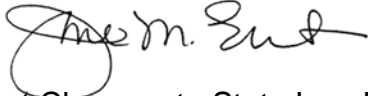





THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: P-12 Education Committee

FROM: Jhone M. Ebert 

SUBJECT: Update on Recent Changes to State Law Relating to the Educational Stability of Students in Foster Care to Implement Title I, Part A of the Elementary and Secondary Education Act, as Amended by the Every Student Succeeds Act

DATE: October 4, 2018

AUTHORIZATION(S): 

SUMMARY

Issue for Discussion

The purpose of this presentation is to provide an update to the P-12 Education Committee regarding recent changes made to State law relating to the educational stability of students in foster care to implement Title I, Part A of the Elementary and Secondary Education Act (“ESEA”), as amended by the Every Student Succeeds Act (“ESSA”).

Reason(s) for Consideration

As part of the 2018-2019 Enacted Budget (Part CC of Chapter 56 of the Laws of 2018), the Legislature and Governor enacted a new Education Law §3244 entitled: "Education of Children in Foster Care." The law became effective immediately and provides clear direction regarding the responsibilities of school districts for enrolling, educating, and transporting students in foster care. It is built upon existing federal law, including the Fostering Connections to Success and Increasing Adoptions Act (“Fostering Connections”) of 2008, the Uninterrupted Scholars Act of 2011 and, most recently, the foster care provisions set forth in ESEA, as amended by ESSA, and existing State law— Education Law §3202, which governs the tuition reimbursement for children in foster care.

Over the past eighteen months, the State Education Department (“SED”) has partnered with the Office of Children and Family Services (“OCFS”), local departments of social services (“LDSS”) and educational providers to develop guidance to implement the new federal and State laws. The guidance is intended to clarify the requirements and processes necessary to support the educational needs of children in foster care in New York State.

Background Information

Children in foster care, compared to their peers have higher rates of grade retention, lower scores on standardized tests, higher rates of absenteeism, tardiness and truancy, and are more likely to drop out of school.¹ Keeping children in the same school when they have been removed from home maintains connections with teachers, friends, school nurses, school counselors, coaches, and extracurricular activities, and provides consistency in curriculum. Students who feel connected to their schools are more likely to succeed academically and graduate, less likely to be truant, be involved in fighting and bullying, and are less likely to use substances or become pregnant.²

Children in foster care also experience three to four changes in placements while in care and, on average, experience one to two placement changes per year.³ School mobility, the usual result of a change in placement, disrupts students’ exposure to key concepts, and is linked to lower tests scores and repeating grades, and to dropping out of school.⁴

The Fostering Connections Act was enacted in 2008 to increase educational stability and reduce school transfers for children and youth in foster care. The provisions of Title I, Part A (Title I) of ESEA, as amended by ESSA, emphasize the importance of collaboration and joint decision-making between child welfare agencies and educational agencies. While these provisions do not create new requirements for child welfare agencies, they mirror and enhance similar provisions in the Fostering Connections Act. Considered together, these laws make clear that the educational stability of children in foster care is a joint responsibility of educational and child welfare agencies, and to successfully implement these provisions, these entities need to collaborate continuously. Education Law §3244, as added in Part CC of the 2018-2019 Enacted Budget (Chapter

¹ Burley, 2013; Zorc, O’Reilly, Matone, Long, Watts, & Rubin, 2013; Castrechini, 2009; Pecora et al., 2005; Smithgall et al., 2004; Vera Institute, 2004; Yu, Day & Williams, 2002: see also, Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care, <http://fostering-ed.org/fostering-success-in-education-national-factsheet-on-the-educational-outcomes-of-children-in-foster-care/>.

² Thapa, Cohen & Guffey, 2013; Lonczak et al, 2002; Samdel et al, 1998; Cannell et al, 1995; Schapps, 2003. (students in the general population.)

³ Clemens, Klopfenstein, Tis & Lalonde (2017); Sullivan, et al, 2010; Yu, Day & Williams, 2002; U.S. Department of Health and Human Services, 2005

⁴ Clemens, Lalonde & Sheesley, 2016; Piescher, Colburn, LaLiberte, & Hunt, 2014; Yu, Day & Williams, 2002; U.S. DHHS, 2005; Wood et al., 1993; Rumberger et al., 1999; Rumberger & Larson, 1998; Audette, Algozzine & Warden, 1993; Benson et al., 1979; Kerbow, 1996.

