



EVERY STUDENT SUCCEEDS ACT (ESSA) EXCERPTS:

PROVISIONS ON EDUCATIONAL STABILITY OF CHILDREN IN FOSTER CARE

INTRODUCTION

In recognition of the unique needs of children involved in the child welfare system, both Federal and State governments have launched efforts to increase school stability and improve education outcomes for students in foster care. The federal ***Fostering Connections to Success and Increasing Adoptions Act of 2008*** took a significant step by requiring State and tribal child welfare agencies collaborate with schools to ensure children in foster care are able to continue attending their school of origin, when in the child's best interest. In December of 2015, the federal ***Every Student Succeeds Act (ESSA)*** was passed, reauthorizing the ***Elementary and Secondary Education Act of 1965 (ESEA)***. ESSA's provisions for schools regarding the educational stability of children in foster care generally mirror similar provisions in the federal *Fostering Connections Act* governing State, tribal and local child welfare agencies. The ESSA provisions on school stability for foster children take effect on December 10, 2016.

EDUCATIONAL STABILITY AND BEST INTEREST DETERMINATIONS

A child placed in foster care shall remain in the school of origin, unless a determination is made that it is not in the child's best interest. This decision must be based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting and proximity to the school where the child is enrolled at the time of foster placement (school of origin). Once the *Best Interest Determination* is made, it is recommended that the school notify all parties involved of this decision and the relevant considerations in writing, in collaboration with the child welfare agency.

20 U.S.C. § 6311(g)(1)(E)

(g) OTHER PLAN PROVISIONS –

(1) DESCRIPTIONS – Each State plan shall describe. . . .

(E) the steps a State educational agency will take to ensure collaboration with the State agency responsible for administering the State plans under parts B and E of title IV of the *Social Security Act* (42 U.S.C. 621 et seq. and 670 et seq.) to ensure the educational stability of children in foster care, including assurances that –

- (i) any such child enrolls or remains in such child's school of origin, unless a determination is made that it is not in such child's best interest to attend the school of origin, which decision shall be based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;
- (ii) when a determination is made that it is not in such child's best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment;
- (iii) the enrolling school shall immediately contact the school last attended by any such child to obtain relevant academic and other records. . . .

DATE: December 1, 2016

SOURCE: Nebraska Department of Education's *Initiative on Education of Systems-Involved Students (ESIS)*

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. For comments regarding this document, contact nde.guidance@nebraska.gov

STATE AND LOCAL POINTS OF CONTACT

ESSA requires the State educational agency (e.g., Nebraska Department of Education) and local educational agencies (e.g, school districts and Educational Service Units) collaborate with child welfare agencies to ensure the educational stability of children in foster care. To facilitate this collaboration, Nebraska's "**Fostering Connections in Education**" **Liaison Network (FCLN)** was established in 2011 and includes State, regional and local Points of Contact (POC) designated by the schools, child welfare, juvenile/criminal justice and behavioral health systems.

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(iv) the State educational agency shall designate an employee to serve as a point of contact for child welfare agencies and to oversee implementation of the State agency responsibilities required under this sub-paragraph, and such point of contact shall not be the State's Coordinator for Education of Homeless Children and Youths under section 722(d)(3) of the *McKinney-Vento Homeless Assistance Act* (42 U.S.C. 11432(3)). . . .

20 U.S.C. § 6312(c)(5)(A)

(c) ASSURANCES – Each local educational agency plan shall provide assurances that the local educational agency will -

(5) collaborate with the State or local child welfare agency to -

(A) designate a point of contact if the corresponding child welfare agency notifies the local educational agency, in writing, that the agency has designated an employee to serve as a point of contact for the local educational agency. . . .

ADDITIONAL SCHOOL TRANSPORTATION

Children in foster care may need additional transportation to remain in the school of origin, when in their best interest. However, transportation cost shall **not** be considered in the *Best Interest Determination*.

