

# Students in Foster Care

## Tool Kit

### for Local Education Agencies and Local Departments of Social Services

#### Revised 2021



Office of Children  
and Family Services



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## **GUIDANCE OVERVIEW**

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) (P.L. 110-351) and Every Student Succeeds Act (ESSA) (§1112 [c][5][A] and [B]), effective December 2016, require state and local education agencies to collaborate with child welfare agencies to promote school stability and educational success for students in foster care.

Additionally, New York Education Law § 3244, effective April 2018, established state statutory requirements promoting educational stability of students in foster care, covering areas including school selection, best interest decision-making, and transportation. Education Law § 3244 makes it clear that the school district where it has been determined the child will attend must provide transportation and, further, that this district will be able to receive transportation state aid for the allowable costs. The law also provides that any uncovered or unreimbursed transportation costs must be split 50/50 between the school district and social services district. These provisions are discussed more fully later in this guidance document.

To ensure that students in foster care attend the school that is in their best interest and have transportation to the school, the New York State Education Department (SED) and the New York State Office of Children and Family Services (OCFS) have collaborated to develop a state policy for school transportation of students placed in foster care. This state policy seeks to prepare local education agencies (LEAs), charter schools, preschools, and local departments of social services (LDSSs) to meet the needs of children placed in foster care by focusing on the creation of processes and relationships among the local agencies.

The needs of children placed in foster care vary widely and often include additional complex needs that can overlap with school stability needs (examples include children with disabilities and English language and multilanguage learners, or ELLs and MLLs), so it is essential that a standard process is created at the local level to address these needs quickly, effectively, and sensitively. A consistent process with clearly defined roles and timelines for the LEAs and LDSSs will provide for these students' needs in a timely and appropriate manner. In all cases, the presumption is that the child remains in the child's school of origin, unless the LDSS determines that remaining in that school is not in the child's best interest. By collaborating, local agencies can ensure that the child is transported to the school determined to be in the child's best interest and that educational stability is maintained.

The purpose of this tool kit is to provide LEAs and LDSSs with instructions, a flow-chart, documents, and fillable forms to facilitate effective and transparent communication among local agencies as they work to meet the educational needs of a student in foster care.

## GLOSSARY OF TERMS

**Point of Contact (POC)** - Each school district must appoint a local education agency foster care point of contact (LEA POC) who will work collaboratively with representatives from the local departments of social services (LDSSs). The LEA POC should not be the same as the liaison designated under McKinney-Vento for homeless students, unless that person has sufficient time, capacity, and ability to carry out the duties of both positions.<sup>1</sup> Likewise, each LDSS must also designate a point of contact for school districts (LDSS POC).

At the state level, points of contact have been appointed at SED and OCFS to assist local agencies. Contact information for these state POCs can be found:

- SED Foster Care POC: on the [SED Office of Student Support Services - Foster Care webpage](#).
- OCFS Foster Care POC: under Educational Points of Contact on the [Educational Stability Provisions for Students in Foster Care](#) web page

**District of Origin:** The district that the student attended, or was entitled to attend, when he or she 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 (Education Law § 3244).

**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 (Education Law § 3244).

**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 (Education Law § 3244).

**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 (Education Law § 3244).

**Local Education Agency (LEA):** A board of education or other public agency responsible for the administration of public elementary schools or secondary schools.

**Local Department of Social Services (LDSS):** The local child welfare governmental entity whose local commissioner of social services (or the commissioner of OCFS) has care and custody of a child. In general, the LDSS has case management responsibility of a child in foster care, except in New York City, where voluntary agencies (VAs) may have case management responsibilities.

**Foster Care:** A status where a child is in the care and custody or custody and guardianship of a local commissioner of social services or OCFS (Education Law § 3244). Foster care placements can include

- with a foster parent in a foster boarding home;
- in an agency-operated boarding home, group home, group residence, or residential facility;
- with an approved relative in a relative foster home; and
- trial discharge to a parent or guardian, as the child remains in the care and custody or custody and guardianship of the LDSS during a trial discharge.

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<sup>1</sup> N.Y. Educ. Law 3244 § (2)(g).

**Foster Care Episode**: In this tool kit and the corresponding FAQs, a "foster care episode" comprises a continuous period in the care and custody of the LDSS or OCFS commissioner, which may include multiple foster care placements. A foster care episode starts when care and custody is transferred to the LDSS or OCFS commissioner and ends when the child leaves the care and custody of the LDSS or OCFS commissioner. Please keep in mind that an episode may include a period of trial discharge, during which the child is still in the care and custody of the LDSS or OCFS commissioner.

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**SCHOOL STABILITY AND TRANSPORTATION POLICY  
FOR STUDENTS IN FOSTER CARE**

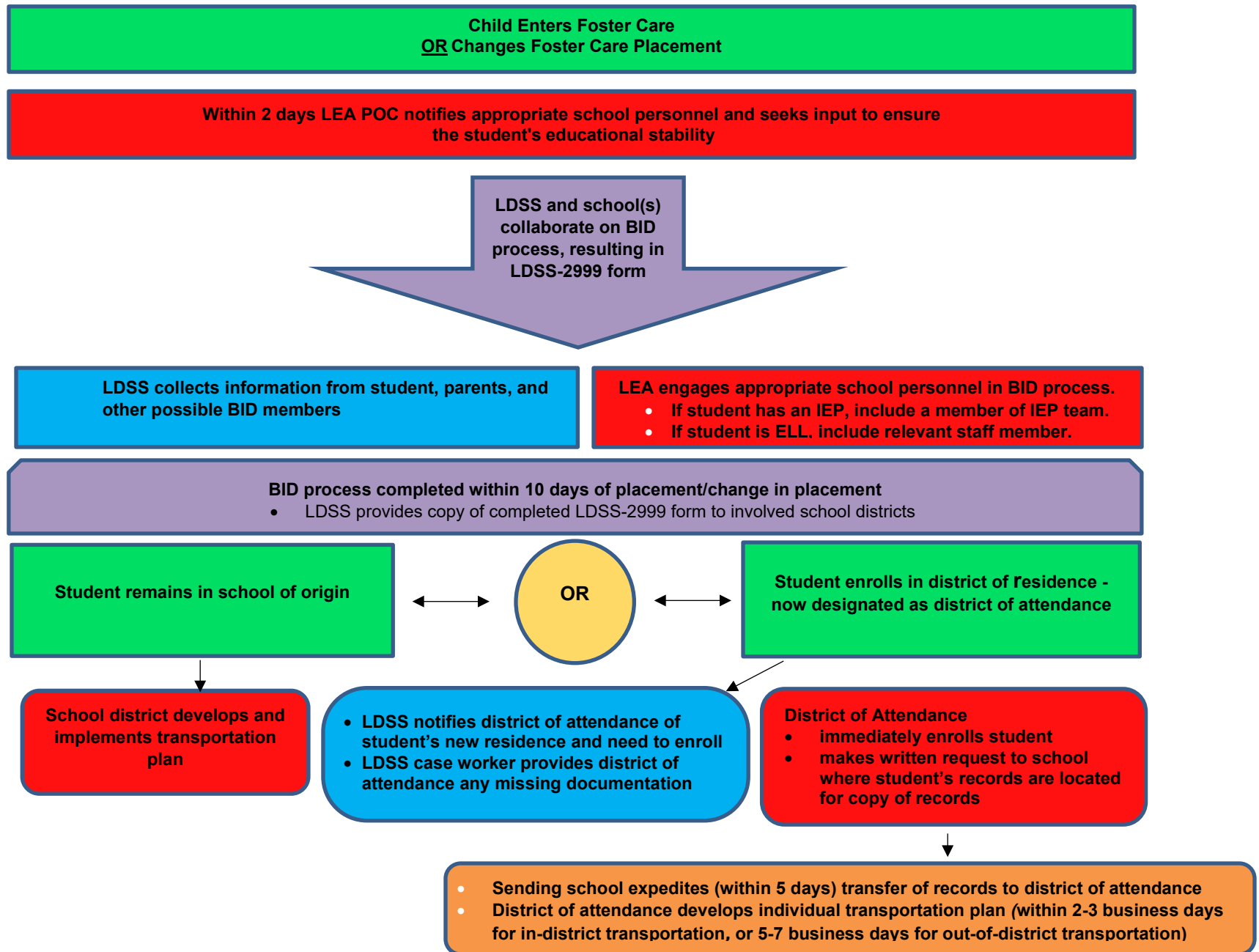
**Interagency Collaboration**

Interagency collaboration and timely communication between LEAs and LDSSs is critical to promptly address the educational needs of children in foster care. Both the New York State Education Department and the New York State Office of Child and Family Services have a state-level point of contact who serves as a resource to assist with matters relating to foster care students and school.

The school placement process flowchart on the following page provides a visual summary of the process described below.

- 1. Residence Determination:** The LDSS case worker determines the most appropriate residence for the child.
- 2. School Placement Determination:** The LDSS case worker sends initial notification letter to the child's school, notifying the school of the foster care entry/change in foster care placement. LDSS and school officials work together to assess the student's individual situation, needs and educational program to make the BID for the child's school placement. The BID will be documented in the LDSS-2999 form.
- 3. Enrollment/Transportation Actions:** If it's not in the child's best interest to stay in their school of origin, the student must be immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment. The enrolling school shall immediately contact the school last attended to obtain the student's records. The LEA and LDSS develop an individual transportation plan for the student.

## Flow Chart: Foster Care Educational Placement Decision Process



## FOSTER CARE STUDENTS WITH DISABILITIES

A significant percentage of children in foster care receive special education services. Students with disabilities have rights under the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> *Section 504 of the Rehabilitation Act* of 1973<sup>3</sup> and other state and federal laws to help them succeed in school. In addition to their rights as students with disabilities, as children in foster care, they are entitled to education stability under the federal Every Student Succeeds Act (ESSA) and Education Law § 3244.

**Best interest determination process** - If a foster care student has an IEP or a Section 504 plan, the relevant school staff familiar with the student should participate in the BID process to provide feedback on the student's progress in the student's current special education program and how changing schools might impact the student's academic, social, and emotional well-being.<sup>4</sup> While the committee on special education (CSE), which includes the IDEA parent,<sup>5</sup> provides important information, it is the local department of social services (LDSS) that makes the final BID determination.

The BID may determine that the child needs to change schools to the out-of-home placement location. However, a CSE in that school district will make the ultimate determination as to how the student can receive a free appropriate public education.<sup>6</sup> This could include placement outside of that district.

If a BID determines that the child will be placed in a new school

- the new school district, designated the district of attendance, must immediately enroll the student and make a written request for the student's records,<sup>7</sup> and
- within five days of receipt of the records request, the student's original school district shall forward the student's records.<sup>8</sup>
- If the child was in the process of being evaluated for special education services at the time of the change in school placement, the district of attendance is encouraged, in federal guidance, to complete the evaluation on an expedited basis, within 30 days.<sup>9</sup>
- If the child already has an IEP, the district of attendance shall, in consultation with the student's IDEA parent, provide the student a free and appropriate public education (FAPE) including services that are "comparable" to the services in the IEP developed by the student's former school district until the district of attendance convenes a CSE or committee on preschool special education (CPSE) and either adopts the student's old IEP or develops a new IEP in accordance with IDEA procedures.<sup>10</sup>

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<sup>2</sup> 20 U.S.C. §§ 1400 *et seq.*

<sup>3</sup> 29 U.S.C. § 794, 34 C.F.R. part 104.

<sup>4</sup> U.S. Department of Education and U.S. Department of Health and Human Services, *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* (June 23, 2016), Q. 14 at page 13, available at [https://oese.ed.gov/files/2020/09/Non-Regulatory-Guidance\\_06-23-2016.pdf](https://oese.ed.gov/files/2020/09/Non-Regulatory-Guidance_06-23-2016.pdf), (last visited June 25, 2021) (hereinafter "Federal Guidance").

