

Every Student Succeeds Act (ESSA) | Foster Care

Preliminary Implementation Q & A | December 9, 2016

The Every Student Succeeds Act (ESSA), passed in 2015, is the most recent version of the federal Elementary and Secondary Education law and replaces the No Child Left Behind Act. ESSA made comprehensive changes to federal testing, accountability and funding requirements for public schools. As part of its reforms, ESSA places a new emphasis on the unique educational needs of students in foster care and the shared responsibility of state and local education agencies and child welfare organizations to collaborate and work together to promote educational stability. Although ESSA aligns closely with the federal child welfare law, entitled the Fostering Connections to Success and Increasing Adoptions Act of 2008, there are new requirements that need immediate action and attention. Many of the changes related to students in foster care take effect on December 10, 2016.

Terms:

- ESSA applies to both school districts and open enrollment charter schools, referred to as local education agencies (LEAs) in this document.
- The Texas Education Agency is considered the "State Education Agency", and is referred to as the SEA.
- The State child welfare agency in Texas is the Department of Family and Protective Services (DFPS), and is referred to in this document as DFPS or Child Protective Services (CPS), which is a division within DFPS.
- The term Foster Care used throughout this document refers to all children and youth who are in the legal custody of Texas DFPS (also known as managing conservatorship), regardless of their living arrangements.

Please submit any questions, concerns and/or feedback to fostercareliaison@tea.texas.gov. Feedback will assist TEA and DFPS with technical assistance and planning. Additional information and guidance will be available in the future.

Resources:

1. Is there federal guidance available regarding ESSA and Foster Care?

Yes. The U.S. Departments of Education and Health and Human Services issued joint guidance on June 23, 2016 to support states and communities with implementation of the foster care provisions in ESSA including the following:

- Dear Colleague Letter on Foster Care Guidance
<http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercaredcl.pdf>
- Dear Colleague Letter on Foster Care Timelines
<http://www2.ed.gov/policy/elsec/leg/essa/edhhseffectivedatesdcl.pdf>
- Non Regulatory Guidance
<http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>

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*Please note: Guidance provided by the state should be considered in conjunction with information provided by U.S. Departments of Education and Health and Human Services (June 23, 2016) to assist local education agencies and child welfare organizations in implementing the ESSA provisions that become effective on **December 10, 2016**.*

2. Are other tools and resources available?

Yes. The School Superintendents Association (AASA) and National Association for the Education of Homeless Children and Youth (NAEHCY) developed, "Considerations for Local Educational Agencies in Developing Transportation Procedures for Students in Foster Care Under the Every Student Succeeds Act of 2015":

<http://naehcy.org/sites/default/files/dl/legis/Transportation%20plan%20guide%20August%209.pdf>

The U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, Child Welfare Information Gateway created "Educational Stability for Children and Youth in Foster Care":

<https://www.childwelfare.gov/topics/systemwide/service-array/education-services/meeting-needs/educational-stability/>

The Legal Center for Foster Care and Education provides resources at

<http://www.fostercareandeducation.org/NewsUpdates.aspx>

Texas Foster Care & Student Success Resource Guide is another resource available at

www.tea.state.tx.us/FosterCareStudentSuccess/resource-guide.pdf

Federal Child Welfare Law | Fostering Connections and Education Stability:

3. What does the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 require regarding education stability for children in foster care?

The federal Fostering Connections Act requires each state's child welfare agency to ensure education stability for children in foster care, among many other provisions. The child welfare system is required to provide assurances that

- a child coming into foster care is able to remain in the school in which the child is enrolled at the time of placement, unless it is not in the child's best interest to remain in the same school;
- the placement of the child takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of each placement or move; and
- unless a determination is made that remaining in the current school is not in the best interests of the child, the child is immediately enrolled in a new school with all of the educational records of the child provided to the school.

The child welfare agency is also directed to "coordinate" with LEAs to ensure education stability requirements are met.

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Texas Law | Education Stability:¹

4. What does Texas law require regarding education stability for children in foster care?

Texas law promotes education stability by requiring a school to allow a child to remain in the school in which the child was enrolled at the time of placement in foster care (or at the time of any subsequent placement change). The student may attend the school without payment of tuition until he or she completes the highest grade offered at the school at the time of the student's enrollment, even if the student leaves DFPS conservatorship.²

Finally, Texas law requires an LEA to accept a child for enrollment in a public school immediately without certain documentation otherwise required for enrollment if DFPS has taken possession of the child. DFPS shall ensure that the documentation required is furnished to the school district not later than the 30th day after the date the child is enrolled in the school.³

Every Student Succeeds Act (ESSA):

5. What do the new requirements of ESSA add to what federal and state law already require?

Under ESSA, states must ensure that a student in foster care is able to remain in his or her school of origin, even if the child enters foster care or changes placement while in care, unless a determination is made that it is not in the child's best interest to attend the school of origin. The child is entitled to remain in the school of origin even if the student is living in another attendance zone or school district.⁴

Because Texas law requires LEAs to allow students in foster care to remain in their schools of origin, including following any subsequent school moves, this ESSA requirement has already been implemented in Texas.

