State Level Memorandum of Understanding:

Implementing the School Stability Provisions of ESSA

**WHEREAS,** ensuring school stability and academic success for students in foster care is an important joint responsibility of state and local child welfare and education agencies;

**WHEREAS,** on October 7, 2008, the Fostering Connections to Success and Increasing Adoptions Act of 2008,1 (Fostering Connections Act) went into effect requiring states to ensure that child welfare and education agencies collaborate to guarantee school stability and school attendance for all children in foster care;

**WHEREAS,** the Fostering Connections Act specifically mandates that in making decisions regarding

a child’s placement child welfare agencies take into account the proximity to the child’s school and the appropriateness of the child’s current educational placement;

**WHEREAS,** the Fostering Connections Act further requires that a child’s foster care case plan include assurances that a child remains in his current school or, if this is not in the child’s best interest, that the child is immediately and appropriately enrolled in a new school with all school records;

**WHEREAS,** the Fostering Connections Act clarifies that Title IV-E funds may be used by child welfare agencies to reimburse for some costs of transportation to support school stability for eligible children;

**WHEREAS,** the Fostering Connections Act also requires, as a condition of federal Title IV-E funding, that all children of compulsory school age are enrolled in school;

**WHEREAS,** on December 10, 2015, the Every Student Succeeds Act (ESSA) was signed into law;

**WHEREAS,** ESSA aligns with the Fostering Connections Act to clarify the obligations of state and local education agencies, in collaboration with child welfare agencies, to ensure school stability with necessary transportation and immediate school enrollment in a new school when in a child’s best interest;

**WHEREAS,** on June 23, 2016, The U.S., Departments of Education and Health and Human Services issued Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care (the Guidance) to clarify the legal obligations and help states and localities effectively implement these important new requirements, including encouraging State Departments of Education and Child Welfare to issue joint guidance for the implementation of these Title I provisions, and allowing LEAs to use Title I funds to pay for additional costs needed to transport children in foster care to their school of origin;2

**WHEREAS,** on November 30, 2016 the U.S. Department of Education issued regulations implementing the ESSA3 which, inter alia, clarify requirements relating to transportation to ensure school stability.4

WHEREAS, the effective date of ESSA’s key foster care requirements is December 10, 2016;

**THEREFORE,** the undersigned Parties do hereby agree to the following:

PARTIES

The Parties to this Memorandum of Understanding are [ Enter text ] (Child Welfare) and

[ Enter text ] (Education).5

INTRODUCTION AND PURPOSE

The Parties enter into this Memorandum of Understanding to ensure [name of state]’s compliance with ESSA and the Fostering Connections Act and to guarantee that the state’s Departments of Child Welfare and Education fulfill their obligations to address the educational needs of children in foster care. The Parties will regularly monitor local educational and child welfare agencies to ensure compliance with ESSA, the Fostering Connections Act, and this Memorandum of Understanding.

The Parties hereby commit to the following principles:

* For the duration of their time in foster care and until the end of the school year in which the children exit care,6 children in foster care in the state shall remain in the “school of origin” when initially placed and when a placement change occurs unless a determination is made that remaining in the same school is not in the children’s best interest.7
* Each local educational agency in the state, in collaboration with the relevant local child welfare agencies, shall develop and implement clear written cost-effective transportation procedures. Those procedures shall ensure that, for the duration of their time in foster care and until the end of the school year in which the children exit care,8 transportation necessary to ensure school stability is promptly arranged, provided, and funded so that these children do not experience gaps in their education programs even when disputes arise as to which agency or agencies will fund any additional costs incurred. The procedures will also describe which agency or agencies shall initially fund such additional costs pending resolution of funding disputes.9
* If a school change is needed, a child in foster care must be immediately enrolled in the new school even if the child is unable to produce records or documents normally required for school enrollment. Immediate enrollment means a child in foster care should be enrolled in a new school as soon as possible to prevent educational discontinuity. The enrolling schools shall immediately contact the schools of origin to obtain relevant academic and other records and those records will be promptly transferred.
* When initially placing a child in foster care and in all subsequent placement changes, child welfare agencies shall consider the proximity of the placement to the child’s school of origin and the appropriateness of the child’s current educational placement. Whenever appropriate, child welfare agencies shall make reasonable efforts to place the child within the boundaries of the schools of origin and if that is not possible within reasonable driving distance from those schools. State and local education and child welfare agencies shall work collaboratively on activities such as caregiver recruitment to ensure sufficient living placement options within the child’s school district.

