

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**RHODE ISLAND DEPARTMENT OF ELEMENTARY AND SECONDARY  
EDUCATION**

**and**

**RHODE ISLAND DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES**



**ENSURING EDUCATIONAL STABILITY FOR CHILDREN IN  
FOSTER CARE**

**JOINT NON-REGULATORY GUIDANCE DOCUMENT**

**2019**

## INTRODUCTION

In December 2015, Congress passed the Every Student Succeeds Act (ESSA), instituting new protections for children in foster care<sup>1</sup> related to ensuring their educational stability and their equal access to the same free and appropriate public education through high school graduation as provided to other children and youth. These provisions took effect on December 10, 2016. These protections align with the educational stability protections found in the Fostering Connections Act of 2008 and require SEAs (State Education Agencies- in Rhode Island the Rhode Island Department of Elementary and Secondary Education, "RIDE")<sup>2</sup> and LEAs (local education agencies) to share the responsibility with child welfare agencies (in Rhode Island, the Department of Children, Youth and Families, "DCYF") to ensure the educational stability of children in foster care in the state of Rhode Island

RIDE and DCYF have jointly prepared this guidance document to clarify the specific responsibilities and obligations under ESSA's school stability provisions and to provide clear and unambiguous guidance to staff of DCYF, RIDE, Rhode Island's LEA's, foster care providers and other interested parties on selected provisions of the law and its implementation in Rhode Island.

Students in foster care must have the same opportunity to achieve at high academic levels as their peers. Educational disruption must be limited by allowing children who move in foster care (when entering foster care or changing foster care placement) to remain in their school of origin, unless it is determined that it is not in the child's best interest to remain there and that it is in their best interest to change schools. ESSA's educational stability provisions also provide that when a child is not to remain in his or her school of origin, the child is, enrolled in the new school without delay.

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<sup>1</sup> Pursuant to 45 § 1355.20 Foster Care is defined as when a child is in the care and custody of DCYF and is placed by DCYF in any out of home setting with the exception of a psychiatric hospitalization or hospital step-down program, the Rhode Island Training School, or Ocean Tides. This includes foster homes, kinship foster homes, congregate care facilities and residential treatment programs.

<sup>2</sup> As a matter of state law, the Rhode Island Department of Elementary and Secondary Education (RIDE) is the State Education Agency (SEA) for Rhode Island.

### **SCHOOL OF ORIGIN<sup>3</sup>**

The school of origin is the school in which a student is enrolled at the time of his or her initial placement in foster care or, if a child's foster care placement changes, the school in which the student is enrolled at the time of the placement change. RIDE and the LEA in which a student's school of origin is located must ensure that a student in foster care remains in his or her school of origin unless a determination is made by DCYF that it is not in the student's best interest to remain there. At the time of initial placement into foster care or at the time a change in foster care placement is made, the primary DCYF worker will immediately notify the DCYF Educational Services Coordinator (the "ES Coordinator"). The DCYF ES Coordinator will then provide notice to the involved LEAs that a Best Interest Determination telephone conference call is being scheduled with the interested parties identified in the following section of this document titled "Best Interest Determination", Paragraph 2, and provide the date, time and conference line information to those parties.

Notwithstanding the above, DCYF may move a student from his or her school of origin pending the Best Interest Determination for the student, if there is an immediate and substantial safety concern presented by the student remaining in the school of origin. In the event such a determination is made by DCYF, the DCYF ES Coordinator will notify the LEA responsible for the presumptive school of origin and the LEA responsible for the city/town in which the foster care placement is located of this decision. The LEA responsible for the city/town in which the foster care placement is located will then immediately enroll the child in that LEA and make appropriate educational placement pending the completion of the Best Interest Determination.

To date, RI statutes and the decisions of the Rhode Island Commissioner of Education have provided the following guidance on the identification of a school of origin:

- The school of origin for a child being discharged from the Thomas C. Slater Training School or Ocean Tides (both juvenile justice facilities to which placement is made by the Family Court) will be the last school in which the child was enrolled prior to placement in the aforementioned facilities<sup>4</sup>; and
- The school of origin for a child who has been placed in an out-of-district educational placement pursuant to an Individualized Education Program ("IEP") developed by an LEA will be the out of district educational placement. The LEA which placed the child in the out-of-district placement is the LEA of the school of

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<sup>3</sup> The LEA that is educational responsible (administratively and financially) for the child in his or her school of origin remains responsible at the time of placement in foster or at the point in time of a change in foster care placement unless there is a determination that it is not in the student's best interest to remain in his or her school of origin.

