

**New Mexico Public Education Department
Student Success and Wellness Bureau**



**EDUCATIONAL STABILITY OF STUDENTS
IN FOSTER CARE**

**Dispute Resolution Process for Educational
Decision Makers, Foster Parents, Guardians ad Litem,
and Youth Attorneys**

Every effort must be made to resolve a Best Interest Determination (BID) dispute at the local level before it is submitted to the New Mexico Public Education Department (PED). Resolving the dispute at the local level means resolving it at the level of the Local Educational Agency (LEA) or state charter school, and the Child Welfare Agency (CWA), which in New Mexico is known as the Children, Youth and Families Department (CYFD).

The purpose of this procedure is to provide an avenue for the educational decision maker, foster parent, guardian ad litem or youth attorney to request assistance in resolving a dispute regarding the educational stability of students in foster care. This procedure should not be invoked to resolve disputes between the CWA and LEA or state charter school nor should it be used to by-pass or supersede a decision made by the PED and CYFD Deputy Cabinet Secretaries, or their designees, regarding a dispute between the CWA and LEA or charter school.

Notwithstanding the other provisions herein, any decision made by the PED and CYFD Deputy Cabinet Secretaries, or their designees, during the procedures invoked when a CWA and LEA or state charter school disagree shall stand for purposes of these dispute resolution procedures, provided that the educational decision maker, foster parent, guardian ad litem or youth attorney have had opportunity to provide written submissions to the Departments in accordance with the procedures invoked when a CWA and LEA or state charter school disagree.

If through a BID process a decision is made to place a child in foster care in a school other than the school of origin or school requested by the educational decision-maker, foster parent, , guardian ad litem, or youth attorney, these persons shall be provided written notice of their right to appeal the decision. To the extent feasible and appropriate, an LEA or state charter school must ensure that the student remains in his or her school of origin while the disputes are being resolved to minimize disruptions and reduce the number of moves between schools. (See ESEA section 1111(g)(1)(E)(i)).

Appeal processes described in this policy exclude any instances where the child is moved from his or her school of origin in an emergency situation or for special behavioral health needs not available in the county of the school of origin.

Level 1 LEA/State Charter School Superintendent/School Leader or Designee

Note: If the district superintendent/state charter school director was involved in the original decision, the appeal process should begin at Level 2.

1. Initiating the Level 1 Dispute

To dispute a BID school placement decision for a student in foster care, persons covered in this appeal process must request dispute resolution in writing by submitting a dated appeal letter specifying the school in which enrollment is sought and the basis for seeking enrollment in that school. The appeal letter must include the name and contact information (phone, email and mailing address) for the person making the appeal.

The submission of the appeal letter may be considered incomplete if the letter is not dated or is missing the name or contact information. The contact information must be continuously updated while the dispute is in the process of being resolved.

The appeal letter must be submitted within five (5) school days from the date the LEA or state charter school delivered the letter with its decision and written notice of the right to dispute the decision. An additional three (3) calendar days may be added if the decision and written notice is delivered by mail. The letter may be submitted via an email with the subject line “Student in Foster Care Appeal” and copied to the LEA’s or state charter school’s Point of Contact (POC) for students in foster care. The letter may also be submitted by delivering to the district office addressing it to the attention of the superintendent or charter school leader along with a copy delivered to the POC.

The submission of the appeal letter by email or delivery to the district office as required above initiates the dispute process. Once the dispute process is initiated, the student shall remain in the school of origin, to the extent feasible, until the dispute reaches its final resolution.

Note: During the dispute resolution process, the student shall be provided with all appropriate educational services for which the student is eligible. Students attending their school of origin during the pendency of the dispute will be entitled to receive transportation. The LEA or state charter school will provide or arrange transportation during the dispute and the CWA and LEA are responsible for sharing any additional costs of transportation while the dispute is being resolved.

Once the dispute is resolved, transportation will be provided pursuant to the local transportation procedures developed collaboratively between the LEA or state charter school and the CWA. In the event agreement cannot be reached as to the transportation procedures, the CWA will determine the transportation procedures.

2. LEA/State Charter School Decision

The superintendent/charter school leader or designee, will arrange for a personal conference to be held with him/her, the person making the appeal, and at least one representative of the CWA. The student may attend the personal conference if determined to be appropriate by the superintendent/charter school leader or designee, along with the CWA. The personal conference will be arranged within five (5) business days of the LEA's/state charter school's receipt of the Level 1 appeal letter and will take place as expeditiously as reasonably possible.

