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OKLAHOMA STATE DEPARTMENT *of* EDUCATION

# Foster Care Oklahoma State Plan

Oklahoma State Department of Education

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## **1. PURPOSE OF THE GUIDANCE**

The Oklahoma State Department of Education (OSDE) in collaboration with the Oklahoma Department of Human Services (OKDHS) and stakeholders have developed the Foster Care State Plan and herein issued guidance to assist Local Educational Agencies (LEAs) in the State of Oklahoma in meeting their obligations under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) enacted on December 10, 2015.

The guidance in the Foster Care State Plan is intended to eliminate barriers to the enrollment, attendance, and school success of children and youth in foster care, and provide such children and youth with the opportunity to meet the same challenging State academic achievement standards to which all students are held. The guidance will ensure that foster care children and youth have access to the same free, appropriate public education, including public preschool education, as provided to other children and youth, and that students in foster care are not separated from the mainstream school environment because of foster care placement.

## **2. INTRODUCTION TO FOSTER CARE**

Children in foster care often and inadvertently change schools, which along with enrollment delays and record transfers can have a significant disruptive impact on their academic progress. Studies have shown that children in foster care face an increased risk of grade retention, gaps in academic achievement, low high school graduation rates, and postsecondary enrollment.

Recognizing these adverse educational outcomes, the new foster care provisions under Title I of ESSA require State Educational Agencies (SEAs) and LEAs to collaborate with Child Welfare Agencies (CWAs) to ensure educational stability and minimize educational disruptions for children in foster care. Among other provisions, the educational stability includes assurances that (1) a child in foster care will remain in the child's school of origin, unless a determination is made that it is not in the child's best interest to remain in that school and (2) if a determination is made that it is not in the child's best interest to remain in the school of origin, the child will be immediately enrolled in the school of residence, even if the child is unable to produce records normally required for enrollment. These will help ensure that children in foster care experience minimal disruption to their education during moves and placement changes. In implementing these provisions, SEAs, LEAs, and CWAs must ensure compliance with other applicable laws, such as Title VI of the Civil Rights Act of 1964 (Title VI), the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504), among others. Taken in totality, these provisions promote greater stability for children in foster care so that they can continue their education without disruption, maintain important relationships with peers and adults, and have the opportunity to achieve college- and career-readiness.<sup>1</sup>

### **3. LAW REQUIREMENTS**

#### **3.1 Fostering Connections Act**

In 2008, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351, Fostering Connections Act) was signed into law. This law amends parts B and E of Title IV of the Social Security Act and seeks to promote education stability for foster children.

For children in out-of-home care, child welfare agencies must include “a plan for ensuring the educational stability of the child while in foster care” as part of every child’s case plan. As part of this plan, the agency must include assurances that:

- Each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and
- The state child welfare agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement.

Additionally, the law requires that if remaining in such school is not in the best interest of the child, the case plan must include assurances by the child welfare agency and the local educational agencies that:

- Provide immediate and appropriate enrollment in a new school; and
- Provide all of the educational records of the child to the school.

The Fostering Connections Act supports the well-being of children in out-of-home care by requiring states to provide assurances in their Title IV, Part E state plans that every school-age child in foster care, and every school-age child receiving an adoption assistance or subsidized guardianship payment, is a full-time elementary or secondary school student or has completed secondary school. The Fostering Connections Act increases the types of federal funding that may be used to cover education-related transportation costs for children in foster care. It expands the definition of “foster care maintenance payments” to include reasonable transportation to a child’s school of origin.

#### **3.2 ESSA Law**

In December 2015, Congress passed the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA). United States Department of Education (USDE) places a condition on SEA’s fiscal year 2016 Title I grant award that requires each State to ensure that the Title I educational stability provision requirements under ESSA, Sections 1111(g)(1)(E) and 1112(c)(5)(B) are implemented no later than December 10, 2016. OSDE has developed the guidelines herein to ensure compliance with the new law requirements.

The McKinney-Vento Act is a federal law that provides rights and protections to homeless children and youth, including those “awaiting foster care placement.” ESSA amended section 725 of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), removing children “awaiting foster care placement” from the definition of “homeless children and youths” starting on December 10, 2016.

### 3.3 Oklahoma State Law

#### **340:75-1-9. Oklahoma Department of Human Services authority to administer a child welfare program**

The authority of the Oklahoma Department of Human Services (OKDHS) to administer a Child Welfare (CW) program is based on the Oklahoma Social Security Act [[Section 176 of Title 56, Oklahoma Statutes](#)] that authorizes OKDHS to provide . . . for the protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent. The authority and scope for the care and custody of children includes:

- (1) The Oklahoma Children's Code, [Article 1 of Title 10A](#) of the Oklahoma Statutes;
- (2) Federal laws and regulations under Titles IV-B, IV-E, V, VI, XIX and XX of the Social Security Act, as amended, including, but not limited to the:
  - (A) Multiethnic Placement Act of 1994;
  - (B) Interethnic Adoption Provisions of 1996;
  - (C) Adoption and Safe Families Act of 1997;
  - (D) Fostering Connections to Success and Increasing Adoptions Act of 2008; and
- (3) Decisions made by the Oklahoma Commission for Human *Services*.<sup>2</sup>

**"Reasonable and prudent parent standard"** means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. This standard is used by the child's caregiver when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities, per [10A O.S. § 1-1-105](#).

- (A) For purposes of this definition, the term "caregiver" means a foster parent with whom a child in foster care has been placed, a representative of a group home where a child has been placed, or a designated official for a residential child care facility where a child in foster care has been placed.
- (B) Each facility must assure that at least one employee is designated and authorized to apply the reasonable and prudent parent standard to decisions involving the participation of a child in age-appropriate or developmentally-appropriate activities. The authorized facility employee is provided with training on how to use and apply the reasonable and prudent parent *standard*.<sup>3</sup>

## **4. EDUCATIONAL STABILITY FOR CHILDREN IN FOSTER CARE**

### **4.1 Identification of Children**

New requirements under Title I of the ESEA, as amended by the ESSA, highlight the need to provide educational stability for children in foster care, with particular emphasis on collaboration between SEAs, LEAs, and CWAs to ensure that all school-age children in foster care have the opportunity to achieve at the same high levels as their peers. SEAs, LEAs and CWAs must ensure compliance with other applicable laws, such as Title VI of the Civil Rights Act of 1964 (Title VI), the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

#### 4.1.1 IDEA Students

The IDEA, Part B is the Federal law that assists States, and through them, local school districts, in providing special education and related services to children with disabilities. Under Part B, States and school districts must make a Free Appropriate Public Education (FAPE) available to all eligible children with disabilities in the Least Restrictive Environment (LRE). FAPE under IDEA includes the provision of special education and related services at no cost to the parents in accordance with a properly developed Individualized Education Program (IEP). [34 C.F.R. §§ 300.101, 300.201 and 300.17]

LRE means that to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that the child cannot be educated satisfactorily in regular classes with the provision of supplementary aids and services. [34 C.F.R. § 300.114(a)]

While IDEA presumes that the first placement option considered for each child with a disability is the regular classroom with appropriate supplementary aids and services, there is no one-size-fits-all approach. School districts must make available a range of placement options to meet the needs of children with disabilities for special education and related services, including regular classes, special classes, separate schools, home instruction, and instruction in hospitals and institutions.[34 C.F.R. § 300.115]

Under the IDEA, each child's placement decision must be made by a group of knowledgeable persons, including the child's parents. This group may also include staff from a child welfare agency. "Parent" is defined in the IDEA at 34 C.F.R. § 300.30. Note that this definition includes a child's foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent.

