

## Student Success and Wellness Bureau

Providing Educational Stability  
and Supporting Students in Foster Care

Every Student Succeeds Act (ESSA)



## “NEW MEXICO RISING”

see the state’s Every Student Succeeds Act (ESSA) plan at:

<https://webnew.ped.state.nm.us/wp-content/uploads/2018/02/FINAL-APPROVED-NM-State-ESSA-Plan.pdf>

# Guidance on Ensuring Educational Stability for Students in Foster Care

## Introduction and Purpose of this Document

The purpose of this document is to provide technical assistance to Local Education Agencies (LEAs) and state charter schools in order for them to develop procedures and implement services to students in foster care ensuring compliance with federal and state statutes.

The Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), includes key provisions for supporting the educational stability of students who are in foster care. These provisions are intended to assist students in succeeding in school and extra-curricular activities by reducing the number of educational disruptions while increasing school stability. During the 2017 New Mexico legislative session, legislation was passed which enhances some of the ESSA provisions and applied the provisions to all districts and state charter schools regardless of whether they receive Title I funds.

Sources of information for this document include the Every Student Succeeds Act, as amended through P.L. 114-95, Enacted December 10, 2015, <https://www2.ed.gov/documents/essa-act-of-1965.pdf> New Mexico statutes 22-13-33 NMSA 1978 and 22-12-10 NMSA, and *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, (issued jointly by the U.S. Department of Education (ED) and the U.S. Department of Health and Human Services (HHS) on June 23, 2016, <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf> .

*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.*

## Introduction to Educational Stability Provisions for Students in Foster Care

### Educational entities required to implement ESSA's foster care provisions

School districts, local (dependent) charter schools and state charter schools fall under ESSA requirements for foster care.

### Foster care defined (45 CFR 1355.20 and 22-13-11 (A) NMSA 1978)

Foster care means 24-hour substitute care for children who are placed away from their parents or guardians and who are in the custody of state and tribal child welfare agencies. In New Mexico, the Children Youth and Families Department (CYFD) is the state child welfare agency (CWA). Because the majority of foster care custody affecting LEAs are under CYFD jurisdiction, this document refers primarily to CYFD as the CWA. CYFD maintains contact with tribal child welfare agencies. Foster placements include, but are not limited to, foster family homes, foster homes of relatives, group homes, residential facilities, emergency shelters and pre-adoptive homes. A student is in foster care in accordance with this definition regardless of whether the

foster care facility is licensed and payments are made by the state, tribal or a local agency for the care of the student, whether adoption subsidy payments are being made prior to the finalization of an adoption or whether there is federal matching of any payments that are made. As per changes to the McKinney-Vento act, children awaiting foster care placement are no longer defined as children experiencing homelessness.

### Federal legislation

Research consistently indicates that students in foster care are more mobile than other students, resulting in frequent school changes. Large cities, suburbs and small communities in rural areas sometimes do not have enough foster homes to keep children close to their school of origin. 75% of students in foster care change schools unexpectedly each school year; some students move multiple times in a school year. These school changes result in slower academic growth, decreased levels of academic achievement, lower test scores, and lower graduation rates.

The U.S. Department of Education (ED) and the US Department of Health and Human Services (HHS) have worked together for a number of years to address the educational barriers related to frequent school changes. The Fostering Connections and Increasing Adoptions Act of 2008 represented a significant step forward in addressing educational stability by requiring child welfare agencies to collaborate with districts in an effort to keep a student in foster care in their same school (school of origin), even if a foster care home placement changes to a location outside of the school's attendance area. In 2011, HHS and ED hosted a national meeting on the education of children in foster care which included leaders from state and tribal child welfare agencies, state educational agencies (SEAs) and state juvenile courts to create action plans to strengthen educational supports and services for children in foster care.

The Uninterrupted Scholars Act of 2013 amended the Family Educational Rights and Policy Act (FERPA) to permit educational agencies and institutions to disclose, without parental consent or the consent of an eligible student, educational records of a student in foster care to state and child welfare agencies.

