

Appendix A

Every Student Succeeds Act Frequently Asked Questions

This Frequently Asked Questions document reflects many of the questions received by the New York State Office of Children and Family Services (OCFS) and the New York State Education Department (SED) as local departments of social services (LDSSs) and local education agencies (LEAs) work to implement the foster care provisions of Every Student Succeeds Act (ESSA) as well as New York law and joint agency guidance, including the students in foster care tool kit, originally released in the fall of 2018.

A. Resources:

1. NYSED website with foster care information:
<http://www.p12.nysed.gov/sss/pps/fostercare.html>
2. OCFS website with education information:
<https://ocfs.ny.gov/main/fostercare/education.asp>
3. SED and OCFS Students in Foster Care Tool Kit for LEAs and LDSSs:
https://ocfs.ny.gov/main/policies/external/ocfs_2018/ADM/18-OCFS-ADM-18-Students-in-Foster-Care-Tool-Kit.docx

B. Definitions and Use of Terms: For the purposes of this document, child refers to students ages 3-21 AND those children 0-3 years of age who are not yet school age.

1. Q: Does the district of origin change when a child exits, and re-enters foster care?

A: Yes, the district of origin may change upon a child's re-entry to foster care as the district of origin is determined at the time of entry into foster care. The district of origin remains constant for the duration of the foster care episode. (A foster care episode comprises a continuous period of time in the care and custody of the LDSS or OCFS commissioner, which may include multiple foster care placements. A foster care episode starts when care and custody are transferred to the LDSS or OCFS commissioner and ends when the child leaves the care and custody of the LDSS or OCFS commissioner.)

2. Q: Can a school of origin ever change for a child in foster care?

A: Yes, a child's school of origin may change during the child's time in a foster care episode. The school of origin is the school the student attended or was entitled to attend at the time of the initial placement in foster care, or the school the student attended or was entitled to attend at the time of a change in foster care placement. When a student's foster care placement changes, the best interest determination (BID), based on a range of factors, may result in the student who was enrolled in School A now being enrolled in a new school, School B. Should the student experience another foster care placement change, School B would constitute the student's school of origin. Therefore, in cases involving multiple

foster care placement changes, a student's school of origin may change over the course of their time in foster care.

C. ESSA Transportation

1. Q: Is there a sample MOU for LDSSs and school districts to use?

A: Page 33 of the foster care tool kit has a sample MOU between an LDSS, and a school district called *the Local Transportation Agreement for Students in Foster Care*.

2. Q: Does the district of attendance bill the district of origin for transportation costs?

A: No, the district of attendance is responsible for the cost of transportation.

3. Q: Is the district of attendance responsible to provide transportation to a child in care if the district does not provide transportation to its own students?

A: The federal joint guidance, released in 2016 and available at <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>, addresses this situation in question 29 located on page 18:

“If an LEA does not provide transportation to children who are not in foster care, is it required to transport children in foster care to their schools of origin? Yes. An LEA must ensure that transportation is provided for children in foster care consistent with the procedures developed by the LEA in collaboration with the state or local child welfare agency under section 1112(c)(5)(B) of the ESEA. These requirements apply whether or not the LEA already provides transportation for children who are not in foster care.”

4. Q: What if the standard for transporting all students is public transportation? Would that be as appropriate for students in foster care who must travel long distances as for other students?

A: School districts must provide a viable form of transportation for the student in foster care. For example, if it is a young student who cannot travel on public transportation unaccompanied, then the school district must provide public transportation passes for the foster parent to accompany the child. If the foster parent cannot accompany the child on public transportation (because of their work schedule or because they must care for other children, etc.), then the school district must provide an alternate form of transportation that is viable for the student. Districts that use public transportation must ensure that the provider is compliant with the regulations that govern that mode of transportation. The commissioner of education has ruled that rides up to 90 minutes are not considered to be excessive in certain circumstances.

5. Q: What if the student wants to stay enrolled in their school of origin but the foster placement is 90 minutes away? How do you handle transportation?

A: Once an appropriate foster care placement is determined that is located in a new school district, the LDSS must make a BID to determine whether the child should remain in their school of origin or be reenrolled in a new school. The BID must be based on all factors relating to the child's best interest, including consideration of the student's preferences, proximity to the school in which the child is enrolled at the time of placement, and the impact of a school transfer, including the commute. If remaining enrolled in the student's school of origin is determined to be in the student's best interest, the school of origin's district will constitute the student's district of attendance and, as such, it must provide the necessary transportation for the child to attend the school of origin. (see 18-OCFS-ADM-18 for additional guidance on this topic).