The IDEA requires that the educational placement of each eligible child with a disability, including children with disabilities in foster care, be determined at least annually, and be based on the child's IEP in accordance with the child's individual needs. Unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if not disabled.

In 2013, the Education Department (ED), Office of Special Education and Rehabilitation Services released a "Dear Colleague Letter" (*DCL*)<sup>4</sup> on highly mobile children with disabilities which highlighted several important issues that are relevant to educational stability for children in foster care. The DCL emphasized timely and expedited evaluations and eligibility determinations for highly mobile children with disabilities, and clarified that such children must have access to comparable services (including summer and other extended school year services, if applicable).

Students with disabilities who are eligible for services under the IDEA are also protected by Section 504, a Federal law that prohibits discrimination on the basis of disability by recipients of Federal financial assistance, including public schools. Section 29 U.S.C. § 794, 34 C.F.R. part 104 stipulates that “Students with disabilities who are in foster care are also protected by Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits disability discrimination by public entities, including public schools, regardless of whether they receive Federal financial assistance.” [42 U.S.C. §§ 12131-12134, 28 C.F.R. part 35]

School districts also must provide FAPE under Section 504 to students who have disabilities, regardless of whether they are eligible for services under the IDEA. FAPE under Section 504 includes the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met, and that include adherence to specific procedural requirements. [34 C.F.R. § 104.33-104.36]

An IEP developed and implemented in accordance with the IDEA is one means of meeting the Section 504 FAPE standard. School districts often develop written plans, commonly referred to as Section 504 Plans, for students with disabilities who receive services under Section 504. Even if a student does not require special education services and does not have an IEP, he or she may nevertheless be a student with a disability under Section 504 and be entitled to receive related aids and services under Section 504 Plan.

As is true under the IDEA, Section 504 also requires that, to the maximum extent appropriate, students with disabilities be educated in the regular educational environment, unless they cannot be educated satisfactorily in that environment with the use of supplementary aids and services. [34 C.F.R. § 104.34 (a)]<sup>4</sup>

For additional information on Section 504, see the document entitled *Protecting Students with Disabilities*, available on the website of the Office for Civil Rights, U.S. Department of Education, at: <http://www2.ed.gov/about/offices/list/ocr/504faq.html>.

#### **4.1.2 EL Students**

Some children in foster care are also English Learners (ELs)—students identified as having limited English proficiency in speaking, listening, reading or writing English through procedures established by school districts. Title VI [42 U.S.C. § 2000d to d-7, 34 C.F.R. part 100] and the Equal Educational Opportunities Act of 1974 (EEOA)[20 U.S.C. § 1703(f)] require public schools to ensure that all EL students, including EL students in foster care, can participate meaningfully and equally in educational programs. In order to meet their obligations under Title VI and the EEOA, LEAs must:

- Identify and assess all potential EL students in a timely, valid and reliable manner;

- Provide EL students with a language assistance program that is educationally sound and proven successful;
  - Sufficiently staff and support the language assistance programs for EL students;
  - Ensure that EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities;
  - Avoid unnecessary segregation of EL students;
  - Ensure that EL students with disabilities are evaluated in a timely and appropriate manner for special education and disability-related services and that their language needs are considered in these evaluations and delivery of services;
  - Meet the needs of EL students who opt out of language assistance programs;
  - Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level core content, exit EL students from language assistance programs when they are proficient in English and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;
  - Evaluate the effectiveness of a school district's language assistance program(s) to ensure that EL students in each program acquired English proficiency and that each program was reasonably calculated to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time;
  - Ensure meaningful communication with Limited English Proficient (LEP) parents.
- Additional information about States' and school districts' legal obligations under Title VI and the EEOA can be found in the DCL jointly released by the Department of Education and Department of Justice.<sup>5</sup>

## 4.2 SEA Responsibilities

### 4.2.1 OSDE Point of Contact for Foster Children

Under the requirements of ESSA, Section 1111(g)(1)(E) (iv), OSDE has designated an employee in the Office of Federal Programs to be the point of contact (POC) for Child Welfare Agencies (CWA) and to oversee the implementation of the OSDE responsibilities required under this subparagraph. For any questions, please contact:

Oklahoma State Department of Education  
 Office of Federal Programs  
 2500 N. Lincoln Boulevard  
 Oklahoma City, OK 73105  
 (405) 521-2846

The foster care point of contact at the SEA level CANNOT be the same person designated as the homeless liaison [ESSA, Section 1111(g)(1)(E)(iv)]

Some of the roles and responsibilities of the POC at the state level may include:

1. Coordinate with the corresponding State and Tribal child welfare agency POCs to issue joint State guidance for the implementation of the Title I provisions, which should include:
  - i) Establishment of uniform criteria around the best interest determination factors;
  - ii) Establishment of guidelines for transportation procedures, including how transportation will be addressed across district and State lines and what should be included in local transportation procedures;
2. Facilitate data sharing with the State and Tribal child welfare agencies, consistent with Family Educational Rights and Privacy Act (FERPA) and other Federal or State privacy laws, regulations, and policies;
3. Monitor LEAs to ensure compliance with the Title I requirements at the local level;
4. Provide professional development opportunities and technical assistance for LEA POCs and other personnel regarding school stability and educational support for children in foster care, as *needed*<sup>6</sup>;
5. Collaborate with State and Tribal child welfare agencies to provide guidance to LEAs regarding laws, regulations and policies.

OSDE annually collects the Point of Contact (POC) information for the LEAs, and the list – which includes the SEA POC – is made available on the OSDE’s website on or before December 10.

#### **4.2.2 OSDE Dispute Resolution Process for Foster Care Complaints**

Child welfare agencies, SEAs and LEAs each bring valuable perspectives to the best interest determination. Recognizing this, both the Fostering Connections Act and Title I require coordination among agencies at the State and local level to ensure the educational stability of children in foster care. Given these coordination requirements, the relevant agencies should make every effort to reach agreement regarding the appropriate school placement of children in foster care.