KEY TERMS

**“Child in Foster Care” Foster Care** means 24-hour substitute care for children placed away from their parents or guardians and for whom the child welfare agency has placement and care responsibility. Note that the legal right to school stability extends to ALL children in foster care, regardless of whether they are eligible for Title IV-E funding from child welfare agencies that may be used to reimburse transportation costs. A “child in foster care” under ESSA also includes children in foster care attending a public preschool.

**“Immediate Enrollment”** means attending and fully participating in school and that the children’s educational needs, including, for example, special education or English Language Learners (ELL) services if appropriate, are being met.

**“Local Educational Agency” (LEA)** means school districts and public charter schools.

**“School of origin”** means the school in which the child was enrolled at the time of initial placement. If the child’s foster care placement changes or the child returns home, the school of origin is the school in which the child is enrolled at the time of the placement change.

Designating Points of Contact (POCs)

**State POCs:** The Departments of Education10 and Child Welfare11each agree immediately to appoint persons to serve as Points of Contact (POC) to collaborate in implementing ESSA’s requirements. The persons appointed shall have sufficient capacity and resources to fulfill their duties. The role of the State Education and Child Welfare POCs shall include coordinating to do the following:

* Assist the Parties to develop and issue statewide guidance, policies, and tools as set forth above in Section IX and in this Memorandum of Understanding.
* Facilitate data sharing between state agencies consistent with federal and state privacy laws, regulations, and policies and support the data reporting requirements in ESSA as they relate to students in foster care.
* Monitor LEAs’ compliance with the Title I requirements at the local level.
* Promptly develop and notify local child welfare agencies and LEAs concerning joint professional development opportunities and technical assistance for LEA POCs, child welfare POCs, school and child welfare staff, and other professionals regarding school stability and educational supports for children in foster care.
* Establish and staff a state interagency group, with membership from state and local child welfare and education agencies, parents, youth, the courts, and attorneys for child welfare agencies and children in foster care. This group will: provide ongoing support and guidance and technical assistance on how best to accomplish the goals of school stability, prompt school enrollment, and other matters to improve education outcomes for children in foster care.

**LEA POCs:** Each LEA in the state shall be required immediately to appoint a POC12 to cooperate with the appropriate local child welfare agencies to implement ESSA’s educational stability requirements, and develop and implement, by December 10, 2016, written school stability transportation procedures. The staff appointed must have sufficient capacity and the necessary resources to fulfill their duties. Those duties include:

* Coordinating with corresponding child welfare agencies’ POCs to implement ESSA’s requirements.
* Participating in the development or revision of a process for making best interest determinations.
* Documenting best interest determinations.
* Facilitating the transfer of records and immediate enrollment.
* Facilitating data sharing with the child welfare agencies consistent with the FERPA and other privacy laws and policies.
* Developing, coordinating, and ensuring implementation of written transportation procedures in collaboration with the child welfare agency.
* Following dispute resolution processes when issues arise, including ensuring children are promptly transported to their school of origin even when there is a dispute regarding which agency will fund additional costs incurred and that the agency (or agencies) identified in the written transportation procedures pays any additional costs pending resolution of the disputes.
* Ensuring that children in foster care are enrolled in and regularly attending school.
* Providing professional development and training to school staff on ESSA’s provisions and the educational needs of children in foster care.