56 of the Laws of 2018) was enacted to implement the provisions of ESEA, as amended by ESSA, and the federal guidance on this issue.

ESSA requires the state and each local educational agency to identify Points of Contact to help facilitate the process and to make such contact information publicly available so that child welfare agencies can easily reach them. ESSA also requires states to, among other things, develop clear, written procedures for how to ensure the following:

- A child in foster care remains in his or her school of origin, unless it is determined that remaining in the school of origin is not in that child's best interest;
- If a determination is made that it is not in the child's best interest to stay in his or her school of origin, the child is immediately enrolled in the new school even if the child is unable to produce records normally required for enrollment; and
- That the new (enrolling) school immediately contacts the school to obtain relevant academic and other records. (20 USC 6311(g)(1)(E)(i)-(iii)).

Some children in foster care will need transportation to remain in their school of origin when it is in their best interest. ESEA, as amended by ESSA, requires states to develop a policy/procedure for how transportation to maintain students placed in foster care in their school of origin will be provided, arranged, and funded for the duration of the time in foster care. These procedures must ensure that students placed in foster care who need transportation to the school of origin promptly receive it in a cost-effective manner and that states develop a process to determine who will pay for the transportation.

School districts have indicated that it has been problematic to provide transportation when the student resides in a foster care placement in a different school district than the one they had attended at the time of placement in foster care. Based upon this feedback, the Department and OCFS agreed that the State Education Law should be amended to clarify and support school districts' responsibilities.

The new State law provides the framework for school districts/charter schools and LDSSs to collaboratively make decisions regarding educational placement in the best interest of the child in foster care. The law defines and delineates the responsibilities of the district, where the child is entitled to attend school, which district must provide transportation and who is responsible for the payment of such transportation.⁵ Finally, the State law establishes that any allowable costs incurred to transport a foster care student is eligible for State aid up to fifty miles each way and that any excess costs should be split between the school district and the LDSS.

The Department has worked collaboratively with OCFS to develop a Toolkit for LDSSs, school districts and charter schools to assist them in meeting the requirements

⁵ The school district of origin is defined as the school district the student was attending when they first entered foster care.

of the federal and State laws. The [Foster Care Toolkit](#) and accompanying guidance memo, [Educational Stability of Students in Foster Care](#), were released in August 2018.

This Toolkit seeks to prepare school districts, charter schools, and LDSSs to meet the needs of children placed in foster care by focusing on the creation of processes and relationships between the local agencies. A consistent process with clearly defined roles and timelines for the school districts/charter schools and LDSSs will provide for the needs of these students in a timely and appropriate manner. The local agencies will work together to ensure that the child is transported to the school determined to be in the child's best interest and educational stability is maintained. The Toolkit explains the requirements of ESSA and the new State law and provides school districts/charter schools and LDSSs with instructions and forms to facilitate transparent communication between local agencies as they work to meet the educational needs of students in foster care.

At the October 2018 meeting, Department staff will be joined by staff from OCFS, who will provide an update on educational outcomes for children in foster care, and a BOCES District Superintendent, who will provide an update from the field regarding implementation of the new provisions to date.

Representatives are:

- Lisa Gharthey Ogundimu, Esq., Assistant Commissioner, OCFS
- Dr. Harold Coles, District Superintendent, Southern Westchester BOCES

Related Regents Items

December 2016, [Guidance issued by the New York State Education Department and the New York State Office of Children and Family Services on Ensuring Educational Stability for Children in Foster Care](#)

<http://www.regents.nysed.gov/common/regents/files/1216p12hed1.pdf>

Next Steps

The Department and OCFS will be providing a statewide educational session on October 29, 2018 regarding the new State law for LDSSs, school districts and charter schools and will provide an overview of the Toolkit as well. Each of the BOCES sites across the State will host staff from the LDSSs, school districts and charter schools in the region to view the Webinar together.

This is a good opportunity for the local Points of Contact at school districts, charter schools and LDSSs to meet and learn together about the new requirements of State law, which was enacted to implement federal law regarding educational stability of youth in foster care.