ESSA adds some additional requirements to this framework; however, that can help ensure children are able to take advantage of the education stability protections.

The new provisions in Title I, Part A pertaining to students in foster care will be discussed in this Q & A and include involving LEAs in "best interest" decision-making, appointing points of contact for the schools and child welfare agencies, new assurances and data reporting requirements, and a requirement for transportation policies and procedures.

6. What is the school of origin?

The **school of origin** is 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 is then considered the school in which the child is enrolled at the time of the placement change.

¹ See APPENDIX 1 for a ESSA, Fostering Connections, Texas Law Comparison Chart

² TEC § 25.001(g-1)

³ TEC § 25.002(g)

⁴ TEC § 25.001(g)

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7. How is Foster Care defined in ESSA guidance?

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, childcare institutions, and pre-adoptive 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 by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made (45 C.F.R. § 1355.20(a)).⁵

The child welfare agency has responsibility for the child's care and placement and the child's caregiver provides for the child's day to day needs. The child can live with a relative, fictive kin, a foster parent, in a residential treatment center or other placement setting while under the conservatorship, or custody of the state.

8. Under what circumstances is a student in foster care unable to remain enrolled in the 'school of origin'?

Sometimes the distance between the child's placement and the school, child safety issues, the child's wishes or other factors, it will be in the child's best interest to change schools. In those situations federal law requires immediate enrollment at the new school.⁶

U.S. Department of ED and HHS ESSA guidance strongly encourage child welfare and school staff to work together and take into consideration all factors relating to a child's best interest prior to initiating a school move. Whenever possible, school staff should be consulted and should provide information from the school perspective, regarding the child's educational best interest that can be used in case planning and decision-making prior a change in school placement.

If DFPS determines that a school change is necessary for a child, Texas law requires that DFPS enroll the child in the new school within 3 days of placement.⁷ DFPS policy requires the child to be enrolled in school no later than 2 days after the child is placed. Accordingly, school districts are required to enroll students in foster care immediately when a student is presented for enrollment, regardless of whether the student has all the records needed for enrollment.⁸

See questions 23 and 24 for more information about 'best interest' and opportunities for school and child welfare collaboration to determine the child's educational best interest.

⁵ Adapted from U.S. Department of ED and HHS Non-Regulatory Guidance Ensuring Educational Stability for Children in Foster Care and U.S. Department of ED Non-Regulatory Education for Homeless Children and Youths Program.

⁶ See 20 U.S. Code §6311 (g)(1)(E)(ii), 42 U.S. Code §675 (1)(G)(ii)(II)

⁷ Tex. Fam. Code (TFC) § 264.115(a)

⁸ TEC § 25.002(g)

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Providing Assurances:

9. What assurances must the LEA provide to fulfill new ESSA requirements?

Each LEA must provide an assurance that it will collaborate with the State or local child welfare agency to designate a point of contact, if the corresponding child welfare agency notifies the local educational agency in writing, that the agency has designated an employee to serve as a point of contact for the local educational agency.⁹ The LEA must also assure that it will work in collaboration with the child welfare agency to develop clear, written, procedures governing transportation.¹⁰

School districts should document all outreach, internal/external planning, and collaboration with DFPS to fulfill ESSA requirements.

10. How will LEAs that receive Title I, Part A provide assurance to TEA regarding their coordination with child welfare regarding designated points of contact and development of clear, written transportation procedures?

Assurances will be provided to TEA in the district's Title I Plan and eGrants application annually, in accordance with TEA instructions.

For the purpose of providing assurance to TEA by the December 10, 2016 deadline, TEA is adding an addendum to 2016-17 eGrants application that must be submitted no later than December 8, 2016. Notification has been provided through TEA's Grants Administration Division.

For questions regarding submitting the addendum, please call the Grants Administration Division at (512) 463-8525.

Points of Contact:

11. How do Texas law and ESSA work together related to designation of points of contact between child welfare and education to support collaboration?