<sup>4</sup> See the Commissioner's decision in DCYF v. Newport (In re: P. Doe), RIDE # 08-099A.

origin for purposes of the Best Interest Determination and the responsibility to maintain the child in the school of origin, if this is determined to be in his or her best interest.<sup>5</sup>

### **BEST INTEREST DETERMINATION**

Under ESSA, there is a legal presumption that it is in the foster child's best interest to remain in his or her school of origin. When making the Best Interest Determination for a child in foster care, DCYF determines whether this presumption has been rebutted - that is, whether or not consideration of all of the relevant factors would indicate that remaining in the school of origin is not in the best interest of the foster child.

***In accordance with the transportation provisions of ESSA, the school/LEA of origin is responsible for providing transportation for the student to be able to remain in their school of origin during the Best Interest Determination process and, if it is supported that remaining in the school of origin is in the best interest, after that determination is made.***

If it is determined not to be in the child's best interest to remain in his or her school of origin, the child must immediately be enrolled in the LEA for the city or town where the child is placed in foster care.

Conference Call:

DCYF will conduct the Best Interest Determination process through a telephone conference call which is structured as described below.

1. DCYF (Office of Youth Development, Education, and Constituent Support Services - YDECS) will schedule a conference call to consider best interest determination within ten (10) business days of the receipt of the fully completed ESSA Student Contact form by the DCYF YDECS staff notifying them of the child's initial foster care placement or change in foster care placement. DCYF will provide all the parties designated in paragraph 3 below with written notification of the conference call at least five (5) business days prior to the call.
2. DCYF will make every effort to schedule the ESSA best interest determination conference call prior to the discharge of any child placed in a residential treatment program that includes the delivery of educational services provided the child's new DCYF placement is in a foster care setting.

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<sup>5</sup> See Commissioner's decision in DCYF v. Pawtucket (In re: N. Doe), RIDE # 18-039P.

3. The DCYF (Office of Youth Development, Education, and Constituent Support Services - YDECS) will send notification of the conference call to the following parties:
  - a. Foster care point of contact for LEA responsible for the student in the school of origin;
  - b. Foster care point of contact for the LEA of the community in which the foster care placement is located;
  - c. The Superintendent of the school districts listed in paragraph's (a) and (b) above;
  - d. The primary DCYF worker and supervisor;
  - e. The student's Educational Advocate - if one has been identified; and
  - f. The CASA office – if the CASA office is appointed to the child's case pending in Family Court;

The interested parties will be notified of the time and date of the conference call and offered the opportunity to participate on the call or to provide **written** input into the best interest determination. Written input should be sent to DCYF in accordance with the instructions contained in the conference call notification. Any input provided outside of the conference call must be submitted by the end of the day on which the conference call took place. Such input is to be provided in accordance with the instructions contained in the email by DCYF for the scheduling of the Conference call.

Receipt of input by an interested party outside of the Best Interest Determination conference call will be documented in the Best Interest Determination.

The LEA's involved should determine the most appropriate person to represent the LEA on the conference call, based on the person's knowledge and experience with the student. The LEA's ESSA Point of Contact does not necessarily have to represent the LEA on the conference call. If the student has an IEP or Section 504 Plan, a person or persons knowledgeable about the student's needs and services should participate in the conference call. If the student is receiving EL services, relevant school staff members should participate in the call.

In the event that a DCYF primary worker cannot make the call, then the DCYF primary worker's supervisor will join the call. In the event that the supervisor also cannot make the call, DCYF primary worker or supervisor will provide written input and the conference call will still proceed as planned and be facilitated by the DCYF ESSA Foster Care designee.

In the event that a call must be rescheduled for any reason, DCYF will reschedule the call no less than five (5) business days thereafter,

The primary DCYF worker will invite and/or solicit input from the parent(s); child/youth, foster parent(s) or other caregiver, unless the primary DCYF worker determines it is not appropriate due to the age of the child and capacity and/or fitness of the parent(s).

4. DCYF will make a written Best Interest Determination within three (3) business days of the conference call. The written decision will be sent to the parties listed above in Paragraph 3 above via email. Under ESSA, students should continue to attend their schools of origin while best interest determinations are being made, unless DCYF removes them because of immediate and substantial safety concerns. In the event that DCYF and the LEAs cannot agree about the school of origin or whether it is in the student's best interest to attend the school of origin, the dispute may be resolved by the Commissioner pursuant to R.I. Gen. Laws § 16-39-1. Pending the resolution of disputes with respect to best interest determinations, children are to attend school in the LEA as determined by DCYF.