ESSA compliments the Fostering Connections Act by emphasizing the importance of school stability and the establishment of ongoing partnerships between child welfare and educational entities at the state and local levels to ensure students' educational stability. It includes a requirement to keep students in foster care in their school of origin if at all possible and as determined through a process called Best Interest Determination. For more information including the foster care transition toolkit see <https://www2.ed.gov/about/inits/ed/foster-care/index.html>.

## New Mexico legislation

Legislation was passed during the New Mexico 2017 regular legislative session which further supports educational stability of students in foster care. 22-13-33 NMSA 1978, Appointing a point of contact person for certain students and 22-12-10 NMSA, Timely graduation and support for students who experience disruption in the student's education.

Key points 22-13-33 NMSA, 1978

- Each LEA/state charter school shall designate an individual to serve as a point of contact (POC) for students in foster care
  - Charter schools authorized by LEAs shall use the district's point of contact
  - Multiple school districts or state charter schools may share a single point of contact with approval from the PED and CYFD.
  - POC's Responsibilities:
    - complying with state policies and developing school district or charter school policies in collaboration with the Children, Youth and Families Department for:
      - best interest determinations about whether the student will remain in the school of origin;
      - transportation policies to ensure that students receive transportation to their school of origin if it is in their best interest to remain in the school of origin; and
      - dispute resolution;
    - convening or participating in best interest determination meetings in collaboration with the Children, Youth and Families Department pursuant to state policies and the school district's or charter school authorized by the department's policies; and
    - ensuring that transportation occurs to the student's school of origin pursuant to the school district's or charter school authorized by the department's policies and in compliance with state policies.

Additional POC Responsibilities:

- ensuring that a student has equal opportunity to participate in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;
- ensuring that a student in high school receives timely and ongoing assistance and advice from counselors to improve the student's college and career readiness;
- ensuring that a student receives all special education services and accommodations to which the student is entitled under state and federal law;
- identifying school staff at each school site who can ensure that students are appropriately supported throughout their enrollment;
- supporting communication among the school; the children, youth and families department; the student; the student's educational decision maker appointed by the children's court; caregivers; and other supportive individuals that the student identifies to ensure that the responsibilities listed in this subsection are implemented; and
- ensuring that other school staff and teachers have access to training and resources about the educational challenges and needs of system-involved youth, including trauma-informed practices and the impact of trauma on learning.

## Key Points 22-12-10 NMSA, 1978

Under New Mexico law, a student in foster care is considered to be a student who experiences disruption in his/her education and the following provisions apply:

- When a student who has experienced a disruption in the student's education transfers to a new public school or school district, the receiving school or school district shall communicate with the sending school district within two days of the student's enrollment. The sending school or school district shall provide the receiving school or school district with any requested records within two days of having received the receiving school's or school district's communication.
- A student who has experienced a disruption in the student's education transferring to a new school as the result of circumstances set forth in this section shall have:
  - priority placement in classes that meet state graduation requirements; and
  - timely placement in elective classes that are comparable to those in which the student was enrolled at the student's previous school or schools as soon as the school or school district receives verification from the student's records.
- For a student who has experienced disruption in the student's education at any time during the student's high school enrollment, a school district and public schools shall ensure:
  - acceptance of the student's state graduation requirements for a diploma of excellence pursuant to the Public School Code [Chapter 22 NMSA 1978];
  - equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;
  - timely assistance and advice from counselors to improve the student's college or career readiness; and
  - that the student receives all special education services to which the student is entitled.

## **ESSA Educational Stability Requirements**

### Collaboration among educational and child welfare agencies

ESSA requires that State Education Agencies (SEAs), the Public Education Department (PED) and Local Education Agencies (LEAs)/State Charter Schools communicate and collaborate on an ongoing basis with CWAs to ensure students' educational stability. LEA/State Charter School policies must emphasize the priority that students will remain in their school of origin whenever possible, even if the foster placement changes to a location outside of the school of origin's attendance area. Local policies and procedures must meet federal and state requirements, and follow CYFD Protective Services Department (PSD) procedures, but may be developed in consideration of the nature of the local community, culture, and resources. State Education Agencies (SEAs) are responsible for ensuring that LEAs/State Charter Schools implement educational stability requirements for students in foster care.