20 U.S.C. § 6312(c)(5)(B)

(c) ASSURANCES – Each local educational agency plan shall provide assurances that the local educational agency will -

(5) collaborate with the State or local child welfare agency to -

(B) by not later than 1 year after the date of enactment of the *Every Student Succeeds Act*, develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the time in foster care, which procedures shall -

(i) ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with the section 475(4)(A) of the *Social Security Act* (42 U.S.C. 685(4)(A)); and

(ii) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools or origin, the local educational agency will provide transportation to the school of origin if

(I) the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation;

(II) the local educational agency agrees to pay for the cost of such transportation; or

(III) the local educational agency and the local child welfare agency agree to share the cost of such transportation. . . .

CONSOLIDATED STATE PLAN

ESSA requires the State Educational Agency (SEA) to develop a *Consolidated State Plan* that includes a description of how *Title IV, Part A* funds will support State and local efforts to ensure all children have the opportunity to meet State academic, career and technical standards and graduate from high school.

34 C.F.R. § 299.19 SUPPORTING ALL STUDENTS

(a) Well-rounded and supportive education for students.

- (1) In its consolidated State plan, each SEA must describe how it will use title IV, part A funds and funds from other included programs, consistent with allowable uses of funds provided under those programs, to support State-level strategies and LEA use of funds designed to ensure that all children have a significant opportunity to meet challenging State academic standards and career and technical standards, as applicable, and attain, at a minimum, a regular high school diploma consistent with § 200.34. This description must . . .
 - (iii) Describe how, when developing its State strategies in paragraph (1) and, as applicable, paragraph (2), the SEA considered the academic and non-academic needs of the subgroups of students in its State including:
 - (A) Low-income students.
 - (B) Lowest-achieving students.
 - (C) English learners.
 - (D) Children with disabilities.
 - (E) Children and youth in foster care.
 - (F) Migratory children, including preschool migratory children and migratory children who have dropped out of school.
 - (G) Homeless children and youths.
 - (H) Neglected, delinquent, and at-risk students identified under title I, part D of the Act, including students in juvenile justice facilities.
 - (I) Immigrant children and youth.
 - (J) Students in LEAs eligible for grants under the Rural and Low-Income School program under section 5221 of the Act.
 - (K) American Indian and Alaska Native students.

STATE AND LOCAL REPORT CARDS ON STUDENT ACHIEVEMENT AND GRADUATION RATES

Under ESSA, the State and Local Educational Agencies (SEA and LEAs) are required to report data on student achievement and high school graduation rates for all students, including children in foster care.

20 U.S.C. § 6311(h)(1)(C)(ii)-(iii)

(h) REPORTS. -

(1) ANNUAL STATE REPORT CARD. --

(C) MINIMUM REQUIREMENTS. -- Each State report card required under this subsection shall include the following information

- (ii) For all students and disaggregated by each subgroup of students described in subsection (b)(2)(B)(xi), homeless status, status as a child in foster care, and status as a student with a parent who is a member of the Armed Forces (as defined in section 101(a)(4) of title 10, United States Code) on active duty (as defined in section 101(d)(5) of such title), information on student achievement on the academic assessments described in subsection (b)(2) at each level of achievement, as determined by the State under subsection (b)(1).
- (iii) For all students and disaggregated by each of the subgroups of students, as defined in subsection (c)(2), and for purposes of subclause (II) of this clause, homeless status and status as a child in foster care—
 - (I) information on the performance on the other academic indicator under subsection (c)(4)(B)(ii) for public elementary schools and secondary schools that are not high schools, used by the State in the State accountability system; and
 - (II) high school graduation rates, including four-year adjusted cohort graduation rates and, at the State's discretion.

34 C.F.R. § 200.33 Calculations for Reporting on Student Achievement and Progress toward Meeting Long-Term Goals

(a) Calculations for reporting student achievement results.