**Child Welfare POCs:**13 Each local child welfare agency shall be required immediately to appoint

a POC to cooperate with the appropriate LEAs to implement the ESSA’s educational stability requirements, and development and implement, by December 10, 2016, written school stability transportation procedures. The staff appointed must have sufficient capacity and necessary resources to fulfill their duties. Those duties include:

* Serving as one of the primary contacts between children in foster care and school staff, district personnel, and other service providers.
* Coordinating with the corresponding LEA POCs on ESSA implementation including immediate enrollment.
* Establishing a process to notify the LEA when a child has been placed in foster care in the LEA or when there has been a foster care placement change.
* Establishing or revising a process for best interest determinations in coordination with the LEA.
* Facilitating transfer of records including immunizations, medical records, and copies of IEPs and 504 Plans.
* Working with LEAs to ensure children in foster care are immediately enrolled in school and to coordinate transportation services.
* Coordinating best interest determinations and transportation costs agreements with LEAs.
* Following dispute resolution processes when issues arise and working with the LEA POC to ensure children receive prompt school stability transportation even when the agencies are disputing payment of additional costs.
* Providing training to LEA and child welfare staff on the educational needs of children in foster care including state and local policies.
* Coordinating with the LEA regarding data sharing for children in foster care, consistent with FERPA and the confidentiality provisions in the IDEA as well as any state confidentiality laws.
* Coordinating services so children in foster care can access early educational services for which they are eligible, including Head Start and Early Head Start, home visiting and preschool programs administered by the state educational agency or the LEA, screening and referral to health, mental health, dental, and other appropriate services.
* Informing parents or education decision makers of the child’s education rights and providing public notice of the education rights of these children to community stakeholders.

BEST INTERESTS DETERMINATIONS

**Principle:** All LEAs shall permit a child in foster care to remain in his or her school of origin unless it is determined that remaining in that school is not in the child’s best interest. LEAs and child welfare agencies should make every effort to make this determination jointly with input from all relevant parties. If the agencies cannot reach agreement, unless state law dictates otherwise, the child welfare agency, which has legal responsibility for the well-being of the child, makes the final decision. If that decision is that the child is to remain in the same school, the LEA must collaborate with the child welfare agency to provide necessary transportation according to the LEA’s transportation plan.

**Participants in making best interest determinations:** Participants can include but are not limited to the child’s family and foster family, other relatives, knowledgeable child welfare staff, the child (when age appropriate), school staff (including persons knowledgeable about the child’s special education needs if appropriate), and any legally appointed education decision makers (EDMs) such as surrogate parents or general education EDMs. The representative from the school of origin should be knowledgeable about the child and able to provide feedback on significant relationships that the child may have formed with staff and peers and how changing schools would impact his or her academic, social, and emotional well-being. Based on the individual situation, this person could be a teacher, counselor, or coach, of another meaningful person in the child’s life.

**Factors to consider in making best interest determinations:** Best interest determinations must be child-centered and deference should be accorded to the views of the youth, the child’s or youth’s parent, guardian, surrogate parent, or other authorized educational decision maker. Teams should consider the child’s attachment to the current school and meaningful relationships with staff and peers, the placement of siblings, the impact of the school environment on the child, including safety, the availability and quality of the services in the school to meet the child’s educational and social/emotional needs, the history of school transfers, and how the length of the commute would affect the child given the child’s developmental age. A child’s need for and entitlement to special services such as special education or ELL supports are also important factors to consider. The child should remain in the school of origin while the best interest determination is being made, to the extent feasible and appropriate. The cost of transportation cannot be a factor in a best interest determination.

**Process for making best interest determinations:** The LEA and the local child welfare agency can incorporate this decision into previously established meetings such as a family team meeting, placement hearing, or it may occur at a separate meeting. In an emergency, the meeting may take place through phone or email.

**Documenting the placement decision:** The child welfare agency shall immediately notify the child, the child’s education decision maker, the school of origin LEA, and the child’s attorney (if known) in writing of the decision. This notification should include the basis for the decision and the new school in which the child will be enrolling. Documentation of the decision, the persons participating in the decision, and the rationale shall be maintained in the child’s case file.

IMMEDIATE SCHOOL ENROLLMENT WITH ALL SCHOOL RECORDS

**A. Principle:** If a decision is made that it is in the best interest of a child in foster care to change schools, the child must be immediately enrolled in the new school. Enrollment of children in foster care cannot be denied or delayed because documents normally required for school enrollment such as proof of immunizations, residence, or age have not been provided.