See [Appendix F](#) for the proposed Foster Care Complaint Guidelines and Complaint Form.

### **4.3 LEA Responsibilities**

#### **4.3.1 LEA Point of Contact for Foster Children**

Under the requirements of ESSA, Section 1112(c)(5)(A), each LEA must “designate a point of contact if the corresponding child welfare agency notifies the local educational agency in writing that the agency has designated an employee to serve as a point of contact for the local educational agency.”

Due to the fact that the foster care provisions will be implemented at the local level and will involve communication and collaboration with various stakeholders, LEAs shall designate an employee as the LEA point of contact (POC) in an expedited manner, even if the child welfare agency has not yet sent written notification in regard to their corresponding POC.

The foster care point of contact at the LEA level may be the same person designated as the homeless liaison. LEAs are responsible for submitting this person’s name to OSDE, through the online Grants Management System, by September 30 of each year. Considering the roles and responsibilities of the POC, LEAs should ensure that the assigned person would have the capacity to fulfill his or her duties and the necessary resources to implement the Title I foster care requirements.

Some of the *roles and responsibilities* of the LEA POC may include:

- Coordinating with the corresponding child welfare agency POC on the implementation of the Title I provisions;
- Leading the development of a process for making the best interest determination;
- Documenting the best interest determination;
- Facilitating the transfer of records and immediate enrollment;
- Facilitating data sharing with the child welfare agencies, consistent with FERPA and other privacy protocols;
- Developing and coordinating local transportation procedures;
- Managing best interest determinations and transportation cost disputes;
- Ensuring that children in foster care are enrolled in and regularly attending school; and
- Providing professional development and training to school staff on the Title I provisions and educational needs of children in foster care, as *needed*.<sup>7</sup>

#### **4.3.2 Guidelines to Implement the Educational Stability Provisions**

To ensure the implementation of the Title I educational stability provisions for children in foster care under ESSA, OSDE provides the following guidelines and steps to be taken by the appropriate agency:

1. CWA notifies the LEA POC regarding which students are in foster care;
2. CWA informs the LEA POC about a child placement away from parents or guardians and for whom the child welfare agency has placement and care responsibility. The CWA must start collaboration and consultation with the LEA within 72 hours;
3. Such child enrolls or remains in the school of origin, unless a determination is made that it is not in the child's best interest to attend the school of origin. The LEA POC and CWA should consult and make a joint determination in regard to the best interest of the child. In the event of emergency circumstances, the CWA has the authority to make an immediate decision regarding the school placement, and then consult with the LEA and revisit the best interest determination of the child. See [Appendix D](#) for examples of checkpoints to be considered during this determination and a sample form.

Transportation costs should not be considered when determining a child's best interest, which is consistent with the program instruction released by the U.S. Department of Health and Human Services (*HHS*)<sup>8</sup> ;

4. If there is disagreement regarding school placement for a child in foster care, the child welfare agency should be considered the final decision maker in making the best interest determination (unless State law or policy dictates otherwise). The child welfare agency is uniquely positioned to assess vital non-educational factors such as safety, sibling placements, the child's

permanency goal and other components of the case plan. The child welfare agency also has the authority, capacity and responsibility to collaborate with and gain information from multiple parties, including parents, children, schools and the court in making these *decisions*<sup>9</sup>;

5. The LEA must collaborate with the CWA to develop and implement clear written procedures governing how transportation is provided to maintain children in foster care in their schools of origin, when in their best interest;

CWA receives funds under Title IV-E, and some of these funds may support the transportation costs to maintain the child in the school of origin. Therefore, CWA must ensure that transportation is provided when needed, and will be the agency mainly responsible for paying the transportation costs within the first 72 hours. Foster care parents may agree to provide and pay for the transportation to the school of origin, but if this is not an option, the LEA shall ensure transportation for the foster care children is provided, and reach an agreement with CWA in regards to covering the transportation costs as outlined by ESSA. LEA and CWA should aim to reach an agreement in regard to how the transportation will be provided, arranged and funded for the duration of the child's time in foster care.

ESSA, Section 1112(5)(B) stipulates:

“If there are additional costs incurred in providing transportation to maintain children in foster care in their school of origin, the local educational agency will provide transportation to the school of origin if—

- (I) the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation;
  - (II) the local educational agency agrees to pay for the cost of such transportation; or
  - (III) the local educational agency and the local child welfare agency agree to share the cost of such transportation”;
6. OSDE highly recommends that LEAs reserve 1% of Title I funds to transport foster care students. If funds are not utilized, the district can reassign funds for usage in other Title I areas;
  7. When a determination is made that it is not in such child's best interest to remain in the school of origin, the child is immediately enrolled in the school of residence by the child's foster parent or caseworker. To prevent educational discontinuity, ESSA, Section 1111(g)(1)(E) stipulates that enrollment must not be denied or delayed for children in foster care because documents normally required for enrollment have not been provided;
  8. During the enrollment process, the following shall occur:
    - a) The caseworker notifies both schools within one (1) business day of making the decision and sends the required documents to both schools within two (2) business days of making the decision.
    - b) The receiving school shall immediately contact the school last attended by any such child to obtain relevant academic and other records.

- c) The school of origin is required to transfer non-essential records to the receiving school within three (3) business days of receiving notice from the child welfare agency that the child will be changing *schools*.<sup>10</sup>

#### **4.3.3 LEA Legal Verification Documents**

Foster care children may be brought to school for enrollment by their foster care parents, social workers or other legal guardians. The LEA has the obligation to immediately enroll these children in school. After immediate enrollment, the following guardianship or legal custody documents shall be provided for verification:

1. Power of Attorney
2. Affidavit
3. Court Order

#### **4.3.4 LEA Foster Care Plan**

Under the requirements of ESSA, Section 1112(c)(5)(B) the Title I educational stability provisions take effect on December 10, 2016. By such date, each LEA shall have the Foster Care Plan developed and disseminated to all stakeholders.

Under ESSA, Section 1111(c)(5), an LEA must collaborate with the Child Welfare Agency and Tribal Child Welfare Agencies to implement the Title I educational stability provisions. Therefore, each LEA shall develop a clear, written Foster Care Plan that includes the following:

1. LEA Point of Contact and responsibilities;
2. Decision-making process;
3. The type of documentation or records that should be shared between parties;
4. Collaborative structure, such as regularly scheduled meetings, in which relevant individuals can participate in a particular process;
5. The best interest determination document regarding the child's school placement (school of origin or the receiving school);
6. Transportation procedures;
7. Responsibilities and costs related to student transportation;
8. Clear, written policies that will remove barriers to immediate enrollment and record transfers for children in foster care.