In Texas, each school district and open-enrollment charter must designate a foster care liaison.¹¹ Additionally, DFPS has 11 regional education specialists to facilitate education and ancillary services for children and youth in foster care.

DFPS/CPS Education Specialists are a resource for ESSA planning and coordination with LEAs. As points of contact for ESSA, the DFPS Regional Education Specialists and the Service Program Administrators can provide support and facilitate collaborative planning between child welfare and local education agencies.

DFPS/CPS Regional Education Specialists are available to local school districts as subject matter experts in child welfare and can work with school staff to address many school-related issues of the child. The

⁹ 20 U.S. Code §6312 (c)(5)(A)

¹⁰ See 20 U.S. Code §6312 (c)(5)(B)

¹¹ TEC § 33.904

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Regional Education Specialists are tenured child welfare staff who are invested in improving the education outcomes for children and youth in foster care by building collaboration among schools, community stakeholders, and child welfare. Caseworkers are responsible for determining the best interest of the child, including the most appropriate school placement.

12. Is it assumed that the LEA foster care liaison is the designated point of contact for coordination with child welfare?

While foster care liaisons are the logical choice to serve in the role of education point of contact, these individuals are not required to serve in this additional role. School districts and charters have flexibility regarding local procedures and determining staff responsibilities. The LEA foster care liaison is required by state statute to facilitate successful enrollment and transfers for students in foster care.¹² Additionally, the SEA has provided guidance to LEAs that the foster care liaison plays a key role in increasing awareness about the education of students in foster care and implementation of laws to support students locally ([Chapter 5, Foster Care & Student Success](#)).¹³ The DFPS and LEA points of contact will coordinate both within their agencies and with one another to ensure educational stability for students in foster care.

Foster care liaisons are strongly encouraged to work in coordination with the Title I director, transportation director, McKinney-Vento Homeless liaison, and special education and other federal program staff to coordinate the new ESSA requirements within their LEAs.

The LEA must ensure that its designated foster care liaison contact information is up-to-date in the AskTED (Texas Education Directory) database on the TEA Website. See question 14 for more information.

13. Where can DFPS/CPS access the LEA points of contact?

LEA foster care liaison information is maintained and stored in AskTED at <http://mansfield.tea.state.tx.us/tea.askted.web/Forms/Home.aspx>

Step-by-step instructions for how to access the information in AskTED can be found under the 'foster care liaison contact Information' header at the bottom of the page: <http://tea.texas.gov/FosterCareStudentSuccess/liaisons/>.

14. How do school districts update their foster care liaison information in AskTED?

LEAs are responsible for keeping their foster care liaison information up to date in AskTED.

A district staff member needs to notify the district's AskTED administrator immediately if the foster care liaison changes. The AskTED administrator will update the information in AskTED.

Charter schools must submit their foster care liaison to the Charter School Division at TEA by phone at (512) 463-9575 or by email at CharterSchools@tea.texas.gov. Include the liaison's name, email address, and phone and fax numbers. This information will be added to the AskTED directory.

¹² TEC § 33.904

¹³ Texas Foster Care & Student Success: <http://tea.texas.gov/FosterCareStudentSuccess/>

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More information is available: <http://tea.texas.gov/FosterCareStudentSuccess/liaisons/>

15. Where can the LEA access the CPS points of contact?

CPS Regional Education Specialists and Service Program Administrators will serve as the child welfare points of contact.

- School district administrators and staff can access the contact information for the CPS Regional Education Specialists and Service Program Administrators by CPS region at http://www.dfps.state.tx.us/Child_Protection/State_Care/education.asp
- To view a map of DFPS/CPS regions visit: https://www.dfps.state.tx.us/contact_us/map.asp
- To view a list of corresponding DFPS/CPS regions, counties and local school districts visit: http://www.dfps.state.tx.us/contact_us/counties.asp?r=all
- TEA has also posted contact information for the CPS point of contact in TEA's To the Administrator Addressed (TAA) letter, Every Student Succeeds Act (ESSA) and the Education of Students in Foster Care, November 17, 2016.

Please note: Child Welfare regions are different from Education Service Center regions.

16. Should school districts and charter schools wait for written notification from DFPS to begin ESSA implementation and planning?

No. Due to the large number of Independent School Districts and Open Enrollment Charter Schools in Texas, DFPS is not able at this time to send separate letters to each to notify them of the child welfare points of contact. However, school districts and CPS offices are encouraged to use the contact lists to locate and collaborate with their respective counterparts to begin transportation planning to meet the law's school stability requirements.