<sup>5</sup> In New York, under some circumstances, a foster parent may be appointed by the school to serve on the CSE as the student's surrogate parent to ensure that the rights of the student are protected; however, it should be noted that outside of this circumstance, foster parents have a limited role because they are not the student's legal guardians. 8 N.Y.C.R.R. §§ 200.1(ii)(2), 200.5(n)(1)(iii), 200.5(n)(3)(v).

<sup>6</sup> Federal Guidance, Q. 16 at page 13.

<sup>7</sup> 20 U.S.C. § 6311(g)(1)(E)(i)-(iii); N.Y. Educ. Law § 3244 (2)(d).

<sup>8</sup> N.Y. Educ. Law § 3244 (2)(e).

<sup>9</sup> U.S. Department of Education and U.S. Department of Health and Human Services, *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, (June 23, 2016), available at [https://oese.ed.gov/files/2020/09/Non-Regulatory-Guidance\\_06-23-2016.pdf](https://oese.ed.gov/files/2020/09/Non-Regulatory-Guidance_06-23-2016.pdf), (last visited June 25, 2021).

<sup>10</sup> When a foster care student with an IEP is placed pursuant to a BID determination in a school district in a contiguous state, the new LEA must conduct an evaluation of the student's educational needs and develop, adopt, and implement a new IEP, if appropriate. 34 C.F.R. §300.323(f).



- Children in foster care with disabilities must have access to comparable services (including summer and other extended school year services, if applicable).<sup>11</sup>

The IDEA requires that the educational placement of each eligible child with a disability, including those who are in foster care, be determined at least annually and be based on the child’s IEP in accordance with the child’s individual needs.<sup>12</sup>

## **FOSTER CARE STUDENTS WHO ARE ENGLISH LANGUAGE LEARNERS**

Some children in foster care are also English language learners (ELLs) - students with limited English proficiency in speaking, listening, reading, or writing English identified through procedures established by school districts. These students have rights under Title VI and the Equal Educational Opportunities Act of 1974 (EEOA).

School districts must identify and assess all potential ELL students and provide all of them, including those in foster care, with a language assistance program that is educationally sound and proven. When a best-interest determination is made for an ELL student in foster care, the student’s LEA must ensure that it complies with its obligations under Title VI and the EEOA.

A school district must consider a student’s status as an ELL in determining the “relevant school staff members who should participate in the best interest determination process.”<sup>13</sup>

## **ACROSS STATE LINES | FOSTER CARE PLACEMENTS IN CONTIGUOUS STATES**

While not frequent, there are occasions when a child or youth in foster care is placed in an out-of-state foster care placement, such as with a relative or in a congregate care facility, such as a group home or residential treatment center.

The Interstate Compact on the Placement of Children (ICPC) establishes uniform guidelines and procedures for the caseworkers and LDSSs in the sending and receiving states to follow that are intended to safeguard the best interests of children being placed across state lines.

Five states border New York State - MA, PA, VT, CT, and NJ - and, within each, responsibilities and costs associated with foster care educational placements are handled differently. Thus, clear and timely coordination between multiple LEAs and the LDSSs involved is essential to ensure the educational stability of the child or youth.<sup>14</sup> Additionally, federal guidance encourages LEAs to establish inter-state policies and procedures around tuition reimbursement to avoid any barriers to immediate enrollment.<sup>15</sup> LEAs, particularly those located near one of New York’s borders, are encouraged to develop policies and procedures relating to these out-of-state placements.

## **TRANSPORTATION**

**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* (see page 33 for model agreement) that outlines local transportation procedures. These agreements also provide both local agencies with a list of key contacts for foster care issues and 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

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<sup>11</sup> United States Department of Education Office of Special Education and Rehabilitation Services, Dear Colleague Letter on Education for Highly Mobile Children, July 19, 2013, Issue #2 Analysis, p. 2, available at <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/12-0392dclhighlymobile.pdf> (last visited July 2, 2021).

<sup>12</sup> Federal Guidance, Q. 8 at page 9.

<sup>13</sup> Federal Guidance, Q. 14 at page 13.

<sup>14</sup> U.S. Department of Education and U.S. Department of Health and Human Services, Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care (June 23, 2016), Q. 40 at page 26, available at [https://oese.ed.gov/files/2020/09/Non-Regulatory-Guidance\\_06-23-2016.pdf](https://oese.ed.gov/files/2020/09/Non-Regulatory-Guidance_06-23-2016.pdf), (last visited June 25, 2021)(hereinafter “Federal Guidance”)

<sup>15</sup> Federal Guidance, Q. 33 at page 20.

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 NYS Education Department that these agreements are in place

**Internal Protocols:** School districts must develop internal protocols to ensure that the transportation office is informed immediately when the district is notified that a child has been placed in foster care or has changed foster care placement and to arrange new transportation.

**Transportation Document for a Student Placed in Foster Care:** Once school districts receive the initial notification letter — sent when a student is placed in foster care and after any subsequent change in foster care placement — they should prepare the *Individual Transportation Plan for a Student in Foster Care* (see page 36). The plan helps ensure that transportation is being provided in a timely manner that is consistent with the protocol.

**Aidable Transportation Costs:** A student in foster care is entitled to receive transportation to attend the school of origin. Such transportation shall be provided and funded by the school district of attendance and shall be aidable up to 50 miles each way. The state supports a share of the eligible costs of mandated home-to-school transportation, and the proportion shared varies under a formula that measures districts' resources. Likewise, when a student is designated to attend the school district of residence, rather than the school of origin, any cost incurred for transporting that student is aidable as long as it does not exceed an amount determined by the commissioner of education.

**Excess Allowable Transportation Costs:** Excess costs beyond those reimbursed as discussed above shall be shared equally between the LDSS and the designated school district of attendance. "Excess transportation costs" is 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." The LEA and LDSS are expected to consider and utilize all allowable funding sources, including federal funds, to cover additional transportation costs. The LEA must ensure that children in foster care promptly receive transportation without delay (within two to three business days for in-district transportation or five to seven business days for out-of-district transportation) as needed to the school determined to be in their best interest.

For additional information and scenarios on transportation costs, please see the section below entitled *Every Student Succeeds Act (ESSA) and NYS Ed Law §3244 Summary Transportation Costs for Children in Foster Care* on page 18.

## DISPUTE RESOLUTION

It is the responsibility of both the LDSS and LEA to collaborate in determining the student's best interest for school placement, upon either the student's entry into foster care or a change in foster care placement. It is also the responsibility of the LDSS and LEA to work to resolve any conflict concerning the school placement decision so as to ensure the student's educational stability and provide the student with the best opportunity to succeed.

Both LDSSs and LEAs bring valuable perspectives to the school stability needs and the BID, as do key points of contact within OCFS and SED. Recognizing this, both the Fostering Connections Act and Title I of ESEA require coordination among agencies at the local and state level to ensure the educational stability of children in foster care. Given these coordination requirements, the relevant agencies should make every effort to reach an agreement regarding the appropriate school placement of children in foster care.

Although the LEA must be consulted regarding the BID, the LDSS is ultimately responsible for making the final determination<sup>16</sup>. The LDSS is uniquely positioned to assess vital non-educational factors such as safety, sibling placements, the child's permanency goal, and the other components of the case plan. The LDSS also has the authority, capacity, and responsibility to collaborate with and gain information from

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<sup>16</sup> see Federal Guidance Page 12-15, Q13-20; Education Law § 3244(2)

multiple parties, including parents, children, schools, and the court in making these decisions. However, the court overseeing the child welfare case can review any and all decisions made by the LDSS to ensure that they are appropriate, and any party to the proceeding may raise a challenge to the BID to the family court.

During any other dispute, including over transportation, an LEA should ensure that the student is enrolled in and transported to the school placement determined by the BID pursuant to local transportation procedures developed collaboratively between the LEA and the LDSS.

Should a school district's board of education disagree with the LDSS's determination that the district constitutes the student's school district of origin, the district must, within 10 days of receiving the LDSS-2999 form notifying it of the BID, submit to the LDSS additional evidence to establish that it is not responsible for the child's tuition.<sup>17</sup> The LDSS then has five days from the submission of such additional evidence to make a final determination. If the district does not submit additional evidence within the 10-day period, the public agency's initial determination and notification are deemed final.<sup>18</sup> The designated district of origin may appeal the public agency's final determination within 30 days of its receipt to the commissioner of education pursuant to Education Law §310.<sup>19</sup>

Financial disputes between school districts related to foster care tuition reimbursement pursuant to [Education law §3202\(4\)](#) may be appealed to the commissioner of education within 30 days of the end of the relevant school year through the appeals process outlined on the [New York State Education Department's Office of Counsel's webpage](#).

For all other disputes (e.g., transportation, failure to make a BID), OCFS and SED recommends the following process to resolve differences:

1. Each LDSS and LEA should involve their corresponding local POCs, who can also seek additional input and guidance from their immediate supervisor and others within the local DSS and/or LEA to attempt to resolve the disagreement at the local level.
  - a. For LDSSs only: reach out to your OCFS Regional Office for additional support and guidance to resolve the dispute.
2. If local agreement cannot be reached, LDSS and LEA representatives, in consultation with their POCs, can seek guidance and support from the POCs at SED and OCFS. The local agency, either the LDSS or LEA, that initiated the dispute must copy corresponding LDSS or LEA representatives and POCs in communication with the state POCs.
  - a. LDSS-initiated disputes should be communicated through the OCFS POC. LEA-initiated disputes should be communicated through the SED POC.
  - b. Communications must provide details of efforts made to collaborate between the LDSS and LEA to resolve issues.
  - c. State POCs will make every effort to resolve local disputes and collaborate with the corresponding state POC when necessary to reach resolution.
3. In rare circumstances where state POCs cannot reach agreement, the dispute will be elevated within the state agencies and resolved through intervention with counsel and agency leadership.

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<sup>17</sup> Education Law § 3202(4)(f)(ii).

<sup>18</sup> *Id.*

<sup>19</sup> Education Law § 3202(4)(f)(iv).

## LOCAL AGENCY RESPONSIBILITIES

**Local Department of Social Services (LDSS):** To comply with federal child welfare law, state regulation(s), and state policy, and to meet the goal of ensuring the educational stability of children placed in foster care, the LDSS will commit to the actions contained in the local transportation agreement, which prospectively applies to the overall relationship between the two agencies. In addition, the LDSS will do the following:

- Appoint the LDSS ESSA point of contact who will be the point person to provide information as necessary. Notify OCFS immediately upon change in the appointed LDSS ESSA POC.
- Inform in writing, using the initial notification letter, the school district's LEA POC as soon as possible and no later than within two business days that a child who is currently a student in the district has been placed in foster care or has 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 LEAs to make a BID that considers the student's individual situation, educational program, and needs. In some cases, particularly when time is tight and a telephonic, video, or in-person meeting is not practicable, the LDSS may gather input by email and/or telephone conversations.
- When developing the BID, input from the child's caseworker, the child's parent(s) (if available and able to provide input), and the child (if developmentally able) must be sought in making the best interest determination. Education personnel from the child's current school including the LEA POC should be informed of the BID process, invited to attend, or provide input, and/or provide information to be considered in making the BID. Other relevant parties should also be consulted, including the foster parent(s), the child's attorney, others involved in the case planning for the child, teachers, school counselors or social workers, transportation staff, special education coordinators, or other adults significant to the child. The cost of school transportation is not to be a factor in determining the best interest of the child for educational stability; however, transportation staff can offer information on the length of trip and arrangements.
- Inform the school district(s) of the determination by providing a copy of the completed form **LDSS-2999, *Child in Foster Care School Notification***, to inform the school district of origin and the school district of attendance (if different) of that determination.<sup>20</sup>
- While a permanent transportation plan is being arranged, LDSSs and school districts 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, such as the following:
  - Use existing school district bus routes. For example, a foster parent could transport the student to an established stop where the school district bus could pick up the student.
  - Use alternate pickup and drop-off points. For example, school district A could transport the student to school district B, and then school district B could transport the student to a drop-off point within walking distance of the out-of-home placement if appropriate.
  - Use transportation available through the Individuals with Disabilities Education Act (IDEA). Students receiving special education services who have transportation marked as a related service on their Individualized Education Program (IEP) are entitled to transportation from the school district where the child is enrolled.
  - Have the child's caseworker or other agency staff transport the child.
  - The LDSS may consider reimbursing the foster parent for the cost of mileage or public transportation to take the child to school.