### School of origin

ESSA provisions emphasize the importance of limiting educational disruption by keeping students in foster care in their schools of origin, unless it is determined to be in their best interest to change schools.

The school of origin is the school in which a child is enrolled at the time of placement in foster care. An LEA/State Charter School must ensure that a child in foster care remains in the school of origin unless a determination, through the best interest determination process (discussed below), is made that it is not in the child's best interest to do so. If a child's foster care placement changes, the school of origin is considered to be the school the child was enrolled in at the time of the residential placement change.

Example: A child enters foster care and changes residences. She now lives 10 miles away from her school of origin (school A) and the closest school is school B. The child welfare agency and the district determine it is in the child's best interest to attend school B. One year later, this same student changes foster care placement. She now lives five miles away from school B and is closest to school C. For the purposes of determining which school is in this child's best interest, the custodial agency and the district should now consider school B as the school of origin.

When a determination is made that it is not in the student's best interest to remain in the school of origin, the student must be immediately enrolled in a new school, even if the student is unable to produce records normally required for enrollment. In New Mexico, the enrolling school shall immediately contact the school last attended by any such student to obtain relevant academic and other records. When a student in foster care experiences a disruption in their education, and transfers to a new public school or school district, the receiving school or school district shall communicate with the sending school district within two days of the student's enrollment. The sending school or school district shall provide the receiving school or school district with any requested records within two days of having received the receiving school's or school district's communication.

### Students exiting foster care and maintaining school of origin

LEAs/State Charter Schools must collaborate with state and tribal child welfare agencies to ensure that each student in foster care remains in the school of origin if it is determined to be in the student's best interest for the duration of the student's time in foster care. If a student exits foster care, LEAs/State Charter Schools should continue to prioritize educational stability. In addition to benefitting academically from school continuity, students need to be able to maintain connections with their peers, teachers and other supportive adults at the school during the transition out of foster care. LEAs/State Charter Schools are encouraged to adopt policies that allow a student who is exiting foster care to remain in their school of origin through the end of the school year or when there is a natural juncture, such as the end of a semester.

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

Every LEA/State Charter School is required by ESSA to work with the CWA to develop procedures for holding best interest determination for students in foster care. The best interest determination (BID) is the process by which the CWA and LEA/State Charter School decide whether it is in the student's best interest to stay in the school of origin when the foster placement changes to an area outside of the school's attendance area. It is preferable that a BID be conducted via a face-to-face meeting, although a conference call may be necessary in some situations. Either way, it is imperative that all the individuals involved are able to be active participants and have a meaningful student-centered dialog during the BID. The BID process is not to be completed by one person during separate conversations with participants which would preclude a collaborative discussion among participants.

The local CYFD office Permanency Planning Worker (PPW) or County Office Manager (COM) will notify the LEA Point of Contact (POC) when a BID is needed because a school placement change becomes necessary to a location outside of the school attendance area. The LEA/State Charter School POC will work with the CYFD staff to arrange for the best interest determination meetings, contact school staff who know the student well, and notify them of the BID meeting. The LEA/State Charter School POC will collaborate with the CYFD representative to ensure that the BID meeting process and outcomes are documented accurately, signatures of participants are obtained, and copies distributed to the applicable personnel. Records must be retained in accordance with applicable federal and state laws and regulations.

### **Recommended BID Required Participants:**

- LEA/State Charter School's POC for foster care.
- CYFD Permanency Planning Worker (PPW) assigned to the student.
- CYFD PSD County Office Education POC.
- Student in foster care, whenever possible and appropriate.
- Student's educational decision maker (EDM).
- School staff that are knowledgeable about the student and can provide pertinent input on the student's significant relationships (with peers and adults), academic progress, and social and emotional well-being. For students with an Individualized Education Program (IEP) or Section 504 plan under the Americans with Disabilities Act (ADA), an individual who is familiar with the student's IEP and required services and supports such as the student's case manager under Section W of 6.29.1.7 NMAC.
- Other individuals as appropriate and directed by LEA/State Charter School and/or CYFD. For potential cross-district transfers, this may include the Point of Contact from the other LEA. As per CYFD direction, participants may also include the child's attorney, foster care provider, and parent or guardian, when appropriate.