6. Q: What is the standard for "transportation"? Is the LEA required to provide either the same transportation that would be available to any other student or whatever transportation is necessary to maintain a student in the school of origin?

A: School districts are expected to provide safe and appropriate transportation for all students. All carriers must comply with laws and regulations from the United States Department of Transportation (USDOT), the New York State (NYS) Department of Motor Vehicles (DMV), the NYS Department of Transportation (DOT), and SED. Districts that use public transportation must ensure that providers are compliant with the regulations that govern that mode of transportation and evaluate whether a guardian would be required to make using such service a safe and appropriate means of transportation given the age of the student.

7. Q: What happens if a district of attendance cannot transport due to, for example, a lack of bus drivers to fulfill current transportation needs?

A: The district of attendance is required by state and federal law to transport. The district must consider alternate ways of providing statutorily mandated transportation.

8. Q: If a child in foster care is in a special class with the Board of Cooperative Educational Services (BOCES) and it is determined to be the best placement but a far commute, does the child remain in that school placement?

A: The length of the commute is one of many factors that is considered when making a BID. Please see page 17 of the foster care tool kit for a complete list of factors to consider when making a best interest decision. Additionally, it should be noted that at times there may be some overlapping issues that need to be addressed, for example when a child who is receiving special education services is in a placement determined to meet their special education needs. ESSA and

school stability law need to be applied along with special education law. Please see Foster Care Students with Disabilities section in the tool kit.

9. Q: What district is responsible for transporting a foster child placed in a BOCES special ed program?

A: The district of attendance is responsible for providing transportation.

10. Q: A school-aged student was attending school in District A (district of origin) when placed in foster care and their foster care placement was located in District B. A BID was made to have the student remain in District A. Who is responsible for transportation?

A: The district of attendance, District A in this scenario, is responsible for providing the transportation.

11. Q: A student with an individualized education plan (IEP) from District A is relocated to a foster home in District B and the BID determines the student should remain in District A. The Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) at District A determines that the student's educational placement should be a state-approved private school in a third district, District C. Who transports in this scenario?

A: If the CSE or CPSE from District A placed the student in the state-approved private school in another district, then District A is responsible to provide transportation. This will be true regardless of whether transportation is listed as a related service if the child has an IEP. Please see Question 3 below under **ESSA Financial Related Issues.**

12. Q: What should the school district do in the event that the LDSS fails to complete a BID and or/provide documentation of the determination to the school district?

A: Contact SED's point of contact (POC) whose contact information is available on the [SED's Foster Care webpage.](#)

13. Q: If a district of attendance fails to provide transportation, what is the course of action for an LDSS?

A: The district of attendance is required to arrange transportation. In the event that a district of attendance fails to provide this transportation, the LDSS POC should contact the OCFS or SED POC for assistance, keeping in mind the time frames for an appeal. An appeal to the commissioner of education must be filed within 30 days from the date on which transportation was denied. For further information on this process, see: [http://www.counsel.nysed.gov/appeals/.](http://www.counsel.nysed.gov/appeals/)

14. Q: Can neighboring districts share the responsibility for transporting their respective foster students? And if so, can they both still receive aid on the costs?

A: We encourage districts to collaborate on the provision of transportation. However, in order to ensure that services are being shared and not piggybacked, it is crucial to know, and spell out in writing, who is providing the services, a neighboring school district or a contractor. In the case of a neighboring school district, this arrangement comprises a shared service, the latter constitutes piggybacking. If a neighboring district owns their own buses, services can be shared through an intermunicipal contract. However, if a contracted vendor is providing transportation, then both districts must hold a valid contract with the vendor. One district cannot hold a contract with a vendor, then allow an uncontracted district to share the bus.

15. Q: Is a district of attendance required to provide transportation to a prekindergarten student in foster care?

A: Yes. Districts are required provide transportation to prekindergarten students in foster care.

D. ESSA Financial Related Issues

1. Q: There is a lot of confusion about what is meant by tuition versus transportation. Does tuition include transportation or does tuition only include educational services?

A: Regarding the education of children in foster care, the term *tuition*, as it is used in Education Law §§ 3202 and 3244, refers to educational services, not transportation costs.

2. Q: With the new rules related to transportation costs under Education Law § 3244, is there a change in this process for how a district of attendance will bill the district of origin for tuition costs related to children in foster care?

