



Highlights from November 2024 Every Student Succeeds Act (ESSA) Foster Youth Education Non Regulatory Guidance

Ensuring Educational Stability and Success for Students in Foster Care: Non-Regulatory Guidance, U.S. Department of Education, U.S. Department of Health & Human Services (November 2024) [hereafter "Guidance"]

ESSA In Brief

In 2015, Congress passed the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA) and, for the first time, created specific requirements regarding school stability for foster youth that states and school districts must follow in order to receive federal funding.

These requirements under ESSA are a floor, not a ceiling. California law is more expansive in some areas. Most importantly, California law includes all Juvenile Court involved youth, including those with WIC 602 (delinquency) petitions - whether or not they have been removed from their homes - in many foster youth educational rights.

California law is also more specific. ESSA guidance includes a number of areas where states are encouraged or required to detail the exact responsibilities of various roles, such as school district foster liaisons. (See, e.g., Guidance at 11-12.)

The November 2024 guidance document is lengthy—seventy-seven pages of questions and answers—however, only a fraction of the guidance is actually new information. What follows is what Youth Law Center believes to be the most important points of clarification.

School-of-Origin Transportation

Federal law requires school districts to establish a written policy, in collaboration with the county child welfare agency, as to how transportation

will be “promptly” provided to foster youth to remain at their school of origin. (ESEA section 1112(c)(5).) In many counties in California, county-wide Memoranda of Understanding coordinate related policy across all county school districts. Check with your county Foster Youth Services Coordinating Programs (FYSCP) for more information about local transportation policy.

Transportation to School of Origin should be provided within *three (3) business days*.

Unnecessary delay in transportation is the biggest issue with implementing the school of origin transportation provision in California. The federal Department of Education recognizes this issue and has finally provided a definition of “promptly” to help guide local policymakers: “within three business days of the completion of the BID process.” (Guidance at 20.)

Independent charter schools must comply with ESSA and school of origin transportation requirements.

In California, a small number of charter schools receive their charter directly from the California State Board of Education and are not sponsored by a local school district. Such *directly* chartered schools are considered to be their own district (Local Education Agency) under state law. The Guidance clarifies that such charter schools must comply with all ESSA requirements, including school of origin transportation.

Students at non-independent charter schools also qualify for school of origin transportation, but those costs generally fall on the charter school's local chartering district.

School of origin policies need to account for extracurriculars, summer school, and dispute resolution procedures.

The Guidance details a number of areas where current district and county school of origin transportation procedures may currently lack sufficient levels of details or fail to cover key academic services. These include how transportation will be provided to extracurricular activities, summer academic supports, after school tutoring etc. (Guidance at 21.)

In addition, the Guidance repeatedly emphasizes the need for written dispute resolution procedures so that ambiguities and disagreements can be promptly addressed. (Guidance at 21, 23, 24, & 28.)

Who is covered by ESSA school stability protections?

There are occasional disputes over which youth are covered under the federal ESSA definition of "foster youth." This matters because federal monies for school of origin transportation are only available to those who qualify under the federal definition of "foster youth."

Youth in trial reunification with their parents are "foster youth" for ESSA purposes and remain eligible for school of origin transportation funding.

Youth who have been returned to the physical custody of their parents but whose case has not yet been closed by the Juvenile Court are often referred to as being in a "trial placement." Under California law there is no doubt that they continue to qualify as foster youth for purposes

of educational rights, including continued attendance at their school of origin. (See Cal. Ed. Code § 48853.5.) The Guidance clarifies that youth in trial reunifications continue to qualify under the ESSA definition of "foster youth." (Guidance at 8.)

Youth up to age 22 are covered by ESSA protections.

Youth are covered by ESSA protections until their 22nd birthday *if they have not yet graduated from high school*. Some California counties and districts have mistakenly excluded transition aged youth from their school stability and transportation programs based on age. The Guidance reiterates that their 22nd birthday is the only hard cut off, stating that "the term "children" includes children through age 21 who are entitled to a free public education through grade 12." (34 C.F.R. § 200.103(a)(1))." (Guidance at 8, fn. 9.)

Best Interests Determination for Remaining at School of Origin

The Guidance reiterates that a best interests determination must begin with the presumption that the student should remain at their school of origin. It also clarifies that, if a change of placement is being considered, a best interests determination should be completed within *three (3) business days* of the student's entry into foster care. (Guidance at 17.)

Any transportation costs or administrative burden on the school district or child welfare agency should not be considered in weighing the youth's best interest. (Guidance at 18.)