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<sup>20</sup> Please see New York State Education Law Section 3202(4) for the process of appeal of the determination as the school district of origin, as an LDSS may be subject to financial responsibility determinations made by the commissioner of SED if it fails to make reasonable efforts to appropriately identify the school district of origin for a child in foster care.

- Keep the school district of origin, as well as the school district(s) of attendance and/or residence informed regarding changes in placement or other information essential to the maintenance of educational stability, meeting the student's educational needs, and the provision of transportation.
- Inform the local school district(s) immediately regarding any changes to its program or the staff listed as contacts on the *Local Transportation Plan for Students in Foster Care*.

**Local Education Agency (LEAs):** To comply with federal and state education law and meet the goal of ensuring the educational stability of children placed in foster care, school districts must collaborate with the LDSS to do the following:

- Appoint the LEA POC and identify in each school building a designee who will be the point person (building designee) to provide information as necessary to the LEA POC. Notify SED immediately upon change in the appointed LEA POC.
- Develop and implement clear written protocols and procedures for the provision of transportation to the school determined to be in the best interest to ensure children and youth in foster care receive prompt, cost-effective transportation. School districts will commence transportation as quickly as possible. School districts have a continuing obligation to transport children.
- Upon receipt of the initial notification letter, provide necessary information to inform the best interest determination to be made by the LDSS; updated as needed.
- As soon as possible after receipt of notice, include staff responsible for pupil transportation so that appropriate long-term arrangements can be made as soon as possible.
- Provide necessary information to inform the best interest determination to be made by the LDSS; updated as needed.
- Share documented additional costs with the LDSS if there are additional costs incurred in providing transportation.
- If an LEA does not agree with the designation of it by the LDSS as a foster child's district of origin, the LEA has 10 days from notification by the LDSS of this designation to challenge it. If the district does not submit additional evidence to the LDSS within the 10-day period, the public agency's initial determination and notification are deemed final, pursuant to Education Law §3202[4] [f][ii].
- School districts will also commit to the actions contained in the local transportation agreement, which apply to the overall relationship between the two agencies.
- School districts must be prepared to demonstrate written protocols for their process, completed local transportation agreement(s), and any individual transportation plans for a student in foster care, and provide proof of compliance with the transportation plan upon audit or records review by SED.

### **Local Department of Social Services Point of Contact Responsibilities**

- Coordinate with the corresponding LEA POCs on state law and ESSA implementation, including the immediate enrollment in a new school when a school change is determined to be necessary to meet the best interest of the child placed in foster care, and when determining transportation services.
- Coordinate with the LEA POC to facilitate information necessary to support casework contact regarding the educational stability and progress of children in foster care, consistent with FERPA as amended by the Uninterrupted Scholars Act<sup>21</sup>, and other federal and state privacy and or

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<sup>21</sup> In January 2013, Congress passed the Uninterrupted Scholars Act (USA), which amended the Family Educational Rights and Privacy Act (FERPA) to permit educational agencies and institutions to disclose, without parental consent or the consent of an eligible student, education records of students in foster care to State and tribal child welfare agencies. These amendments permit educational agencies and institutions to disclose personally identifiable information (PII) from the education records of students in foster care placement, without parental consent, to an agency caseworker or other representative of a State or local child welfare

follow procedures to notify the LEA POC via the initial notification letter when a child has been placed in foster care or when there has been a foster care placement change.

- Follow all applicable statutes, regulations, and OCFS policies for making timely BIDs in coordination with the LEA, including documenting the decision and notifying necessary school district personnel.
- Coordinate with applicable school authorities for the immediate transfer of records, including immunization records, medical records, and copies of IEPs and 504 Plans.
- Coordinate transportation agreements with LEA POCs.
- Monitor that children in foster care are enrolled in and regularly attending school. Serve as a primary contact between schools, families, and other service providers to assist and coordinate educational services and supports for children in foster care.

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agency (CWA) or tribal organization authorized to access a student's case plan "when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student." 20 U.S.C.A. § 1232g (b)(1)(L).

## STEPS FOR LDSS POC TO FOLLOW

1. Using the initial notification letter, inform 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. When a child enters foster care, or is currently in foster care and changes placement, the LDSS POC shall also take steps necessary to collaborate with LEAs to make a best interest determination that considers the student's individual situation and educational program and needs.
2. The form **LDSS-2999**, *Child in Foster Care School Notification*, must be completed, maintained in the case record, and a copy of each provided to the LEA POC of the school district believed to be the 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/change in foster care placement, or earlier if possible.
3. 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 of the district of attendance must ensure that the student is immediately enrolled in the new school, regardless of whether all necessary documentation is available, to avoid gaps in the child's school attendance. The LDSS POC and the LEA POC should collaborate to develop any interim transportation plan that may be necessary.
4. The LDSS POC and the LEA POC of the district of attendance shall develop an *Individual Transportation Plan for a Student in Foster Care* document.

## BEST INTEREST DETERMINATION

### Documents Considered at Meeting

- Report cards and progress reports
- Achievement data (test scores) and attendance data
- Disciplinary records (if any)
- Special Education Individualized Education Program (IEP) 504 Plan
- Emails or correspondence from individuals consulted

### Meeting Participants

Input from the child's caseworker, the child's parent(s) (if available and able to provide input), and the child (if developmentally able) must be sought in making the BID. Education personnel from the child's current school should be informed of the meeting, invited to attend, and/or provide information to be considered in making the BID. Other relevant parties should also be consulted. A non-exhaustive list of participants is below:

- Child
- Birth parent(s)
- Caseworker(s)
- Foster parent(s)
- Attorney for child
- Current school's representative(s)
- Committee on Preschool Special Education (CPSE)/Committee on Special Education (CSE) Chairperson (if applicable)
- Pupil services personnel (school social worker, school counselor, school psychologist, school nurse, attendance officer/teacher)
- Other participants as deemed necessary

*Please note* - Sometimes the BID process will work best in a formal meeting setting that brings together all participants to make the determination. Other times, especially when time is tight, more informal methods, including receiving input by email, may enable the LDSS to gather the necessary information and review in a timely fashion. Regardless of whether the BID is conducted through a formal or informal process, the LDSS must work to gather input from relevant individuals and review documentation to make a BID. Efforts to consider input from schools (if provided) are critical, as well as using all information available to make the most informed BID as possible. A BID must be made no later than 10 days after the placement of a child in foster care/change in foster care placement.



**Factors to be considered at the BID determination meeting include, but are not limited to** <sup>22</sup>

- safety concerns, which could include negative relationships or concerns about bullying;
- child's preference to change schools or remain in the current school;
- parent's preference to have the child change schools or remain in the current school;
- the appropriateness of educational programs in the current school or another school, and how each school serves or can serve the child's needs (including special education and other interests);
- expected length of child's foster care placement, considering whether the child is likely to be returning home after a brief stay in foster care or whether a change in placement is anticipated soon;
- child's permanency plan;
- child's need for proximity to the family of origin;
- placement with siblings or relatives;
- available foster care resources;
- child's age;
- child's grade level;
- child's maturity level;
- number of school disruptions the child has already experienced;
- other child-centered needs, including social adjustment and well-being (for example, what are the strengths of the child's ties to peers and staff members at the current school; how would changing schools affect the child emotionally);
- how changing schools would affect the student's ability to earn full academic credit, proceed to the next grade, or graduate on time;
- involvement in extracurricular activities;
- input from representative of child's current school at time of removal or move;
- proximity of placement home to child's current school;
- length of commute and its impact on the child, based on the child's developmental stage;
- what school siblings attend;
- what schools any other children in the foster home attend; and
- point of time in school year and whether the timing of any school transfer would coincide with a logical juncture such as standardized testing, report card period, end of semester, or end of school year.

**The cost of school transportation is not to be a factor in determining the best interest of the child for educational stability.**

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<sup>22</sup> Please refer to 12 OCFS INF 04 *Educational Stability of Foster Children: OCFS, State Education Department and NYS Uniform Court System Field Guidance*, for more information.

## **LOCAL EDUCATION AGENCY FOSTER CARE POINT OF CONTACT (LEA POC) RESPONSIBILITIES**

The LEA POC serves as the primary contact between schools, families, the LDSS, and other service providers. They also advocate for prompt and appropriate actions that further the educational well-being of students in foster care. The LEA POC has the capacity and resources to guide the implementation of state and federal requirements for students in foster care.

Responsibilities of the LEA POC include, but are not limited to, the following:

- Coordinating with the LDSS to develop processes for implementing state and federal requirements
- Notifying the school building designee and other school personnel including, but not limited to, administration, transportation personnel, PPS personnel, and CPSE/CSE chairperson, as needed, of the student's placement in the school
- Facilitating immediate enrollment and transfer of records from the school district where the student's records are located
- Developing and coordinating transportation protocols and plans
- Participating in best interest determinations, as needed
- Facilitating enrollment and regular attendance of students in foster care
- Assisting students who have transferred schools with integration into the new school environment
- Maintaining or increasing students' involvement in appropriate programming including, but not limited to, career and technical programs, advanced placement courses, and extracurricular activities
- Providing information and helping to educate school staff on meeting the needs of students in foster care
- Maintaining an updated list of school building designees

## STEPS FOR LEA POC TO FOLLOW

1. When the LDSS notice is received, notify appropriate school personnel to ensure the educational stability of the student. At a minimum, the school personnel to be notified **within two business days** include the following:
  - a. School building designee
  - b. School district superintendent
  - c. School district pupil personnel services
  - d. School building principal (*school of origin*)
  - e. District transportation administrator
  - f. CSE/CPSE chairperson (*if applicable*)
2. District of origin and district of attendance (if not also the district of origin) receive form **LDSS-2999**, *Child in Foster Care School Notification*, informing that the student is placed in foster care or has a change in foster care placement.

***Please Note - Districts have 10 days to dispute assignment as the district of origin [EL§3202(4)(f)(2)].***

3. District of attendance receives form **LDSS-2999**, which will document that the student will continue attending the school of origin in district or that the student will be attending school out of district.
4. District of attendance immediately contacts the last school attended to obtain education records if student will be attending a new school.
5. District of attendance ensures that the transportation office is informed immediately when the child is placed in foster care and that new transportation will be needed. Information includes the child's residential address, school building that the student will attend, and any other special transportation needs.
6. Complete and commence the *Individual Transportation Plan for a Student in Foster Care* (within **two to three business days** for in-district transportation, or **five to seven business days** for out-of-district transportation of notification of the BID).

Transportation Costs for Children in Foster Care  
**EVERY STUDENT SUCCEEDS ACT (ESSA) AND  
NYS ED LAW §3244 SUMMARY**

In 2015, ESSA reinforced the need for local departments of social services (LDSSs) and local education agencies (LEA or school district) to collaborate concerning the school enrollment of children in foster care. In 2018, New York State amended the education law to codify federal requirements and delineate responsibilities for transportation and transportation funding.

For each child or youth in foster care, Education Law §3244(2) requires that the LDSS, in consultation with the appropriate LEA or agencies, designate either the school **district of origin** or the school **district of residence** where the child in foster care shall be entitled to attend in accordance with a best interest determination (BID) made by the applicable LDSS or voluntary authorized agency. Additionally, Education Law §3244 entitles a child in foster care to attend the **school of origin**, defined as “a public school **that a child or youth attended at the time of placement into foster care, or the school in which the child or youth was last enrolled, or any school** that children and youth who live in the attendance area in which the foster care placement is located are eligible to attend.” It is important to note that a student’s **school of origin** may change in cases where the student experiences multiple foster care placement changes. Upon notification of the BID, the school district where the child will attend becomes the school **district of attendance** (Education Law §3244 (2)(d)).

