



**DISTRICT OF COLUMBIA
NON-REGULATORY GUIDANCE**

**Elementary and Secondary Education Act (ESEA) Provisions
Regarding Educational Stability for
Children in Foster Care**

November 2016

Office of the State Superintendent of Education (OSSE) and District of Columbia Child and Family Services Agency (CFSA) Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965 ("ESEA"), as Amended by the Every Student Succeeds Act ("ESSA") of 2015.

DC Office of the State Superintendent of Education (OSSE)**DC Child and Family Services Agency (CFSA)**

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This guidance document¹ is a joint publication created by the District of Columbia Office of the State Superintendent of Education (“OSSE”) and the District of Columbia Child and Family Services Agency (“CFSA”) regarding new provisions related to educational stability for children and youth in foster care included in the reauthorization of the Elementary and Secondary Education Act (“ESEA”), as amended by the Every Student Succeeds Act (“ESSA”)² on Dec. 10, 2015. The information provided in this guide is designed to clarify requirements of applicable law and regulations. This guidance is not meant to:

- Be a complete explanation of all relevant laws and regulations;
- Give legal advice; or
- Supersede any local or federal law.

ESEA FOSTER CARE STATE POINTS OF CONTACT

Pursuant to ESEA, the District of Columbia must designate a point of contact (“POC”) at OSSE to oversee the implementation of the state agency responsibilities under the law.

The ESEA Foster Care POC for OSSE is:
Katie Reda, Special Programs Manager
810 First Street, NE, Fifth Floor
Washington, DC 20002
(202) 481-3926
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ESEA also mandates local education agencies identify a POC for children in foster care once the local child welfare agency notifies them in writing of their agency’s designated POC.

The ESEA Foster Care POC for CFSA is:
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² References to ESEA in this document shall refer to ESEA, as amended by ESSA, unless otherwise indicated.

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OVERVIEW & BACKGROUND

On Dec. 10, 2015, the U.S. Department of Education reauthorized the Elementary and Secondary Education Act of 1965 (“ESEA”) through the enactment of the Every Student Succeeds Act (“ESSA”), Public Law 114-95. ESEA has significant bearing on the responsibilities of state education agencies (“SEAs”), local education agencies (“LEAs”), and other public agencies, such as child welfare agencies,³ as it contains a number of new provisions to ensure equity in education for all children, including those in special populations, such as children in foster care.

For children in foster care, new requirements under Title I, Part A of ESEA highlight the need for states to provide educational stability for this population, with emphasis on collaboration between SEAs, LEAs, and child welfare agencies to ensure that children in foster care have the opportunity to achieve at the same levels as their peers. While most of the new requirements in ESEA are not required to be implemented until the 2017-18 school year (“SY”), the foster care provisions go into effect on Dec. 10, 2016.

The school stability provisions of ESEA closely mirror similar requirements in the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) (also known as “Fostering Connections”), a federal law that requires child welfare agencies to collaborate with educational agencies to keep children in foster care in the same school when living placements change, if remaining in that school is in their best interest. Fostering Connections 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 new school is provided the children’s relevant school records. While the educational stability provisions of ESEA do not create new requirements for child welfare agencies, they offer an opportunity for child welfare agencies to better cooperate with state and local education agencies to create more effective educational stability plans for children in foster care.

Ensuring school stability – or if necessary, ensuring immediate enrollment in a new school – is critical to improving educational outcomes for children in foster care. Research has revealed that children in foster care are a vulnerable and highly mobile population who typically make more unscheduled school changes than their peers in a given school year. Compared to their peers, children in foster care experience lower high school graduation rates, lower scores on academic assessments, and high rates of chronic absenteeism, suspension, expulsions and grade retention.⁴ The following section further details the specific SEA and LEA responsibilities set forth in ESEA.

³ In the District of Columbia (“District”), the Child and Family Services Agency (“CFSA”) is the child welfare agency responsible for protecting child victims and children at risk of abuse or neglect. CFSA’s duties include, among other things, investigating abuse of neglect reports, assessing and treating children and families within its care, and providing child protective services, foster services, and post-permanency services. (D.C. Code §§ 4-1303.01a and 4-1303.03). In executing its duties and responsibilities, CFSA may place children or youth in temporary settings outside of the District. During such placement, children and youth may be enrolled in a school in that jurisdiction but they remain District wards and thus, are also entitled to maintain their enrollment in any District public school.

⁴ See *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care* (2014) from the National Working Group on Foster Care and Education (http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=1279&Command=Core_Download&method=inline&PortalId=0&TabId=124)

STATE EDUCATION AGENCY RESPONSIBILITY

Pursuant to Section 1111(g)(1)(E) of ESEA (20 U.S.C. §6311), OSSE's state education plan must describe:

- The steps it will take to ensure collaboration with CFSA to ensure educational stability for children in foster care, including:
 - An assurance that a child in foster care is able to remain in his or her school of origin unless it is determined that remaining in the school of origin is not in the child's best interest;
 - An assurance that, if it is not in the child's best interest to stay in his or her school of origin, the child is immediately enrolled in the new school, even if the child is unable to produce records normally required for enrollment;
 - An assurance that the new (enrolling) school will immediately contact the school of origin to obtain relevant academic and other records; and
 - Designation of an SEA point of contact for the child welfare agencies in the state, who shall also oversee implementation of the SEA's responsibilities. The SEA point of contact shall not be the State Coordinator under the section 722(d)(3) of the McKinney-Vento Homeless Assistance Act.

OSSE is also required to conduct regular monitoring and ensure adequate oversight to guarantee appropriate implementation of these provisions by LEAs. (See 2 C.F.R. §§ 200.331(d), 200.328(a); 34 C.F.R. § 76.770).

