



Office of Children and Family Services

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Administrative Directive

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| Transmittal: | 18-OCFS-ADM-18 |
| To: | Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies |
| Issuing Division/Office: | Division of Child Welfare and Community Services |
| Date: | August 17, 2018 |
| Subject: | Educational Stability and Transportation Requirements for Children in Foster Care |
| Suggested Distribution: | Directors of Social Services Child Protective Services Supervisors Child Welfare Supervisors Foster Care Supervisors CONNECTIONS Implementation Coordinators |
| Contact Person(s): | Please see Section VI. |
| Attachments: | Students in Foster Care Tool Kit for Local Education Agencies and Local Social Services Agencies |

Filing References

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

I. Purpose

The purpose of this Administrative Directive (ADM) is to release and outline the Students in Foster Care Tool Kit for Local Education Agencies and Local Social Services Agencies, developed by the Office of Children and Family Services (OCFS) and the State Education

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

II. Background

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

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

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

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

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

2018: ESSA set the groundwork for the enactment of Part CC of Chapter 56 of the Laws of 2018 (Chapter 56), which set forth into state law specific roles and responsibilities for LEAs and local social services districts (LDSSs) to ensure the quickest possible enrollment of youth in foster care in school, and delineate responsibility for transportation and transportation funding. Chapter 56 mandates that a best interest determination rests

¹ National Working Group on Foster Care and Education. (2018). *Fostering success in education: National factsheet on the educational outcomes of children in foster care*. Retrieved from <http://www.fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx>.

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

ultimately with the LDSS or VA, after consultation with the LEA, and that children in foster care are entitled to transportation provided by the LEA in order to remain enrolled in the school they attended at the time of placement. Chapter 56 also set forth protocol for LEAs and CWAs to follow to ensure continuity in school enrollment.

III. Program Implications

Chapter 56 codified more general federal mandates into specific state requirements for LDSSs, VAs and LEAs related to the enrollment and transportation of youth in foster care in school. Implementation of the provisions described below, as set forth by Chapter 56, is instructed by the attached tool kit (see section IV).

The “**district of origin**” is the school district in which the student was attending a public school or preschool on a tuition-free basis or was entitled to attend at the time of placement into foster care, which is different from the district of residence.

The “**school of origin**” is the school the child was attending at the time of the foster care placement or at the time of a change in foster care placement.

The “**district of residence**” is the school district in which the child is residing due to foster care placement, which is different from district of origin

The “**district of attendance**” is the school district where the student placed in foster care is enrolled after a best interest determination is made.

Best Interest Determination

When a child is placed in foster care, or changes placements, the LDSS must determine whether the child will attend his or her school of origin, or a different school located in the school district of residence, in accordance with a best interest determination. This determination must be made in consultation with the others, including relevant school personnel; however, the final decision is with the LDSS. The cost of transportation may not be a factor in the determination.

The child is entitled to attend the designated school for the duration of his or her time in foster care, until the end of the school year in which the child is discharged from foster care, and for one additional year if that year is the final year in such school building.

Transportation

A student in foster care is entitled to receive transportation to attend the school of origin. The school district of attendance must provide the necessary transportation for the student in foster care and such transportation will be aidable up to fifty miles each way. This also applies when a student is designated to attend the school district of residence, rather than the school of origin, any cost incurred for transportation of that student is aidable and subject to determinations made by the commissioner of education.

IV. Required Action

LDSSs and VAs must utilize the attached tool kit to meet their responsibilities under Chapter 56. The tool kit is intended to facilitate transparent communication between child welfare and educational agencies as they work to meet the educational needs of students in foster care. It contains detailed instructions and forms required for the transporting and enrollment of children in foster care in school. LDSSs and VAs must implement the applicable requirements in the tool kit. Additionally, LDSSs and VAs should become familiar with requirements for LEAs contained in the tool kit. The shared knowledge of each agency's separate roles and responsibilities will help facilitate effective and timely coordination.

Detailed guidance, step by step instructions, and corresponding forms can be found in the tool kit on each element described below.

Best Interest Determination

LDSSs must determine, in consultation with relevant school personnel and others, whether it is in the best interest of a youth in foster care to attend the school of origin or a different school in the school district of residence. The LDSS makes the final determination on the child's school of attendance based on the best interest determination. The presumption is that a student should remain in the school he or she is currently attending (school of origin) unless a change in school placement is in the child's best interest.

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

Point of Contact (POC)

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

- Inform, either orally or in writing, 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
- Collaborate with the LEAs to make a best interest determination. The Best Interest Determination Transmittal Form, and the OCFS 2999 Form, must be completed, maintained in the case record, and a copy of both forms provided to the LEA POC of the school district of origin, and, if a school change is recommended, to the LEA POC at the school district of attendance, no later than 10 days after the placement of a child in foster care or a change in foster care placement.
- After notifying the LEA POC of the best interest determination, collaborate with the LEA POC for the child's immediate or continued enrollment in school. If the child is changing schools, the LEA POC must ensure that the student is immediately

enrolled in the designated school regardless of whether all necessary documentation is available. In addition, the LDSS POC and LEA POC should collaborate to develop any interim transportation plan that may be necessary

- Provide the LEA POC of the school district of origin and the school district of attendance with any other information essential to the maintenance of educational stability, meeting the student's educational needs and the provision of transportation.
- Inform the School District of Attendance immediately regarding any changes to the LDSS staff listed as contacts on the Local Transportation Agreement for Students in Foster Care

Local Transportation Agreement for Students in Foster Care

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

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

The LDSS POC must inform the School District of Attendance immediately regarding any changes to LDSS staff listed as contacts in the Local Transportation Agreement for Students in Foster Care form.

In addition to the Local Transportation Agreement for Students in Foster Care form, an Individual Transportation Plan for a Student in Foster Care form must be completed by the LEA POC, after agreement with the LDSS. This plan serves as a record that transportation is being provided in a timely manner that is consistent with the protocol.

While a permanent transportation plan is being arranged, LDSSs are encouraged to collaborate with school districts to ensure that students in foster care who remain in their current school are provided with transportation. All available resources should be explored and creative strategies should be employed (see tool kit for a list of suggested strategies).

V. Systems Implications

None

VI. Contacts

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

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VII. Effective Date

This policy directive is effective immediately.

/S/ Laura M. Velez

Issued By:

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Title: Deputy Commissioner

Division/Office: Child Welfare and Community Services