



Children's Commission

Attorney Resource Letter:

For Attorneys Handling Child Protective Services Cases

January 27, 2017

Every Student Succeeds Act Update

Recognizing the challenges faced by children and youth in foster care, policymakers have in recent years made changes to state and federal law to emphasize the joint responsibility of the education and child welfare systems to meet the educational needs of children and youth in the state's care. In December 2015, the Every Student Succeeds Act (ESSA) became law and a Jurist in Residence [letter](#) was released that month detailing the provisions in ESSA related to foster care.

A new and significant provision of ESSA became effective on December 10, 2016. Education and child welfare agencies must now collaborate to develop clear, written procedures on how transportation will be maintained, arranged, and funded when necessary to maintain a child in the school of origin.¹ As many of you know, transportation is often the biggest barrier to children and youth staying enrolled in their school of origin. Requiring the agencies to collaborate to address the issue could have a significant impact on schools' ability to take prompt action and encourage school stability.

Q: What is the "school of origin" for a child in foster care?

A: The school of origin is the school where the child was enrolled prior to entering foster care. If the child changes school while in foster care, the school of origin is considered the school where the child is enrolled at the time of a placement change. Under ESSA, a child may enroll or remain in the school of origin unless a determination is made that it is not in the child's best interest to attend the school of origin.² Although the terminology is different under state law, a child in foster care in Texas can remain enrolled in the "school of origin" through the highest grade offered without payment of tuition, even if the child exits conservatorship.³

Q: How is the best interest determination made?

A: A best interest determination will inevitably be made on a case by case basis and include factors such as the appropriateness of the current educational setting and proximity of the child's placement in foster care to the school. Other factors to consider when determining the child's educational best interest include:

- The child's preference,
- Placement of the child's siblings,
- A history of school changes and the impact on the child's academic and social progress,
- The length and circumstances of the commute, and

¹ 20 U.S.C. §6312(c)(5)(B).

² 20 U.S.C. §6311(g)(1)(E)(i).

³ See Tex. Educ. Code §25.001(g)-(g-1).

- Relationships with peers and supportive adults at the school of origin.

Although ideally CPS and the school district or campus staff will work together to determine what is in the child's educational best interest, the child welfare agency will have the final decision-making authority as the managing conservator for the child.

Q: What are the transportation requirements in ESSA?

A: Every school district and open enrollment charter school must now have clear, written transportation procedures, developed in collaboration with the state or local child welfare agency, to ensure that when it is in a child's best interest to remain in the school of origin, cost-effective transportation is promptly provided.⁴ Procedures must be in place to address the payment of additional costs incurred in transporting a child to the school of origin including sharing costs, CPS reimbursing the school district or charter, or the school district or charter agreeing to pay the cost.⁵ Although dispute resolution processes are still under development, the transportation procedures must include details about who is responsible for the additional cost of transportation while a dispute is resolved.

Since the circumstances of each child's transportation to the school of origin will be unique, CPS and the school district staff are encouraged to think creatively to develop cost-effective transportation solutions. Some examples include determining whether a student's IEP will include transportation as a special education-related service, arranging for a caregiver or approved adult to transport the child to an existing school district bus route, or using public transportation.

Q: What funding is available to fulfill the ESSA transportation requirements?

A: No additional federal funding is associated with ESSA or its implementation. Both child welfare and education agencies will have to work within existing budgets to meet a child's transportation needs. Notably, the cost of transportation cannot be a factor in the educational best interest determination.

Q: Are McKinney-Vento transportation services still available to children in foster care?

A: No. As of December 10, 2016, the "awaiting foster care placement" provision under the McKinney-Vento Homeless Assistance Act, which was used in the past to secure transportation for some children in foster care, was removed from the definition of homeless. If a child is living in a shelter, sharing the housing of others due to loss of housing, economic hardship, or a similar reason, or otherwise meets the definition of homeless, the child will still be eligible for McKinney-Vento transportation services.⁶ Otherwise, any transportation services required by ESSA will be offered under the school district's Title I program. Although children who are homeless and children in foster care are both considered at risk of dropping out of school, ESSA creates separate and distinct mechanisms to support each student population.

Q: Where can I find additional information about the foster care provisions in ESSA?

A: For additional resources and correspondence regarding ESSA please visit the Children's Commission's website and check out the ESSA resources [here](#). You can also access tips for attorneys and an overview of the relevant ESSA provisions through the State Bar CPS library [here](#). Search for a webinar entitled, "Effective Representation of Children and Aged Out Foster Youth: Beyond the Basics." The entire webinar relates to representing children and youth in foster care; discussion of ESSA begins at 2 hours and 39 minutes.

⁴ 20 U.S.C. §6312(c)(5)(B)(i).

⁵ 20 U.S.C. §6312(c)(5)(B)(ii).

⁶ 42 U.S.C. §11434a(2).



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