**B. Duties of enrolling LEAs and schools of origin:** All LEAs in the state must immediately review their policies and procedures and revise them to eliminate any barriers to immediate enrollment and attendance of children in foster care. Immediately upon enrollment of a child in foster care, the enrolling LEA shall contact the child’s school of origin to request the child’s academic and other records and the previous LEA shall promptly transfer those records.

**C. Duties of child welfare agencies:** Child welfare agencies shall routinely request all school records from the child’s current school and maintain those records in the child’s case file. Child welfare agencies should also document the name and address of the child’s current education decision maker and surrogate parent if one has been appointed. LEAs shall promptly forward education records to the requesting child welfare agency.14 Educational information shall be reviewed and updated each time a child’s placement changes, or at each permanency review hearing if no placement change has occurred.

TRANSPORTATION TO SUPPORT SCHOOL STABILITY

**Principle:** All LEAs in the state, in collaboration with the State or local child welfare agency, 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 their time in foster care and until the end of the School Year in which they exit care15 and shall ensure that children in foster care needing transportation promptly receive this support in a cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act (42 U.S.C. 675(4)(A)).

**Additional costs:** LEAs must continue to pay what they would otherwise spend to transport the child in foster care to school. Only “additional costs” necessary to transport the child to the school of origin can be the subject of a funding agreement or dispute with the responsible child welfare agency. Moreover, if the LEA in which the school of origin is located can arrange or provide transportation at no or minimal cost, that LEA shall arrange, fund, and provide that transportation. Examples include adding an additional stop to an existing bus route.

**Funding the additional costs of school stability transportation:** Additional costs shall be funded according to the statewide policy issued by the Parties. Child welfare agencies can use Title IV-E funds and LEAs can use Title I funds to assist with funding school stability transportation. Following that policy, LEAs’ written transportation plans must describe how school stability transportation will be ensured in the event of a dispute over which agency or agencies will pay any additional costs incurred and which agency or agencies will initially pay the additional costs so transportation is provided promptly during pendency of the dispute.16

CHILDREN “AWAITING FOSTER CARE PLACEMENT”
UNDER THE MCKINNEY-VENTO ACT

**Principle**: LEAs must continue to accord children who are considered “awaiting foster care placement” under the federal McKinney-Vento Act with all of the protections of that Act until December 9, 2016. As of that date, all students previously recognized as entitled to school stability under the McKinney-Vento Act shall be entitled to the same school stability and immediate school enrollment protections under ESSA. LEAs must ensure a seamless transition from McKinney-Vento to ESSA for these students. In addition, some children in foster care will still be considered “homeless” under other provisions of McKinney-Vento if they are, for example, living in a shelter, doubled up, or runaways. Children and youth who were recognized as “awaiting foster care placement” under the McKinney-Vento Act before December 10, 2016, but exited to permanence before that date, are entitled to remain in the same school with transportation costs covered until the end of the school year. Children who remain in care after December 10th, will transfer over to the foster care ESSA protections in Title 1, Part A.

GUIDANCE TO THE FIELD 17

Within XX days following the signing of this Memorandum of Understanding, and as needed in the future, the Parties shall issue to the field appropriate guidelines and policies to implement their commitments in this Memorandum of Understanding and meet the state’s duty to ensure school stability for children in foster care. To the extent appropriate, the guidelines and policies shall align with policies and procedures already in place to comply with the Fostering Connections Act. Guidelines to the field reflecting this agreement will include at minimum:

**Best interest processes:** Guidelines establishing uniform factors to be used in making best interest determinations, setting out the procedures to be used, providing tools, and otherwise assisting local educational and child welfare agencies to jointly make such determinations for children in foster care.

**Transportation plans:** Guidelines stating what to include in local transportation procedures, including how local educational and child welfare agencies shall collaborate to develop cost-effective, clear, written procedures on how school stability transportation shall be arranged, promptly provided, and funded, including when necessary transporting children in foster care across district and state lines.

***Funding “additional costs” of transportation:***18 A statewide policy setting out how the additional costs of school stability transportation shall be funded. The policy shall include the requirement that LEAs’ written transportation plans must describe how school stability transportation will be ensured if a dispute over which agency or agencies will pay any additional costs arises.

