



Office of Children and Family Services

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Administrative Directive

Transmittal:	22-OCFS-ADM-01
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Division of Youth Development and Partnerships for Success
Date:	January 11, 2022
Subject:	Revised Education Stability and Transportation Requirements for Children in Foster Care
Suggested Distribution:	Directors of Social Services Child Protective Services Supervisors Child Welfare Supervisors Foster Care Supervisors
Contact Person(s):	Please see section VII.
Attachments:	Students in Foster Care Tool Kit for Local Education Agencies and Local Departments of Social Services (Pub. 5221) Appendix A - Every Student Succeeds Act Frequently Asked Questions LDSS-2999 - School District Notification of Foster Child Placed in a Foster Family, Agency Boarding, or Group Home OCFS-5017 - Child in Foster Care Sample Notification Letter OCFS-5018 - Local Transportation Agreement for Students in Foster Care OCFS-5019 - Individual Transportation Plan for Students in Foster Care

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
18-OCFS-ADM-18 12-OCFS-ADM-03	18-OCFS-ADM-18	18 NYCRR 430.11(c)(1)(i) 18 NYCRR 430.12(c)(4)	Part CC of Chapter 56 of the Laws of 2018 P.L 110-351 P.L 112-34 P.L 114-95 Education Law § 3244		

I. Purpose

The purpose of this Administrative Directive (ADM) is to release the revised [Students in Foster Care Tool Kit for Local Education Agencies and Local Departments of Social Services](#), developed by the New

York State Office of Children and Family Services (OCFS) and the New York State Education Department (SED), that must be used to meet requirements under federal and state law pertaining to the school enrollment and transportation of children in foster care. The tool kit is designed to create a standard process by which local departments of social services (LDSSs), voluntary agencies (VAs), and local education agencies (LEAs) must coordinate efforts to promote educational stability for students in foster care.

II. Background

Children in foster care experience trauma when they are removed from their home, family, and daily routine. School disruption further compounds this trauma and creates additional barriers to academic success. Foster care placements are frequently made outside of a child's home school district, and subsequent placement changes may result in further changes in a school district. As a result, children placed in foster care are more likely to experience delays in academic progress associated with unplanned school changes.¹

The federal government and New York State have recognized the importance of minimizing school changes for children in foster care. The following is a summary of federal and state actions taken to address educational stability in foster care in recent years.

2008: The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) required state plans to include assurances that local education agencies (LEAs) and child welfare agencies (CWAs) coordinate to ensure that children in foster care remain enrolled in the school they attended at the time of placement. If remaining in such school is not in the best interests of the child, the LEAs and the CWAs were required to ensure the immediate transfer of records and enrollment of the child in a new school. P.L. 110-351 required that the placement of the child into foster care consider the child's current educational setting as well as the proximity of the child's foster care placement to the school in which the child is enrolled at the time of placement.

2011: P.L. 110-351 originally only applied to a child's initial entry into foster care. In 2011, the federal Child and Family Services Improvement and Innovation Act (P.L. 112-34) went into effect and extended the application of the educational stability provisions to each subsequent move in foster care. OCFS issued regulations to comply both with P.L. 110-351 and P.L. 112-34.²

2015: On December 10, 2015, President Barack Obama signed the Every Student Succeeds Act (ESSA) [114-95] into law. ESSA built on the requirements set forth in the Fostering Connections to Success Act by reinforcing the need for LEAs and CWAs to collaborate around the enrollment of children in foster care in school. ESSA outlined distinct responsibilities for education and child welfare agencies relating to school enrollment and required that states develop a plan for the funding of transportation costs.

2018: ESSA set the groundwork for the enactment of Part CC of Chapter 56 of the Laws of 2018 (Chapter 56), which set forth into state law specific roles and responsibilities for LEAs and LDSSs to ensure the quickest possible enrollment of youth in foster care in school and delineate responsibility for transportation and transportation funding. Chapter 56 mandates that a best interest determination rests ultimately with the LDSS or VA, after consultation with the LEA, and that children in foster care are entitled to transportation provided by the LEA in order to remain enrolled in the school they attended at

¹ National Working Group on Foster Care and Education. (2018). *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care*. Retrieved from <http://www.fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx>.

