



To: Texas Judges Who Hear CPS Cases

From: The Honorable Robin Sage and The Honorable Dean Rucker,
Jurists in Residence, Supreme Court Children's Commission

Date: December 29, 2015

RE: Every Student Succeeds Act

On December 10, 2015, President Obama signed the Every Student Succeeds Act (ESSA). ESSA is the reauthorization of the Elementary and Secondary Education Act (ESEA), which originally became law in 1965 under President Lyndon Baines Johnson. The previous reauthorization, known as No Child Left Behind (NCLB), was signed into law by President George W. Bush in 2002. The recent passage of ESSA has far reaching implications for states including less federal oversight of state and local education agencies while maintaining an emphasis on student performance and school accountability. Importantly, although ESSA applies to all students in public schools, it also recognizes the unique needs of students in foster care and includes specific requirements to promote better educational outcomes for them.

Q: How does ESSA affect students in foster care?

A: Certain provisions of ESSA are now very much in line with current Texas law and the federal Fostering Connections Act of 2008:

- School of origin
 - Like Texas law,¹ ESSA now enables a child in foster care to remain in his or her school of origin, unless it is not in the child's best interest. Often when a child changes foster care placement, the child also has to change schools. This can have a negative effect on the child's academic, social, and emotional development. Although the federal Fostering Connections Act passed in 2008 highlighted the importance of school stability, it placed the burden on the child welfare agency to ensure school stability. With the passage of ESSA, schools share the responsibility.
 - Now, under both Texas and federal law, if a child cannot remain in the school of origin, the child must be immediately enrolled in the new school with prompt records transfer.² Since courts must review the child's educational needs and goals at every permanency hearing, one

¹ See Tex. Educ. Code (TEC) §25.001 (g) – (g-1).

² See Tex. Educ. Code §§25.002(g) and 25.007 (b)(1).

important consideration is whether the child's school placement has changed and what efforts were made to maintain the child in the school of origin.

- Foster Care Liaison
 - ESSA also requires each state to designate a state-level foster care coordinator and local district points of contact upon request. Notably, Texas law already includes each of these provisions as well as requiring a foster care liaison in every school district and open enrollment charter school.³
- Transportation to the school of origin
 - Under ESSA, child welfare and local education agencies must collaborate to develop clear written transportation plans to maintain students in the school of origin when it is in their best interest. This coordination is already occurring in some jurisdictions around the state such as Austin ISD, where the district foster care liaison researched existing bus routes to find the one closest to a child's new placement in another school district to ensure a student could remain in the same school in Austin ISD. In another jurisdiction, a CASA volunteer came forward as a transportation resource and this allowed the child to stay in the school of origin through the end of the school year. ESSA will formalize what has been an informal process and will hopefully encourage creative problem-solving between CPS and the schools.
- Student achievement
 - ESSA requires the collection of student achievement data, including graduation rates, specifically for students in foster care. Texas has collected data on students in foster care for several years, but the new ESSA data requirements will encourage further efforts and highlight the achievement gap for students in foster care.

Q: What other resources are available?

A: Some resources include:

- The text of ESSA can be found at <https://www.gpo.gov/fdsys/pkg/BILLS-114s1177enr/pdf/BILLS-114s1177enr.pdf>.
- The Department of Education created a webpage to gather information on ESSA. Please link to <http://www.ed.gov/essa> for more information about the new law.
- The Legal Center for Foster Care and Education issued a press release on the impact of ESSA found at: http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=2002&Command=Core_Download.
- The Children's Commission staff will update the education page of the Children's Commission website as further resources become available at <http://texaschildrenscommission.gov/the-texas-blueprint/foster-care-education-resources.aspx>.

³ See further Tex. Educ. Code §§25.007 (b)(13) and 33.904.