

**Ensuring Educational Stability for Children in Foster Care
Every Student Succeeds Act (ESSA)
Frequently Asked Questions
November 28, 2016**

1. What does ESSA require of Local Educational Agencies (LEAs) by December 10, 2016?

On October 25, 2016, the department issued a [memo](#) outlining the requirements. An optional [checklist](#) to aid in planning was also issued.

Sections 1111(g)(1)(E) and 1112(c)(5) of the Elementary and Secondary Education Act (ESEA) as amended by ESSA require LEAs to:

- a. Designate a point of contact if the corresponding child welfare agency (CWA) notifies the LEA, in writing, that the agency has designated an employee to serve as a point of contact for the LEA.
- b. Develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged and funded for the duration of the time in foster care.
- c. Ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with the federal Social Security Act.
- d. Ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the LEA will provide transportation to the school of origin if (a) the local CWA agrees to reimburse the LEA for the cost of such transportation; (b) the LEA agrees to pay for the cost of such transportation; or (c) the LEA and the local CWA agree to share the cost of such transportation.
- e. Ensure that any such child enrolls or remains in such child's school of origin, unless a determination is made that it is not in such child's best interest to attend the school of origin, which decision shall be based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.
- f. Ensure that when a determination is made that it is not in such child's best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment.
- g. Ensure that the enrolling school immediately contacts the school last attended by any such child to obtain relevant academic and other records.

2. Has the federal government provided guidance on ensuring educational stability for children in foster care?

The United States Departments of Education and Health and Human Services have released guidance on this topic at <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>. Corresponding technical assistance presentations are available at <http://www2.ed.gov/policy/elsec/leg/essa/index.html>.

3. When the requirement goes into effect December 10, 2016, does it apply only to children going into foster care on or after December 10 or does it apply to children already in foster care?

These provisions require the LEA to ensure that, by December 10, 2016, all children in foster care enroll or remain in their school of origin unless a determination is made that it is not in their best interest to do so, and that such children needing transportation to the school of origin will promptly receive the necessary transportation. This includes children who were placed in foster care prior to that date; however, if a best interest determination has been made prior to this date, it is not required that a new or different determination be made.

4. How should CWAs and LEAs determine if the student’s school of origin is in their best interest?

CWAs and LEAs should collaborate to make best interest determinations, and the student must remain or be enrolled in the student’s school of origin, unless a determination is made that it is not in the student’s best interest to do so.

The Florida Department of Children and Families (DCF) has drafted and shared with community-based care leaders a “School Stability Checklist for Children in Out-of-Home Care” that would help to document the best interest factors to consider during placement decision-making. These are:

- a. The child’s desire to remain in the school of origin.
- b. The preference of the child’s parents or legal guardian.
- c. Whether the child has a sibling(s), close friends, and/or a mentor at the school of origin.
- d. The child’s cultural and community connections in the school of origin.
- e. The ability to implement a 504 Plan, individual educational plan (IEP), or other special education services, if applicable.
- f. The impact a change would have on academic credits and progress toward promotion.
- g. The availability of extracurricular activities important to the child.
- h. The child’s medical and behavioral health needs.
- i. The child’s permanency goal and timeframe for achieving permanency.
- j. The child’s history of school transfers and how they have impacted the child.
- k. The length of the commute and how it would impact the child.

The federal guidance states that the cost of transportation should not be a factor when making a best interest determination.

5. ESSA says that the LEA must “ensure children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner....” In many instances it takes 24-48 hours for an LEA to arrange transportation. Is this considered promptly?

ESSA does not define “promptly” or provide a minimum timeframe. According to the plain meaning of the term “promptly,” the LEA must arrange for the required transportation quickly and without delay.

6. Who is the Florida Department of Education (FDOE) point of contact?

The FDOE contact for school districts is Iris Williams, School Social Work Consultant in the Bureau of Exceptional Education and Student Services. Her email address is Iris.Williams@fldoe.org and her phone number is 850-245-7851.

7. Who is the DCF point of contact?

The DCF contact for CWAs is Amy Hand, Out of Home Care Specialist in the Office of Child Welfare. Her email address is Amy.Hand@myflfamilies.com and her phone number is 850-717-4491.