### Best Interest Determination process

The BID process is student-centered and a variety of issues must be considered in determining school placement. Factors to discuss and consider include, but are not limited to:

- Student's preference for school
- History of school transfers and how they have impacted the student
- Preference of the student's parent or educational decision maker
- Student's attachment to the school, including meaningful relationships with staff and peers
- Programs and activities that address the student's unique needs or interests (for example, extracurricular activities)
- Placement of the student's siblings
- Influence of school climate on the student, including safety, availability of services, and quality of the services in the school to meet the student's educational and socioemotional needs
- Length of the commute to a school other than the school of origin and how it would impact the student, based upon the student's age and developmental factors
- Whether the student is a student with a disability under IDEA who is receiving special education and related services, and the availability of the required services and supports in a school other than the school of origin
- Whether the student is a student with a disability under Section 504 who is receiving services, and the availability of the required services and supports in a school other than the school of origin
- Whether the student is an English Learner (EL) and is receiving language services, and the availability of these required services in a school other than the school of origin, consistent with Title VI and the EEOA.

NOTE: The potential need and additional expense for transportation to allow the student to remain in their school of origin is not a consideration when determining whether the student should remain in that school of origin. This is consistent with the program instruction released by U.S. Health and Human Services Department subsequent to the passage of the Fostering Connections Act, Public Law 110-351.

### Situations in which a student's foster care placement changes and a BID meeting is not necessary

If a student's foster care placement changes but the new location/placement is not outside of the school of origin's attendance area or geographic boundaries as determined by the local board of education, a BID meeting is not necessary.

### Emergency removal or placement change and removal from school of origin

In emergency removal situations when a student is removed from his or her home environment by CYFD, a formal BID meeting between CYFD and LEA/State Charter School personnel may not be feasible. In this situation, CYFD will contact the school and LEA/State Charter School POC the next school day to inform the school of the child's new school placement. The school in which the student was currently enrolled will use this information to mark the school absences as excused, update contact information for the child and immediately transfer records to the new school, if applicable.

### Resolution of disputes about the school placement that is in the best interest of the student

The local policies and procedures developed by the LEA must include a description of a dispute resolution process. The discussion during the best interest determination process must be student-centered and should consider relevant programming and related service needs. All efforts must be made to reach agreement in deciding the school placement that is in the best interest of the student regardless of the potential for the additional cost of transportation. As necessary, the LEA/State Charter School and local CYFD should make arrangements for additional discussions with the student's team until an agreement has been reached.

If the BID and additional good faith efforts result in an unresolvable dispute, the Regional Office Manager of CYFD's Protective Services Division, as the custodial agency, should be the final decision maker. The final decision by the CYFD Regional Office Manager should be made within forty-eight (48) hours of the best interest determination meeting and a written explanation should be provided to all involved parties, including the LEA/State Charter School.

If the educational decision maker, foster parent, guardian, guardian ad litem, or youth attorney disagrees with the school placement decision made by the CYFD Regional Office, the educational decision maker can access the PED's dispute resolution process on the PED's Student Success and Wellness Bureau's website.

### LEA disagreement with BID placement decision; appeal procedure for LEA

If an LEA disagrees with a BID school placement decision, the LEA may appeal to the PED Deputy Cabinet Secretary and CYFD Deputy Cabinet Secretary, or their designees. The LEA must notify each Deputy Cabinet Secretary, or their designees, in writing five (5) business days of the BID school placement decision requesting an appeal, and must include any documents considered in the BID placement decision.