LOCAL EDUCATIONAL AGENCY RESPONSIBILITY

In accordance with Section 1112(c)(5)(B) of ESEA (20 U.S.C. §6312(c)(5)(B)), all LEAs, in collaboration with CFSA, must ensure the implementation of the foster care provisions under ESEA, including the following:

- By **Dec. 10, 2016**, LEAs must develop and implement clear written procedures governing how transportation to maintain foster children 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. Please see appendices for model agreements.
- ESEA requires LEAs to designate a point of contact to serve as a foster care liaison with CFSA once CFSA notifies the LEA that it has designated a POC.⁵ However, LEAs should not delay and should designate their POC in an expedited manner, because of the LEA's obligation to establish written transportation procedures by Dec. 10, 2016. Accordingly, OSSE encourages LEAs to designate a foster care POC by **Dec. 2, 2016**. OSSE requests that each LEA submit its designated foster care POC to Katie Reda via email at Katie.Red@dc.gov, with a copy to Megan Dho at Megan.Dho@dc.gov. A list of LEA POCs will be developed and posted on OSSE's website.

⁵ ESEA § 1112(c)(5)(A); Joint Guidance at 21.

- LEAs must ensure prompt provision of transportation for children in foster care needing transportation to their school of origin.

The following sections address topics that must be considered in order to appropriately implement the foster care provisions under ESEA. Content from joint guidance issued by the U.S. Department of Education and U.S. Department of Health and Human Services on the foster care provisions were used to inform the content of this document.⁶

CHILD WELFARE AGENCY RESPONSIBILITIES

As the District of Columbia agency responsible for administering plans under Title IV-E and IV-B of the Social Security Act, CFSA is required to include a plan for ensuring the educational stability of a child in foster care in the child's case plan (the educational stability plan). This plan must include: 1) an assurance that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child was enrolled at the time of placement; and 2) an assurance that CFSA has coordinated with the LEA(s) to ensure the child can remain in that school, or if remaining in that school is not in the child's best interest, an assurance that the child will be enrolled immediately in a new school and that the new school obtains relevant academic and other records. These assurances relate to the circumstances at the time of the child's initial placement into foster care, as well as each time a child moves to a different foster care placement. (Section 475(1)(G) of the Social Security Act.)

The educational stability plan must be a written part of the child's case record, which is jointly developed with the child's parents no later than 60 days after a child's removal from the home, and every six months thereafter. The child welfare agency has the flexibility to determine which factors will be examined in determining whether remaining in the school of origin is in the child's best interest, but the cost of school transportation should not be a factor in determining the best interest of the child for the purposes of school selection.

EDUCATIONAL/SCHOOL STABILITY PROTECTIONS

Remaining in the school of origin and the best interest determination. Taking into account the child's best interest, a child in foster care should remain in the same school that he or she attended before placement, also known as the school of origin.

As Fostering Connections already requires CFSA to ensure a best interest determination is made with respect to a child's school stability any time a child initially comes into care or changes foster care placements, CFSA has established a process for making best interest determinations, whereby it will seek the input of the LEA serving as the child's school of origin as well as other relevant stakeholders. Its process mandates consideration of the following factors depending on the context of the case:

- Availability and quality of the services in the school to meet the child's educational and socio-emotional needs;

⁶ The full joint guidance is available at: <http://www2.ed.gov/policy/elsec/leg/ESEA/edhhsfostercarenonregulatorguide.pdf>

- 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);
- History of school transfers and the way in which they may have impacted the child;
- Proximity to the school in which the child was enrolled at the time of placement and how the length of the commute to the school of origin would impact the child, depending on the child’s developmental age and capacity;
- The unique needs of the child and the ability for the new schools to meet the needs, including:
 - Whether the child is a student with a disability under the Individual with Disability Education Act (“IDEA”) or a student under Section 504 of the Rehabilitation Act of 1973, as amended (“Section 504”), and if so, the availability of those required services in a school other than the school of origin;
 - Whether the child is an English learner (EL) and is receiving language services, and if so, the availability of those required services in a school other than the school of origin;
- Length of time the child’s current placement is expected to last;
- Permanency plan of the child;
- The time remaining in the semester and school year and how a move would impact the student’s credit acquisition, promotion, or graduation; and
- Influence of the school climate on the child, including safety.

*SPECIAL NOTE: When determining a child’s best interest, the cost of transportation **should not be** included as part of the decision.*

Removal from the school of origin/Immediate enrollment. When a determination is made that it is not in the child’s best interest to remain in the school of origin, a child must immediately be enrolled in a new school, regardless of whether the child’s records or other documentation typically needed for school enrollment can be produced.

Transfer of records. When a child in foster care changes schools, the enrolling school must immediately contact the previous school to obtain academic and other records.

SCHOOL TRANSPORTATION REQUIREMENTS

Some children in foster care will need transportation in order to continue attending their school of origin. By Dec. 10, 2016, LEAs must create written procedures governing how transportation will be provided, arranged and funded for all children who require transportation assistance to remain in their school of origin, when in the child’s best interest, for the duration of the time they are in foster care. ESEA requires that LEAs ensure that children needing transportation promptly receive it in a cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act. If additional costs are incurred in providing transportation, ESEA indicates that the LEA will provide such transportation if:

- 1) The local child welfare agency agrees to reimburse the LEA for the cost of the transportation;
- 2) the LEA agrees to pay for the cost; or

- 3) the LEA and local child welfare agency agree to share the cost.⁷

In the District, CFSA is committed to pay the up-front additional transportation costs so long as the LEA agrees in writing to reimburse a minimum of 25 percent of the total expenditures to offset costs. LEAs can use Title I funding to support the additional costs of school stability transportation.⁸ Child welfare agencies can receive some federal reimbursement under Title IV-E of the Social Security Act for some children in foster care. Specifically, school transportation to ensure school stability is allowable as either Title IV-E foster care maintenance payments or administrative costs. However, child welfare agencies may only claim reimbursement for those children who are “Title IV-E eligible,” which varies by state.