Education Law §3244 (4)(a) states that when a student requires transportation to attend a **school of origin** designated with the BID, the school **district of attendance** must provide this transportation and, further, that the costs incurred are aidable up to 50 miles each way.

Education Law §3244(4)(b) requires that when a student attends the **district of residence** (where the foster care placement is located) that such school district, designated the **district of attendance**, shall provide transportation to the foster care student on the same basis as a resident student.

Education Law §3244(4)(c) requires both the designated school **district of attendance** and the **LDSS** to split all excess transportation costs evenly and sets forth how such excess cost should be calculated. The statute defines excess transportation costs 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**; except as otherwise reimbursed under [§3244(4)(a) and (b)]” Education Law §3244(4)(c). All three sections of the Education Law §3244(4), read together, articulate the calculation that is required to determine the amount each entity will be responsible for paying after the aidable amounts up to 50 miles each way have been subtracted.

Therefore, excess costs would stem from transportation of the student from their foster care placement to the **school of origin**. The LDSS and the school **district of attendance** will split 50/50 the costs remaining after deducting from the total cost:

1. the cost of what the school district would otherwise spend to transport a non-foster care student to their assigned school; and
2. the amount received in state transportation aid for miles travelled up to 50 miles each way.

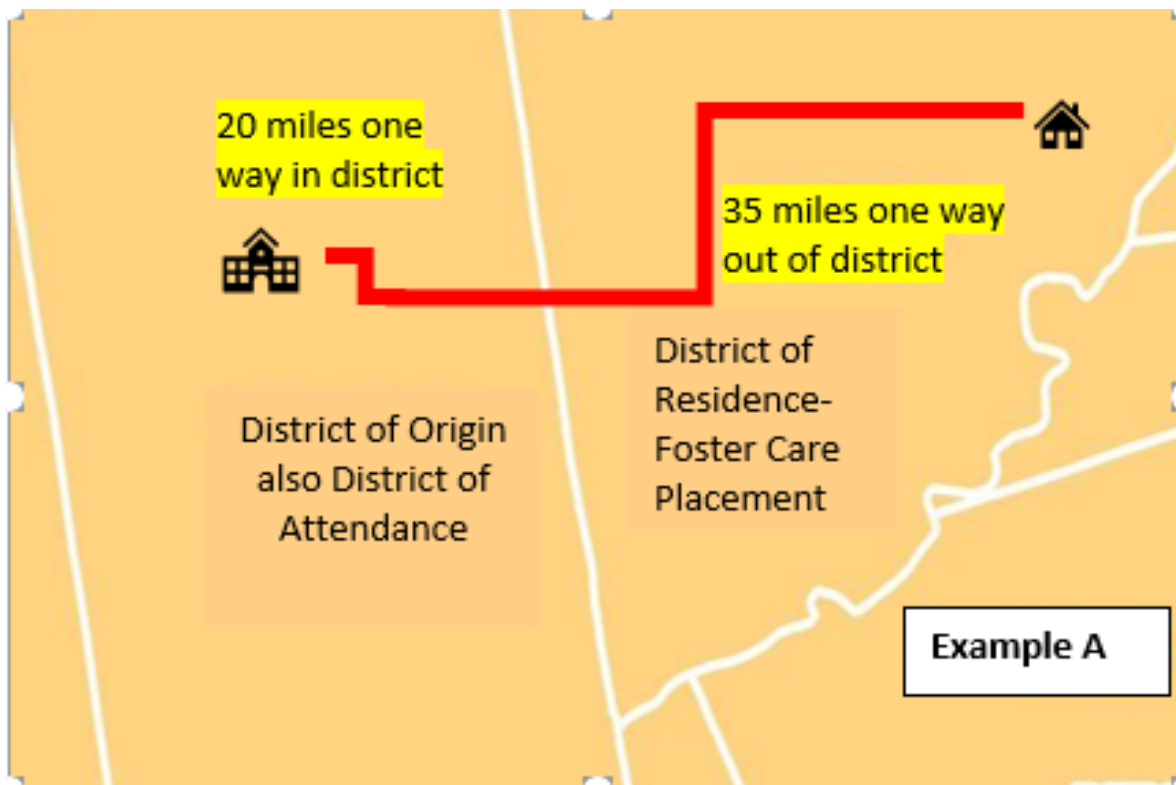
Only after the school **district of attendance** calculates and subtracts out those two factors can the excess cost be determined. The result of that analysis is the excess cost that would be split between the school **district of attendance** and the **LDSS**.

The examples below are intended to be illustrative:

**Example A:** The school **district of origin** is the location where the child lived prior to foster care placement. In this example, the child is placed into foster care in the neighboring school district, which is now referred to as the **district of residence**. Further, through a BID, in this example, the child’s assigned school in the school **district of origin** is designated as the BID school.

Based on the BID, the **district of origin** becomes the **district of attendance**, which is responsible for the transportation costs for the child. From the foster care placement in the **district of residence**, the child is transported 55 miles to the school of origin, located in the **district of attendance**, which is aided 90% on the first 50 miles one way.

The **district of attendance** is responsible for 10% of the unreimbursed 20 in-district miles (the portion of the student transportation for which the district otherwise would spend to transport a student to his or her assigned school), 5% of the unreimbursed 30 miles (from 21 to 50) and 50% of the additional 5 miles (those miles over the 50-mile limit for transportation aid). The LDSS is responsible for 50% of the unreimbursed 30 miles (from 21 to 50) and 50% of the additional 5 miles (those miles over the 50-mile limit for transportation aid).



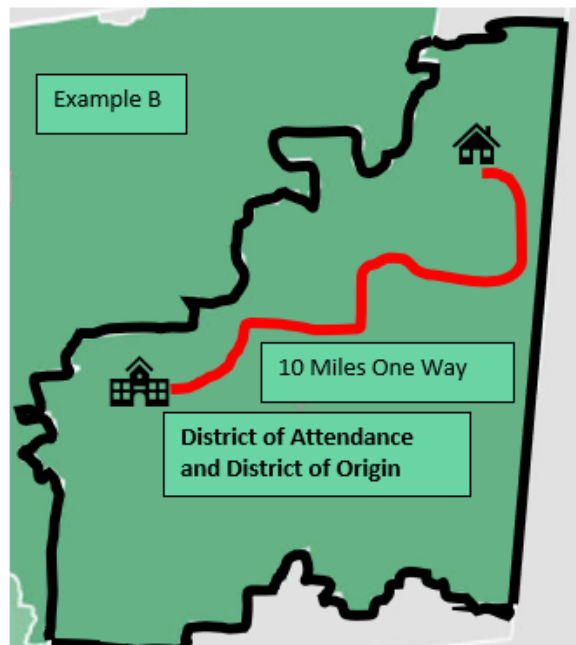
<b>Example A</b>		
<b>Step 1</b>	<b>A:</b> Distance from the BID school of attendance to the foster care placement (one-way)	55
	<b>B:</b> Distance [in district] from school to district boundary	20
	<b>C:</b> Distance from boundary [out of district] to school of attendance (transportation aid up to 50 miles one-way)	35
	<b>D:</b> Mileage over 50 miles (not aidable and divided 50/50)	5
<b>Step 2</b>	Calculate cost per trip (cost per mile x number miles one way)	\$2.09
<b>Step 3</b>	Determine applicability of state transportation aid ratio and calculate remaining shares for school district and LDSS	90%
<b>Step 4</b>	Calculate costs	
<b>Step 5</b>	Calculate number of trips per day and number of days	
	Trips per day	4
	Days per school year	30
	Total trips	120

<b>Cost Per Trip</b>							
<b>Step 1: Mileage</b>		<b>Step 2: Cost Per Trip</b>			<b>Step 3: Percentage Share</b>		
Distance/Mileage	Portion of Route	Total Miles	Cost Per Mile	Cost Per Trip	State Aid	LEA	LDSS
A	Total	55	\$2.09	\$114.95			
B	0 - 20 Miles	20	\$2.09	\$41.80	90%	10%	0%
C	20 - 50 Miles	30	\$2.09	\$62.70	90%	5%	5%
D	50 - 55 Miles	5	\$2.09	\$10.45	0%	50%	50%

<b>Step 4: Cost per Trip (one way)</b>			<b>Step 5: Total Cost</b>				
State Aid	State Aid	State Aid	Distance/Mileage	State Aid	LEA	LDSS	Total
\$94.05	\$94.05	\$94.05	A	\$11,286.00	\$1504.80	\$1,003.20	\$13,794.00
\$37.62	\$37.62	\$37.62	B	\$4,514.40	\$501.60	\$0.00	\$5,016.00
\$56.43	\$56.43	\$56.43	C	\$6,771.60	\$376.20	\$376.20	\$7,524.00
\$0.00	\$0.00	\$0.00	D	\$0.00	\$627.00	\$627.00	\$1,254.00

# of Miles Each Way	# of Miles Per Day	Cost Per Mile	Total Cost Per Day					
55	220	\$2.09	\$459.80					
	<b>Miles in District Per Day</b>		<b>Cost of In-District Miles (Aidable)</b>	<b>Aid Amount for In-District Miles (90%)</b>		<b>LEA's Cost of Miles in District per day</b>	<b>LDSS Cost of Miles in District per day</b>	
	80	\$2.09	\$167.20	\$150.48		\$16.72	\$0.00	
	<b>Miles Out of District Per Day</b>		<b>Cost of Out-of-District Miles (Aidable)</b>	<b>Aid Amount for Out-of-District Miles (90%)</b>	<b>Remaining 10% to be Split Between LEA and LDSS</b>	<b>LEA Portion of the Remaining 10%</b>	<b>LDSS Portion of the Remaining 10%</b>	
	120	\$2.09	\$250.80	\$225.72	\$25.08	\$12.54	\$12.54	
	<b>Miles Over 50 Per Day (Unaided)</b>		<b>Cost of Miles Over 50 Per Day (Unaided)</b>			<b>LEA Portion of the Unaidable Cost</b>	<b>LDSS Portion of the Unaidable Cost</b>	
	20	\$2.09	\$41.80			\$20.90	\$20.90	
							<b># of Days</b>	<b>Grand Total</b>
<b>NYSED Transportation Aid</b>			\$376.20 Per Day				30	\$11,286.00
<b>LEA's Total Expenses</b>					\$50.16 Per Day		30	\$1,504.80
<b>LDSS's Total Expenses</b>						\$33.44 Per Day	30	\$1,003.20

**Example B:** In this example, the school **district of residence** is also the **district of attendance** and, thus, is responsible for 100% of the transportation costs, just as the district would be for any other in-district child. The LEA has a transportation aid ratio of 90% in this scenario. The **district of attendance** would be responsible for the unaidable 10% of transportation expense, and the LDSS would not have to pay any part of the transportation costs.