In making a Best Interest Determination, DCYF, in consultation with other interested parties, must consider a variety of student-centered factors. If applicable, the factors to be considered may include:

- **Safety considerations based on the child's welfare;**
- **Preferences of the child;**
- **Whether or not siblings attend the same school;**
- **The child's permanency goal and expected date of achieving permanency;**
- **Preferences of the child's parent(s) or educational decision maker;**
- **Whether or not the foster care placement is expected to be less than 90 days;**
- **The child's attachment to the school, including meaningful relationships with staff and peers;**
- **Whether transferring schools will positively impact the child emotionally, socially or academically.**
- **How the length of the commute would impact the child, based on the child's developmental stage;**
- **History of school transfers and how they have impacted the child;**
- **How long the child has attended the school of origin, the child's attachment to the school of origin and the child's involvement in school-related or extra-curricular activities;**
- **The availability and quality of the services in the school to meet the child's educational and socioemotional needs;**
- **To the extent that information is available, whether the new school is able to meet the student's academic needs, including the student's need for special instruction or special education and related services.**

- **Whether the child is an EL and is receiving language services, and, if so, the availability of those services in a school other than the school of origin, consistent with Title VI and the EEOA.**
- **Whether changing schools would negatively impact the child's ability to graduate on time; and**
- **Whether the timing of a school transfer would undermine educational success.**

The primary DCYF worker must document the Best Interest Determination in the child's service plan.

The LEA responsible for the school of origin must not disenroll the student unless and until it is determined by DCYF that it is not in the student's Best Interest Determination to remain in the school of origin. The LEA must permit the student to remain enrolled and must ensure that the student is provided school transportation from the date the LEA is notified of the foster care placement and at least until the finalization of the Best Interest Determination. Should the Best Interest Determination result in the student remaining in the school of origin, the responsible LEA will continue to ensure that school transportation is provided. In the event the Best Interest Determination designates a change of school, the LEA responsible for the school of origin is no longer required to provide transportation upon enrollment in the new school.

### **TRANSPORTATION**

Transportation costs must **NOT** be considered when determining a child's best interest process. **In accordance with the transportation provisions of ESSA, the school/LEA of origin is responsible for providing transportation for the student to be able to remain in their school of origin during the best interest determination process and, if it is supported that remaining in the school of origin is in the best interest, after that determination is made.**<sup>6</sup> Should the Best Interest Determination result in the child remaining in the school of origin, the responsible LEA will continue to ensure school transportation to and from the school of origin. In arranging the Best Interest Determination conference call, DCYF will include location and contact information for the child's foster care placement.

If the responsible LEA does not initiate the necessary school transportation on its own or submit a request for transportation to RIDE within two (2) business days of receiving the DCYF notification of a change in foster care placement, DCYF will initiate a request to RIDE's statewide transportation system and indicate the LEA responsible for the foster student's transportation costs. In such cases, DCYF will request that the LEA be directed by RIDE to provide DCYF with the transportation routing information for the foster child.

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<sup>6</sup> See the Commissioner's decision in DCYF v. Pawtucket (In re: B. Doe), RIDE #18-039P

## **SCHOOL ENROLLMENT**

When a student changes schools because attending the school of origin is determined not to be in his or her best interest, the new LEA must immediately enroll the student in the most appropriate school/educational program regardless of whether the student can produce the documentation normally required for school enrollment. The DCYF primary service worker or the foster care provider will initiate steps to immediately enroll the child in the new LEA. Therefore, as is the case with children experiencing homelessness, immediate enrollment cannot be delayed or denied because the student cannot provide documents such as proof of age, residency, or immunization records required to enroll other students. “Immediate enrollment” means the student must be enrolled and admitted to classes and other school-based activities and be receiving all appropriate services including special education.

## **DISPUTE RESOLUTION PROCESS**

When DCYF and the LEAs cannot agree about which school is a student’s “school of origin” and/or whether it is in the child’s best interest to remain in the school of origin or to enroll and attend locally, and DCYF makes a final decision that the LEA cannot accept, the dispute may be resolved by the Commissioner pursuant to R.I. Gen. Laws 16-39-1. Consistent with the US DOE Guidance that the child welfare agency (here, DCYF) should be considered the final decision maker in making the best interest determination (unless state law or policy dictates otherwise), the scope of the commissioner’s review of challenges to the best interest determination was clearly erroneous and/or whether DCYF failed to comply with applicable procedure<sup>7</sup>. Pending final resolution of the dispute, LEAs must comply with DCYF’s determinations with respect to enrollment and transportation.<sup>8</sup>

## **APPLICABLE DEPARTMENT POLICY, FORMS AND INTER-AGENCY GUIDANCE**

- DCYF Policy 700.0150, Educational Stability
- DCYF ESSA Student Contact Form
- DCYF Best Interest Determination Form

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<sup>7</sup> DCYF v. North Smithfield School Department, RIDE No. 17-21 and DCYF v. Pawtucket School Department, RIDE No. 17-22, referred to as the “Consolidated Decision” in subsequent decisions of the Commissioner related to ESSA/school stability issues at page 13.

<sup>8</sup> See the “Consolidated Decision” supra at pages 12-13.



Educational Stability

- RIDE Guidance Document, Recommended LEA Procedure for School of Origin Transportation for Students in Foster Care