, or succeeding in school. Specific responsibilities of an LEA’s Point of Contact may include:

- Leading the LEA’s development of best interest determination process, in partnership with the CCYA;
- Facilitating with the CCYA the transfer of student records, including immunizations, medical records, and copies of Individualized Education Program (IEP) and Section 504 plans, to ensure immediate enrollment when a student in foster care changes schools;
- Facilitating data sharing with the CCYA, consistent with FERPA and other privacy protocols;
- Developing and coordinating local transportation procedures, including protocols for resolving transportation disputes;
- Ensuring that children in foster care are enrolled in and regularly attending school; and
- Providing professional development and training for school staff on the Title I foster care provisions and education needs of children in foster care, as needed.

² Bulletin 3130-10-04, “Educational Stability and Continuity of Children Receiving Services from the County Children and Youth Agency (CCYA) Including the Use of an Education Screen,” PA Department of Human Services, Office of Children, Youth and Families, September 28, 2010, <http://www.dhs.pa.gov/publications/bulletinsearch/bulletinselected/index.htm?bn=3130-10-04&o=N&po=OCYF&id=09/17/2010>



LEAs must submit the name and contact information of their foster care Point Of Contact to PDE by December 10, 2016, using this [webform](#).

Ensuring Educational Stability for Students in Foster Care

Under ESSA, a child in foster care must remain in their school of origin, unless it is determined that remaining in the school of origin is not in that child’s best interest.³ Consistent with the Fostering Connections Act, “foster care” means 24-hour substitute care for children placed away from their parents or guardians, and for whom the child welfare agency has 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 pre-adoptive homes.⁴ All children in foster care (with the exception of voluntary placements) are placed under order of the court. As such, court determinations, findings and orders are critical to best interest discussions. Teams should be aware of and must follow existing court orders. If a court order specifies an educational placement for the child, the CCYA must request and obtain a modified court order prior to the child changing schools if a best interest educational determination is different from the court order.

As the state educational agency, PDE must ensure that LEAs consider all factors when making a best interest determination for students in foster care, including the appropriateness of the current educational setting and proximity of foster care placement.⁵ Importantly, transportation costs should **not** be considered when determining a child’s best interest; this requirement under ESSA is consistent with the requirements of Fostering Connections. In making best interest determinations, LEAs and CCYAs should work together to develop clear policies, protocols, guidelines, and procedures – including identifying who should be involved in the decision-making process.

These policies and procedures should be child-centered, and ensure that best interest determinations are made jointly with input from all relevant parties (including, as appropriate, the child’s biological family and resource family, CCYA staff, school staff, legally-appointed education decision makers, etc.). Teams making decisions should consider a number of factors, including a child’s attachment and engagement in their current school, placement of siblings, school environment, quality of services, history of school transfers, and the impact of commuting on a child. Finally, best interest determinations should reflect, where applicable, a child’s need for, and entitlement to, special services, including special education and/or English learner supports. To aid LEAs in meeting this requirement, PDE and DHS collaborated to develop this [Best Interest Determination Form \(BID\)](#).

Transportation Plans

LEAs must collaborate with CCYAs to develop and implement clear written procedures for how transportation will be provided, arranged, and funded for the duration of a child’s time in foster care.⁶ To support LEAs in meeting this requirement, PDE and DHS developed a [Transportation Plan Guide](#), [Transportation Agreement Memorandum of Understanding \(MOU\)](#) and [Transportation Plan Template](#). An LEA’s plan must also address how transportation costs will be covered if additional costs are incurred. Options include:

- LEA is reimbursed by the CCYA;
- LEA agrees to pay the costs;
- LEA and the CCYA agree to share the costs; or
- LEA of origin, LEA of residence, and the placing CCYA agree to share the costs.

³ ESEA Section 1111(g)(1)(E)(i).

⁴ See ED/HHS joint guidance (page 6, *Frequently Asked Questions – Best Interest Determination*) for more information.

⁵ See ED/HHS joint guidance (page 11, *Frequently Asked Questions – Best Interest Determination*) for more information.

⁶ ESEA Section 1112(c)(5)(B). See ED/HHS joint guidance for more information (page 15, *Frequently Asked Questions – Transportation*).



There are several strategies that LEAs and CCYAs can pursue to cover these costs, including, but not limited to the following:

1. If transportation can be funded by the CCYA through Title IV-E foster care maintenance payments, the CCYA should cover additional transportation costs using a mix of federal, state, and local funds.
2. If the child is not eligible for federal child welfare funds under Title IV-E, or the funding is not available, the cost of transportation could be evenly divided between the LEA and CCYA using available funding. Transportation plans or MOUs could also contemplate a phased-in coverage of costs. For example, LEAs could cover transportation costs for a designated time period, leveraging Title I funds to support school stability, and CCYAs could cover the remainder of costs for the duration of the child’s time in foster care, using a mix of state and local funds.
3. If the child is not eligible for federal child welfare funds under Title IV-E, and Title I funds are exhausted or not available, CCYAs could support the transportation costs using a mix of state and local funds.
4. Other solutions, such as the sharing of costs between the school district of origin, the school district of residence, and the placing CCYA.

LEAs must submit established transportation plans to PDE by January 31, 2017, via email to pafostercare@csc.csiu.org

Finally, LEA transportation plans should address dispute resolution procedures to ensure that any disagreements regarding the cost of transportation is resolved promptly and fairly, and does not impact a student’s ability to remain in the school of origin during the dispute resolution process.

Technical Assistance and Resources for LEAs and CCYAs

Both PDE and DHS recognize that changes in federal law result in new responsibilities at the local level. As such, we have assigned regional coordinators to assist in plan development and implementation. As LEAs develop, finalize, and implement their local transportation plans, they can access technical assistance, professional development, and training via those Foster Care Youth Regional Coordinators. In addition to the state foster care point of contact, these Regional Coordinators will support LEAs to ensure compliance with Title I requirements at the local level. As CCYAs collaborate with LEAs on the implementation of the ESSA foster care provisions, they can access technical assistance from their respective Office of Children Youth and Families (OCYF) Regional Offices or their Program Practice Improvement Specialist at the Child Welfare Resource Center. (For a full list of LEA regional coordinators, please visit www.pafostercare.org).

Looking Ahead

Ensuring the success of all our students – including those in foster care – is a shared responsibility, one that is paramount to securing a bright future for our students and our commonwealth. Over the next year, PDE and DHS will continue to provide training, technical assistance, and resources to support implementation of ESSA’s provisions related to ensuring educational stability of children and youth in foster care.

Thank you for your commitment and work to provide Pennsylvania’s children and youth with the supports and care they need to learn, grow, and succeed.

Sincerely,

Pedro A. Rivera
Secretary of Education

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Secretary of Human Services