<b>Example B</b>		
<b>Step 1</b>	<b>A:</b> Distance from the BID school of attendance to the foster care placement (one-way)	10
	<b>B:</b> Distance [in district] from school to district boundary	10
	<b>C:</b> Distance from boundary [out of district] to school of attendance (transportation aid up to 50 miles one way)	0
	<b>D:</b> Mileage over 50 miles (not aided and divided 50/50)	0
<b>Step 2</b>	Calculate cost per trip (cost per mile x number miles one way)	\$2.15
<b>Step 3</b>	Determine applicability of state transportation aid ratio, and calculate remaining shares for school district and LDSS	90%
<b>Step 4</b>	Calculate costs	
<b>Step 5</b>	Calculate number of trips per day and number of days	
	Trips per day	4
	Days per school year	22
	Total trips	88

<b>Cost Per Trip</b>							
<b>Step 1: Mileage</b>			<b>Step 2: Cost Per Trip</b>		<b>Step 3: Percentage Share</b>		
Mileage/Distance	Portion of Route	Total Miles	Cost Per Mile	Cost Per Trip	State Aid	LEA	LDSS
<b>A</b>	<b>Total</b>	10	\$2.15	\$21.50			
<b>B</b>	0 - 22 Miles	10		\$21.50	90%	10%	0%
<b>C</b>	22 - 50 Miles	0		\$0.00	90%	10%	10%
<b>D</b>	50 + Miles	0		\$0.00	0%	50%	50%

<b>Step 4: Cost per Trip (one way)</b>			<b>Step 5: Total Cost</b>				
State Aid	LEA	LDSS	Distance/Mileage	State Aid	LEA	LDSS	Total
\$19.35	\$2.15	\$0.00	<b>A</b>	\$1,702.80	\$189.20	\$0.00	\$1,892.00
\$19.35	\$2.15	\$0.00	<b>B</b>	\$1,702.80	\$189.20	\$0.00	\$1,892.00
\$0.00	\$0.00	\$0.00	<b>C</b>	\$0.00	\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00	<b>D</b>	\$0.00	\$0.00	\$0.00	\$0.00



# of Miles Each Way	# of Miles Per Day	Cost Per Mile	Total Cost Per Day				
10	40	\$2.15	\$86.00				
	Miles in District per Day		Cost of in District Miles (Aidable)	Aid Amount for in District Miles (90%)		LEA's Cost of Miles in District per day	LDSS Cost of Miles in District per day
	40	\$2.15	\$86.00	\$77.40		\$8.60	\$0.00
	Miles Out of District per Day		Cost of Out of District Miles (Aidable)	Aid Amount for Out of District Miles (90%)	Remaining 20% to be Split Between LEA and LDSS	LEA Portion of the Remaining 10%	LDSS Portion of the Remaining 10%
	0	\$2.15	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Miles over 50 per Day (Unaided)		Cost of Miles over 50 per Day (Unaided)			LEA Portion of the Unaidable Cost	LDSS Portion of the Unaidable Cost
	0	\$2.15	\$0.00			\$0.00	\$0.00
						# of Days	Grand Total
NYSED Transportation Aid		\$77.40 Per Day				22	\$1,702.80
LEA's Total Expenses		\$8.60 Per Day				22	\$189.20
LDSS's Total Expenses				\$0.00 Per Day		22	\$0.00

**Example C:** A student attending or entitled to attend in District A is placed in foster care. District A is the **district of origin**. The foster care placement is in District B. District B is the **district of residence**.

The BID for the child is to attend **School 1**, which is located in District B.

District B becomes the **district of attendance** – District B provides transportation to **School 1** and receives transportation aid.

**School 1** becomes the **school of origin**.

The student is placed in a new foster care placement in District C.

District A **remains the district of origin**.

District C **becomes the district of residence**.

The BID is for the child to attend **School 2** located in District C.

**District C** becomes the **district of attendance** – District C provides transportation to **School 2** and receives transportation aid for the related service.

**School 2** becomes the **school of origin**.

The student is placed in a new foster care placement in District D.

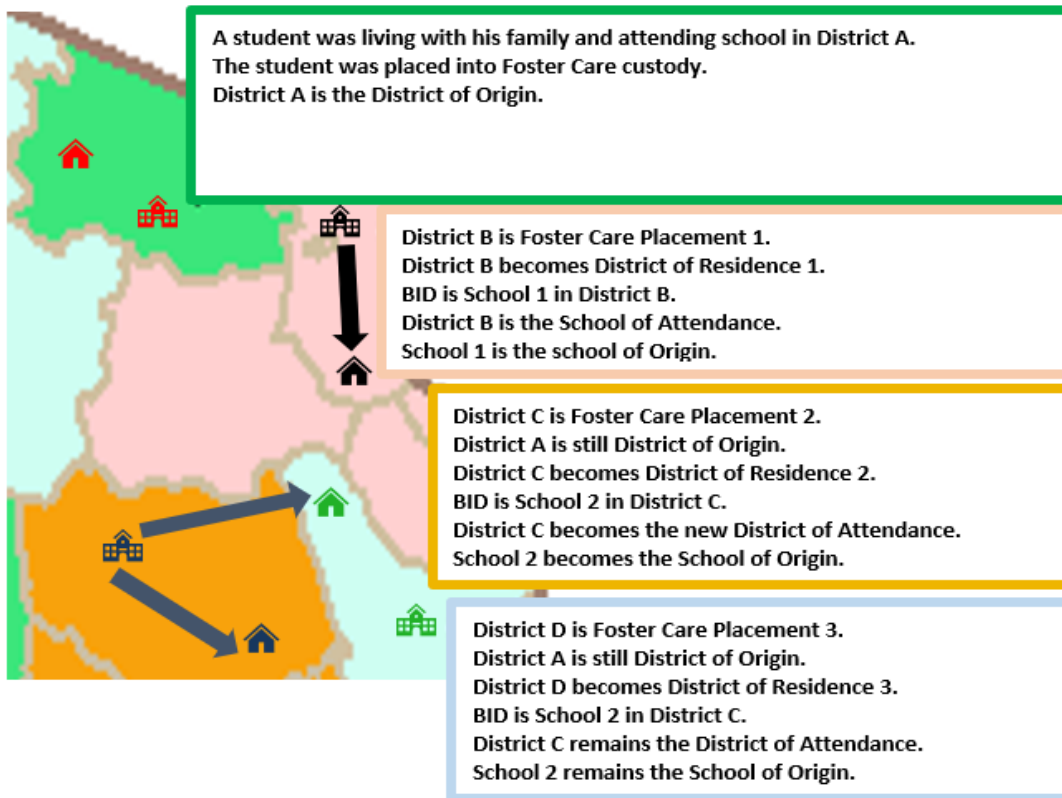
District A remains the **district of origin**.

District D becomes the **district of residence**.

The BID is for the child to attend **School 2** (the current **school of origin**) located in District C.

District C remains the **district of attendance** – District C provides transportation from the foster home placement in District D to **School 2** in District C and receives transportation aid for the related service.

**School 2** remains the **school of origin**.



School of Origin Example		Dist. B	Dist. C	Dist. D
<b>Step 1</b>	<b>A:</b> Distance from the BID school of attendance to the foster care placement (one way)	10	12	15
	<b>B:</b> Distance [in district] from school to district boundary	0	0	2
	<b>C:</b> Distance from boundary [out of district] to school of attendance (transportation aid up to 50 miles one- way)	0	0	13
	<b>D:</b> Mileage over 50 miles (not aidable and divided 50/50)	0	0	0
<b>Step 2</b>	Calculate cost per trip (cost per mile x number miles one way)	\$2.09	\$2.09	\$2.09
<b>Step 3</b>	Determine applicability of state transportation aid ratio, and calculate remaining shares for school district and LDSS	90%	73%	84%
<b>Step 4</b>	Calculate Costs			
<b>Step 5</b>	Calculate number of trips per day and number of days			
	Trips per day	4	4	4
	Days per school year	20	15	60
	Total trips	80	60	240

Cost Per Trip							
Step 1: Mileage			Step 2: Cost Per Trip		Step 3: Percentage Share		
<b>B</b>	10 Miles in District	10	\$2.09	\$20.90		90%	10%
<b>C</b>	12 Miles in District	12	\$2.09	\$25.08		73%	27%
<b>D</b>	13 Miles in District	15	\$2.09	\$27.17		84%	16%
	2 Miles Out of District		\$2.09	\$4.18		84%	<b>8%</b>

Cost Per Trip							
Step 1: Mileage			Step 2: Cost Per Trip		Step 3: Percentage Share		
<b>B</b>	10 Miles in district	10	\$2.09	\$20.90		90%	10%
<b>C</b>	12 Miles in District	12	\$2.09	\$25.08		73%	27%
<b>D</b>	13 Miles in District	15	\$2.09	\$27.17		84%	16%
	2 Miles Out of District		\$2.09	\$4.18		84%	<b>8%</b>

# of Miles Each Way	# of Miles per Day	Cost per Mile	Total Cost per Day				
15	60	\$2.09	\$125.40				
	Miles in District per Day		Cost of in District Miles (Aidable)	Aid Amount for in District Miles (84%)		LEA's Cost of Miles in District per day	LDSS Cost of Miles in District per day
	52	\$2.09	\$108.68	\$91.29		\$17.39	\$0.00
	Miles Out of District per Day		Cost of Out of District Miles (Aidable)	Aid Amount for Out of District Miles (84%)	Remaining 16% to be Split Between LEA and LDSS	LEA Portion of the Remaining 16%	LDSS Portion of the Remaining 16%
	8	\$2.09	\$16.72	\$14.04	\$2.68	\$1.34	\$1.34
	Miles over 50 per Day (Unaidable)		Cost of Miles over 50 per Day (Unaidable)			LEA Portion of the Unaidable Cost	LDSS Portion of the Unaidable Cost
	0	\$2.09	\$0.00			\$0.00	\$0.00
						# of Days	Grand Total
NYSED Transportation Aid			\$105.34 Per Day			60	\$6320.40
LEA's Total Expenses				\$18.74 Per Day		60	\$1123.20
LDSS's Total Expenses					\$1.34 Per Day	60	\$80.40

**APPENDIX  
FORMS**

*Child in Foster Care Sample Notification Letter, OCFS-5017*

*Child in Foster Care School Notification, LDSS-2999*

*Local Transportation Agreement for Students in Foster Care, OCFS-5018*

*Individual Transportation Plan for a Student in Foster Care, OCFS-5019*

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**CHILD IN FOSTER CARE SAMPLE NOTIFICATION LETTER**  
SAMPLE INITIAL NOTIFICATION LETTER/EMAIL FROM LDSS TO LEAs

**Instructions:**

- Send within two (2) days of entry into foster care or a change in foster care placement that could impact educational placement and BID is required
- Send one (1) copy via letter, fax or email to school principal and one (1) copy to file. Subject line of correspondence should indicate “CONFIDENTIAL: READ IMMEDIATELY REGARDING STUDENT IN FOSTER CARE IN YOUR SCHOOL” and if sent via email, please send using “High Importance” indicator.

DATE:        /        /

Dear:

The purpose of this letter is to notify you that one of your students has

- entered foster care or
- undergone a change in foster care placement.

This change for the student, \_\_\_\_\_ may impact their educational placement.

**We are seeking your input on their educational best interest and school placement.** This determination is required, under both state and federal law, and will help inform whether this student remains in their school of origin (your school) or immediately enrolls in a new school.

School placement changes have a profound impact on academic success and overall well-being, so your consideration of this student’s educational needs is important.

**Please respond to this letter by providing us with the name and contact information for the appropriate person at your school who can provide information about this student.** We will be following up to contact this individual in preparation for making a best interest decision that must be made in the next five (5) days.

Please feel free to contact me with any questions.

