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**REASON FOR THIS TRANSMITTAL**

- ☐ State Law Change
- ☒ Federal Law or Regulation Change
- ☐ Court Order
- ☐ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

May 3, 2017

ALL COUNTY LETTER NO. 17-24

TO: ALL COUNTY CHILD WELFARE DIRECTORS  
ALL COUNTY CHIEF PROBATION OFFICERS  
ALL TITLE IV-E AGREEMENT TRIBES  
ALL FOSTER FAMILY AGENCIES  
ALL COUNTY CHILD WELFARE PROGRAM MANAGERS  
COUNTY WELFARE DIRECTORS ASSOCIATION

SUBJECT: EVERY STUDENT SUCCEEDS ACT (ESSA)

REFERENCE: [42 UNITED STATES CODE \(USC\) 675\(4\)\(A\)](#); [34 CODE OF FEDERAL REGULATIONS \(CFR\) 299.13\(c\)\(1\)\(ii\)](#); ASSEMBLY BILL (AB) [490](#) (CHAPTER 862, STATUTES OF 2003); PUBLIC LAW (PL) [114-95](#), [107-110](#), AND [110-351](#); ALL COUNTY LETTERS (ACL) NO. [16-75](#), [13-03](#), [12-70](#), [11-51](#) AND [10-12](#); ALL COUNTY INFORMATION NOTICE (ACIN) NO. [I-77-16](#); FEDERAL [NON-REGULATORY GUIDANCE: ENSURING EDUCATIONAL STABILITY FOR CHILDREN IN FOSTER CARE](#); UNITED STATES (U.S.) DEPARTMENT OF EDUCATION: [DEAR COLLEAGUE LETTER](#).

The purpose of this All County Letter (ACL) is to inform county child welfare and juvenile probation departments about the ESSA (PL [114-95](#)) enacted on December 10, 2015. The foster youth educational stability requirements of ESSA became effective on December 10, 2016, and are applicable to child welfare and probation supervised foster youth. This ACL does not cover the ESSA provisions specific to students in or returning from the juvenile justice system that are not in foster care.

The ESSA (PL [114-95](#)) reauthorizes the Elementary and Secondary Education Act of 1965, replaces the No Child Left Behind Act of 2001 (PL [107-110](#)), and builds upon the 2008 Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL [110-351](#)) by containing key protections for students in order to promote school stability and success. The ESSA requires each State Educational Agency (SEA) to have improved accountability systems to support school quality, student success and student growth and to submit this information in their state plans. The ESSA requires

SEAs and Local Education Agencies (LEAs) to collaborate with state and local Child Welfare Agencies (CWAs) and envisions dual-agency responsibility for supporting the educational success of students in foster care.

### **Background/Overview**

Data suggests that school-aged students in foster care have been academically outperformed by their peers who are not in foster care in achievement, testing, graduation and post-secondary attendance, and experience more challenges than their peers who are not in foster care. Additionally, students in foster care experience expulsion and suspensions at higher rates than their peers who are not in foster care.<sup>1</sup> The challenges in education that foster youth experience can be attributed to multiple placement and school changes, poor attendance and educational discontinuity.

California recognized the importance of educational stability for children and youth in foster care and passed [AB 490](#) in 2003, which established educational protections for students in foster care, thus leading the way for many of the state and federal educational reforms for youth in foster care. In 2008, the passage of [PL 110-351](#) further enhanced the educational rights of foster youth. Please refer to the following ACLs for more detailed information about AB 490 and PL 110-351: 12-70, 10-12, 11-51 and 13-03.

### **Protections for Students in Foster Care Included in ESSA**

The ESSA builds upon existing protections and requirements in child welfare law by requiring that SEAs, LEAs and local CWAs work collaboratively to improve the educational outcomes of children and youth in foster care. Existing federal child welfare law described in ACLs 12-70 and 10-12 already requires CWAs to collaborate with educational agencies to ensure educational stability. The ESSA creates reciprocal obligations for education agencies. The new provisions include enhancements to existing law in each of the following areas:

**School of Origin and Best Interest Determinations:** Foster youth must be enrolled or remain in their school of origin, unless there is a determination that it is not in their best interest to do so. Factors that must be taken into account in determining best interest include proximity of placement and appropriateness of the educational setting. Transportation costs should *not* be a factor in determining best interest. For additional guidance on best interest determinations, please consult the “Non -Regulatory

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<sup>1</sup> Harden, B.J. (2004). “Safety and stability for foster children: A developmental perspective”. The future of children, 14(1): 31-47; National Youth in Transition Database. Unpublished analyses (April 2016). Administration on Children, Youth and Families, HHS; and Frerer, K., Sosenko, L.D., Pellegrin, N., Manchik, V., & Horowitz, J. (2013). Foster youth stability: A study of California foster youths’ school and residential changes in relation to education outcomes. Retrieved from [http://www.iebcnow.org/wp-content/uploads/2016/12/pub\\_foster\\_youth\\_stability\\_2013.pdf](http://www.iebcnow.org/wp-content/uploads/2016/12/pub_foster_youth_stability_2013.pdf)

Guidance” available at

[https://www.acf.hhs.gov/sites/default/files/cb/ed\\_hhs\\_foster\\_care\\_guidance.pdf](https://www.acf.hhs.gov/sites/default/files/cb/ed_hhs_foster_care_guidance.pdf).