The Office of Federal Programs at OSDE will monitor each LEA during the Consolidated Monitoring cycle, and collect a copy of the LEA Foster Care Plan.

#### **4.3.5 LEA Transportation Policies**

LEAs must collaborate with CWAs to develop and implement clear written procedures for how transportation will be provided, arranged and funded for the duration of a child's time in foster care. Procedures must ensure that children will promptly receive transportation in a cost-effective manner in

accordance with the Fostering Connections Act. LEAs shall include in their transportation policies the inter-district and inter-State procedures that address potential transportation issues that may arise as students in foster care move from one district to another or across State lines. See [Appendix E](#), Transportation Agreement between LEA/CWA sample.

OSDE will review the LEA transportation policies during the Consolidated Monitoring process when the Foster Care Plan is collected.

#### **4.4. Child Welfare Agency Responsibilities**

If the Child Welfare Agency (CWA or Tribal Child Welfare Agency) established a point of contact for an LEA, the Child Welfare Agency must inform the LEA in writing about the designated person. The LEA will then inform the child welfare agency of its corresponding point of contact.

Examples of the possible roles and responsibilities of that child welfare agency POC 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 POC on implementation of the Title I provisions, including immediate enrollment;
- Establishing a process to notify the educational agency when a child has been placed in foster care in the LEA or when there has been a foster care placement change;
- Establishing a process for coordinating on best interest determinations with the LEA;
- Facilitating transfer of records including immunizations, medical records and copies of IEPs and Section 504 Plans;
- Working with LEAs to ensure that children in foster care are immediately enrolled in school, and to coordinate transportation services;
- Managing best interest determination and transportation costs agreements between the LEA and the child welfare agency;
- Providing training to LEA and child welfare agency staff on 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 of information provisions in the IDEA;
- Coordinating services so that 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 SEA or LEA, and screening and referrals to health, mental health, dental and other appropriate services;
- Informing parents or education decision makers of children in foster care of the child's education rights and providing public notice of the educational rights of children in foster care to community *stakeholders*.<sup>11</sup>

A CWA administering plans under Title IV, Part E and IV, Part B of the Social Security Act is required to include a plan for ensuring the educational stability of a child in foster care in the child's case plan (the educational stability plan). CWA will have a written educational stability plan for each child that the welfare agency has placement and care responsibility as part of the child's case record.

This plan shall have the following characteristics:

- 1) It is jointly developed with the child's parents no later than 60 days after a child's removal from the home and every six months thereafter. The child welfare agency has the flexibility to determine which factors will be examined in determining whether remaining in the school of origin is in the child's best interest, but the cost of school transportation should not be a factor in determining the best interest of the child for the purposes of school selection;
- 2) It provides assurance that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child was enrolled at the time of placement;
- 3) It provides an assurance that the child welfare agency has coordinated with the LEA to ensure the child can remain in that school, or if remaining in that school is not in the child's best interest, an assurance that the child will be enrolled immediately in a new school and that the new school obtains relevant academic and other records.

These assurances relate to the circumstances at the time of the child's initial placement into foster care, as well as each time a child moves to a different foster care placement. (See Section 475(1)(G) of the Social Security Act.)

While the Title I educational stability provisions do not create any new requirements for child welfare agencies, they offer an opportunity for child welfare agencies to better coordinate with SEAs and LEAs to create more effective educational stability plans for children in foster care, as required under the *Fostering Connections Act*.<sup>12</sup>

#### **4.5 Collaboration**

ESSA, Section 1111(g)(1)(E) requires SEA to collaborate with the state agency responsible for administering State plans under the *Fostering Connections Act* to ensure the educational stability of children in foster care. ESSA, Section 1112(b) requires LEAs and local CWAs to collaborate to develop a joint process for making best interest determinations.

When a local CWA notifies the LEA about a foster care child, collaboration between LEA and local CWA should immediately begin, within 72 hours of notification.

## **5. TRANSPORTATION**

### **5.1 Transportation of Foster Care Children Overview**

Child welfare agencies must ensure that children stay in the school in which the children were enrolled at the time of placement (unless it is not in the children's best interest to do so). Therefore, child welfare agencies must ensure that transportation is provided when needed.

Federal child welfare reimbursement dollars are available to assist with school transportation costs, but work must be done to determine how these reimbursements will be actualized in each state and jurisdiction.

New federal child welfare education stability requirements apply to *all* children in care, even though federal child welfare reimbursement is only available for *some* children in care. Therefore, additional federal or state funding is necessary to ensure transportation for *all* children in foster care who need to remain in a stable school placement.

The dependency court has a critical role in ensuring school stability for children in foster care. Judges must oversee that child welfare agencies meet their obligation to ensure school stability for children, including providing transportation when necessary. The court can play a critical role in promoting collaboration between child welfare and education *agencies*.<sup>13</sup>

### **5.2 Child Welfare Federal Financing Basics**

States receive federal child welfare funds from a range of sources to support the child welfare services provided to children. The largest funding source is Title IV, Part E of the Social Security Act. Title IV, Part E guarantees federal reimbursement to states for a portion of foster care costs. Title IV, Part E funds are used to provide foster care maintenance payments for children who are "IV-E eligible," as well as for administrative and training costs associated with the foster care *program*.<sup>14</sup>

In 2007, prior to the Fostering Connections Act, the United States Department of Health and Human Services Administration on Children and Families (ACF) confirmed in its Child Welfare Policy Manual (CWPM) that school transportation for a child to remain in the same school could be reimbursable as a Title IV-E administrative cost. After the enactment of the Fostering Connections Act, the CWPM indicated that Foster Care Maintenance Payment (FCMP) reimbursement could include transportation for the child to remain in the school and for the foster parent to travel to attend school conferences at the school in which the child is enrolled at the time of placement. The CWPM also provides additional details on the types of school transportation that are allowable for foster care administrative costs. Specifically, the CWPM makes clear that transportation to extracurricular activities is an allowable

administrative expense. Finally, the CWPM states that transportation provided by a caseworker, foster parent or a volunteer transporting a child is reimbursable as an administrative cost.

In 2008, Congress enacted the Fostering Connections to Success and Increasing Adoptions Act (the Fostering Connections Act), which requires that child welfare agencies collaborate with local education agencies to ensure that children remain in the schools they were attending at the time of placement (unless to do so is not in their best interest). Furthermore, the Fostering Connections Act provides that FCMP can include “reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.”