The LEA must also deliver a copy of the request for appeal and the documents included with the request to the Educational Decision Makers, Foster Parents, Guardians ad Litem, or Youth Attorneys at the time of submitting the request with the Deputy Cabinet Secretaries, or their designees. The Educational Decision Makers, Foster Parents, Guardians ad Litem or Youth Attorneys must submit to the Deputy Cabinet Secretaries, or their designees, any items regarding the BID placement decision for their consideration. The submission must be made within five (5) business of delivery of the LEA's request to appeal. Only written submissions made timely by the LEA, and by the Educational Decision Makers, Foster Parents, Guardians ad Litem, or Youth Attorneys will be considered.

Following notification of an LEA's request to appeal, the PED Deputy Cabinet Secretary and CYFD Deputy Cabinet Secretary, or their designees, will meet in person, or by teleconference to review the determinations. The meeting must take place within twenty-five (25) calendar days of receipt of the request to appeal, unless any circumstances otherwise prevent it, in which case at a reasonable time thereafter not to exceed thirty (30) calendar days. The deadlines within this paragraph are not intended to be jurisdictional and are intended to be for the purpose of moving the process forward expeditiously.

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 in subsequent dispute resolution proceedings, provided that the educational decision maker, foster parent, guardian ad litem or youth attorney have had opportunity in accordance with the procedures herein to provide written submissions to the Departments to be considered for a BID placement decision.

#### Continued attendance at school of origin during a best interest determination dispute resolution

To the extent feasible and appropriate, an LEA/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)). Arrangements must be made during a dispute resolution process to allow the student to continue to attend the school of origin and be provided all educational services as well as being allowed to participate in all extra-curricular activities.

#### **Educational Stability for All Student Populations**

##### Students in foster care who have disabilities under the Individuals with Disabilities Education Act (IDEA) and under Section 504 of the Americans with Disabilities Act (ADA)

Students with disabilities under the IDEA must be provided a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). FAPE under IDEA includes the provision of special education and related services at no cost to the parents in accordance with a properly developed Individualized Education Program (IEP). IEPs must be updated at least annually and the LRE considered at that time. LRE means to the maximum extent appropriate, students with disabilities are educated with students who are not disabled, and that special classes, separate schooling, or other removal of student with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that the student cannot be educated satisfactorily in regular classes with the provision of supplementary aids and services.

LEAs/Charter Schools must make available a continuum of LRE placements in order to meet the unique needs of the student. See <https://webnew.ped.state.nm.us/wp-content/uploads/2018/03/Developing-Quality-IEPs.pdf>

Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if nondisabled.

Under IDEA, the student's placement decision must be made by a group of knowledgeable persons, including the student's parents or guardians. This group may also include staff from the CWA.

In 2013, the ED Office of Special Education and Rehabilitation Services released a Dear Colleague Letter (DCL) regarding highly mobile students with disabilities which highlighted issues pertinent to children with disabilities in foster care. See <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-0392dclhighlymobile.pdf>. The document emphasized timely and expedited evaluations and eligibility determinations for highly mobile children with disabilities, and clarified that such children must have access to comparable services (including summer and other extended school year services, if applicable).

Subsection E(2) of 6.29.1.9 NMAC states in tier 2, a properly-constituted Student Assistance Team (SAT) at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. As part of the child study process, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. The SAT shall create no undue delay for full initial evaluation to determine eligibility for special education for a student who is identified as homeless or in foster care under the state's foster care system or based on criteria to assess housing stability status under the federal McKinney-Vento Act and the 2015 ESSA Title IV, Part B, due to the high mobility of this specific population group. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a full, initial evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR Sec. 300.300.

LEAs/State Charter Schools must provide FAPE under Section 504 of the ADA to students who have disabilities under Section 504. FAPE includes the provision of regular or special services and related aids and services that are designed to meet the individual educational needs of students as identified in their 504 plans.