**Immediate Enrollment and Transfer of Records:** When a school transfer is warranted, ESSA requires immediate enrollment without producing normally required school records and/or documents. Additionally, enrolling schools must immediately contact the school last attended to obtain relevant academic information even if the student did not properly check out. Since the passage of [AB 490](#), California law specifies that the enrolling school must make this request for records within two-days of receiving a request for enrollment. Furthermore, the student’s previous school must send education records to the new school within two-days of receiving the request. Some education records may include but are not limited to: immunization record, birth certificate, transcript, and IEP documents.

**Designated Point of Contact:** Each SEA must designate a Point of Contact (POC) to work with CWAs to oversee and implement the ESSA. The California Department of Education’s POC may be contacted at [Fosteryouth@cde.ca.gov](mailto:Fosteryouth@cde.ca.gov). State CWAs are not required to designate a POC, but the CDSS has chosen to do so. The CDSS’s POC may be contacted at [FosterCareEducation@dss.ca.gov](mailto:FosterCareEducation@dss.ca.gov). Under ESSA, LEAs must designate a local POC if the child welfare agency notifies the LEA, in writing, that it has designated a POC within the child welfare agency. In California, all LEAs must already have a foster care liaison in place under [AB 490](#). If an LEA has designated a POC, this person may be the same person as the LEA’s foster care liaison, but not necessarily.

Under ESSA, local CWAs are not required to designate an equivalent POC at the tribal or local level, but for the purpose of best practices it is highly encouraged that all county child welfare and probation agencies do so and notify the LEAs of their POC as soon as possible. By CWAs designating a POC, the LEA will be required to designate a POC as well.

Local education and child welfare agency POCs can help reduce interagency communication barriers and improve efficiency in connecting foster youth to supportive services that may aid in their educational stability. For more information about the local CWA’s POC role and what steps a POC should take when getting started, please review the fact sheets released by the National Center for Youth Law, provided at <http://foster-ed.org/child-welfare-agency-point-of-contact-fact-sheets/>.

For more information on the potential role and responsibilities of the various agencies Points of Contact, please refer to the Federal [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care letter](#).

**School Transportation:** As of December 10, 2016, LEAs must now collaborate with CWAs to develop and implement clear written procedures for how transportation will be provided, arranged and funded to ensure children and youth in foster care are properly transported to their school of origin for the duration of their time in foster care. The procedures must ensure that children in foster care who need transportation to the school of origin will promptly receive such transportation in a cost effective manner and in accordance with [42 USC 675\(4\)\(A\)](#), which describes the foster care maintenance payment to include, in part, the cost of reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. The procedures developed must also outline which agency will be responsible for payment of any costs outside of those that the LEA would otherwise have to expend for the student related to transportation to maintain a child in his or her school of origin. When there are additional costs incurred, ESSA allows for the LEAs to provide transportation if:

- They are reimbursed by the child welfare agency,
- The local education agrees to pay the cost, or
- The child welfare agency and LEA agree to share the cost.

The transportation procedures must describe how transportation will be provided in the event of a dispute regarding which agency or agencies will pay any additional costs, and describe which agency or agencies will initially pay the additional costs so that transportation is provided promptly during pending disputes, such that there are no gaps in transportation in the event of a disagreement between agencies.  
(See [34 CFR 299.13\(c\)\(1\)\(ii\)](#)).

The U.S. Department of Education has suggested some possible cost-sharing arrangements between LEAs and CWAs. These include:

- a) The LEAs and local CWAs share costs based on an agreed-upon distance, such as the LEA paying for transportation costs up to a certain number of miles and the CWA paying the remaining transportation costs; and
- b) The LEAs and CWAs share costs based on the length of time the student requires transportation, such as the LEA paying for transportation costs the first six-months of the student's foster care placement, and the child welfare agency paying for costs following the initial six-months.

(See the [U.S. Department of Education Dear Colleague Letter](#)).

The LEAs and CWAs are encouraged to work together to ensure the provisions of ESSA related to transportation of children in foster care are effectively and timely implemented.

**Data Collection and Reporting:** The SEA must annually report the progress of students in foster care. These reports must include achievement and graduation rates among children and youth in foster care. This requirement must be implemented with the collaborative efforts between child welfare and education agencies working together to ensure effective and confidential data and information sharing between systems. Please refer to the ACLs 16-75 and I-77-16 for further information on data sharing between CWAs and education agencies for the purposes of providing students in foster care with additional support to promote stability and success.

### **Conclusion**

The ESSA was enacted, in part, to provide more comprehensive support to improve educational outcomes for children and youth in foster care. As mentioned above, there are state and federal laws requiring that CWAs and education agencies work in close partnership and collaboration. The ESSA has reaffirmed this mandate placing a stronger emphasis on cooperation among state and local education and CWAs to improve educational stability. The California Department of Social Services urges all local CWAs to collaborate with LEAs in the development and implementation of policies regarding school of origin, immediate enrollment, records transfer, and transportation that are consistent with ESSA and California state law.

For further information regarding California's plan to implement the federal ESSA, please refer to the California Department of Education's website, at <http://www.cde.ca.gov/re/es/>. For additional resources and sample documents pertaining to ESSA and the foster youth provisions, please refer to the ESSA Toolkit provided by the American Bar Association, at [http://fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=2080&Command=Core\\_Download](http://fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=2080&Command=Core_Download)>

If you have any questions about this ACL, please contact the Permanency Policy Bureau at (916) 657-1858 or via email at [FosterCareEducation@dss.ca.gov](mailto:FosterCareEducation@dss.ca.gov).

Sincerely,

### ***Original Document Signed By:***

GREGORY E. ROSE  
Deputy Director  
Children and Family Services Division

c: Chief Probation Officers of California  
Judicial Council of California