8. Who are the LEA and local CWA contacts?

The current list is posted at http://sss.usf.edu/contact/contact_lists/Foster_care_CBC.pdf. Updates continue to be made.

9. Must the LEA point of contact be the LEA Title I, Part A point of contact?

No, but they should be on the planning team with the foster care point of contact in order to make the appropriate assurances in the Title I, Part A application.

10. What are the responsibilities of the LEA point of contact?

The LEA point of contact should work with the local CWA point of contact to make best interest determinations. The LEA point of contact may also provide transition services from one school to another when it is determined that remaining in the school of origin is not in the best interest of the student. These services may include providing documentation of the best interest determination to the receiving school, facilitating transfer of records, collaborating with district Title I office on the implementation of Title I provisions, and performing other duties that may assist in the educational stability of the child in foster care as outlined in district policies.

11. How will the LEA assurances be made to FDOE?

The LEA will submit an amendment to its 2016-17 Title I, Part A application certifying that it complies with all assurances in Section 1112(c)(5) of ESEA. This amendment will also include a description of the written procedures the LEA has in place for how transportation will be provided, arranged, and funded for a child's duration of time in foster care. Additionally, the amendment should reflect any budget changes if the LEA intends to use Title I, Part A funds during the 2016-17 school year to transport foster care children to their school of origin. FDOE prepared an amendment template to assist with meeting this requirement. Notification along with the template was provided to district federal program administrators on **November 21, 2016**.

12. When will the LEAs submit to FDOE the assurances to the new foster care requirements? If it is not in an LEA's approved Title I, Part A application to use Title I funds to transport foster children to their school of origin, is it the expectation that the LEA amend at the same time the assurances are submitted? To reduce the number of amendments submitted this time of the year, may an LEA who wants to use roll-forward funds for transportation, submit the amendment for transportation costs at the same time as their roll-forward amendment?

The LEA will need to submit to FDOE the assurances to the new foster care requirements (via amendment) on or before December 10, 2016. The LEA may amend its application at the same time if the LEA intends to use Title I funds to transport foster care children to their school of origin. Roll-forward usually occurs in January each year, so the LEA would not be able to submit a roll-forward amendment at the same time that it submits its assurances and description of written procedures for

transporting children in foster care. However, the LEA may amend its Title I, Part A application at any time during the project period if the LEA intends to use Title I, Part A funds to cover any costs associated with transporting children in foster care.

13. Do the new Title I, Part A provisions regarding the education of children and youth in the foster care system also apply to children who are homeless?

No. Changes to the McKinney-Vento Act (Title IX, Part A of ESSA) were developed separately from the new foster care provisions of Title I, Part A. However, Congress clearly modeled the new foster care provisions on the structures and features of the McKinney-Vento Act. The two titles are very similar and many implementation strategies will be the same or similar. LEAs should review both titles to assure proper and effective implementation of each. The monitoring of each title will include the differences as well as the similarities.

14. How should LEAs implement the transportation provisions?

Proof of residence and documentation that the student is eligible for foster care transportation services should be established. Students whose foster home is in the attendance zone for the school of origin will ordinarily not create excess cost, since the student will be able to ride on an existing route without creating additional costs. For students whose foster home is outside the attendance zone for the school of origin, there are several ways in which implementation could be accomplished, for example:

Option 1:

If the student who is transported to the school of origin lives beyond the school of origin's attendance zone, yet adjacent, then add the student to a current school bus route that serves their school of origin. Determine the extra time needed per day for the driver to be able to serve at the beginning of the bus route in the morning and the end of the bus route in the afternoon. Contract with the bus driver for the extra time necessary to serve the student. The excess cost includes any mileage associated with the bus route, along with the driver pay.

If the student requesting school of origin, according to ESSA, lives beyond the school of origin's attendance zone, and one would need to cross several boundaries in order to attend, then there are a few options, as listed below.

Option 2:

Offer to the foster parent or legal guardian reimbursement mileage for the transportation of the student(s) to and from school. For standard IRS mileage reimbursement rates, see <https://www.irs.gov/tax-professionals/standard-mileage-rates>. The excess cost includes any mileage paid to the foster parent or legal guardian.