Note: If a local CPS office is able to individually notify a LEA in writing of the CPS point of contact, the LEA would be obligated under ESSA to notify the CPS office of the corresponding LEA contact.

Transportation Planning:¹⁴

17. What are the transportation requirements in ESSA?

LEAs are required to develop and implement clear written procedures for how transportation to maintain foster youth in their school of origin will be **provided, arranged** and **funded** for the duration of the child's time in foster care.

The procedures must ensure that transportation will be provided *promptly* in a cost-effective manner and in accordance with federal child welfare Title IV-E funding requirements¹⁵ and must ensure that if there are any *additional costs* incurred in providing transportation to maintain children in their schools of origin, the LEA will provide the transportation if

- 1) the child welfare agency agrees to reimburse the LEA for the cost of such transportation,

¹⁴ See APPENDIX: 2 for additional questions and consideration to support procedure development.

¹⁵ Section 475(4)(A) of the Social Security Act (42 U.S.C. 675(4)(A))

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- 2) the LEA agrees to pay for the cost of such transportation, or
- 3) the LEA and the child welfare agency agree to share the cost of such transportation.

Make sure to include in your district's procedures a communication protocol between child welfare and the local education agency when transportation for a student is no longer needed.

19. Who should be involved in developing clear written transportation procedures?

LEA staff who should coordinate planning include foster care liaisons, Title I director, transportation director, McKinney-Vento Homeless Liaison, special education and other federal program staff. Additionally, it is important to include any district personnel not listed who are responsible for approval of transportation planning, procedural development, and fiscal matters.

LEAs should make a reasonable attempt to include the CPS Regional Education Specialist, and the Service Program Administrator, in development of local transportation procedures. The CPS Regional Education Specialists and the Service Program Administrators may consult with their CPS Regional Director for additional assistance as needed.

School districts should document all internal and external collaborative efforts to develop written transportation procedures.

Additionally, LEAs and child welfare agencies should document the number of students impacted and additional costs associated with providing school of origin transportation for future local and state planning concerning transportation funding and reimbursement.

20. What funds can DFPS use to pay for a child's education-related transportation costs?

The Social Security Act allows federal child welfare Title IV-E dollars to be used for items such as food, clothing and shelter for children in foster care who meet federal Title IV-E eligibility criteria, and includes the cost of reasonable travel for a child to remain in the school in which the child is enrolled at the time of placement in foster care.¹⁶

No source of federal funding currently exists to pay for the costs of transportation for non-eligible children, and the state does not currently have a mechanism to reimburse schools for transporting either IV-E eligible or non-eligible children. Therefore, the transportation plan for the majority of children in foster care will need to be developed on a case-by-case basis by assessing available resources.

21. Who is eligible for Title IV-E funds referenced in section 475(4)(A) of the Social Security Act?

¹⁶ 42 U.S.C. 675(4)(A))

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Under federal law, only children who meet certain financial criteria and are living in licensed foster care placements may be eligible for IV-E funding. Although children in DFPS legal conservatorship who are placed with relative or "fictive kin" caregivers are considered to be in foster care for the purposes of state and federal education stability and transportation requirements, those placements and those children are not considered "IV-E eligible."

The foster care maintenance, including transportation costs for children not eligible for IV-E, are funded with other resources, including state funds. Caregivers for some students who are placed in kinship care do not receive any foster care maintenance funds for transportation from federal, state or local sources.

22. Since student level case planning may be a necessary procedure to develop a student's transportation plan with so many variables involved in planning, how or where might that case planning take place?

Case planning to develop individualized transportation plans may ensure that each student's needs are met. Case-by-case planning for ensuring educational stability can take place in a face-to-face meeting or electronically. Ideally planning for educational stability, including transportation planning to ensure the student can remain in the school of origin, would take place in advance of placement changes to allow all parties to plan to meet the student's needs. Transportation planning on a case-by-case basis can take place in coordination with a process for DFPS and LEA consultation on the educational best interest of the student. See question 23 & question 24 for more information.

Communication between the DFPS and the LEA points of contact will be an essential element for establishing successful individual transportation planning procedures.

Best Interest Decisions:

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

Federal and state laws require the student in foster care to remain in the school of origin unless it is not in the student's best interest to remain. Ultimately, that decision is up to the child welfare professionals and the court involved in the child's CPS case.

Ideally the decision regarding what school is in the child's best interest will include collaboration between child welfare and education. Caseworkers are encouraged to consult with a representative from the school who is knowledgeable about the child and able to provide feedback on significant relationships that the child may have formed with staff and peers and how changing schools would impact his or her academic, social, and emotional well-being.