² 18 NYCRR 430.11(c)(1)(i), 18 NYCRR 430.12 (c)(4).

the time of placement. Chapter 56 also set forth protocols for LEAs and CWAs to follow to ensure continuity in school enrollment.

III. Program Implications

Chapter 56 codified more general federal mandates into specific state requirements for LDSSs, VAs, and LEAs related to the enrollment and transportation of children in foster care in school. When a child is placed in foster care, or changes foster care placements, the LDSS must notify the child's current school of the change. In addition, the LDSS must determine whether the child will continue to attend their school of origin or a different school located in the school district of residence. This determination must be made in consultation with others, including relevant school personnel; however, the final decision is with the LDSS. The cost of transportation may not be a factor in the determination. The best interest determination (BID) must be documented using the LDSS-2999 form, *Child in Foster Care School Notification Form*, and a copy of the determination must be provided to the school district(s).

A child in foster care is entitled to receive transportation to attend the school of origin. The school district of attendance must provide the necessary transportation for the child in foster care and such transportation will be aidable up to 50 miles each way (see the toolkit for transportation examples). This also applies when a child is designated to attend the school district of residence, rather than the school of origin, any cost incurred for transportation of that student is aidable as long as it does not exceed an amount determined by the commissioner of education.

The child is entitled to attend the designated school for the duration of their time in foster care, until the end of the school year in which the child is discharged from foster care, and for one additional year if that year is the final year in such school building. All changes in foster care placement require a BID to be conducted and individual transportation plans.

Implementation of the provisions, as set forth by Chapter 56, is included in the attached tool kit. Below are relevant ESSA definitions:

District of Origin - The school district that the student attended, or was entitled to attend, when they entered foster care. The district of origin remains constant through the entirety of a student's foster care episode (as defined below); however, a student may have a different district of origin in connection with a subsequent foster care episode.

School of Origin - The public school the child attended or would have been entitled or eligible to attend based on the child's last residence at the time of the foster care placement or change in foster care placement.

District of Residence – The public school district in which the child is residing due to foster care placement. While the district of residence is defined as different from the district of origin, in some cases, it may be the same as the district of origin.

District of Attendance –The school district wherein the student in foster care is enrolled, or is entitled to attend, after a best interest determination is made.

Best Interest Determination (BID) - An LDSS decision, following collaboration with LEAs and other stakeholders, as to whether it is in the child's best interest to remain in the school of origin following a foster care placement or a change in foster care placement.

Local Transportation Agreement - To meet the goal of promptly addressing the educational needs of children in foster care, LDSSs and LEAs will biennially prepare a *Local Transportation Agreement for Students in Foster Care* that outlines local transportation procedures. These agreements also provide

both local agencies with a list of key contacts for foster care issues; they also outline the information to be provided by the school district in support of the BID. An LDSS must have an agreement with each LEA in which students in foster care are attending. This includes agreements with LEAs outside of the county if a student in foster care attends that LEA. Although either agency may initiate a local transportation agreement, it is the responsibility of the LEA to ensure that the agreement is in place. Pursuant to ESSA, LEAs are required to make assurances to the SED that these agreements are in place.

Individual Transportation Plan - A plan to help ensure that transportation is being provided in a timely manner that is consistent with the protocols established in the local transportation agreement.

Aidable Transportation Costs - Transportation will be provided and funded by the school district of attendance and shall be aidable up to 50 miles each way (see tool kit for examples).

Excess Allowable Transportation Costs - Defined in Education Law §3244 as “the difference between what a school district 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.” Excess costs, beyond those reimbursed as discussed in the tool kit, shall be shared equally between the LDSS and the designated school district of attendance.

IV. Required Action

LDSSs and VAs must utilize the attached tool kit to meet their responsibilities under Chapter 56. The tool kit is intended to facilitate transparent communication between child welfare and educational agencies as they work to meet the educational needs of students in foster care. It contains detailed instructions and forms required for the enrollment and transportation of children in foster care in the designated school district of attendance.

LDSSs and VAs must implement the applicable requirements in the tool kit. Additionally, LDSSs and VAs should become familiar with requirements for LEAs contained in the tool kit. The shared knowledge of each agency’s separate roles and responsibilities will help facilitate effective and timely coordination for enrollment and transportation of children in foster care.