Thank you,

\_\_\_\_\_

Case Worker  
LDSS/AGENCY:  
PHONE:  
EMAIL:

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**CHILD IN FOSTER CARE - SCHOOL NOTIFICATION**

This notice is being sent pursuant to section 445.1 of the Social Services Regulation on the following date:  
 \_\_\_ / \_\_\_ / \_\_\_ (Enter date notification is being transmitted)

- CHILD ENTERING FOSTER CARE
- CHANGE IN FOSTER CARE PLACEMENT
- CHILD DISCHARGED FROM FOSTER CARE

**Complete and transmit  
within 10 days of notification date**

**Section A**

CHILD (Full name):	DATE OF BIRTH OR APPARENT AGE: / / , OR
ADDRESS OF CHILD WHEN CHILD ENTERED FOSTER CARE:	GENDER: <input type="checkbox"/> Male <input type="checkbox"/> Female
	DATE CHILD ENTERED FOSTER CARE: / /
	DATE CHILD DISCHARGED FROM FOSTER CARE: / /
Foster Care Placement ( <b>Choose one</b> ): *Parent <input type="checkbox"/> Guardian <input type="checkbox"/> Foster Boarding Home <input type="checkbox"/> Agency Boarding <input type="checkbox"/> Group Home <input type="checkbox"/> * List parent name/address ONLY if child is home on trial discharge basis (HOTB)	
NAME AND ADDRESS OF PARENT(S), GUARDIAN(S), FOSTER PARENT(S) OR CHILD-CARE AGENCY (Checked above):	
(AREA CODE) CELL PHONE NO.: ( ) -	(AREA CODE) TELEPHONE NO.: ( ) -
NAME OF SCHOOL DISTRICT CHILD RESIDED IN AT TIME OF ENTRANCE INTO FOSTER CARE (School district of origin):	ADDRESS OF SCHOOL DISTRICT OF ORIGIN:
NAME OF SCHOOL DISTRICT LAST ATTENDED (If different from above, school of origin):	ADDRESS OF SCHOOL OF ORIGIN:

**Section B**

NAME OF SCHOOL DISTRICT THAT CHILD WILL ATTEND PURSUANT TO THE BEST INTEREST DETERMINATION (School district of attendance):	ADDRESS OF SCHOOL DISTRICT OF ATTENDANCE:
<b>Date entered this district</b> / /	<b>Does child have an IEP?</b> <input type="checkbox"/> NO <input type="checkbox"/> YES
SCHOOL DISTRICT OF ATTENDANCE CONTACT PERSON (Please print name):	
TITLE:	(AREA CODE) TELEPHONE NO.: ( ) -

**Section C**

NAME OF SOCIAL SERVICES COMMISSIONER CHARGED WITH CARE OF CHILD:	ADDRESS OF SOCIAL SERVICES COMMISSIONER CHARGED WITH CARE OF CHILD:
NAME OF AUTHORIZED AGENCY ACTING FOR COMMISSIONER (If applicable):	ADDRESS OF AUTHORIZED AGENCY ACTING FOR COMMISSIONER (If applicable):
SIGNATURE OF COMPLETING OFFICIAL:	TITLE: <span style="float: right;">DATE: / /</span>
EMAIL:	(AREA CODE) TELEPHONE NO.: ( ) -
NAME OF CASEWORKER (Please print):	(AREA CODE) TELEPHONE NUMBER: ( ) -

**Section D - BEST INTEREST DETERMINATION**

Documents considered for BID	Report Cards/Progress Reports <input type="checkbox"/> <b>Special Education:</b> Achievement data/test scores <input type="checkbox"/> IEP <input type="checkbox"/> 504 Plan <input type="checkbox"/> Attendance data <input type="checkbox"/> Disciplinary records <input type="checkbox"/> Emails/correspondence from individuals consulted <input type="checkbox"/> Other <input type="checkbox"/>
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Input from the child’s caseworker, the child’s parent(s) (if available and able to provide input), and the child (if developmentally able) must be sought in making the best interest determination. Education personnel from the child’s current school must be informed of the meeting and invited to attend, and/or provide information to be considered in making the best interest determination. Other relevant parties should also be consulted, including the foster parent(s), the child’s attorney, others involved in the case planning for the child, teachers, school counselors or social workers, special education coordinators, coaches, school transportation personnel or other adults significant to the child. If the child is enrolled in BOCES programming, impact on that enrollment should also be considered.

**Name of Parties Who Participated in the BID Process:**

Child	Name:
Birth parent(s)	Name:
Caseworker	Name:
Foster parent(s)	Name:
Attorney for child	Name:
School representative from current school who knows student	Name:
CPSE/CSE chair or designee (if applicable)	Name:
Pupil personnel services (school social worker, school counselor, school psychologist, school nurse, attendance officer/teacher)	Name:
Other:	Name:
Other:	Name:

**Section E - BEST INTEREST DETERMINATION SUMMARY OF RATIONALE (Summarize the key factors influencing the determination)**

**COMPLETE AND TRANSMIT WITHIN 10 DAYS OF CHILD ENTERING FOSTER CARE, CHANGE IN FOSTER CARE PLACEMENT OR FINAL DISCHARGE FROM FOSTER CARE.**

**One copy** to originating agency (LDSS or authorized agency), **one copy** to school district of attendance and **one copy** to school district of origin

**INSTRUCTIONS**  
*(Please print all information clearly)*

**In Section A**

- Enter name, address and date of birth, OR age of child entering foster care.
- Enter the gender of the child entered into the foster care system.
- Enter date child entered and left the foster care system.
- Check the type of foster care placement: Parent(s) (only if the child is home on a trial discharge basis, HOTB), guardian, foster boarding home, agency boarding home or group home.
- Enter the name and address of the following individual(s), as applicable to the placement type: Parent(s) if the child is home on trial discharge; guardian(s) if the child is placed with a guardian; foster parent(s) if the child is in a foster boarding home; or the child-caring agency if the child is in an agency-operated boarding home or group home. This is the contact person that the School will keep on file for day-to-day communication.
- Enter parent's name(s), address and phone number only if child is HOTB.
- Enter name, address and phone number of the school district the child resided in when the child entered foster care.
- Enter name of the school district the child last attended if different from the one entered above.

**In Section B**

- Enter the school district the child is attending.
- Enter the county department of social services handling foster care.
- Enter the date the child entered the district.
- Does the child have an Individualized Education Plan (IEP)?
- Enter a contact person's printed name and his/her phone number.

**In Section C**

- Enter the name and address of the social services commissioner charged with care of the child.
- Enter the name and address of the authorized agency acting for the commissioner.
- Signature of the completing official, his/her title, phone number, email and date.
- Print the name of the social services caseworker, his/her area code and phone number.
- Comments the social services caseworker may have.

**In Section D:**

- Enter the documents considered when making the BID.
- Enter the name of all individuals who participated in the BID process. Participation may consist of submission of documents, correspondence, etc. or may include in-person attendance at any meetings.

**In Section E:**

- Enter a rationale for the BID, including any key factors that influenced the determination such as participation in a BOCES or other programming.



NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES

## LOCAL TRANSPORTATION AGREEMENT FOR STUDENTS IN FOSTER CARE

Local department of social services (LDSSs) and local school districts (LEA) will biennially prepare a local transportation agreement for students in foster care that will outline local transportation procedures. This document will provide both local agencies with a list of key contacts for foster care issues, statements regarding the information the LEA and LDSS will provide in support of the best interest determination and additional supports available for students in foster care. These agreements must be done between LEAs and LDSSs when children in the care and custody of social services are attending the school/district.

<b>LEA:</b>
<b>LDSS:</b>
<b>School year(s) to which the current plan applies:</b>

To provide continuity of appropriate educational services for children who are placed in foster care, the LEA and LDSS agree to cooperate effectively to meet the educational and transportation needs of children in foster care as follows:

- I. **The LEA and LDSS will identify key contacts and update as needed immediately upon any change.**

### ***Critical School District/Local Education Agency (LEA) Contacts***

Role	Name/Title	Phone - Office	Phone - Cell	Email
Superintendent	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
LEA Point of Contact	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
School Counselor	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
CPSE/CSE Chair (where applicable)	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Transportation Administrator	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

### ***Critical Local Department of Social Services Contacts***

Role	Name/Title	Phone - Office	Phone - Cell	Email
LDSS Commissioner	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
LDSS Point of Contact	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
(Alternate) LDSS Point of Contact	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Voluntary Agency Point of Contact	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

**II. In recognition that the LDSS must determine the educational placement that is in the best interest of the child, the LEA agrees to cooperate with the LDSS to support the placement decision. The LEA also agrees to assist in providing the necessary logistical support for the implementation of the decision.**

**Supporting the Best Interest Determination (BID) Process:**

1. To support the best interest determination process of the LDSS, ***the LEA agrees to the following:***
  - Provide any information requested by the LDSS in support of the decision.
  - Make staff available that may be able to inform the decision about the educational needs of the child.
  - Align all processes and procedures regarding these discussions with privacy requirements under state and federal law.
2. To support the best interest decision determination process, ***the LDSS agrees to the following:***
  - Inform the current school district of attendance of the placement of a child in foster care as soon as possible **and no later than two business days** from the placement.

**Implementation of BID:**

Once the BID is made, the **LDSS** will do the following:

- Immediately contact the district of origin and district of attendance, if different, POC(s) **within 10 days of the placement** of the child in foster care or earlier, if possible.
- Give written notice of the determination to district of origin's LEA POC.
- Continue its consultation with the school district of origin and/or district of attendance regarding the child's foster care placement and other issues relevant to the child's educational stability and well-being in accordance with privacy and confidentiality requirements under federal and state law.

Once the best interest determination is made, the **LEA** will do the following:

**Based on the student's BID, the school will implement steps under 1, 2 or 3:**

1. **When the student is placed in foster care inside his or her school district of origin and will attend school in the school of origin (the district of origin and district of attendance are the same):**

The LDSS will contact the LEA POC in writing (**LDSS-2999**), then the following parties in the district will be notified of the placement through the district's internal processes.

- District superintendent
- School building principal (building of origin; new building)
- District transportation administrator
- CSE/CPSE chairperson (if applicable)
- Pupil personnel services

The district of origin will transport the child in a manner appropriate to the child's needs from their placement address. The district will provide transportation and as soon as reasonably possible (within two to three business days), create an individual transportation agreement. The costs of expenditures associated with this transportation are aidable under the provisions of **Sections 3244** and **3202** of the Education Law.

**2. When the student is placed in foster care outside of his or her district of origin, but will attend the school of origin in the district of origin (the district of origin and district of attendance are the same):**

When the LDSS has determined that it is in a student’s best interest to remain in his/her district of origin, the LDSS will notify the LEA POC of the district of origin in writing (LDSS 2999).

- a. Upon receipt of notice from the LDSS, the district of origin’s LEA POC will notify appropriate school personnel. At a minimum, the school personnel that should be notified **within two business days or sooner** are:
  - District Superintendent
  - School building principal (building of origin)
  - District transportation administrator
  - CSE/CPSE Chairperson (if applicable)
  - Pupil personnel services
- b. **Transportation provision:** The school district of attendance shall provide transportation to and from the child’s foster care placement to the school of origin. Any cost incurred for such transportation that is allowable up to 50 miles each way is an aidable expense. The district’s transportation administrator should be immediately informed of the child’s residential address, school building that will be attended and any other special transportation needs.
  - The transportation director will contact other school districts, per usual practice, to determine if the student can be accommodated on an existing (or reasonably modified) school transportation or public service route.
  - Once this determination has been made, a decision of how appropriate services will be provided will be made (within **five to seven** business days).

**3. Student is placed outside of the school district of origin and will attend school in a district outside the school district of origin (the school district of residence and the district of attendance are the same)**

When the LDSS has determined that it is in a student’s best interest to attend school in a new district, the LDSS will notify the district of attendance LEA POC and the district of origin in writing (LDSS 2999).

- a. Once the LDSS notifies them, the LEA POC in the district of residence (now known as the district of attendance) will notify appropriate school personnel. At a minimum, the school personnel that should be notified **within two business days** are:
  - School district Superintendent
  - School building principal (building of origin)
  - District transportation administrator
  - CSE/CPSE Chairperson (if applicable)
  - Pupil personnel services
- b. The district of attendance will transport the child in a manner appropriate to the child’s needs from his/her placement address. The district will provide transportation as soon as reasonably possible to put a plan in place (within **five to seven business days** for out-of-district transportation) and as collaboratively agreed upon with the LDSS. The costs of expenditures associated with this transportation are aidable under the provisions of **Sections 3244 and 3202 of the Education Law.**

**Agreed to on the following date:**        /        /

**Authorized Signature for School District (LEA):**

**Authorized Signature for Local Department of Social Services (LDSS):**

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**INDIVIDUAL TRANSPORTATION PLAN  
FOR A STUDENT IN FOSTER CARE**

Student's name:

Student's date of birth:        /        /

Student's current grade level:

School to be attended (address):

Foster care placement address (address from which transportation will be provided):

School district of origin:

School district of residence, now designated district of attendance (where different from district of origin):

Date of best interest determination (BID) document received:        /        /

Date of *Individual Transportation Plan for a Student in Foster Care* completion:        /        / .