### Students who are English Learners

Some children in foster care are also English learners (ELs)—students identified as having limited English proficiency in speaking, listening, reading, or writing English through procedures established by school districts. Title VI [42 U.S.C. §2000d to d-7, 34 C.F.R. part 100] and the Equal Educational Opportunities Act of 1974 (EEOA) [20 U.S.C. §1703(f)] require public schools to ensure that all EL students, including EL students in foster care, can participate meaningfully and equally in educational programs

Students who are EL are to be provided instruction and services in accordance with the English Language Development Standards provided in 6.29.5 NMAC. For additional resources on the education of students who are ELs in New Mexico, see <https://webnew.ped.state.nm.us/bureaus/languageandculture/english-learners/>.

Students in foster care enrolled in a school with an approved bilingual multicultural education program or an approved Native American heritage language revitalization program shall be provided services in accordance with the Educational Standards for Bilingual and Multicultural programs provided in 6.32.2 NMAC. For additional information on Bilingual and Multicultural programs see <https://webnew.ped.state.nm.us/bureaus/languageandculture/bilingual-multicultural-education-programs-bmeps/>.

Additional information about States' and school districts' legal obligations under Title VI and the EEOA can be found in a DCL about EL students and LEP parents jointly released by the Department of Education and Department of Justice. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

#### Preschool students

If a LEA offers a public preschool education, the LEA must meet Title I requirements for children in foster care in preschool, including ensuring that a child in foster care remains in his or her preschool of origin, unless a determination is made that it is not in the child's best interest. (See ESEA Section 1111(g)(1)(E)).

### **LEA Responsibilities to implement Educational Stability Provisions**

#### Immediate enrollment

Students in foster care who move frequently may not always have the documentation usually required to enroll in a new school. When a BID determines that a student will not remain in the school of origin, LEAs must ensure that a student who transfers to a new school be enrolled immediately and without delay, even if the student does not have the required academic and other records. LEAs should examine and, if needed, revise enrollment policies and practices to remove any barriers to immediate enrollment of students in foster care.

#### Timely records transfer

22-12-10 NMSA 1978 requires that when there is a school change, the receiving LEA/State Charter School shall communicate with the sending LEA/State Charter School/school within two days of the student's enrollment. The sending LEA/State Charter School/School shall provide the receiving school or LEA/State Charter School with any requested records within two days of having received the receiving school's or LEA's/State Charter School's communication. 22-13-33 NMSA, 1978 requires the LEA's/State Charter School's POC provide all records to the new school within two business days of receiving a request from the receiving school.

#### Priority and timely placement in classes and graduation requirements

22-12-10 NMSA, 1978 requires that students in foster care are provided priority placement in classes that meet state graduation requirements. Additionally, the student shall be provided timely placement in elective classes comparable to those in which the student was enrolled in the previous school as soon as the LEA/school receives student records providing verification.

For students enrolled in high school who are in foster care and experienced a disruption in their education at any time during the student's high school enrollment, in accordance with 22-12-10 NMSA 1978 and 22-13-33 NMSA 1978 the LEA/State Charter School shall ensure:

- Acceptance of the student's graduation requirements for a diploma as per the Public School Code [Chapter 22 NMSA 1978];
- Equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;
- Timely assistance and advice from counselors to improve the student's college or career readiness; and
- That the student receives all special education services and accommodations to which the student is entitled under state and federal law.

### **LEA/State Charter School Point of Contact (POC) for Foster Care**

Both ESSA and state law require a POC, as referenced above, for students in foster care experiencing a disruption in their education.

A LEA's POC may be the same person as the LEA's homeless coordinator as long as:

- The LEA does not pay for the position using only McKinney-Vento funds. The position must be funded proportionately based on the time spent on supporting each population.
- The individual identified to be the LEA/State Charter School POC has sufficient capacity, time and the necessary resources to fulfill the duties in facilitating implementation of foster care educational stability provisions.