***Dispute resolution mechanism:*** Guidelines concerning the interagency dispute resolution mechanism by which transportation funding disputes (including inter-district and inter-state disputes) and other disputes arising under this Memorandum of Understanding can be resolved. LEAs’ written transportation plans must describe which agency or agencies will initially pay the additional costs of school stability transportation so the transportation is provided promptly during pendency of any funding dispute.

**Sharing student data:** A directive to LEAs and local child welfare agencies that, consistent with applicable privacy laws, local child welfare agencies shall share with LEAs crucial data (including which children are in foster care and when a change in the child’s placement is proposed that will move the child into another LEA or attendance area); that local child welfare agencies shall share only information needed to ensure school stability, immediate school enrollment, or that is relevant to a child’s safety or need for an accommodation in school; and that LEAs shall share child welfare data among school staff only on a “need to know” basis.

**Collecting and reporting student data:** Guidelines explaining how LEAs should report information so the state can disaggregate by “status as a child in foster care” data regarding student achievement on academic assessments at each mandated level; performance on the state’s other academic indicator for elementary and middle schools; and high school graduation rates (or at the state’s discretion extended year adjusted cohort graduation rates).

**Duties of Points of Contact (POCs):** Guidelines regarding the appointment and duties of LEA and local child welfare agencies’ POCs consistent with this Memorandum of Understanding.

**Directive to LEAs:** A directive to all LEAs comprehensively setting out their duties under ESSA and this Memorandum of Understanding.

**Endnotes**

1. Fostering Connections to Success and Increasing Adoptions Act of 2008 (hereinafter “Fostering Connections Act”), Pub. L. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 42 U.S.C.).

2. The *Guidance* can be found at [http://www.acf.hhs.gov/sites/default/files/cb/ ed\_hhs\_foster\_care\_guidance.pdf](http://www.acf.hhs.gov/sites/default/files/cb/%20%20ed_hhs_foster_care_guidance.pdf). This model MOU relies heavily on language from that *Guidance*.

3. These regulations can be found at: [http://www2.ed.gov/policy/elsec/leg/essa/ essaaccountstplans1129.pdf](http://www2.ed.gov/policy/elsec/leg/essa/%20essaaccountstplans1129.pdf).

4. 34 C.F.R §299.13(c)(1)(ii).

5. This agreement is intended to govern the agencies directly involved in caring for children. In states with county-based systems, state agencies should further support the collaboration sought through this agreement through joint directives or other statewide policy guidance.

6. ESSA mandates school stability and transportation necessary to ensure school stability until students exit foster care. The Guidance strongly urges states to extend these rights until the end of the school year in which the child exits foster care.

7. See *Guidance* at Q: 11.

8. See endnote 4.

9. See 34 C.F.R §299.13(c)(1)(ii); *Guidance* at Q: 25.

10. The person appointed cannot be the person the state has designated as the state’s Coordinator for the Education of Homeless Children and Youth under the McKinney-Vento Act.

11. ESSA mandates the appointment of a state level Department of Education POC. The *Guidance* also strongly recommends that state Child Welfare agencies appoint POCs to collaborate with the Education POCs to implement ESSA’s requirements. *Guidance* at Q: 36.

12. As this MOU requires child welfare agencies to appoint a POC, LEAs will therefore be required under federal law to also make such appointments.

13. The Guidance strongly recommends that child welfare agencies designate staff who can fulfill these functions. *Guidance* at Q: 36.

14. This is allowable under the Uninterrupted Scholars Act. FERPA permits LEAs to release the school records of a child in foster care to a representative of a child welfare agency with care and placement responsibility of the child without first obtaining parental consent as would otherwise be required by FERPA. 20 U.S.C.

§1233(g); 34 C.F.R. Part 99.

15. See endnotes 4 and 5.

16. 34 C.F.R §299.13(c)(1)(ii).

17. Statewide directives are highly recommended for effective and uniform implementation. *Guidance* at Q: 3.

18. Guidance at Q: 21. Guidance also urges that transportation for school stability policies include transportation for extracurricular and academic activities that extend beyond the school year.