REQUIRED DATA COLLECTION AND REPORTING

In accordance with ESEA, SEAs will be required to report annually on student achievement and graduation rates for children in foster care.⁹ To implement this requirement, OSSE and CFSA will work together to ensure effective, appropriate, and confidential data sharing between systems.

DEFINITIONS

Awaiting Foster Care Placement¹⁰ - children who have been removed from their homes by CFSA and who are in emergency or interim placement but for whom a decision to secure formal foster care placement for the child has not yet been made. Usually this is a very temporary (24 – 48 hours) circumstance. Once CFSA has made a determination, these children are either formally considered a ward of the District or potentially returned home.

Best Interest Determination - A CFSA-led process of determining whether it is in a child’s best interest to remain in their school of last enrollment after their initial entry to foster care and subsequent to any changes in their foster care placement. CFSA must seek the input of the LEA and other stakeholders in making this decision. Children should remain at their school of origin unless it is determined to be contrary to their best interests.

Child in Foster Care - Child who is removed from home and whose care and placement are the responsibility of the CFSA.

Foster Care - 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 CFSA has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes

⁷ ESEA, section 1112(c)(5)(B).

⁸ Joint Guidance at 19, Q30

⁹ ESEA, section 1111(h)(1)(C)(ii) and (iii).

¹⁰ ESSA amended section 725 of the McKinney-Vento Homeless Assistance Act, removing children “awaiting foster care placement” from the definition of “homeless children and youths” for purposes of the Education for Homeless Children and Youths program. This change is effective in the District as of Dec. 10, 2016. However, children who were identified as “awaiting foster care placement” from the first day of the SY 2016-17 until Dec. 9, 2016 will remain eligible for services in this category for the remainder of the SY 2016-17.

of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes.

Immediate enrollment - When it is in the child’s best interest to change schools, a child should be enrolled – and not just technically enrolled, but attending and meaningfully participating – upon presentation to a school.¹¹ The enrollment should occur as soon as possible in order to prevent educational discontinuity. Enrollment cannot be denied or delayed because documents normally required for enrollment (proof of age, proof of residency, vaccination records) have not been submitted.¹² School records, including an individualized education program (“IEP”), are never required for enrollment, but an enrolling school must immediately contact the school of origin to obtain relevant records.¹³

Point of Contact - ESEA requires the designation of several POCs to oversee and implement educational stability provisions for children in foster care.

- SEAs must designate a POC to oversee implementation of state responsibilities.¹⁴
- LEAs are required by law to designate a POC once child welfare agencies notify the LEA that their agency has designated a POC.¹⁵ However, LEAs should not delay and should designate their POC in an expedited manner because it is the LEA’s obligation to establish written transportation procedures by Dec. 10, 2016.¹⁶

School of Origin - The school in which a child is enrolled at the time of placement in foster care. If a child’s foster placement changes, the school of origin will be the school in which the child is enrolled at the time of the placement change.

¹¹ Joint Guidance at 20, Q33.

¹² ESEA § 1111(g)(1)(E); Joint Guidance at 20.

¹³ ESEA § 1111(g)(1)(E)(iii); Joint Guidance at 20, Q33.

¹⁴ ESEA § 1111(g)(1)(E)(iv); Joint Guidance at 21. For more information see [POC Q and A](#).

¹⁵ ESEA § 1112(c)(5)(A); Joint Guidance at 21.

¹⁶ Joint Guidance at 21.

FREQUENTLY ASKED QUESTIONS

1. To which children do the new requirements to ensure educational stability of children in foster care apply?

ESEA requirements apply to all children in foster care. Consistent with Fostering Connections, “foster care” means 24-hour substitute care for children placed away from their parents or guardians and for whom CFSA has placement and care responsibility. This includes, but is not limited to, placements in foster homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive homes.

SPECIAL NOTE: As of Dec. 10, 2016, children “awaiting foster care placement” will no longer be included in the definition of “homeless children and youths.” However, children who were identified as “awaiting foster care placement” from the first day of the SY 2016-17 until Dec. 9, 2016 will remain eligible for services in this category for the remainder of the SY 2016-17.

2. Do the foster care provisions apply to preschool-age children in foster care?

Yes. If an LEA offers a public preschool education, the LEA must ensure that a child in foster care remains in his or her school of origin, unless a determination is made that it is not in the child’s best interest.

3. What special considerations and legal requirements should LEAs consider when implementing the educational stability provisions for children with disabilities under IDEA or under Section 504?

IDEA Part B requires SEAs and LEAs to make a free appropriate public education (FAPE) available to all eligible children with disabilities in the least restrictive environment (LRE). FAPE under IDEA includes the provision of special education and related services at no cost to the parents in accordance with a properly developed IEP. While IDEA presumes that the first placement option considered for each child with a disability is the regular classroom with appropriate supplementary aids and services, there is no one size fits all approach. School districts must make available a range of placement options to meet the needs of children with disabilities for special education and related services, including regular classes, special classes, separate schools, home instruction, and instruction in hospitals and institutions. Under the IDEA, each child’s placement decision must be made by a group of knowledgeable persons, including the child’s parents.¹⁷ This group may also include staff from CFSA.

LEAs also must provide FAPE under Section 504. FAPE under Section 504 includes the provision of regular or special education and related aids and services that are designed to meet individual educational needs of children with disabilities as adequately as the needs of children without

¹⁷ “Parent” is defined in the IDEA at 34 C.F.R. § 300.30. Note that this definition includes a child’s foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent. In the District of Columbia, a foster parent may act as a “parent” for purposes of IDEA if: (a) the natural parent’s authority to make educational decisions on the child’s behalf has been extinguished under applicable law; and (b) the foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions for the child as required under the IDEA, and has no interest that conflicts with the interests of the child. (5-E District of Columbia Municipal Regulations § 3001.)

disabilities are met, and that include adherence to specific procedural requirements.¹⁸ LEAs often develop written plans, commonly referred to as Section 504 Plans, for children with disabilities who receive services under Section 504. As is true under the IDEA, Section 504 also requires that, to the maximum extent appropriate, children with disabilities be educated in the regular educational environment, unless they cannot be educated satisfactorily in that environment with the use of supplementary aids and services.