Within five (5) business days after the personal conference, the superintendent/charter school leader or designee will inform the person making the appeal of the decision in writing, using the contact information provided in the appeal letter, or as updated. The superintendent/charter school leader or designee may consult with the LEA's/state charter school's POC for foster care in making the decision. A copy of the decision will be provided to the representative(s) of the CWA who were present at the personal conference. The written decision must include:

- A copy of the complete Level 1 appeal packet (letter and any supporting documentation).
- The decision rendered at Level 1 by the superintendent or designee and an explanation for that decision.
- Instructions regarding how to file a Level 2 dispute, and the name, phone number and email address of the Public Education Department's (PED) foster care point of contact.

3. Deadline to Appeal LEA/State Charter School Decision

If the person making the appeal disagrees with the level 1 decision and would like to appeal to Level 2, they shall inform the LEA superintendent/state charter school leader or designee of the intent to appeal to Level 2 within five (5) school days of delivery of the LEA's/state charter school's decision to the address provided in the notice of appeal or subsequent update. An additional three (3) calendar days may be added if the decision and written notice is delivered by mail.

If the appeal is not submitted within this timeframe, the student shall be enrolled and provided all appropriate educational services in the school determined by the LEA. If that school is not the school the student had been attending during pendency of the dispute, the LEA will prioritize minimizing the disruption to the child's education in effecting the transition to the new school.

Level 2 State Education Agency (SEA): Public Education Department

1. Initiating the Level 2 Dispute

If a person covered in this appeal process disagrees with the decision rendered by the LEA's superintendent/state charter school leader or designee at Level 1, he/she may appeal the decision to the PED within the deadline provided above. To appeal to Level 2, they must request an appeal in writing by submitting a dated appeal letter, which must include:

- The school in which enrollment is sought and the basis for seeking enrollment in that school.
- The name and contact information (phone, email and mailing address) for the person making the appeal, which must be updated throughout the appeal.
- A copy of the previous appeal letter submitted at Level 1.
- A copy of the decision rendered by the LEA at Level I.

The letter must be submitted via an email to the PED's foster care point of contact, with the subject "Foster Child Appeal". The letter also must be submitted to the LEA superintendent/state charter school leader, via an email with the subject "Foster Child Appeal," or delivered to the district office to the attention of the superintendent/state charter school leader. The appeal letter must be submitted to both the SEA and LEA superintendent/state charter school leader. As provided above, the appeal letter must be submitted within five (5) school days of delivery of the Level 1 appeal decision from the LEA, and an additional three (3) calendar days may be added if the decision and written notice is delivered by mail.

The LEA has an additional five (5) school days from its receipt of the appeal letter to submit its response to the appeal letter to the PED foster care point of contact, via an email with the subject "Foster Child Appeal." Documents submitted by either party after the applicable deadlines will not be considered.

The student shall remain in the school of origin until the dispute reaches its final resolution. The student shall be provided with all appropriate educational services for which the student is eligible during the pendency of the dispute. Students attending their school of origin during the pendency of the dispute will be entitled to receive transportation. The LEA will provide or arrange transportation during the dispute; however, the CWA and LEA are responsible for sharing any additional costs of transportation during the pendency of disputes. Once the dispute is resolved, transportation will be provided pursuant to the local transportation procedures developed collaboratively between the LEA(s) and local child welfare agencies.

2. SEA/CWA Decision

The Level 2 decision will be made by a three-person panel including the PED's foster care point of contact, another PED staff member selected based upon the student's academic, behavioral and health needs, and a representative from CYFD (CWA Point of Contact) that was not involved in the initial decision. The Level 2 review will be an impartial review of all relevant information. The

panel will arrange to meet within five (5) business days of the deadline for receipt of additional documentation from the LEA, and the meeting shall occur as expeditiously as reasonably possible. The meeting may occur in person, by phone or other device, at the discretion of the panel. The panel shall make a decision within five (5) business days of the panel meeting.

The PED's foster care point of contact will forward the final written decision to the person making the appeal, the LEA superintendent or state charter school leader, and the representative from CYFD who participated at the panel meeting. The written decision must include:

- A copy of the complete Level 2 appeal packet.
- The decision rendered at Level 2 and an explanation of that decision.

Nothing in these procedures precludes the parties from addressing concerns through legal action in accordance with the New Mexico Children's Code.

Note: Schools must check at the beginning of the school term, and periodically throughout the school term, for updates on these procedures issued by the Public Education Department. Refer to Rule 6.10.3.8 NMAC for other forms of complaints which may be submitted with the Department.