Then, in July 2010, ACF released a Program Instruction (P.I.) that reaffirms many of the above clarifications from the CWPM, but also provides additional clarification on when school transportation is reimbursable. It states that FCMP can be used for school stability transportation when a child is initially placed and for all subsequent moves while the child is in care. The P.I. gives the child welfare agency the discretion to determine what is “reasonable” transportation for purposes of FCMP reimbursability and clarifies that the cost of transportation can be included in the payment provided to the child’s care provider or may be a separate payment made directly to the transportation provider. Finally, the P.I. clarifies that these transportation costs can be claimed as either maintenance or administrative *costs*.<sup>15</sup>

### **5.3 Transportation Considerations**

There are other considerations to keep in mind in structuring the transportation model that is most cost effective and appropriate, including determining whether it is best for your state to classify school stability transportation as an FCMP or an administrative cost.

#### **Q1: What is the State’s Federal Medical Assistance Percentages or FMAP Rate?**

The FMAP rate provides the percentage of reimbursement a state can claim from the federal government related to IV-E foster care maintenance. To determine a specific state’s rate, see <http://aspe.hhs.gov/health/fmap11.pdf>. The reimbursement rate for IV-E administrative costs is 50% for all states. Therefore, states that have FMAP rates much higher than 50% will have a strong incentive to include transportation as an FCMP. Alternatively, states that have FMAP rates closer to 50% will need to determine whether using FCMP or administrative costs is most cost-effective and efficient.

#### **Q2: Should the State Claim School Transportation as an FCMP or an Administrative Cost?**

The Fostering Connections Act allows FCMP to be used to pay for “reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement,” and the P.I. reiterates that Title IV-E administrative dollars can also be used for this purpose. These provisions allow the child welfare agency considerable flexibility in determining how to classify the cost of school transportation. For many states, the FMAP rate is well above 50%; these states will probably prefer to claim school transportation costs as FCMP. States with 50% or only slightly higher FMAP rates may prefer to claim

school transportation costs as administrative costs given the less rigorous documentation and other requirements.

**Q3: Can FCMP be used for costs regardless of whether the child is in an initial or subsequent placement?**

Yes. States can claim FCMP reimbursement for transportation to the school in which the child was enrolled at the time of placement at ANY point in the case, regardless of how many placement changes have occurred.

**Q4: How do child welfare agencies determine what is considered “reasonable travel”?**

The Fostering Connections Act provides that FCMP includes “reasonable travel,” yet the law does not define this term. The P.I. makes clear that the child welfare agency has the discretion to determine what is “reasonable,” and mentions cost, distance and length of travel as examples of factors that an agency can consider. Whether it is in a child’s *best interest* to remain in the current school is a different question than whether transportation qualifies as “reasonable” for purposes of federal reimbursement. The P.I. is very clear that cost should NOT be a factor in determining the *best interest* of the child for school selection purposes. Child welfare agencies should not be unduly restrictive in determining whether a particular cost or travel is “reasonable” for purposes of federal reimbursement; transportation that is not determined to be “reasonable” by the child welfare agency will not be eligible for IV-E reimbursement.

**Q5: Are child welfare agencies permitted to include school transportation costs in an FCMP paid to the child’s provider OR as a separate payment directly to the transportation provider?**

Yes, child welfare agencies are permitted to do either. There is great flexibility in deciding the most efficient way to provide school transportation. Furthermore, the FCMP reimbursement may be claimed to cover school transportation costs incurred by non-child welfare agencies such as school districts that provide school stability *transportation*<sup>16</sup>.

## 5.4 Types of Transportation

### 5.4.1 Children Not Requiring Transportation

Not every child in foster care requires transportation to remain in his or her current school. As examples, the following categories of children will not require transportation:

**Children who are placed within the school boundaries:** A critical element of the Fostering Connections Act is that child welfare agencies must make a documented effort to place children within or close to their current school communities. If child welfare agencies are successful in these required efforts, fewer children will need to change schools.

Some agencies use mapping tools and data to assess locations and distances to compare where children are being removed to where children are being placed in relation to school boundary lines. In this way, agencies are able to identify the communities where greater emphasis should be placed on recruiting and retaining resource families. For example, Illinois uses a geographic information system (GIS) application called “SchoolMinder” that supports school stability. GIS technology helps identify available foster homes that are near the child’s current educational setting and the home from which the child was removed.

**Children whose “best interest” dictates that they should be immediately enrolled in new schools:**

The Fostering Connections Act specifically requires that “best interest” determinations be made when deciding whether a child should remain in the current school or move to a new school. While the presumption is that children remain in their school, when these best interest determinations are made thoroughly and thoughtfully, the decision for some children will be that it is in their best interest to be immediately enrolled in a new school. In these situations, no special transportation will be needed. For an important resource to help in making these best interest decisions, see *School Selection for Students in Out-of-Home Care* at [http://www.abanet.org/child/education/publications/school\\_selection\\_brief.pdf](http://www.abanet.org/child/education/publications/school_selection_brief.pdf).

**Children who have completed high school:** Students who have successfully graduated from high school will no longer need school transportation as they have completed their secondary education. Also, some youth will have received a GED and not be planning to obtain a regular high school diploma. A goal of the school stability requirements of the Fostering Connections Act is to provide youth with opportunities to remain in school or return to school. Of course, youth who have left but will hopefully re-engage should be included in the numbers that may require transportation to achieve school *stability*.<sup>17</sup>

**5.4.2 Children Requiring Transportation at a Minimal or No Additional Cost**

Some of the students requiring transportation can be transported for minimal or no additional cost. Here are some examples:

**Children in care who meet the definition of “homeless” children under the McKinney-Vento Act (McKinney-Vento):**

When a child meets the definition of a “homeless child or youth” under the McKinney-Vento Act, he or she is entitled to school stability, including transportation provided by the educational system when necessary for the child to stay in the “school of origin.” Children and youth who are homeless include children living in emergency or transitional shelters, children abandoned in hospitals, unaccompanied homeless youth and children who are “awaiting foster care placement.” States and districts vary widely on their interpretation of children “awaiting foster care placement.” For children in foster care eligible for McKinney-Vento protections, transportation will be arranged and funded through the educational system.

**Children who have transportation written into their IEPs because of legitimate special education needs:**

When a child in care is eligible for special education services under the Individuals with Disabilities in Education Act (IDEA), he or she must have an Individualized Education Plan (IEP) that outlines the child’s education needs and services, including related services. Transportation is a “related service” that must be provided to a child if the IEP team concludes that a child needs transportation to and from his or her special education program. Although transportation will not be added to the IEP for

the sole purpose of preserving school stability, transportation for the child to attend his or her special education program may nevertheless support the child remaining in the current school.