4. What special considerations and legal requirements should SEAs and LEAs take into account when implementing the educational stability provisions for children who are English learners?

Some children in foster care are also English learners (“ELs”)—children identified as having limited English proficiency in speaking, listening, reading, or writing English through procedures established by school districts. Title VI of the Civil Rights Act of 1964¹⁹ and the Equal Educational Opportunities Act of 1974²⁰ (“EEOA”) require public schools to ensure that all EL children, including EL children in foster care, can participate meaningfully and equally in educational programs. In order to meet their obligations under Title VI and the EEOA, LEAs must:

- Identify and assess all potential EL children in a timely, valid, and reliable manner;
- Provide EL children with a language assistance program that is educationally sound and proven successful;
- Sufficiently staff and support the language assistance programs for EL children;
- Ensure that EL children have equal opportunities to meaningfully participate in all curricular and extracurricular activities;
- Avoid unnecessary segregation of EL children;
- Ensure that EL children with disabilities are evaluated in a timely and appropriate manner for special education and disability-related services and that their language needs are considered in these evaluations and delivery of services;
- Meet the needs of EL children who opt out of language assistance programs;
- Monitor and evaluate EL children in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level core content, exit EL children from language assistance programs when they are proficient in English, and monitor exited children to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;
- Evaluate the effectiveness of a school district’s language assistance program(s) to ensure that EL children in each program acquire English proficiency and that each program was reasonably calculated to allow EL children to attain parity of participation in the standard instructional program within a reasonable period of time; and
- Ensure meaningful communication with limited English proficient (“LEP”) parents.

¹⁸ 34 C.F.R. § 104.33-104.36.

¹⁹ 42 U.S.C. § 2000 d to d-7, 34 C.F.R. part 100.

²⁰ 20 U.S.C. § 1703(f).

5. What is the duration of time that a child is protected under the school of origin provision? What happens once a child exits foster care?

LEAs must collaborate with CFSA to ensure that each child in foster care remains in his or her school of origin if it is determined to be in his or her best interest for the duration of the child's time in foster care, consistent with the educational stability requirements under Fostering Connections. These requirements no longer apply once a student has exited foster care; however, LEAs are encouraged to prioritize educational stability for these children. In fact, under District law, former District foster children who achieve permanency via adoption, custody or legal guardianship with a person(s) that resides in Maryland or Virginia can continue to attend a D.C. Public School (DCPS) or District public charter school without paying non-resident tuition²¹ LEAs must allow a child that exited foster care during the school year to continue in their school through at least the end of the academic year, and until the child completes the last grade offered at that school location, without charging a fee.

6. What process should an LEA and CFSA use when making the best interest determination?

The law does not prescribe a specific process. OSSE acknowledges and encourages the process and policies currently used by CFSA to comply with the Fostering Connections Act to make best interest determinations (as mentioned on page 5) and supports documentation of those policies and procedures in CFSA agreements with the LEAs to ensure clarity of process. To facilitate that process, this guidance document includes a model agreement that agencies can use to document the best interest determination process CFSA has already established and a model transportation planning form that can be adapted by the LEA and CFSA to document each individual student's transportation arrangements if transportation is needed in order for the child to remain in his or her school of origin.

7. Who should be involved in making a best interest determination?

CFSA will consult with the LEA and other relevant parties and make every effort to gather meaningful input in deciding what school placement is in a child's best interest. Other relevant parties may include, the child, depending on the child's age, the foster parents, the biological parents when appropriate, the education decision maker(s), and other relatives. If a child has an IEP or a Section 504 plan or is an EL, then CFSA should consult with the school staff members who are responsible for implementing those programs in the best interest decision process and seek their input on how well the child is or is not benefitting from services at their school.

8. How long do LEAs and CFSA have to make the best interest determination?

Although ESEA does not prescribe a specific timeline for making a best interest determination, the agencies should work in an expeditious but thoughtful manner in arriving at a determination in order to ensure continuity of care and avoid disruption in the child's education.

²¹ See DC Code § 38-302(e)(otherwise known as the Education Continuity Act), stating that "a child in the care and custody of the District pursuant to § 16-2320(a)(3) who, while attending a DCPS or public charter school, ceases to be in that care and custody as a result of being placed in the permanent care and custody of a parent, guardian, or custodian who resides outside the District of Columbia shall be considered a resident of the District of Columbia for the purpose of school attendance and shall be exempt from the requirement to pay tuition for the period of time until the child completes the educational program offered at the school the child currently attends" (emphasis added).

9. If parties cannot come to an agreement regarding the best interest determination, which entity should be the final decision maker?

LEAs, CFSA and OSSE each bring valuable perspectives to the best interest determination. Recognizing this, both the Fostering Connections Act and Title I require coordination among agencies at the state and local level to ensure the educational stability of children in foster care. Given these coordination requirements, the relevant agencies should make every effort to reach agreement regarding the appropriate school placement of children in foster care. However, if there is disagreement regarding school placement for a child in foster care, CFSA should be considered the final decision maker in making the best interest determination.

CFSA, as the child welfare agency, is uniquely positioned to assess vital non-educational factors such as safety, the child's permanency goal, and the other components of the case plan. CFSA also has the authority, capacity, and responsibility to collaborate with and gain information from multiple parties, including parents, children, schools, and the court in making decisions.

10. How should disagreements over the best interest determination among parents, education decision makers, and other important stakeholders be handled?

If other parties to the court case disagree with CFSA's best interest determination with respect to the child's school placement, the aggrieved party may request an emergency hearing to bring the matter before the child's family court judge.

11. Must a child remain in his or her school of origin while disputes are being resolved?

Yes, to the extent feasible and appropriate. The LEA and CFSA must work together to ensure that the child remains in his or her school of origin while any disputes are being resolved to minimize disruptions and reduce the number of moves between schools.