(within two to three business days for in-district, or five to seven business days for out-of-district of notification of BID)

Date transportation must commence:        /        /

(within **two to three** business days for in-district or **five to seven** business days for out-of-district of notification of BID)

Transportation plan reviewed annually: Date(s):        /        / ,        /        /

**Local Department of Social Services (LDSS) Information**

Name of LDSS:

LDSS POC telephone and email:

Other (i.e., nonprofit, voluntary agency, etc.) with name and contact info:

**District of Attendance Contact Information**

Superintendent:

Telephone and email:

LEA POC:

Telephone and email:

Transportation director (or equivalent):

Telephone and email:

Transportation employing agency (if not school district):

**District of Origin Contact Information (if applicable)**

Superintendent:

Telephone and email:

LEA POC:

Telephone and email:

Transportation director (or equivalent):

Telephone and email:

**Approved Transportation Plan**

**(Until further revisions due to a change in services or a new school year)**

Once the regular transportation arrangements are made, the child will (check appropriate box):

- Walk (only if this is consistent with home-to-school travel policy for students living a similar distance from school)
- Use public transportation (only if this is consistent with home-to-school travel policy for students in similar circumstances)
- School-operated or contracted travel on a bus or other vehicle
  - a. If school-operated or contracted travel is the choice above, the student will travel on a vehicle owned and operated by:
  - b. If a transfer between school buses is necessary, please describe:
  - c. This is existing route #            (where applicable)
- Private transportation services provided by the child welfare agency

**These transportation procedures were agreed to on the following date:**        /        /

Authorized Signature for District of Attendance (if not district of origin):
Authorized Signature for District of Origin (only needed for student who has IEP with transportation as a related service):

## APPENDIX A

### EVERY STUDENT SUCCEEDS ACT FREQUENTLY ASKED QUESTIONS

This Frequently Asked Questions document reflects many of the questions received by the New York State Office of Children and Family Services (OCFS) and the New York State Education Department (SED) as local departments of social services (LDSSs) and local education agencies (LEAs) work to implement the foster care provisions of Every Student Succeeds Act (ESSA) as well as New York law and joint agency guidance, including the students in foster care tool kit, originally released in the fall of 2018.

#### **A. Resources:**

1. NYSED website with foster care information: <http://www.p12.nysed.gov/sss/pps/fostercare.html>
2. OCFS website with education information: <https://ocfs.ny.gov/main/fostercare/education.asp>
3. SED and OCFS Students in Foster Care Tool Kit for LEAs and LDSSs: [https://ocfs.ny.gov/main/policies/external/ocfs\\_2018/ADM/18-OCFS-ADM-18-Students-in-Foster-Care-Tool-Kit.docx](https://ocfs.ny.gov/main/policies/external/ocfs_2018/ADM/18-OCFS-ADM-18-Students-in-Foster-Care-Tool-Kit.docx)

**B. Definitions and Use of Terms:** For the purposes of this document, child refers to students ages 3-21 AND those children 0-3 years of age who are not yet school age.

**1. Q: Does the district of origin change when a child exits, and re-enters foster care?**

A: Yes, the district of origin may change upon a child's re-entry to foster care as the district of origin is determined at the time of entry into foster care. The district of origin remains constant for the duration of the foster care episode. (A foster care episode comprises a continuous period of time in the care and custody of the LDSS or OCFS commissioner, which may include multiple foster care placements. A foster care episode starts when care and custody are transferred to the LDSS or OCFS commissioner and ends when the child leaves the care and custody of the LDSS or OCFS commissioner.)

**2. Q: Can a school of origin ever change for a child in foster care?**

A: Yes, a child's school of origin may change during the child's time in a foster care episode. The school of origin is the school the student attended or was entitled to attend at the time of the initial placement in foster care, or the school the student attended or was entitled to attend at the time of a change in foster care placement. When a student's foster care placement changes, the best interest determination (BID), based on a range of factors, may result in the student who was enrolled in School A now being enrolled in a new school, School B. Should the student experience another foster care placement change, School B would constitute the student's school of origin. Therefore, in cases involving multiple foster care placement changes, a student's school of origin may change over the course of their time in foster care.

#### **C. ESSA Transportation**

**1. Q: Is there a sample MOU for LDSSs and school districts to use?**

A: Page 33 of the foster care tool kit has a sample MOU between an LDSS and a school district called *the Local Transportation Agreement for Students in Foster Care*.

**2. Q: Does the district of attendance bill the district of origin for transportation costs?**

A: No, the district of attendance is responsible for the cost of transportation.

**3. Q: Is the district of attendance responsible to provide transportation to a child in care if the district does not provide transportation to its own students?**

A: The federal joint guidance, released in 2016 and available at <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>, addresses this situation in question 29 located on page 18:

“If an LEA does not provide transportation to children who are not in foster care, is it required to transport children in foster care to their schools of origin? Yes. An LEA must ensure that transportation is provided for children in foster care consistent with the procedures developed by the LEA in collaboration with the state or local child welfare agency under section 1112(c)(5)(B) of the ESEA. These requirements apply whether or not the LEA already provides transportation for children who are not in foster care.”

**4. Q: What if the standard for transporting all students is public transportation? Would that be as appropriate for students in foster care who must travel long distances as for other students?**

A: School districts must provide a viable form of transportation for the student in foster care. For example, if it is a young student who cannot travel on public transportation unaccompanied, then the school district must provide public transportation passes for the foster parent to accompany the child. If the foster parent cannot accompany the child on public transportation (because of their work schedule or because they must care for other children, etc.), then the school district must provide an alternate form of transportation that is viable for the student. Districts that use public transportation must ensure that the provider is compliant with the regulations that govern that mode of transportation. The commissioner of education has ruled that rides up to 90 minutes are not considered to be excessive in certain circumstances.

**5. Q: What if the student wants to stay enrolled in their school of origin but the foster placement is 90 minutes away? How do you handle transportation?**

A: Once an appropriate foster care placement is determined that is located in a new school district, the LDSS must make a BID to determine whether the child should remain in their school of origin or be reenrolled in a new school. The BID must be based on all factors relating to the child’s best interest, including consideration of the student’s preferences, proximity to the school in which the child is enrolled at the time of placement, and the impact of a school transfer, including the commute. If remaining enrolled in the student’s school of origin is determined to be in the student’s best interest, the school of origin’s district will constitute the student’s district of attendance and, as such, it must provide the necessary transportation for the child to attend the school of origin. (see 18-OCFS-ADM-18 for additional guidance on this topic).

**6. Q: What is the standard for "transportation"? Is the LEA required to provide either the same transportation that would be available to any other student or whatever transportation is necessary to maintain a student in the school of origin?**

A: School districts are expected to provide safe and appropriate transportation for all students. All carriers must comply with laws and regulations from the United States Department of Transportation (USDOT), the New York State (NYS) Department of Motor Vehicles (DMV), the NYS Department of Transportation (DOT), and SED. Districts that use public transportation must ensure that providers are compliant with the regulations that govern that mode of transportation and evaluate whether a guardian would be required to make using such service a safe and appropriate means of transportation given the age of the student.

**7. Q: What happens if a district of attendance cannot transport due to, for example, a lack of bus drivers to fulfill current transportation needs?**

A: The district of attendance is required by state and federal law to transport. The district must consider alternate ways of providing statutorily mandated transportation.

**8. Q: If a child in foster care is in a special class with the Board of Cooperative Educational Services (BOCES) and it is determined to be the best placement but a far commute, does the child remain in that school placement?**

A: The length of the commute is one of many factors that is considered when making a BID. Please see page 17 of the foster care tool kit for a complete list of factors to consider when making a best interest decision. Additionally, it should be noted that at times there may be some overlapping issues

that need to be addressed, for example when a child who is receiving special education services is in a placement determined to meet their special education needs. ESSA and school stability law need to be applied along with special education law. Please see Foster Care Students with Disabilities section in the tool kit.

**9. Q: What district is responsible for transporting a foster child placed in a BOCES special ed program?**

A: The district of attendance is responsible for providing transportation.

**10. Q: A school-aged student was attending school in District A (district of origin) when placed in foster care and their foster care placement was located in District B. A BID was made to have the student remain in District A. Who is responsible for transportation?**

A: The district of attendance, District A in this scenario, is responsible for providing the transportation.

**11. Q: A student with an individualized education plan (IEP) from District A is relocated to a foster home in District B and the BID determines the student should remain in District A. The Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) at District A determines that the student's educational placement should be a state-approved private school in a third district, District C. Who transports in this scenario?**

A: If the CSE or CPSE from District A placed the student in the state-approved private school in another district, then District A is responsible to provide transportation. This will be true regardless of whether transportation is listed as a related service if the child has an IEP. Please see Question 3 below under **ESSA Financial Related Issues**.

**12. Q: What should the school district do in the event that the LDSS fails to complete a BID and/or provide documentation of the determination to the school district?**

A: Contact SED's point of contact (POC) whose contact information is available on the [SED's Foster Care webpage](#).

**13. Q: If a district of attendance fails to provide transportation, what is the course of action for an LDSS?**

A: The district of attendance is required to arrange transportation. In the event that a district of attendance fails to provide this transportation, the LDSS POC should contact the OCFS or SED POC for assistance, keeping in mind the time frames for an appeal. An appeal to the commissioner of education must be filed within 30 days from the date on which transportation was denied. For further information on this process, see: <http://www.counsel.nysed.gov/appeals/>.

**14. Q: Can neighboring districts share the responsibility for transporting their respective foster students? And if so, can they both still receive aid on the costs?**

A: We encourage districts to collaborate on the provision of transportation. However, in order to ensure that services are being shared and not piggybacked, it is crucial to know, and spell out in writing, who is providing the services, a neighboring school district or a contractor. In the case of a neighboring school district, this arrangement comprises a shared service, the latter constitutes piggybacking. If a neighboring district owns their own buses, services can be shared through an intermunicipal contract. However, if a contracted vendor is providing transportation, then both districts must hold a valid contract with the vendor. One district cannot hold a contract with a vendor, then allow an uncontracted district to share the bus.

**15. Q: Is a district of attendance required to provide transportation to a prekindergarten student in foster care?**

A: Yes. Districts are required provide transportation to prekindergarten students in foster care.

**D. ESSA Financial Related Issues**



- 1. Q: There is a lot of confusion about what is meant by tuition versus transportation. Does tuition include transportation or does tuition only include educational services?**

A: Regarding the education of children in foster care, the term *tuition*, as it is used in Education Law §§ 3202 and 3244, refers to educational services, not transportation costs.

- 2. Q: With the new rules related to transportation costs under Education Law § 3244, is there a change in this process for how a district of attendance will bill the district of origin for tuition costs related to children in foster care?**

A: The district of origin remains responsible for the cost of tuition for the child in foster care, regardless of who is responsible for transportation. The district of attendance is responsible for transportation costs, not the district of origin; therefore, excess transportation costs may not be billed to the district of origin.

- 3. Q: A student with an IEP is placed in a foster home outside of their district of origin and the BID determines that the student will attend school in the district where the foster home is located, the district of residence. Which district is responsible for the costs related to special education services and transportation, etc.?**

A: The district of origin is responsible for education costs throughout the student's placement in foster care. In the case of a student with an IEP, the district of origin is responsible for the cost of special education services and related services that are included in a student's IEP. Some students' IEPs may include specialized transportation as a related service.

The district of attendance, pursuant to Education Law § 3244, is required to treat the child or youth in foster care as a resident for all purposes and is responsible for providing transportation, and related costs are state aidable up to 50 miles. Any uncovered costs for transportation are to be split by the school district of attendance and the LDSS. This would include any excess transportation costs for a student that is an out-of-district CSE/CPSE placement. See guidance on transportation costs for children in foster care in the *Students in Foster Care Tool Kit for Local Education Agencies and Local Departments of Social Services* for further information.