A: The district of origin remains responsible for the cost of tuition for the child in foster care, regardless of who is responsible for transportation. The district of attendance is responsible for transportation costs, not the district of origin; therefore, excess transportation costs may not be billed to the district of origin.

3. Q: A student with an IEP is placed in a foster home outside of their district of origin and the BID determines that the student will attend school in the district where the foster home is located, the district of residence. Which district is responsible for the costs related to special education services and transportation, etc.?

A: The district of origin is responsible for education costs throughout the student's

placement in foster care. In the case of a student with an IEP, the district of origin is responsible for the cost of special education services and related services that are included in a student's IEP. Some students' IEPs may include specialized transportation as a related service.

The district of attendance, pursuant to Education Law § 3244, is required to treat the child or youth in foster care as a resident for all purposes and is responsible for providing transportation, and related costs are state aidable up to 50 miles. Any uncovered costs for transportation are to be split by the school district of attendance and the LDSS. This would include any excess transportation costs for a student that is an out-of-district CSE/CPSE placement. See guidance on transportation costs for children in foster care in the *Students in Foster Care Tool Kit for Local Education Agencies and Local Departments of Social Services* for further information.

4. Q: Can the 50% of transportation funded by the school district of attendance be billed back to the district of origin?

A: No. The district of attendance is responsible for transportation costs, except in the limited circumstances of some students with IEPs that include transportation as a related service.

5. Q: Through what process will the district of origin obtain tuition reimbursement from the district of residence?

A: There is no tuition reimbursement from the district of residence. The district of origin remains responsible for tuition costs throughout the student's placement in foster care.

6. Q: SCENARIO: A student resides in a household within District A and is attending school in District A. The student leaves that household and sleeps on the couch of a friend whose home is located in District B for a few days. The student then enters the foster care system and is placed in a foster boarding home in District C. A best interest determination (BID) determines that the student will attend school in District C, the district of residence. Which district is the district of origin and therefore responsible for non-resident tuition? District A or B? (Note: the student never attended school in District B.)

A: In most cases, a few days sleeping on a friend's couch will not be a sufficient basis for establishing that a child resides in a particular district, or that the child and their parent or person in parental relation has abandoned the permanent residence in another district. In this case, since the student was attending District A or was entitled to attend District A at the time of entry into foster care, then District A is the district of origin and is responsible for tuition.

E. Best Interest Determination (BID)

- 1. Q: Does the BID process only apply to children in foster care? Does it also include children in direct placements pursuant to Family Court Act Sections 1017 or 1055 or situations in which a child is directly placed with a family member in- or out-of-district?**

A: The BID process only applies to children in foster care that are placed in the care and custody of an LDSS; it does not apply to children in direct placements pursuant to FCA 1017 or 1055. The term "child or youth in foster care" means a child who is in the care and custody or custody and guardianship of an LDSS or the commissioner of OCFS. If the placement fits this definition (i.e., if the child is in the custody of an LDSS agency, and the family member is also the foster care parent for that child, then the child would qualify as a child in foster care; if the child is not in the care and custody of the LDSS, then the child would not qualify as a child in foster care.

Please note, some arrangements in which the child is not in foster care, such as direct placements, may meet the definition of homeless under the McKinney-Vento Act, and the child would be entitled to the educational stability protections for students who are homeless. An assessment of eligibility under Mc-Kinney Vento should be performed separately. For more information see: <https://nysteachs.org/resources/determining-mckinney-vento-eligibility-for-students-in-direct-placements/>.

- 2. Q: Are we required to do a BID on children placed at voluntary agency residential programs?**

A: Yes.

- 3. Q: Does the BID process apply when a child leaves foster care and returns to a parent who does not live in the district of attendance? Can that child remain in the district they were attending while in foster care?**

A: With any change in foster care placement, a BID must be made. If the child changes living placement, the goal is to keep the child in the current school of origin unless it is not in their best interest to do so. When a child exits foster care, another BID is made. If the BID is that it is in the child's best interest to attend the school of origin, the child has the right to attend the school until the end of the school year during which the foster care episode ended and the child is no longer in foster care, and for one additional year, if that year constitutes the terminal year in such building.

- 4. Q: Is a student still in foster care when they are on a trial discharge? Are they permitted to remain enrolled in the school district they had been attending before they were on trial discharge?**

A: When the child is staying with their parents on a trial discharge, the child remains in the care and custody of the LDSS and is still in foster care. A BID would be required to be made upon trial discharge.

