

# Federal Law: Promoting Educational Stability for Students in Foster Care

Increasing concerns from educators and policymakers about the barriers to educational success experienced by students in foster care have led to a number of changes in federal laws, policies, and administrative rules. These laws, policies, and rules focus on educational stability as a core component and work together to establish stronger protections that support improved student outcomes. This resource provides a brief overview of key provisions related to students in foster care in Title I, Part A of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA). Those provisions support the rights of children and families, promote success through educational stability, and facilitate cross-system collaboration and information sharing.

## Keep in Mind

Foster care is defined as 24-hour/day substitute care for children placed away from their parents or guardians and for whom the child welfare agency (e.g., state or local child welfare agency or Tribal foster care, etc.) has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions, and pre-adoptive homes. 45 C.F.R. § 1355.20

## What do educators need to know about supporting students in foster care?

Title I, Part A of ESEA focuses on providing all students with a fair, equitable, and high-quality education while closing gaps in educational achievement. In line with these goals, protections for students in foster care were added to ESEA that promote school stability and success and require collaboration between child welfare agencies and educational providers. These requirements mirror and enhance similar provisions in the **Fostering Connections to Success and Increasing Adoptions Act of 2008**. Additionally, ESEA includes a requirement that each state education agency (SEA) designate a foster care point of contact (POC); similarly, the ESEA requires local educational agencies (LEAs) to designate foster care POCs in certain circumstances outlined in the statute. These POCs are responsible for overseeing the implementation of the Title I, Part A foster care provisions by ensuring students do not experience barriers to enrollment and attendance.

“Considered together, these laws make clear that the educational stability of children in foster care is a joint responsibility of educational and CWAs [child welfare agency], and to successfully implement these provisions, these entities will need to collaborate continuously.”

—U.S. Department of Education and U.S. Department of Health and Human Services, 2016

The following table provides a description of specific protections included in foster care provisions in Title I, Part A and related laws and summarizes key points related to implementing them.

**Table 1. Educational Stability Provisions in Title I, Part A**

Specific Protection	Summary of Key Points <sup>1</sup>
<b>School of Origin and Best Interest Determinations (BID)</b>	<ul style="list-style-type: none"> <li>■ Defines school of origin as the school in which a child is enrolled at the time of placement in foster care. If a child’s foster care placement changes, the school of origin would then be considered the school in which the child is enrolled at the time of the placement change (ED and HHS, 2016, Q. 10).</li> <li>■ Provides students in foster care with the right to remain in their schools of origin for the duration of their time in care, even if their foster home is no longer within the school’s attendance boundary or unless a determination is made that it is not in the child’s best interest (20 U.S.C. § 1111(g)(1)(E)(i)). Requires that decisions about school placement be based on the best interest of the student. Schools have the flexibility to include staff beyond the LEA foster care point of contact (POC) based on the educational needs of individual students (ED, 2016, Q. 14).</li> </ul>
<b>Immediate Enrollment in School and Transfer of School Records</b>	<ul style="list-style-type: none"> <li>■ Provides that when the BID finds that transferring to the local attendance area school is in the best interest of the student, the local area school must immediately enroll the student even if the student does not have typically required documentation, like school or medical records (20 U.S.C. § 1111(g)(1)(E)(ii)).</li> <li>■ Defines immediate enrollment as enrolling the student as soon as possible in order to prevent educational discontinuity (ED and HHS, 2016, Q 33).</li> <li>■ Requires both SEAs and LEAs to review and revise enrollment policies, taking into consideration special populations of students such as justice-involved youth in foster care, students with disabilities receiving special education and related services, or English Learners (ELs), to ensure requirements related to documents normally required for enrollment do not create a barrier (ED and HHS, 2016, pp. 20).</li> <li>■ Places responsibility on the enrolling school for contacting the student’s prior school to obtain relevant academic and other records (ED and HHS, 2016, Q. 33).</li> </ul>



Specific Protection	Summary of Key Points <sup>1</sup>
<b>Transportation to the School of Origin</b>	<ul style="list-style-type: none"> <li>■ Provides the right to transportation to the school of origin for students in foster care for the duration of their time in care. LEAs, in collaboration with CWAs, must develop and implement clear written procedures that address which agency arranges, provides, and funds school of origin transportation. In accordance with section 475(4)(A) of the Social Security Act (42 U.S.C. § 675(4)(A)), transportation must be provided in a cost-effective manner (20 U.S.C. § 1112(c)(5)(B)).</li> <li>■ Provides options for offsetting excess costs related to school of origin transportation by providing that the local CWA cover the excess costs, the LEA cover the excess costs, or the CWA and LEA choose to split the excess cost (20 U.S.C. § 1112(c)(5)(B)).</li> <li>■ Encourages LEAs and CWAs to continue to prioritize the educational needs of students when they leave foster care by continuing school of origin transportation until the end of the school year when doing so would be in the best interest of the students. ED, 2016, Q. 25)</li> </ul>
<b>Dispute Resolution</b>	<ul style="list-style-type: none"> <li>■ Encourages LEAs and SEAs to work with CWAs to create dispute resolution procedures that address BIDs. Further, when a dispute is being resolved, the student must remain in the school of origin to the extent feasible (ED and HHS, 2016, Q19).</li> <li>■ Requires that transportation policies include procedures to address disagreements between child welfare and educational agencies related to the provision of school of origin transportation. Transportation must be provided to eligible students while the respective agencies mediate the dispute (ED and HHS, 2016, Q. 28).</li> </ul>
<b>Federal Reporting Requirements and Student Data Privacy</b>	<ul style="list-style-type: none"> <li>■ Requires reporting academic achievement and graduation rates of students in foster care in state report cards (20 U.S.C. § 1111(h)(1)(C)(ii-iii)).</li> <li>■ Beginning with school year 2022–23, ED<i>Facts File Specification 222</i>, known as Foster Care Enrolled, will require each LEA receiving a Title I-A subgrant to report the number of students in foster care enrolled in the district. Note that LEAs and SEAs already report academic achievement data and adjusted cohort graduation rate (ACGR) data for the students in the foster care subgroup. File Specification 222 adds an additional collection for this population.</li> <li>■ Under the Uninterrupted Scholars Act of 2014 exception, schools can share a student’s education records with an agency caseworker or other representative of the state or local child welfare agency if they are “legally responsible...for the care and protection of the student” and have the right to access a student’s case plan (20 U.S.C. § 1232g(1)(L)).</li> <li>■ See <a href="#">Family Education Rights and Privacy Act (FERPA)</a> for additional information related to the privacy of student education records.</li> </ul>

<sup>1</sup>Statutory provisions are requirements, while non-regulatory guidance provisions are merely suggestions.



## References

### **Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care (2016)**

This guidance document jointly issued by the U.S. Departments of Education and Health and Human Services provides information to states, school districts, and child welfare agencies on new provisions in ESSA for supporting children and youth in foster care.

[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)

ESSA, passed in 2015, revises the ESEA. This includes the addition of rights addressed in this brief for students placed in foster care. [PUBL095.PS \(congress.gov\)](#)

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