- 4. Q: Can the 50% of transportation funded by the school district of attendance be billed back to the district of origin?**

A: No. The district of attendance is responsible for transportation costs, except in the limited circumstances of some students with IEPs that include transportation as a related service.

- 5. Q: Through what process will the district of origin obtain tuition reimbursement from the district of residence?**

A: There is no tuition reimbursement from the district of residence. The district of origin remains responsible for tuition costs throughout the student's placement in foster care.

- 6. Q: SCENARIO: A student resides in a household within District A and is attending school in District A. The student leaves that household and sleeps on the couch of a friend whose home is located in District B for a few days. The student then enters the foster care system and is placed in a foster boarding home in District C. A best interest determination (BID) determines that the student will attend school in District C, the district of residence. Which district is the district of origin and therefore responsible for non-resident tuition? District A or B? (Note: the student never attended school in District B.)**

A: In most cases, a few days sleeping on a friend's couch will not be a sufficient basis for establishing that a child resides in a particular district, or that the child and their parent or person in parental relation has abandoned the permanent residence in another district. In this case, since the student was attending District A or was entitled to attend District A at the time of entry into foster care, then District A is the district of origin and is responsible for tuition.

## **E. Best Interest Determination (BID)**

- 1. Q: Does the BID process only apply to children in foster care? Does it also include children in direct placements pursuant to Family Court Act Sections 1017 or 1055 or situations in which a child is directly placed with a family member in- or out-of-district?**

A: The BID process only applies to children in foster care that are placed in the care and custody of an LDSS; it does not apply to children in direct placements pursuant to FCA 1017 or 1055. The term "child or youth in foster care" means a child who is in the care and custody or custody and guardianship of an LDSS or the commissioner of OCFS. If the placement fits this definition (i.e., if the child is in the custody of an LDSS agency, and the family member is also the foster care parent for that child, then the child would qualify as a child in foster care; if the child is not in the care and custody of the LDSS, then the child would not qualify as a child in foster care.

Please note, some arrangements in which the child is not in foster care, such as direct placements, may meet the definition of homeless under the McKinney-Vento Act, and the child would be entitled to the educational stability protections for students who are homeless. An assessment of eligibility under Mc-Kinney Vento should be performed separately. For more information see: <https://nysteachs.org/resources/determining-mckinney-vento-eligibility-for-students-in-direct-placements/>.

- 2. Q: Are we required to do a BID on children placed at voluntary agency residential programs?**

A: Yes.

- 3. Q: Does the BID process apply when a child leaves foster care and returns to a parent who does not live in the district of attendance? Can that child remain in the district they were attending while in foster care?**

A: With any change in foster care placement, a BID must be made. If the child changes living placement, the goal is to keep the child in the current school of origin unless it is not in their best interest to do so. When a child exits foster care, another BID is made. If the BID is that it is in the child's best interest to attend the school of origin, the child has the right to attend the school until the end of the school year during which the foster care episode ended and the child is no longer in foster care, and for one additional year, if that year constitutes the terminal year in such building.

- 4. Q: Is a student still in foster care when they are on a trial discharge? Are they permitted to remain enrolled in the school district they had been attending before they were on trial discharge?**

A: When the child is staying with their parents on a trial discharge, the child remains in the care and custody of the LDSS and is still in foster care. A BID would be required to be made upon trial discharge.

- 5. Q: Where can a school district find documentation of a completed BID?**

A: A copy of the BID is in the casefile of the LDSS, which is responsible for providing the school(s) with a copy of **LDSS-2999 form, *Child in Foster Care School Notification***, see page 30 of the tool kit.

- 6. Q: If a BID has been made, can a judge modify the BID or order a change in school placement?**

A: Judges can review the final BID made by the LDSS and may, in some cases, determine that the BID is not in the child's best interest. If a judge determines that there was an error made by the LDSS in the BID process, the judge may order that the LDSS reassess the BID to ensure the decision is in the child's best interest.

- 7. Q: Are birth parents able to challenge the BID if they aren't in agreement?**

A. Under ESSA and Education Law Section 3244, the BID is made by the applicable social department of social services or voluntary authorized agency in collaboration with the local education agency(ies). Guidance and best practices dictate that the LDSS make the BID after obtaining information on the student’s academic, social, and emotional well-being and, thus, the opinion of the birth parents should be considered by the agency in making the BID. Ultimately, family court judges can review the final BID, taking into consideration any challenge to it, and determine whether it is in the child’s best interest.

**8. Q: If a BID has not been made by the LDSS following placement into foster care or a change in placement, can the judge order the school district placement in lieu of a BID?**

A: No, the LDSS is responsible for making a BID. Family court judges can review a final BID made by the LDSS but cannot make the BID for a child in foster care.

**9. Q: How do the BID and the CSE/CPSE interact?**

A: If a foster care student has an IEP or a Section 504 plan, the relevant school staff members will need to participate in the BID process to provide feedback on the student’s progress in the student’s current special education program and how changing schools might impact the student’s academic, social, and emotional well-being. While the CSE/CPSE provides important information, it is the LDSS that makes the final BID determination.

**10. Q: What happens when a BID determines that a change in school placement is in the child’s best interest?**

A: Should it be determined that a child’s best interest would be served by a school change, pursuant to ESSA,

- the new school district must immediately enroll the student and make a written request for the student’s records; and
- within five days of receipt of this request, the student’s original school district shall forward the student’s records.

Under the Individuals with Disabilities Education Act (IDEA), the new school district shall, in consultation with the student’s IDEA parent, provide the student a Free Appropriate Public Education, which includes services that are “comparable” to the services in the IEP developed by the old school district until the new school district convenes a CSE/CPSE to either adopt the old IEP or develops a new IEP in accordance with IDEA procedures.

**F. Points of Contact**

**2. Q: Can the McKinney-Vento Liaison and foster care POC be the same person?**

A: Under federal law, the local school district’s foster care point of contact may be the same person as the McKinney-Vento liaison, unless it is determined that the McKinney-Vento liaison’s current duties and responsibilities do not allow for the time and capacity needed to perform these additional duties. Federal law does not allow the SED agency point of contact for foster care to be the same individual as the state McKinney-Vento coordinator.

**3. Q: Where can anyone look up who is the POC at an LDSS and/or an LEA?**

A: All the LDSS POC, LEA POC, and state POC contact information is on the Education Department’s foster care webpage (at <http://www.p12.nysed.gov/sss/pps/fostercare.html>) and OCFS website (at <https://ocfs.ny.gov/main/fostercare/education.asp>).

**G. Application of ESSA Requirements**

**1. Q: Are there time limits or timelines that agencies must follow in providing school stability for children in foster care?**

A: Yes.

- i. For the LDSS: LDSS-2999, *Child in Foster Care School Notification* form, must be completed, maintained in the case record, and a copy of each provided to the LEA POC of the school district believed to be the district of origin, and if a school change is recommended to the LEA POC at the school district of attendance, **no later than 10 business days** after the placement of a child in foster care/change in foster care placement or earlier if possible.
- ii. For the LEA:
  - Upon receipt of an LDSS notice, notify appropriate school personnel to ensure the educational stability of the student.
  - District of attendance receives a copy of the LDSS-2999, *Child in Foster Care School Notification*, from the LDSS representing the district where the student will be attending school. Student is immediately enrolled.
  - District of attendance shall immediately contact the last school attended to obtain the student's education records. Within five days of receipt of such request, the school where the student's records are located must forward the student's records to the requesting district.
  - Complete and commence the *Individual Transportation Plan for a Student in Foster Care* (within two to three business days for in-district transportation, or five to seven business days for out-of-district transportation) of notification of the best interest determination (LDSS-2999).

**2. Q: What is the difference between McKinney-Vento and foster care?**

A: The McKinney-Vento Act provides rights and services to children and youth experiencing homelessness. The term "child or youth in foster care" means a child who is in the care and custody or custody and guardianship of an LDSS or the commissioner of OCFS. In certain relatively rare situations, a student may be in foster care and still be found eligible under the McKinney-Vento Act definition of homeless. The following are examples of such situations:

- If a student runs away from a foster care placement and is temporarily living in a runaway and homeless youth shelter or in a doubled-up situation
- The foster parent or caretaker loses their housing and is temporarily staying in a family shelter or in a doubled-up situation with the student

**3. Q: What are the guidelines/rules for prekindergarten students and CPSE students?**

A: The school stability protections and provisions of State Education Law § 3244 specifically include reference to a publicly funded pre-K program administered by the local school district or a Head Start program administered by the local school district and/or services under the IDEA administered by a local school district.

**4. Q: What is the school of origin when a student attends a BOCES program prior to placement in foster care?**

A: When a student attends a BOCES program, that student was placed in the program by the school district in which they are enrolled. Therefore, the BOCES program is not the school of origin in such a situation. Rather, the school of origin is the school in which the student is enrolled or is entitled to be enrolled at the time of entry into foster care. The student's attendance in a BOCES program is one of the factors to be considered when making a BID.

**H. Miscellaneous**

**1. Q: How are cross-county foster care placements managed? Does the LDSS change even if the school does not change?**

A: It is extremely rare that a case may be transferred to another custodial agency, either within the state or outside of New York State. In the event that a change in an LDSS does occur, the new

custodial LDSS would need to make a BID and notify the district of attendance, district of origin, and any other relevant educational parties.

**2. Q: Who makes the determination to place a child into foster care?**

A: Children are placed into foster care either by order of a court or by their parent or legal guardian pursuant to a voluntary placement order.

**3. Q: How does Education Law § 3244 apply when a New York foster care student is placed in an out-of-state foster care placement?**

Education Law § 3244 covers the duties of New York State LEAs and LDSSs regarding children or youth placed into foster care in New York. Under Education Law § 3244(2)(b), when a child in foster care in New York is placed in a foster care placement located in a contiguous state, this child shall be entitled to attend the school of origin, in this scenario, the last school the child attended, or was entitled to attend, in New York, or “any school that children and youth who live in the attendance area in which the foster care placement is located are eligible to attend.”

a. **Example:** Student living with parents in Fishkill, NY, is placed into foster care. At time of entry into foster care, student attended elementary school in the Wappingers Central School District. After weighing options and the individual needs of the student, the Dutchess County LDSS determines that the best foster care placement for the student is with relatives who live in Sherman, CT, about 26 miles away and just across the NY/CT border.

a. Foster care placement – This foster care placement, formalized in an Interstate Compact on the Placement of Children (ICPC) agreement, is contingent on completion of a successful home study.

b. Educational Placement – In this scenario, an elementary school in the Wappingers Central School District constitutes the student’s school of origin and Wappingers Central School District constitutes the district of origin. The Dutchess County LDSS collaborates with the LEAs – Wappingers and the school district in Sherman, CT – to gather relevant information needed to determine whether it is in the student’s best interest to remain enrolled in the school of origin, or if not, whether the student’s educational needs could be met in the Sherman, CT, school district.

**i. BID process determines student remain enrolled in school of origin in New York.**

- Education Law § 3244(4)(d) requires that the student’s designated district of attendance in New York, in this case, Wappingers Central School District, to collaborate with the social services district, Dutchess County LDSS, to arrange for interim transportation needed until the district of attendance finalizes the out-of-district transportation plan within five to seven school days of new foster care placement. The transportation costs incurred are aidable up to 50 miles each way, with the excess costs split 50/50 between the LEA and the LDSS. (See *Transportation Costs for Children in Foster Care*, beginning on page 20 of the *Students in Foster Care Tool Kit for Local Education Agencies and Local Departments of Social Services*.)

**ii. BID process determines that remaining enrolled in school of origin is NOT in student’s best interest.**

Pursuant to Education Law § 3244(2)(b), the student is immediately enrolled in school in Sherman, CT, and district of origin remains financially responsible for student’s tuition. Transportation is handled by the school district in Sherman, CT. Although the Sherman, CT, is not bound by New York Education Law § 3244, this school district is obligated by federal ESSA foster care provisions to immediately enroll the student and contact the student’s school last attended to obtain relevant academic and other records.