12. What is the role of CFSA in providing transportation for a child in foster care to the school of origin?

Pursuant to Fostering Connections, CFSA must ensure that the educational stability plan of each child in foster care includes an assurance that the child welfare agency has coordinated with the appropriate LEA(s) to ensure the child can remain in the school of origin, or if remaining in that school is not in the child's best interest, an assurance that the child will be enrolled immediately in a new school. Given the shared responsibility of CFSA and LEAs to ensure educational stability, CFSA will work with LEAs to explore the full range of options for providing and funding transportation to maintain a child in his or her school of origin, consistent with the child's educational stability plan.

13. By when must an LEA develop and implement its transportation procedures?

An LEA must collaborate with CFSA to develop and implement its transportation procedures by Dec. 10, 2016.

14. What is the duration of time that the LEA must provide a child with transportation services? What happens once a child exits foster care?

An LEA must ensure that a child in foster care needing transportation to the school of origin receives such transportation for the duration of the time the child is in foster care. When a child exits foster care, the LEA should continue to prioritize the child's educational stability, consider each child's best

interest on a case-by-case basis, and when possible, make every effort to continue to ensure transportation is provided through the end of the school year, if needed, when remaining in the school of origin would be in the child's best interest.

15. What does it mean to provide transportation to the school of origin in a “cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act”?

Section 475(4)(A) of the Social Security Act defines “foster care maintenance payments,” which includes the cost of reasonable travel for children in foster care to their school of origin. As such, that means if a child is receiving a Title IV-E foster care maintenance payment, the Title IV-E agency is permitted to include the reasonable costs of transportation for that eligible child. Thus, in determining whether transportation is “cost-effective,” an LEA must consider the reasonableness of those costs. In doing so, an LEA should consider a variety of factors, including cost, distance, and length of travel, as well as whether the mode of transportation is developmentally appropriate for the child. An LEA should also consider whether transportation can be provided for minimal or no additional costs. Examples of no-cost or low-cost options for transportation that LEAs and CFSA could explore include whether:

- The child may be dropped off at a school bus stop near the existing transportation system for the school of origin;
- Public transportation options exist, if the child is of an appropriate age and has or is able to acquire the skills to utilize such options;
- The foster parents or other family member(s) are willing and able to transport the child to school;
- There are pre-existing bus routes or stops close to the new foster care placement and transportation for homeless children as required by the McKinney-Vento Act; and
- The child is already eligible for transportation covered by other programs. For example, IDEA funds may be used to pay for transportation services if the child's IEP Team determines transportation is a related service that is required in order for a child with disabilities in foster care to receive FAPE.

16. What constitutes “additional costs” incurred in providing transportation to maintain children in foster care in their schools of origin?

Additional costs incurred in providing transportation to the school of origin should reflect 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. For example, if the LEA provides transportation through an established bus route, there is no additional cost. If the LEA or CFSA 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 the LEA would incur can be considered additional. If the LEA must re-route buses to transport a child in foster care to one of its schools, the cost of this rerouting can be considered additional cost.

17. What steps should an LEA and CFSA take to ensure that transportation is provided if they face difficulty reaching agreement on how to pay for additional transportation costs?

Given the emphasis on shared agency responsibility to ensure educational stability in both the Fostering Connections Act and Title I of ESEA, the LEA and CFSA 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. OSSE encourages the LEA and CFSA to consider and utilize all allowable funding sources, including federal funds, to cover additional transportation costs. 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. For example, if CFSA provides special transportation services to the child in foster care through a private vehicle or transportation company, OSSE strongly encourages the LEA to reimburse CFSA for at least a quarter (or 25 percent) of those transportation expenses, such that the costs are shared and no one agency has to unilaterally bear all the additional transportation costs to maintain that youth's school stability.

If an agreement cannot be reached regarding how to pay for additional transportation costs, the LEA must contact the ESEA foster care POC will review the information included in the student-level transportation agreement within one business day. The OSSE ESEA POC will provide a written decision regarding what resource will be used to provide the transportation, how the costs will be paid for and an explanation as to how that decision was made to all involved parties, within 2 business days of being notified of the dispute.

18. What funding sources may be used to pay for additional transportation costs?

In addition to any allocated state and local funds, certain federal funds may be available to cover additional transportation costs to maintain children in foster care in their schools of origin.

For example, Title IV-E federal funds are available to assist child welfare agencies with additional transportation costs for children who are eligible for Title IV-E foster care maintenance payments. Specifically, the cost of reasonable travel for a child in foster care to remain in his or her school of origin may be included in the Title IV-E foster care maintenance payment paid out to child welfare agencies if they make the appropriate claims for those funds.

In addition, an LEA may use Title I funds to pay for additional costs needed to transport children in foster care to their schools of origin and their at-risk funding through the Uniform Per Student Funding Formula ("UPSFF") for children in the custody of CFSA. Please note, however, that Title I funds reserved for comparable services to 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 school of origin. In addition to Title I funding through ESEA which can be used for transportation, LEAs receive at risk funding through the UPSFF for children in the custody of CFSA.

19. Are charter school LEAs required to provide transportation for children in foster care?

Yes. As an LEA, a charter school must meet the transportation requirements.

20. Is an LEA required to transport children in foster care to and from their schools of origin while transportation cost disputes are being resolved?

An LEA must ensure that children in foster care needing transportation to the school of origin promptly receive such transportation in a cost-effective manner. Therefore, the LEA must provide or arrange for adequate and appropriate transportation to and from the school of origin while any disputes are being resolved.

21. What are examples of potential roles and responsibilities of the OSSE POC?

Some of the roles and responsibilities of the SEA POC may include:

- Coordinating with the CFSA POC to issue joint guidance for the implementation of the Title I provisions, which should include: 1) establishment of uniform criteria around the best interest determination factors; and 2) establishment of guidelines for transportation procedures.
- Facilitating data sharing with CFSA, consistent with FERPA and other Federal or District of Columbia privacy laws, regulations, and policies;
- Monitoring LEAs to ensure compliance with the Title I requirements; and
- Providing professional development opportunities and technical assistance for LEA POCs and other personnel regarding school stability and educational supports for children in foster care, as needed.