Detailed guidance, step-by-step instructions, flow chart of the foster care educational placement decision process and corresponding forms can be found in the tool kit.

Initial Letter of Notification

The letter of notification to the child’s current school should be sent to the school principal within two days of entry into foster care or a change in foster care placement that could impact their educational placement. The notification provides case worker contact information to the school and begins the preparation for relevant information for the BID.

Best Interest Determination

LDSSs must determine, in consultation with relevant school personnel and others, whether it is in the best interest of a child in foster care to attend the school of origin or a different school in the school district of residence. The LDSS makes the final determination on the child’s school of attendance based on the best interest determination. The presumption is that a child should remain in the school they are currently attending (school of origin) unless a change in school placement is in the child’s best interest. The decision is documented and provided to all relevant schools via the LDSS-2999, *Child in Foster Care School Notification*, form.

Guidance as to how to make a best interest determination can be found in the tool kit and in [12-OCFS-ADM-03](#), *New Requirement Regarding Educational Stability of Foster Children*. The cost of transportation must not be to a factor in determining best interest.

LDSS Point of Contact (POC)

The LDSS must designate a POC to coordinate the educational needs of a child in foster care with the appropriate LEAs. The following are responsibilities of the LDSS POC:

- Inform, in writing, using the Initial Notification Letter, the school district's LEA POC as soon as possible, but no later than two business days after the child enters foster care or changes placement, that a child who is currently a student in the district has been placed in foster care or changed foster care placement. This notification occurs prior to the BID and enables the LEA POC to notify relevant school personnel to prepare for the BID consultation to be held within 10 days of placement or change in placement. Relevant information regarding the student's placement address, school to be attended, if known at that time, and other needs should be shared.
- Collaborate with the LEAs to make a BID that considers the student's individual situation, educational program and needs (see Pub. 5221, page 16 of the tool kit, for further guidance on the BID process). Complete the [LDSS-2999](#) Form, *Child in Foster Care School Notification*, maintain a copy in the case record, provide a copy of the form to the LEA POC of the school district of origin, and if a school change is recommended, to the LEA POC at the school district of attendance no later than 10 days after the placement of a child in foster care or a change in foster care placement.
- After notifying the LEA POC of the district of attendance resulting from the best interest determination, collaborate with the LEA POC for the child's immediate or continued enrollment in school. If it is determined to be in the child's best interest to enroll in a new school, the LEA POC must ensure that the student is immediately enrolled in the new school regardless of whether all necessary documentation is available.
- While a permanent transportation plan is being arranged, LDSSs and LEAs are encouraged to collaborate to ensure that students in foster care who remain in their current school are provided with transportation. They are further encouraged to explore all available resources and employ creative strategies to facilitate transportation.
- Provide the LEA POC of the school district of origin and the school district of attendance with any other information essential to the maintenance of educational stability, meeting the student's educational needs and the provision of transportation.

Local Transportation Agreement for Students in Foster Care

LDSSs and LEAs must biennially prepare form [OCFS-5018](#), *Local Transportation Agreement for Students in Foster Care*, that will outline local transportation procedures. Agreements must be done between a LEA and its LDSS, as well as with any LEA in which a child in the care and custody of the LDSS is attending school. This document will provide both local agencies with the following:

- A list of key contacts for foster care issues
- Information to be provided by the school district in support of the best interest determination
- Additional supports available for students in foster care

The LDSS POC must inform the school district of attendance immediately regarding any changes to LDSS staff listed as contacts in the local transportation agreement for students in foster care form.

In addition to this agreement, an individual transportation plan for a student in foster care [OCFS-5019](#) form must be completed by the LEA POC, upon agreement with the LDSS. This plan serves as a record that transportation is being provided in a timely manner that is consistent with the protocol.

V. Systems Implications

None

VI. Additional Information

Further details of all requirements can be found in the [Students in Foster Care Tool Kit for Local Education Agencies and Local Departments of Social Services](#) and the FAQ Appendix A.

VII. Contacts

Questions concerning this release should be directed to the appropriate regional office, Division of Child Welfare and Community Services:

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VIII. Effective Date

This ADM is effective immediately.

/s/ Nina Aledort, Ph.D., LMSW

Issued by:

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Division/Office: Division of Youth Development and Partnerships for Success