5. Q: Where can a school district find documentation of a completed BID?

A: A copy of the BID is in the casefile of the LDSS, which is responsible for providing the school(s) with a copy of **LDSS-2999 form**, *Child in Foster Care School Notification*, see page 30 of the tool kit.

6. Q: If a BID has been made, can a judge modify the BID or order a change in school placement?

A: Judges can review the final BID made by the LDSS and may, in some cases, determine that the BID is not in the child's best interest. If a judge determines that there was an error made by the LDSS in the BID process, the judge may order that the LDSS reassess the BID to ensure the decision is in the child's best interest.

7. Q: Are birth parents able to challenge the BID if they aren't in agreement?

A: Under ESSA and Education Law Section 3244, the BID is made by the applicable social department of social services or voluntary authorized agency in collaboration with the local education agency(ies). Guidance and best practices dictate that the LDSS make the BID after obtaining information on the student's academic, social, and emotional well-being and, thus, the opinion of the birth parents should be considered by the agency in making the BID. Ultimately, family court judges can review the final BID, taking into consideration any challenge to it, and determine whether it is in the child's best interest.

8. Q: If a BID has not been made by the LDSS following placement into foster care or a change in placement, can the judge order the school district placement in lieu of a BID?

A: No, the LDSS is responsible for making a BID. Family court judges can review a final BID made by the LDSS but cannot make the BID for a child in foster care.

9. Q: How do the BID and the CSE/CPSE interact?

A: If a foster care student has an IEP or a Section 504 plan, the relevant school staff members will need to participate in the BID process to provide feedback on the student's progress in the student's current special education program and how changing schools might impact the student's academic, social, and emotional well-being. While the CSE/CPSE provides important information, it is the LDSS that makes the final BID determination.

10. Q: What happens when a BID determines that a change in school placement is in the child’s best interest?

A: Should it be determined that a child’s best interest would be served by a school change, pursuant to ESSA,

- the new school district must immediately enroll the student and make a written request for the student’s records; and
- within five days of receipt of this request, the student’s original school district shall forward the student’s records.

Under the Individuals with Disabilities Education Act (IDEA), the new school district shall, in consultation with the student’s IDEA parent, provide the student a Free Appropriate Public Education, which includes services that are “comparable” to the services in the IEP developed by the old school district until the new school district convenes a CSE/CPSE to either adopt the old IEP or develops a new IEP in accordance with IDEA procedures.

G. Points of Contact

1. Q: Can the McKinney-Vento Liaison and foster care POC be the same person?

A: Under federal law, the local school district's foster care point of contact may be the same person as the McKinney-Vento liaison, unless it is determined that the McKinney-Vento liaison’s current duties and responsibilities do not allow for the time and capacity needed to perform these additional duties. Federal law does not allow the SED agency point of contact for foster care to be the same individual as the state McKinney-Vento coordinator.

2. Q: Where can anyone look up who is the POC at an LDSS and/or an LEA?

A: All the LDSS POC, LEA POC, and state POC contact information is on the Education Department's foster care webpage (at <http://www.p12.nysed.gov/sss/pps/fostercare.html>) and OCFS website (at <https://ocfs.ny.gov/main/fostercare/education.asp>).

H. Application of ESSA Requirements

1. Q: Are there time limits or timelines that agencies must follow in providing school stability for children in foster care?

A: Yes.

- i. For the LDSS: LDSS-2999, *Child in Foster Care School Notification* form, must be completed, maintained in the case record, and a copy of each provided to the LEA POC of the school district believed to be the district of

origin, and if a school change is recommended to the LEA POC at the school district of attendance, **no later than 10 business days** after the placement of a child in foster care/change in foster care placement or earlier if possible.

ii. For the LEA:

- Upon receipt of an LDSS notice, notify appropriate school personnel to ensure the educational stability of the student.
- District of attendance receives a copy of the LDSS-2999, *Child in Foster Care School Notification*, from the LDSS representing the district where the student will be attending school. Student is immediately enrolled.
- District of attendance shall immediately contact the last school attended to obtain the student's education records. Within five days of receipt of such request, the school where the student's records are located must forward the student's records to the requesting district.
- Complete and commence the *Individual Transportation Plan for a Student in Foster Care* (within two to three business days for in-district transportation, or five to seven business days for out-of-district transportation) of notification of the best interest determination (LDSS-2999).