22. What are examples of the responsibilities of the LEA POC?

Depending on the size of your LEA and the number of children in foster care enrolled in your schools, some of the roles and responsibilities of the LEA POC may include:

- Liaising with the CFSA POC on the implementation of the Title I provisions;
- Providing input to CFSA on the best interest determination following a child's entry to foster care or change in foster placement;
- Documenting the best interest determination;
- Facilitating the transfer of records and immediate enrollment;
- Facilitating data sharing with CFSA, consistent with the Family Educational Rights and Privacy Act ("FERPA") and other privacy protocols;
- Developing and coordinating local transportation procedures;
- Helping to resolve best interest determination and transportation cost disputes with CFSA;
- Ensuring that children in foster care are enrolled in and regularly attending school;
- Providing professional development and training to school staff on the Title I provisions and educational needs of children in foster care, as needed.

23. Is CFSA required to have a POC? How does my LEA know who to contact at CFSA?

While CFSA is not required to identify a POC, they have done so. Your LEA should have received a letter at the beginning of the school year identifying the CFSA POC, the role that individual may play and how he or she may be contacted. The information is also available in this guidance.

24. What are some examples of the responsibilities of a CFSA POC?

Some examples of the possible roles and responsibilities of the CFSA POC:

- Serving as one of the primary contacts between children in foster care and school staff, LEA personnel, and other service providers;
- Coordinating with the corresponding LEA POC on implementation of the Title I provisions including immediate enrollment;
- Establishing a process for coordinating on best interest determinations with the LEA;
- Facilitating transfer of records including immunizations, medical records, and copies of IEPs (if not in the District of Columbia Special Education Data System (SEDS)) and Section 504 Plans;
- Working with LEAs to ensure that children in foster care are immediately enrolled in school, and to coordinate transportation services;
- Overseeing written agreements between the LEA and CFSA;
- Providing training to LEA and CFSA staff on educational needs of children in foster care;
- Coordinating with the LEA regarding data sharing for children in foster care, consistent with FERPA and the confidentiality of information provisions in the IDEA;
- Coordinating services so that children in foster care can access early educational services for which they are eligible, including Head Start and Early Head Start, home visiting, and preschool programs administered by the OSSE or an LEA, and screening and referrals to health, mental health, dental, and other appropriate services; and
- Informing parents or education decision makers of children in foster care of the child's education rights and providing public notice of the educational rights of children in foster care to community stakeholders.

APPENDIX A

**MODEL MEMORANDUM OF AGREEMENT
BETWEEN THE
DISTRICT OF COLUMBIA CHILD AND FAMILY SERVICES AGENCY
AND
INSERT LOCAL EDUCATION AGENCY NAME
THE IMPLEMENTATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT (ESEA)
PROVISIONS REGARDING EDUCATIONAL STABILITY FOR CHILDREN IN FOSTER CARE
FISCAL YEAR ____**

I. INTRODUCTION

The LEA NAME (hereafter referred to as “LEA”) and the District of Columbia Child and Family Services Agency (hereafter referred to as “CFSA”), collectively referred to as the “Parties”, enter into this memorandum of agreement (“MOA”) for the purpose of establishing a collaborative partnership to ensure the implementation of the Elementary and Secondary Education Act (“ESEA”), as amended by the Every Student Succeeds Act (“ESSA”) provisions regarding educational stability for children and youth in foster care.

II. AUTHORITY OF MOA

ESEA, reauthorized by ESSA, enacted Dec. 10, 2015 (Public Law 114-95; 20 USC §§6311 *et seq.*), as amended.

III. OVERVIEW OF PROGRAM GOALS AND OBJECTIVES

CFSA is the child welfare agency for the District of Columbia (“District”), which is responsible for protecting child victims and children at risk of abuse or neglect. CFSA’s duties include, among other things, investigating abuse of neglect reports, assessing and treating children and families within its care, and providing child protective services, foster care services, and post-permanency services. See D.C. Code §§ 4- 1303.01a, 4-1303.03. In executing its duties and responsibilities, CFSA may place children or youth in temporary settings outside the District. During such placement, children or youth may be enrolled in a school in that jurisdiction but the child or youth remains a District resident.

The LEA is an educational institution at the local level that exists primarily to operate a publicly funded school or schools providing elementary or secondary education in the District, including the District public schools and all District public charter schools.

The Parties have a common and concurrent interest in working cooperatively to ensure the effective implementation of the requirements set forth in the ESEA, specifically as it pertains to the provisions regarding educational stability for children and youth in foster care.

IV. APPLICABILITY

- A. This MOA applies to children who are in the care and custody of CFSA and placed in foster care including placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. It also applies to children who exit foster care when permanency has been achieved prior to the end of the academic year.
- B. Unless specified herein, this MOA is in no way intended to modify the responsibilities or authority delegated to the Parties under federal or District of Columbia law.

V. PROGRAMMATIC OBLIGATIONS AND RESPONSIBILITIES OF CFSA AND THE LEA

Pursuant to the applicable authorities and in the furtherance of the shared goals of the Parties to carry out the purposes of this MOA expeditiously, the Parties hereby agree as follows:

A. Coordination

The Parties agree to establish, maintain and implement policies and procedures to ensure coordination and timely and appropriate delivery of services in accordance with each Party's authority and responsibilities as defined in this MOA.