24. What factors should be considered in best interest decision-making?

The non-regulatory guidance provided jointly by U.S. Department of ED and HHS lists a number of factors that should be considered in determining the child's educational best-interest. TEA, DFPS and TASB are in the process of developing a checklist/planning document that may be used and adapted locally to support best-interest planning between education and child welfare. Criteria to consider includes:

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- preferences of the child;
- preferences of the child's parent(s) and/or education decision maker(s);
- placement of the child's sibling(s);
- the safety of the child in the school, in relationship to the child's parent;
- the child's attachment to the school, including meaningful relationships with staff and peers;
- influence of the school climate on the child, including safety;
- the availability and quality of the services in the school to meet the child's educational and emotional needs;
- history of school transfers and how they have impacted the child;
- how the length of the commute would impact the child, based on the child's developmental stage;
- whether the child is a student with a disability under IDEA who is receiving special education and related services or a student receiving accommodations under Section 504 and, if so, the availability of those required services and accommodations in a school other than the school of origin; and
- whether the child is an English Language Learner and is receiving language services, and, if so, the availability of those required services in a school other than the school of origin, consistent with Title VI and the Equal Educational Opportunities Act.

Transportation costs **should not** be considered when determining a child's best interest.

Caseworkers and LEAs are encouraged to establish mechanisms for relevant parties to meaningfully participate in the best interest determination. The structure can be incorporated into previously established meetings, such as family team meetings or placement hearings, or may occur during a separate new meeting.

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APPENDIX: 1 ESSA, Fostering Connections and Texas Law Comparison Chart

	ESSA	Fostering Connections	Texas Law
Right to remain enrolled in same school (school of origin) upon entering foster care	✓	✓	✓
Right to remain enrolled in same school while in foster care	✓	✓	✓
Right to remain enrolled in the same school after exiting foster care			✓
Right to remain enrolled in the same school until completing the highest grade offered			✓
When it is not in the child's best interest to remain enrolled in the same school, immediate enrollment in the new school	✓	✓	✓
Immediate school enrollment with no records required.	✓		✓
Prompt records transfer when school move required	✓	✓	✓ (10 working days)
Designated points of contact	✓ (if the CWA notifies the LEA in writing then the LEA will notify the CWA of their POC)		✓ (District and charter school liaisons already identified in AskTED)
Clear, written transportation procedures	✓		
Assurance that each foster care placement will take into account current educational setting and the proximity to the school in which the child is enrolled		✓	

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APPENDIX: 2 Considerations for LEA transportation procedure development¹⁷

- Identify who is needed for sign-off and approval of procedures that are developed. *Make sure they are aware of the December 10, 2016 deadline.*
- Identify under what circumstances the LEA currently provides transportation to students.
- Consider how the LEA can calculate a standard cost of transportation for students who are not otherwise eligible for transportation, in order to calculate additional costs.
- Consider how the LEA can estimate administrative costs involved in the logistics of providing transportation, such as an additional staff time in coordinating transportation.
- Break down procedures by each scenario defined in the law. Identify current practices and determine where more information is needed.
 - 1) Child welfare agency agrees to reimburse the LEA for the costs,
 - 2) LEA agrees to pay, or
 - 3) LEA and child welfare agency split the costs.
- Consider how many students are impacted.

Preliminary questions for determining capacity and associated costs:

 - Identify the average number of students in DFPS Managing Conservatorship in your district.
 - Is this number increasing or decreasing from previous years?
 - Are students remaining in their schools of origin within your community? How many students are actually residing in a foster home in a different district but still attending school in yours?
 - What type of placement settings exist in your district (kinship caregiver, foster homes, emergency shelter, residential treatment center, other)?
 - What patterns do you observe regarding school mobility and students entering/exiting schools within your community and district?
- Consider strategies where the LEA and DFPS are already coordinating and collaborating to address students' transportation on a case-by-case basis. Consider how procedures could be developed based on existing practices.
- Consider the initial development of procedures a starting point that will be reviewed and updated in the future.
- Leverage existing practices, procedures, and lessons learned from the McKinney-Vento Homeless Education program concerning 'school of origin' transportation.
- Review and incorporate effective practices where transportation costs are shared and provided in collaboration with neighboring school districts, community partners or other outside groups.

¹⁷Some items noted are from AASA & NAEHCY Considerations for LEAs in Developing Transportation Procedures: <http://naehcy.org/sites/default/files/dl/legis/Transportation%20plan%20guide%20August%2009.pdf>