

Education Alert
MARCH 2018

DESE CLARIFIES UNRESOLVED ISSUES FOR FOSTER CARE STUDENTS

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On January 18, 2018, the Massachusetts Department of Elementary and Secondary Education (“DESE”) issued guidance which clarifies the obligations of school districts for foster care students under the Every Student Succeeds Act (“ESSA”). The guidance can be found here: <http://www.doe.mass.edu/news/news.aspx?id=24765>. The guidance generally places significant burdens on school districts, although it did provide some helpful clarifications.

First, ESSA protects foster care students in a similar manner to homeless students. ESSA allows foster care students to continue to attend their school of origin, unless, after a collaborative decision-making process with the school of origin, foster care parents, the student, the Department of Children and Families (“DCF”), and the district where the student is living, it is determined to be in the student’s best interest to attend school where the student is living. In the event that the parties disagree about the best interest determination, DCF will make the final determination. A school district can seek review of DCF’s decision through a “Foster Care School Selection Dispute Resolution Process.” DESE and DCF are creating this process together, and the guidance does not provide any further details on the process. While the dispute process unfolds, the student will be required to attend the school that DCF determines to be in the student’s best interest.

Second, the guidance describes school districts’ responsibilities for transportation costs under ESSA. Previously, transportation had to be provided if: (1) DCF agreed to reimburse the school district for the cost of such transportation; (2) the school district agreed to pay for the cost; or (3) the school district and DCF agreed to share the cost. There was no clarity on what occurred if the school district and DCF did not agree. DESE’s new guidance states that, absent an agreement between districts and DCF, the district of origin is responsible for providing transportation to and from the school of origin. DESE requests that school districts keep records of the amount spent in case it finds funding for the transportation. Nonetheless, until there is further notice from DESE, school districts are shouldering the burden of these additional costs.

Third, DESE clarified that, when enrolling a student in a school district, DCF will present a Notice to LEA (“Local Education Agency”) form that indicates that the student is in foster care, along with the DCF employee’s state-agency identification badge.

Finally, DESE further explained that a student can remain in his or her school of origin for the duration of the student’s time in foster care or until the student completes all the grades in

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that school, whichever takes place first. Therefore, in contrast to homeless students, foster care students have a right to complete all of the grades in their school of origin, but do not have a right to advance to the next level school in the same district (e.g., advancing from elementary to middle school).

If you have any questions about this issue, please contact Felicia Vasudevan or the attorney responsible for your account, or call (617) 479-5000.

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