**Children who live close to or can be dropped off at a bus stop proximate to the existing transportation system for the current school:** When students move across school district lines, the issue of transportation obviously becomes more complicated. However, there may be opportunities to transport the child to his or her current school using some or all of the school transportation system that is already in place. Good communication between the current and new school districts is critical. In 2009, Louisiana passed legislation to promote education stability for children in foster care. Transportation is coordinated by both the Department of Social Services (DSS) and the school district in which the student is enrolled. DSS is responsible for arranging transportation of the child to a drop-off/pick-up point within the school district. The school district is responsible for transporting the child from the drop-off/pick-up point to the appropriate school and back to the pick-up point.

**Children who move within the same school district and transportation across the district is available for other reasons:** Often, school districts have existing transportation options that allow students to be transported across the district (such as magnet schools, special education students and McKinney-Vento routes). To meet a child's transportation needs, it may be necessary to add a bus stop to a preexisting bus route or reroute a school bus, steps that can often be taken without much difficulty or additional expense.

**Children who have a relationship with an adult whose existing commute complements the child's transportation need:** One way to solve the transportation puzzle is to identify all resources that can help transport the child. Engaging the youth in this search is critical. Individuals who are not the child's resource parent may nonetheless be able and willing to transport the *child*.<sup>18</sup>

#### 5.4.3 Children Requiring Transportation at a Cost

Some children will need transportation provided at additional cost. The P.I. is very clear that cost should NOT be a factor in determining the best interest of the child for school selection purposes. Some examples of transportation with associated costs are:

- A foster parent, relative or other adult provides transportation but needs reimbursement for mileage;
- An agency provides the youth or caretaker with bus passes or other public transportation vouchers;
- An agency contracts with a private transportation company to provide a bus/van/car;
- A school district reroutes, or adds a bus to its fleet, to accommodate the transportation needs of children in foster care. A foster parent, relative or other adult provides transportation but needs reimbursement for mileage;
- An agency provides the youth or caretaker with bus passes or other public transportation vouchers;

- An agency contracts with a private transportation company to provide a bus/van/car;
- A school district reroutes, or adds a bus to its fleet, to accommodate the transportation needs of children in foster *care*.<sup>19</sup>

### 5.5 Funding Sources for Additional Transportation Costs

USDE guidelines:

1. Even if an LEA doesn't transport other students, it must ensure that transportation is provided to children in foster care.
2. Transportation must be provided in a "cost-effective" manner so low-cost/no-cost options should be explored:
  - Pre-existing bus stops or public transportation
  - Foster parents, relative or other adult provides transportation
  - Child is eligible for transportation by other programs (e.g. IDEA)
3. "Additional costs" represent the difference between what an LEA would normally spend on transportation to the child's assigned school and the cost of transportation to the school of origin. Examples of additional costs are:
  - An LEA provides the youth or caretaker with bus passes or other public transportation vouchers;
  - An agency contracts with a private transportation company to provide a bus/van/car;
  - A school district reroutes, or adds a bus to its fleet, to accommodate the transportation needs of children in foster care.
4. Title IV-E is an allowable funding source for children in foster care
  - Not all children in foster care are eligible
  - Tribal foster children may be eligible
  - State child welfare agencies are responsible for the non-federal portion
5. Title I is an allowable funding source, although funds reserved for comparable services for homeless children and youth may not be used for transportation of foster care children.
6. All federal funding sources should be maximized to ensure costs are not unduly burdensome on one agent.

### 6. STUDENT DATA PRIVACY

In January 2013, Congress passed the Uninterrupted Scholars Act (USA), which amended the Family Educational Rights and Privacy Act (FERPA) to permit educational agencies and institutions to disclose, without parental consent or the consent of an eligible student, education records of students in foster care to State and Tribal child welfare agencies. The statute also amended the requirement that educational agencies and institutions notify parents before complying with judicial orders and

subpoenas in certain situations. This legislation helps to ensure privacy protections for children and families and to facilitate more efficient data-sharing pertaining to children in foster care between child welfare and educational agencies, a critical component to ensuring school stability for these youth. USDE issued guidance on the USA amendments to FERPA in May 2014. The USDE guidance clarifies that the USA amendments to FERPA also affect the confidentiality of information provisions in the Individuals with Disabilities Education Act (IDEA) by permitting the nonconsensual disclosure of the education records of children with disabilities under the circumstances set forth in the USA.

### **OSDE Personally Identifiable Information Protection Policies**

Effective data privacy protection policies are particularly important for OSDE, because Oklahoma has a robust Open Records Act enabling public access to all agency records that are not specifically exempt under the law. Different data privacy policies apply to Personally Identifiable Information (PII) associated with different sources. The most stringent data privacy principles apply to student data, but specific protections also exist for some teacher data and OSDE personnel information.

OSDE's protection of student data is governed by its own law in Oklahoma, the Student Data Privacy, Transparency and Accountability Act of 2013 ([70 O.S. § 3-168](#)). The Student Data Act specifically addresses the use and transmission of student data by OSDE and the Oklahoma State Board of Education (OSBE). Highlights are that OSDE is required to publish a publicly available index of data held by the agency – this is underway on the [OSDE website](#) – and that only aggregate data may be released in response to requests from the public. The Act also prohibits OSBE and OSDE from transferring student level data to any entity outside Oklahoma, including other government agencies, unless an exception applies such as a student transfer or a FERPA-compliant contract with an out-of-state vendor.

OSBE has promulgated an administrative rule under the authority of the Student Data Act that outlines further guidelines for protecting student data (OAC 210:1-3-8.1). This rule incorporates the FERPA definition of PII, and clarifies how student data is handled in the context of Open Records Act requests. In general, “‘student data’ are not subject to disclosure by the State Department of Education” unless the usual FERPA exemptions apply or the State Board of Education specifically approves the release under certain limited conditions (see OAC 210:1-3-8.1(d)).

See [Appendix G](#), Student Data Accessibility, Transparency and Accountability Act

## 7. GLOSSARY

CWA	- Child Welfare Agencies
EL students	- English Learning students
FAPE	- Free Appropriate Public Education
FCMP	- Foster Care Maintenance Payment
FERPA	- Family Educational Rights and Privacy Act
FMAP	- Federal Medical Assistance Percentages or “FMAP rate”
HHS	- Health and Human Services
IDEA	- Individuals with Disability Act
IEP	- Individualized Education Program
LEA	-Local Educational Agency
LEP	- Limited English Proficient
LRE	- least restrictive environment
MOU	- Memorandum of Understanding
OKDHA	- Oklahoma Department of Human Services
OSDE	-Oklahoma State Department of Education
POC	- Point of Contact
SEA	- State Educational Agency
USDE	- United States Departments of Education

## **8. APPENDIX**

Appendix A (Dear Colleague Letter)

Appendix B (Memo to LEA District Superintendents)

Appendix C (Definitions)

Appendix D (Best Interest Determination)

Appendix E (Transportation Agreement Between LEAs Sample)

Appendix F (Complaint Guidelines)

Appendix G (Student Data Accessibility, Transparency and Accountability Act)

Appendix H (Resources)

## Appendix A (Dear Colleague Letter)

June 23, 2016

Dear Chief State School Officers and Child Welfare Directors:

As the field prepares to implement the Elementary and Secondary Education Act (ESEA),<sup>1</sup> as amended by the Every Student Succeeds Act (ESSA), the U.S. Departments of Education (ED) and Health and Human Services (HHS) would like to draw your attention to important new provisions in Title J, Part A (Title I) of the ESEA that promote educational stability for children in foster care and that take effect on December 10, 2016. The success and well-being of foster youth require ongoing collaboration and partnership between educational and child welfare agencies. The implementation of the Title I foster care provisions provide a critical opportunity for agencies to work together for the betterment of the nearly 270,000 school-aged children currently in foster care.