B. Points of Contact

1. CFSA will designate an employee as a point of contact ("POC") who will be responsible for coordinating and implementing the requirements of this MOA. This employee will serve as the CFSA POC under ESEA in regards to educational stability for children in foster care. By Aug. 15 each year CFSA will, in writing, inform the LEA of its POC. Should the POC change, CFSA will notify the LEA within five (5) business days.
2. LEA will designate an employee who will be responsible for coordinating and implementing the requirements in this agreement. This employee will serve as the LEA POC under ESEA in regards to educational stability for children in foster care. By Aug. 15 each year, the LEA will, in writing, inform CFSA of its POC. Should the POC change, LEA will notify CFSA within five business days.

C. School Stability Best Interest Determination

CFSA and the LEA will collaborate to keep children in their school of origin, unless it is determined that remaining in the school of origin is not in that child's best interest.

D. Process for Making Best Interest Determinations

In accordance with the law, CFSA will make a best interest determination whenever a child is initially placed in foster care and subsequent to any change in the child's foster placement. The determination will be made in consultation with other relevant parties to

the case, including relevant staff at the LEA serving as the child's school of origin. CFSA will consider information from the LEA concerning how well the child is or is not benefitting from the academic program and services at the school in making the best interest determination. CFSA will also consider a range of other factors that may bear on the child's educational and social well-being, including the child's attachment to the school, the child's permanency plan, the availability and quality of the services in the school and their ability to meet the child's educational and socio-emotional needs, how the length of any commute to the school of origin would impact the child, the time remaining in the semester and school year and how a move would impact the student's credit acquisition, promotion, or graduation; and the influence of the school climate on the child, including safety.

E. Notification to LEA of Best Interest Determination

Once CFSA has made the best interest determination and school placement decision, the social worker will ensure that the LEA and all other relevant parties are notified of the decision within 24 hours. This notice will trigger the need for the LEA and CFSA to collaborate under the terms and procedures outlined in this agreement to establish the most cost-effective transportation procedures available for the student.

F. Best Interest Determination Review

CFSA shall ensure that the best interest determination and school stability plan for the student is reviewed at least every six months and more often as appropriate. CFSA will inform the LEA of the best interest decision and any corresponding changes to the child's school placement that ensues, within 24 hours of the decision being made.

G. Resolution of Disputes Regarding the Best Interest Determination

If the LEA and CFSA do not agree regarding what is in the best interest of the child, CFSA will be considered the final decision maker in making the best interest determination.

H. School Enrollment Responsibility

1. If it is determined to be in the child's best interest to enroll in a new school, CFSA or the child's foster parent(s) or birth parent(s) will promptly complete all the paperwork to withdraw the child from the prior school, or school of origin, and go to the new school to request that the child be enrolled and permitted to start attending the school immediately.
2. If CFSA or the child's parents do not have all the documentation or records that are normally required to enroll in school, the LEA must permit the child to enroll and start at the school without such documentation to avoid any gaps in the child's school attendance.

I. School Records Transfer

CFSA shall provide the enrolling school with any prior school records that it has already obtained. The LEA must immediately contact the student's prior school to request copies of any relevant records that are missing and expedite efforts to access those records.

J. Transportation Determination & Transportation Plan

The LEA and CFSA shall jointly complete a student-level transportation agreement for every youth who requires school stability transportation services in order to get to and from their school of origin. That transportation agreement must identify all the resources, including no-cost and low cost options such as public transportation, foster parent or other family members who may be willing and able to transport the child to school, special education services if the student is eligible, and any other public or private transportation resources either agency has at their disposal to provide transportation to the student. Upon identifying those resources, the CFSA POC and the LEA POC must weigh the options identified to determine which mode of transportation is most immediately available, cost-effective and appropriate to meet the child's needs given their developmental age and individual capacity. Once the POCs decide on the transportation resource to be used, the mode of transportation, a target date by which that transportation will start, and any additional steps that need to be taken to put the transportation services in place (i.e., arranging travel training, submitting referral requests, etc.) must be documented in the transportation agreement. The plan should include specification of any interim transportation services that are needed until such time as the permanent transportation plans can be started.

K. Duration of Transportation Services

The LEA and CFSA agree that the transportation services shall continue through the end of the current academic year and for the duration of the child's time in foster care, unless CFSA notifies the LEA that the best interest determination and maintenance of the child in the school of origin needs to change.

L. Payment of Additional Costs for Transportation

1. If there are additional costs associated with the agreed upon mode of transportation, the LEA and CFSA agree to adhere to the following guidelines and procedures:
 - a. The LEA and CFSA will assess whether the child's transportation expenses may be covered by other state or local funds;
 - b. If the student is eligible for Title IV-E funds, CFSA will seek reimbursement for the allowable portion of those transportation costs.
2. If the remaining costs cannot be addressed through cost-effective solutions, one of the following options must be implemented:

- a. If CFSA pays the transportation costs for a student who is not entitled to any other form of cost-effective transportation (i.e., special education transportation), the LEA must reimburse CFSA for at least a quarter (or 25 percent) of the transportation cost.
- b. If CFSA pays the transportation costs for a student who qualifies for transportation services on their Individual Education Program (IEP) on an interim basis, until such time as a new bus route can be established for the student based on their change of address, the LEA will reimburse CFSA for the full-cost of those transportation services.
- c. The LEA shall transfer any reimbursement of transportation costs indicated in Section (V)(L)(2)(a) and (b) of this MOA, in accordance with the terms finalized by written agreement between the Parties, not later than May 31 of each school year.

M. Resolution of Disputes Regarding Mode of Transportation or Funding

If an agreement cannot be reached regarding how to pay for any additional costs of transportation, the LEA must contact OSSE and OSSE will review the information included in the student-level transportation agreement within one business day. OSSE will provide a written decision to all involved parties regarding what resource will be used to provide the transportation, how the costs will be paid for and an explanation as to how that decision was made, within two business days of being notified of the dispute.

N. Provision of Transportation Services to Maintain School Stability Once a Child Exits Foster Care

The LEA agrees to provide, arrange and pay the cost of transportation for the child to remain in their school of origin through the end of the academic year if the child exits foster care and achieves permanency in the middle of the academic year.