### **Roles and responsibilities of the LEA POC**

In addition to the responsibilities of the POC as required under 22-13-33 NMSA 1978, the LEA foster care POC should facilitate district implementation and compliance with state and federal laws as they relate to students in foster care. The LEA/State Charter School POC should collaborate with the local CYFD to address barriers to educational stability. LEA/State Charter School POC responsibilities may include, but are not limited to:

- Ensuring that a student in foster care coming into the school is immediately enrolled, whether or not the student has the academic and other records normally required;
- Serving as the primary point of contact for CYFD, families and other service providers regarding students in foster care;
- Ensuring that LEA and school staff who are familiar with a student in foster care are available to participate in a BID process needed for that student;
- Together with CYFD staff, documenting the process and outcome of best interest determination meetings and ensuring that copies are distributed to all parties;
- Facilitating data sharing with custodial agencies, consistent with FERPA;
- Developing and coordinating local transportation procedures for students in foster care and ensuring that when necessary, transportation to a student's school of origin occurs in compliance with federal laws, state statutes and rules and PED policies. This includes ensuring that the student is transported to the school of origin while disputes are being resolved;
- With CYFD, negotiating best interest and transportation additional cost disputes;
- Ensuring students in foster care in the LEA regularly attend school;

- Attending professional development opportunities designed to improve educational outcomes for children in foster care, and
- Providing professional development and training to school staff on the educational needs of children in foster care.

It is imperative that when a LEA POC changes that the PED Foster Care Liaison be notified in writing of the name, position and contact information of the new LEA POC. A POC change form is located on the PED's Student Success and Wellness bureau's website.

### **Transportation of Students in Foster Care**

The NMAC at 6.41.4 includes the following provisions regarding the transportation of students in foster care.

#### **Provisions of transportation for children and youth in foster care:**

(1) The LEA shall 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. The procedures shall:

(a) 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 section 475(4)(A) of the Social Security Act;

(b) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their school of origin, the LEA will provide transportation to the school of origin if:

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

(ii) the LEA agrees to pay for the cost of such transportation;

or  
(iii) the LEA and the local child welfare agency agree to share the cost of such transportation; and

(c) include, in addition to state and local funds that may be available for transportation, certain federal funds, if allowable under the grants, may be available to cover additional transportation costs to maintain children in foster care in their schools of origin.

(2) LEAs shall provide transportation to maintain children in foster care in their school of origin even if it does not provide transportation for children that are not in foster care.

(3) LEAs shall provide or arrange for adequate and appropriate transportation of children in foster care to and from the school of origin while any disputes are being resolved.

ESSA requires that LEAs/State Charter Schools collaborate with the state or local child welfare agency to develop and implement clear written procedures governing how transportation to a school of origin will be provided, arranged and funded. (ESEA section 1112(c)(5)(B))

The procedures shall ensure that if there are additional costs in providing transportation to maintain students in foster care in the school of origin, the LEA/State Charter School is responsible for providing that transportation. However, both agencies can agree on the following:

1. The local child welfare agency agrees to reimburse the LEA/State Charter School for the cost of such transportation;
2. The LEA/State Charter School agrees to pay for the cost, or
3. The LEA/State Charter School and local CWA agree to share the cost.

To the extent feasible and appropriate, LEAs must ensure children in foster care remain in the school of origin while disputes are being resolved to minimize disruptions and reduce the number of moves between schools (Subsection K(1) 6.41.4.9 NMAC). If there is a dispute regarding transportation costs, the LEA/State Charter School must ensure that students in foster care needing transportation to the school of origin promptly receive such transportation in a cost-effective manner. (ESEA Section 1112(c)(5)(B)(i)) Therefore, the LEA/State Charter School must provide or arrange for adequate and appropriate transportation to and from the school of origin while any disputes are being resolved. ESSA and NMAC require that all LEAs ensure that transportation is provided for a child in foster care, regardless of whether the LEA provides transportation services to its students who are not in foster care, such as charter schools. LEAs shall work with child welfare agencies and other applicable parties to resolve the disputes at the lowest level possible (Subsection K(3) 6.41.4.9 NMAC).

#### Definition of additional costs for transportation

Additional costs reflect the difference between what an LEA normally 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. If a LEA uses existing transportation, such as through an established bus route, there is no additional cost. If a LEA provides special transportation to a student in foster care, such as through a transportation company, private vehicle or a re-routed bus route, these expenditures would be considered additional costs.