Data suggest that children in foster care are more likely than their peers not in foster care to experience adverse educational outcomes, including academic achievement in reading/language arts and math, grade retention, high school graduation, and postsecondary enrollment.<sup>2</sup> These challenges are tied, in part, to the high mobility of foster youth and the educational discontinuity that results from placement and school changes. Unplanned school changes may lead to delays in students' academic progress;<sup>3</sup> this impacts foster youth more than most due to the number of placement changes that many young people experience while in foster care. Greater educational stability has been shown to lead to improved outcomes for foster youth, including higher graduation rates. For example, a recent study found that that educational stability may increase the rate of students in foster care graduating on time and lower the rate of students earning a high school equivalency diploma, remaining enrolled for more than four years, or exiting the K-12 system without a high school credential.<sup>4</sup>

In recognition of the importance of educational stability for foster youth, the Title I foster care provisions in the ESEA require that State educational agencies (SEAs) and local educational agencies (LEAs) collaborate with State and local child welfare agencies (CWAs) to ensure school stability for children in foster care. Specifically, as detailed in the attached joint ED and HHS non-

<sup>1</sup>In this letter, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

<sup>2</sup>See, for example, 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/IEBCPublicFiles/iebc\\_public\\_6767e52ff24b46-4afa-8133-ba223aa80c33.pdf](http://www.iebcnow.org/IEBCPublicFiles/iebc_public_6767e52ff24b46-4afa-8133-ba223aa80c33.pdf).

<sup>3</sup>National Working Group on Foster Care and Education. (2014.) Fostering success in education: National factsheet on <http://www.fostercareandeducation.org/OurWorld/NationalWorkingGroup.aspx>

<sup>4</sup>Clemons, E. and Sheesley, A. (2016.) Every transition counts: Educational stability of Colorado's students in foster care: 2007-08 TO 2013-14. Retrieved from [http://www.unco.edu/cebs/foster-care-research/pdf/reports/Every Transition Counts V. I Interactive.pdf](http://www.unco.edu/cebs/foster-care-research/pdf/reports/Every%20Transition%20Counts%20V.%20I%20Interactive.pdf).

regulatory guidance, a child in foster care must remain in his or her school of origin if that is determined to be in the child's best interest. If, on the other hand, it is in the child's best interest to be enrolled in a new school, the child must be immediately enrolled, and the new school must promptly contact the school of origin to obtain necessary records.

Further, to ensure that a child in foster care remains in his or her school of origin (when it is in the child's best interest), LEAs must develop procedures in collaboration with State and local CWAs that address how transportation to the schools of origin for children in foster care will be provided, arranged, and funded. In addition, for the first time, SEAs and LEAs must report annually on academic achievement and graduation rates for children in foster care as a separate subgroup to show how foster youth are performing relative to their peers. Bringing this crucial data to light will allow SEAs and LEAs to better understand the educational outcomes of foster youth and take appropriate steps to address any deficiencies.

The landmark Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) was the first Federal legislation to require efforts to ensure educational stability for foster youth. Many of the new Title I foster care provisions reinforce and complement those in Fostering Connections, and both statutes emphasize the shared responsibility of educational and child welfare agencies in promoting the well-being of children in foster care. Since the passage of Fostering Connections, States and LEAs have made significant progress towards forming partnerships and instituting laws and policies that further promote school stability and college-and career-readiness for foster youth. Still, there is much work to be done.

We believe that the new Title I foster care provisions, in concert with Fostering Connections, can dramatically improve outcomes for foster youth. Successful implementation of the ESEA will require strong partnerships and consistent collaboration between educational and child welfare agencies. We are providing the attached joint guidance as a key tool for educational and child welfare agencies to use as they embark on establishing new partnerships and implementing the new provisions of the law. In addition to clarifying the statutory requirements, the guidance provides recommendations for SEAs, LEAs, and CWAs and highlights promising practices from the field for agencies to consider as they move toward implementation by December 10, 2016. Given this ambitious timeline, we strongly encourage agencies to begin working together now to ensure that all of the policies and processes are in place so that foster youth may receive the statutory protections to which they are entitled.

These new protections hold great promise for foster youth, and it is our hope that this collaboration leads to ongoing efforts by SEAs, LEAs, and CWAs to improve outcomes for this

vulnerable student population. Thank you for all your work to support children in foster care to date, and we look forward to collaborating with you on this important issue in the future.

Sincerely,

John B. King  
Secretary  
U.S. Department of Education

Sylvia M. Burwell  
Secretary  
U.S. Department of Health and Human  
Services

## Appendix B (Memo to LEA District Superintendents)

### MEMORANDUM

**TO:** District Superintendents and Foster Care Points of Contact

**FROM:** Matt Holder, Deputy Superintendent of Finance and Federal Programs  
Gloria Bayouth, Executive Director, Office of Federal Programs  
Felica Denton, State Foster Care Point of Contact

**DATE:** November 21, 2016

**SUBJECT:** Oklahoma's Foster Care State Plan

Recognizing the unique needs of children in foster care, the Federal and State government have launched efforts in recent years to increase the educational stability of and improve educational outcomes for these youth. The passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (also known as the Fostering Connections Act) was a significant step toward supporting the importance of school stability for children in foster care.

The Fostering Connections Act requires child welfare agencies to collaborate with educational agencies to keep children in foster care in the same school when living placements change, if remaining in the school of origin is in their best interest. The act also requires child welfare agencies to ensure that children in foster care who change schools are promptly enrolled in a new school.

In January 2013, Congress passed the Uninterrupted Scholars Act (USA), which amended the Family Educational Rights and Privacy Act (FERPA) to permit educational agencies and institutions to disclose, without parental consent or the consent of an eligible student, education records of students in

foster care to State and tribal child welfare agencies. The statute also amended the requirement that educational agencies and institutions notify parents before complying with judicial orders and subpoenas in certain situations. This legislation helps to ensure privacy protections for children and families, and facilitates more efficient data-sharing pertaining to children in foster care between child welfare and educational agencies, a critical component to ensuring school stability for these youth. Oklahoma State Department of Education (OSDE) and Oklahoma Department of Human Services (OKDHS) have a memorandum of understanding that outlines the data-sharing between the agencies.