Option 3:

Seek, within the faculty/staff of the school, an employee who lives in the vicinity of the student(s) in question and offer reimbursement mileage for them to transport the student(s) to and from school. For standard IRS mileage reimbursement rates, see <https://www.irs.gov/tax-professionals/standard-mileage-rates>. The excess cost includes any mileage paid to the employee, along with any additional salary or stipend paid to the employee. If the employee performs these duties without additional pay, no portion of the salary may be charged as excess cost.

Option 4:

Seek an employee from within the school or central office staff and contract with them, at an hourly rate, to drive a district-owned vehicle in order to transport the student(s) from their residence to the school of origin. The excess cost includes mileage incurred by the district, along with salary attributable to the transportation. If attributing employee time to transportation as an excess cost, detailed time records must be kept documenting the time attributable to the transportation.

Note: Section 1006.22, Florida Statutes (F.S.), authorizes the use of a motor vehicle other than a school bus, and Section 1006.24, F.S., provides insurance requirements for vehicles used to transport students.

15. Is it the LEA or CWA responsibility to provide transportation for children in foster care crossing state or district lines to get to school of origin?

To the extent practicable, LEAs and CWAs should address inter-district and interstate enrollments through interlocal agreements. It is the responsibility of the State Educational Agency, LEAs, and state and local CWAs, working collaboratively, to ensure that children are enrolled or remain in their school of origin, unless a determination is made that it is not in their best interests to do so. Section 1112 of ESEA indicates that if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the LEA will provide transportation if the CWA agrees to pay the costs, the LEA agrees to pay, or the LEA and CWA agree to share the costs. At this time, neither ESEA nor any rule or regulation specifies the LEA's obligation to provide transportation if there are excess costs and no agreement on the payment of such costs. In that event, all agencies involved are encouraged to find a solution that meets the needs of the child.

16. Does the CWA have allowable funding for transportation?

Title IV-E federal funds are available to assist with additional transportation costs for children who are eligible for Title IV-E foster care maintenance payments, if the CWA agrees to utilize these funds for this purpose. Please see Item 30 of the federal guidance.

17. How should LEAs cover the additional cost of transportation?

Districts may use either CWA funds, district funds, or federal funds to cover the necessary transportation costs.

18. Is there a uniform rate for calculating the "excess cost" for transportation?

Yes. For "white fleet" or personal vehicles, you may use the standard IRS mileage reimbursement rates at <https://www.irs.gov/tax-professionals/standard-mileage-rates>. For a school bus, contact the LEA Transportation Director for the mileage rate. Please see Item 27 of the federal guidance.

19. Is there a reasonable method for determining the reimbursement rate for transportation?

Yes, by using established mileage rates along with any costs associated with employee salary/pay.

20. Is there a federal reimbursement rate for the buses?

No. This is a local district decision.

21. What are the parameters around which Title I, Part A funds may be used to transport foster care children to their school of origin?

- a. **May Title I funds be used only for transportation to Title I-served schools?**
- b. **What if the route involves a mix of Title I and non-Title I schools?**
- c. **If the answer to (a.) above is yes, and the LEA pays for the excess transportation cost to non-Title I schools with LEA funds and Title I pays for the excess transportation cost to Title I schools, is this supplanting?**

- a. No. The new requirements for ensuring educational stability for children in foster care under Section 1111(g)(1)(E) apply to all children in foster care enrolled in schools in the state. Under Title I, the term “children” includes children through age 21.
- b. The districts’ written policies and procedures should clearly address instances where transportation routes meet the needs of children who attend Title I and non-Title I schools.
- c. Not applicable (see a. above).

22. What happens if an agreement cannot be reached between the LEA and the CWA regarding funding for transportation?

Please see Item 28, including footnote 31, of the federal guidance.

23. Will LEAs be required to report to the FDOE information about children in foster care?

For accountability purposes, FDOE expects to receive data from DCF. Additionally, FDOE will explore the creation of a data element for use by districts to track children in foster care.