VI. DURATION OF MOA

The period of this MOA shall be from the date of execution through Sept. 30, 2017. This MOA shall renew automatically on October 1 of each subsequent fiscal year unless terminated in writing by the Parties pursuant to Section VIII of this MOA.

VII. AMENDMENTS AND MODIFICATIONS

The terms and conditions of this MOA may be amended or modified only upon prior written agreement by the Parties. Any modification or amendment of this MOA shall be valid only when reduced to writing, duly signed, and attached to the original MOA. A Party may initiate discussions regarding modification to this MOA by giving thirty (30) days' notice in advance of the proposed modifications.

VIII. TERMINATION

Either Party may terminate this MOA at a date prior to the renewal date specified in the MOA by giving the other Party at least sixty (60) days written notice. The MOA shall terminate on the date specified in the written notice, and the liabilities of the Parties hereunder for further performance of the terms of the MOA shall cease, but the Parties shall not be released from the duty to perform the MOA up to the date of termination.

IX. RESPONSIBILITY FOR THE ACTS OF THE PARTIES

- A. The Parties to this MOA are cooperating District government entities and private entities. No employee or agent of any entity shall be deemed to be an employee or agent of another entity and shall have no authority, expressed or implied, to bind any other entity except as expressly set forth in the MOA. Each entity shall be responsible for its acts and those of its employees, agents and subcontractors, if any, during the course of this MOA.
- B. This MOA shall not be construed to create any rights, substantive or procedural, enforceable at law by any person in any judicial or administrative matter. This MOA is made for the benefit of the parties hereto and not for the benefit of a third party.

X. NOTICE OF CLAIMS AND LAWSUITS

Each Party shall promptly inform the other Party of any information related to the provision of services under this MOA that could reasonably lead to a claim, demand, or liability against the other Party by a third party. Any Party that becomes a defendant in a lawsuit that involves services provided under this MOA and that may involve legal liability of the other party shall deliver to the other parties, within five days of service of process, a copy of any pleading relating to such lawsuit.

XI. CONSISTENT WITH LAW

The Parties shall comply with all applicable laws, rules and regulations whether now in effect of hereafter enacted or promulgated.

XII. CONFIDENTIAL INFORMATION

The Parties to this MOA will use, restrict, safeguard and dispose of all information related to or provided under this MOA in accordance with all relevant federal and local statutes, regulations, and policies. Any unlawful use or disclosure of information related to the services provided under this MOA shall be subject to penalties outlined in the Data-Sharing and Information Coordination Amendment Act of 2010, effective Dec. 4, 2010 (D.C. Law 18-273; D.C. Official Code § 7-241) and its implementing regulations at 29 DCMR 3000, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), approved Aug. 21, 1996 (P.L. 104-191, 42 USC 1320d), as amended, and its corresponding regulations at 45 CFR Parts 160, 162, and 164, and any other applicable District and Federal laws.

XIII. SEVERABILITY

In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions or obligations shall not in any way be affected or impaired thereby.

XIV. EFFECTIVE DATE

This MOA shall be effective upon the last date of execution by signatories below.

IN WITNESS THEREOF, The Parties have executed this MOA as follows:

LEA NAME

NAME/ TITLE

Date

DC Child and Family Services Agency

NAME
Agency Director or Designee

Date

APPENDIX B

**MODEL STUDENT-LEVEL TRANSPORTATION AGREEMENT BETWEEN
NAME OF LOCAL EDUCATION AGENCY – NAME SCHOOL/CAMPUS NAME
AND THE DISTRICT OF COLUMBIA CHILD AND FAMILY SERVICES AGENCY**

STUDENT INFORMATION:

Student Name: NAME

DOB: DD/MM/YYYY

USI: #####

FOSTER PARENT/GUARDIAN: NAME AND CONTACT INFO

EDUCATION DECISIONMAKER, if DIFFERENT: NAME AND CONTACT INFO

LOCAL EDUCATION AGENCY:

ESEA POC: NAME AND CONTACT INFORMATION

TRANSPORTATION CONTACT: NAME AND CONTACT INFORMATION

LOCAL CHILD WELFARE AGENCY:

ESEA POC: NAME AND CONTACT INFORMATION

CASE WORKER: NAME AND CONTACT INFORMATION

SCHOOL STABILITY DETERMINATION

The child welfare agency verifies that:

1. A best interest decision has been made and it’s in the best interest of the child to remain in their school of origin.
2. It is in the child’s best interest to remain in their school of origin because (briefly describe the deciding factors):

3. If the child is eligible under Title IV-E, CFSA will seek reimbursement of some funding of transportation costs.

MODE OF TRANSPORTATION

The LEA POC and CFSA POC agree that the following transportation options are available for the student (check the box for any and all that apply):

- A stop can be added or modification can be made to an already existing bus route.
- Public transportation can be used, if the child is of an appropriate age and has the individual capacity to safely navigate such transportation unsupervised.
- The foster parent(s) or other family resources are willing to transport the child to school at no additional cost (i.e., on the adult’s existing commute) provide the child with transportation
- The child has access to special education transportation services
- Private transportation services provided by the LEA
- Private transportation services provided by the CFSA

Other _____

SELECTED MODE OF TRANSPORTATION AND JUSTIFICATION:

The LEA POC and CFSA POC have determined that the child will get to/from school using the following mode of transportation:

Justification for Decision:

SERVICE INITIATION

The following steps will be taken by the following individuals to put these services in place by **DATE:**

FISCAL RESPONSIBILITY FOR TRANSPORTATION SERVICES

Costs will be paid for the services listed above in accordance with the MOA signed between these agencies on **INSERT DATE**.

These transportation procedures were agreed to on the following date: **INSERT DATE**

And will be implemented within **XX days, by the following date: **INSERT DATE****

AUTHORIZATION

Name & Title of CFSA Representative: _____
Authorized Signature for CFSA _____

Date _____

Name & Title of LEA Representative: _____
Authorized Signature for LEA _____

Date _____