2. Q: What is the difference between McKinney-Vento and foster care?

A: The McKinney-Vento Act provides rights and services to children and youth experiencing homelessness. The term "child or youth in foster care" means a child who is in the care and custody or custody and guardianship of an LDSS or the commissioner of OCFS. In certain relatively rare situations, a student may be in foster care and still be found eligible under the McKinney-Vento Act definition of homeless. The following are examples of such situations:

- If a student runs away from a foster care placement and is temporarily living in a runaway and homeless youth shelter or in a doubled-up situation
- The foster parent or caretaker loses their housing and is temporarily staying in a family shelter or in a doubled-up situation with the student

3. Q: What are the guidelines/rules for prekindergarten students and CPSE students?

A: The school stability protections and provisions of State Education Law § 3244 specifically include reference to a publicly funded pre-K program administered by the local school district or a Head Start program administered by the local school district and/or services under the IDEA administered by a local school district.

4. Q: What is the school of origin when a student attends a BOCES program prior to placement in foster care?

A: When a student attends a BOCES program, that student was placed in the program by the school district in which they are enrolled. Therefore, the BOCES program is not the school of origin in such a situation. Rather, the school of origin is the school in which the student is enrolled or is entitled to be enrolled at the time of entry into foster care. The student's attendance in a BOCES program is one of the factors to be considered when making a BID.

I. Miscellaneous

1. Q: How are cross-county foster care placements managed? Does the LDSS change even if the school does not change?

A: It is extremely rare that a case may be transferred to another custodial agency, either within the state or outside of New York State. In the event that a change in an LDSS does occur, the new custodial LDSS would need to make a BID and notify the district of attendance, district of origin, and any other relevant educational parties.

2. Q: Who makes the determination to place a child into foster care?

A: Children are placed into foster care either by order of a court or by their parent or legal guardian pursuant to a voluntary placement order.

3. Q: How does Education Law § 3244 apply when a New York foster care student is placed in an out-of-state foster care placement?

A: Education Law § 3244 covers the duties of New York State LEAs and LDSSs regarding children or youth placed into foster care in New York. Under Education Law § 3244(2)(b), when a child in foster care in New York is placed in a foster care placement located in a contiguous state, this child shall be entitled to attend the school of origin, in this scenario, the last school the child attended, or was entitled to attend, in New York, or "any school that children and youth who live in the attendance area in which the foster care placement is located are eligible to attend."

a. **Example:** Student living with parents in Fishkill, NY, is placed into foster care. At time of entry into foster care, student attended elementary school in the Wappingers Central School District. After weighing options and the individual needs of the student, the Dutchess County LDSS determines that the best foster care placement for the student is with relatives who live in Sherman, CT, about 26 miles away and just across the NY/CT border.

a. Foster care placement – This foster care placement, formalized in an Interstate Compact on the Placement of Children (ICPC) agreement, is contingent on completion of a successful home study.

b. Educational Placement – In this scenario, an elementary school in the Wappingers Central School District constitutes the student’s school of origin and Wappingers Central School District constitutes the district of origin. The Dutchess County LDSS collaborates with the LEAs – Wappingers and the school district in Sherman, CT – to gather relevant information needed to determine whether it is in the student’s best interest to remain enrolled in the school of origin, or if not, whether the student’s educational needs could be met in the Sherman, CT, school district.

i. **BID process determines student remain enrolled in school of origin in New York.**

- Education Law § 3244(4)(d) requires that the student’s designated district of attendance in New York, in this case, Wappingers Central School District, to collaborate with the social services district, Dutchess County LDSS, to arrange for interim transportation needed until the district of attendance finalizes the out-of-district transportation plan within five to seven school days of new foster care placement. The transportation costs incurred are aidable up to 50 miles each way, with the excess costs split 50/50 between the LEA and the LDSS. (See Transportation Costs for Children in Foster Care, beginning on page 20 of the *Students in Foster Care Tool Kit for Local Education Agencies and Local Departments of Social Services.*)

ii. **BID process determines that remaining enrolled in school of origin is NOT in student’s best interest.**

Pursuant to Education Law § 3244(2)(b), the student is immediately enrolled in school in Sherman, CT, and district of origin remains financially responsible for student’s tuition. Transportation is handled by the school district in Sherman, CT. Although the Sherman, CT, is not bound by New York Education Law § 3244, this school district is obligated by federal ESSA foster care provisions to immediately enroll the student and contact the student’s school last attended to obtain relevant academic and other records.