#### Using Sport Utility Vehicles (SUVs) to transport students in foster care

Students in foster care whose residence is beyond the boundaries of the LEA, or less than five miles from the school, may be transported to and from school in an SUV only if those students in foster care require the transportation as part of the best interest determination. As part of the best interest determination, if the LEA elects to use an SUV to transport students, the LEA shall follow all of the requirements for using SUVs to transport students under 6.41.4.14 NMAC.

The “Standard For Providing Transportation For Eligible Students” rule is available in its entirety at (<http://www.nmcpr.state.nm.us/uploads/nmac/06/06.041.0004.pdf>).

### Cost effective transportation, funding sources and options to consider

An LEA must examine its existing transportation procedures and explore options to identify possible strategies to provide transportation with no or minimal additional costs while ensuring the safety of the student. Examples may include, but are not limited to:

- Using an existing bus stop for the school of origin;
- Utilizing already-existing bus routes or stops close to the new foster care placement;
- Having the foster parent or other appropriate individual (including a person identified by the foster parent through the CWA’s “Prudent Parenting” policy) transport the student to the school of origin
  - Prudent parents must have a valid driver’s license and pass a background check;
- Public transportation options exist, if the student is of an appropriate age and has or is able to acquire the skills to utilize such options; and
- If the student is eligible for funding under another entitlement, such as IDEA, utilize available funds.

LEAs may use Title I funds to pay for additional costs to transport students in foster care to their schools of origin. This includes reimbursing foster parents for mileage, when doing so is part of the agreement between the LEA and local CYFD. 22-16-6 NMSA 1978 allows LEAs/State Charter Schools to pay parents or guardians per capita or per mile reimbursement to transport a student to a school outside the student’s attendance zone, upon local school board authorization. Title IV-E Federal funds are available for CYFD to assist with additional transportation costs for children who are eligible for Title IV-E foster care maintenance payments. Child welfare agencies receiving Title IV-E funds have discretion in determining what is considered reasonable travel, and may take into account factors such as cost, distance and duration of travel.

### Students exiting foster care and transportation

A LEA must ensure that a student in foster care who needs transportation to the school of origin receives it for the duration of time the child is in foster care. (ESEA section 1112(c)(5)(B)). When the student exits foster care, the LEA/State Charter School should

- Continue to prioritize the student’s educational stability;
- Consider each student’s best interest on a case-by-case basis; and
- When possible, make every effort to continue to ensure transportation is provided through the end of the school year, if needed, when remaining in the school of origin would be in the student’s best interest.

### Resolution of disputes about transportation

The transportation procedures developed by the LEA/State Charter School must include a dispute resolution procedure. ESSA requires that if a BID has determined that a student will remain in the school of origin but the LEA and child welfare agency cannot reach agreement as to how to cover any additional costs of transportation, the LEA/State Charter School must ensure that the student continues to be transported to the school of origin while the dispute is being resolved. The LEA or state charter school will provide or arrange transportation during the

dispute; however, the CWA and LEA are responsible for sharing any additional costs of transportation while the dispute is being resolved. See Section K of 6.41.4.9 NMAC.

#### Foster Care Education Dispute Resolution Procedure

Dispute resolution procedures for PED are located at <https://webnew.ped.state.nm.us/wp-content/uploads/2018/04/PED-Foster-Care-Education-Dispute-Resolution-Procedure.pdf>.

#### Direct Certification for School Meals

Students in foster care are categorically eligible for free meals as part of the United States Department of Agriculture's (USDA's) Community Eligibility Provision (CEP). When a student enters foster care and enrolls in a new school or remains in the school of origin, the school's principal or designee or POC shall notify the school food authority (SFA) director within one school day. The SFA director will directly certify the student for free school meals.

The SFA director will notify the LEA's/State Charter School's Student Teacher Accountability Reporting System (STARS) coordinator to update the student's demographics and enter them as categorically eligible.

#### Resources Available

Documents or other resources referenced as being available on-line may also be obtained in hard copy, printed form. If you would like to obtain a copy of the documents referenced in these guidelines, you may contact the Student Success and Wellness Bureau at (505) 827-1821.