- (1) Consistent with paragraph (a)(3) of this section, each State and LEA report card must include the percentage of students performing at each level of achievement under section 1111(b)(1)(A) of the Act (e.g., proficient, advanced) on the academic assessments under section 1111(b)(2) of the Act, overall and by grade.
- (2) Consistent with paragraph (a)(3) of this section, each LEA report card must also--
 - (i) Compare the results under paragraph (a)(1) of this section for students served by the LEA with students in the State as a whole; and
 - (ii) For each school served by the LEA, compare the results under paragraph (a)(1) of this section for students enrolled in the school with students served by the LEA and students in the State as a whole.
- (3) Each State and LEA report card must include, with respect to each reporting requirement under paragraphs (a)(1) and (2) of this section--
 - (i) Information for all students;
 - (ii) Information disaggregated by—
 - (A) Each subgroup of students described in § 200.16(a)(2);
 - (B) Migrant status;
 - (C) Gender;
 - (D) Homeless status;
 - (E) Status as a child in foster care; and
 - (F) Status as a student with a parent who is a member of the Armed Forces on active duty or serves on full-time National Guard duty; and
 - (iii) Results based on both—
 - (A) The percentage of students at each level of achievement, in which the denominator includes the greater of—
 - (1) 95 percent of all students, or 95 percent of each subgroup of students, who are enrolled in the school, LEA, or State, respectively; or
 - (2) The number of all such students enrolled in the school, LEA, or State, respectively, who participate in the assessments required under section 1111(b)(2)(B)(v) of the Act; and
 - (B) The percentage of students at each level of achievement, in which the denominator includes all students with a valid test score.

(b) Calculation for reporting on the progress of all students and each subgroup of students toward meeting the State-designed long-term academic achievement goals.

- (1) Each State and LEA report card must indicate whether all students and each subgroup of students described in § 200.16(a)(2) met or did not meet the State measurements of interim progress for academic achievement under § 200.13(a).

34 C.F.R. § 200.34(e)(1)-(2) High School Graduation Rate

(e) Reporting on State and LEA Report Cards.

- (1) A State and LEA report card must include, at the school, LEA, and State levels--
 - (i) Four-year adjusted cohort graduation rates and, if adopted by the State, extended-year adjusted cohort graduation rates for all students and disaggregated by each subgroup of students described in § 200.16(a)(2), homeless status, and status as a child in foster care.
 - (ii) Whether all students and each subgroup of students described in § 200.16(a)(2) met or did not meet the State measurements of interim progress for graduation rates under § 200.13(b); and
- (2) In reporting graduation rates disaggregated by each subgroup of students described in § 200.16(a)(2), homeless status, and status as a child in foster care, a State and its LEAs must include students who were children with disabilities, English learners, children who are homeless (as defined in § 200.30(f)(1)(ii)), or children who are in foster care (as defined in § 200.30(f)(1)(iii)) at any time during the cohort period.

CROSS-SYSTEMS INFORMATION SHARING AND PRIVACY

Timely notification and appropriate information-sharing between schools and the child welfare system provides the foundation for effective communication, coordination and collaboration, essential to improving school stability and educational outcomes for children in foster care. In every instance, both the school and the child welfare agency must comply with Federal and State statutory requirements protecting student privacy.

The *Uninterrupted Scholars Act (USA)*, enacted on January 14, 2013, amends *Section 444(b)* of the *General Education Provisions Act*, more commonly known as the *Family Educational Rights and Privacy Act (FERPA)* (20 U.S.C. §1232(g)(b); 34 CFR Part 99). Under the USA amendment, educational agencies and institutions are permitted to disclose a student's education records, without parental consent, to a caseworker or other representative of a State, tribal or local child welfare agency authorized to access a student's case plan. In specified types of judicial proceedings in which a parent is involved, the Act also allows educational agencies and institutions to disclose a student's educational records pursuant to a judicial order without requiring additional notice to the parent.

20 U.S.C. § 1232g(b); 34 C.F.R. Part 99

The *Uninterrupted Scholars Act (USA)* amends the *Family Educational Rights and Privacy Act of 1974*, with the addition of the following:

“An agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in section 4 of the *Indian Self-Determination and Education Assistance Act* (25 U.S.C. § 450b)), who has the right to access a student's case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records.”; and

“ . . . except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the *Child Abuse Prevention and Treatment Act* (42 U.S.C. § 5101 note) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required.”