The Every Student Succeeds Act (ESSA), enacted on December 10, 2015, requires each state to ensure that the Title I educational stability provision requirements under Sections 1111(g)(l)(E) and 1112(c)(5)(B) are implemented no later than December 10, 2016.

To comply with the new law requirements, OSDE has appointed the state Foster Care Point of Contact and developed a Foster Care State Plan that includes guidance to assist Oklahoma's Local Educational Agencies (LEAs) in meeting their obligations under ESSA.

This memo is a reminder that by December 10, 2016, each LEA shall have designated the Foster Care Point of Contact, developed the Foster Care Plan at the local level and disseminated the plan to the stakeholders.

OSDE will provide formal training during a webinar presented on December 1, 2016 from 10:00-11:00 AM. Sign up now by going to: <https://oksdeevents.webex.com>.

### Appendix C (Definitions)

<b>Term</b>	<b>Definition</b>
<b>Child Welfare Agency - Local</b>	Child welfare is a continuum of services designed to ensure that children are safe and that families have the necessary support to care for their children successfully.
<b>Child Welfare Agency - State</b>	The Department of Human Services is the largest state agency in Oklahoma. DHS provides a wide range of assistance programs to help Oklahomans in need including: food benefits (SNAP); temporary cash assistance (TANF); services for persons with developmental disabilities and persons who are aging; adult protective services; child welfare programs; child support services; and child care assistance, licensing and monitoring.
<b>Dependency court</b>	When children come to court because a parent has hurt them or not taken care of them, this is a juvenile dependency case.
<b>Foster care or foster care services</b>	Defined as continuous 24-hour care and supportive services provided for an individual in a foster placement, including, but not limited to, the care, supervision, guidance and rearing of a foster child by the foster parent.
<b>Foster child</b>	A child placed in a foster family placement. Foster care children may be placed in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions and pre-adoptive homes. A child is in foster care in accordance with the above definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made. [45 C.F.R. § 1355.20(a)]
<b>Foster child vs. homeless</b>	A child in state custody (including, but not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters,

	residential facilities, child care institutions and pre-adoptive homes) falls under the foster care guidelines, and is not considered homeless.
<b>Foster parent</b>	Any person maintaining a therapeutic, emergency, specialized community, tribal, kinship or foster family home responsible for providing care, supervision, guidance, rearing and other foster care services to a child.
<b>Guardian</b>	A person appointed by a court to ensure the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. Guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian. The term does not include a person appointed as guardian ad litem.
<b>Guardian ad litem or "GAL"</b>	A person appointed by a court, per <a href="#">10 O.S. § 1415</a> , to represent the interests of an individual as specified in the court order.
<b>Protective custody</b>	When custody of a child is taken by law enforcement or designated employee of the court without a court order.
<b>Out of home placement</b>	<p>When a child does not meet the criteria for and is placed in any of the following entities which is out of the home of the child and not in the school district in which the child legally resides: 1. A residential facility; 2. A treatment program or center, including the facility operated pursuant to Section 485.1 of Title 63 of the Oklahoma Statutes; 3. A therapeutic foster family home as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes; 4. A specialized foster home, which is a specialized foster home or an agency-contracted home under the supervision of and certified as meeting the standards set by the Department of Human Services and funded through the Department of Human Services Home and Community-Based Waiver Services Program; or 5. An acute psychiatric care facility. The entity shall, if the child contends he or she resides in a school district other than the district where the entity is located, within eleven (11) days of admittance, notify the school district in which the entity is located of the admittance. For minors who are persons requiring psychiatric treatment as defined by Title 43A of the Oklahoma Statutes, on-site educational services shall be provided beginning on the eleventh day of admission.</p> <p>Upon provision of educational services to children pursuant to the provisions of subsection F of this section, the receiving school district shall receive the State Aid as defined in subsection C of Section 18-110 of this title for those students. Access to the due process procedure guaranteed to children with disabilities shall be available to resolve disagreements about the appropriateness of placements of children with disabilities. [70 O.S. § 1-113 School Laws of Oklahoma 2016]</p>
<b>School age in Oklahoma</b>	All children between the ages of five (5) on or before September 1, and twenty-one (21) years on or before September 1, shall be entitled to attend school free of charge in the district in which they reside. [70 O.S. § 1-114 School Laws of Oklahoma 2016]

The several school districts of Oklahoma are hereby authorized to provide special education and related services necessary for children with disabilities as hereinafter defined. Two or more school districts may establish cooperative programs of special education for children with disabilities when such arrangement is approved by the State Board of Education. Funds may be expended for school services for an additional period during the summer months for approved programs for qualified children with disabilities, provided their Individualized Education Program (I.E.P.) states the need for extended school year special education and related services. Children with disabilities shall mean children, as defined in the Individuals with Disabilities Education Act (IDEA), P.L. No. 105-17, who are three (3) years of age. [70 O.S. § 13-101 School Laws of Oklahoma 2016]

All children who are at least four (4) years of age but not more than five (5) years of age on or before September 1 and who have not attended a public school kindergarten shall be entitled to attend half-day or full-day early childhood programs at any public school in the state where such programs are offered, provided no child shall be required to attend any early childhood education.

<b>School age children under federal law</b>	The term “children” includes children through age 21 who are entitled to a free public education through grade 12. [34 C.F.R. § 200.103(a)(1)] If an LEA offers a public preschool education, the LEA must meet the Title I requirements for children in foster care in preschool, ensuring that a child in foster care remains in his or her preschool of origin, unless a determination is made that it is not in the child’s best interest. [ESSA Section 1111(g)(1)(E)]
<b>School of origin</b>	The school of origin is the school in which a child is enrolled at the time of placement in foster care. An SEA and its LEAs must ensure that a child in foster care enrolls or remains in his or her school of origin unless a determination is made that it is not in the child’s best interest. [ESEA section 1111(g)(1)(E)(i)]. If a child’s foster care placement changes, the school of origin would then be considered the school in which the child is enrolled at the time of the placement change.
<b>School of origin duration</b>	For the duration of the child’s time in foster care, each such child remains in his or her school of origin, if it is determined to be in their best interest [ESEA sections 1111(g)(1)(E)(i) and 1112(c)(5)], consistent with the educational stability requirements under the Fostering Connections Act.
<b>School of Residence</b>	The legal residence of the parents, guardian or person having legal custody. The foster family home, as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, except a therapeutic foster family home or a specialized foster home where a child is in voluntary placement as defined in subsection D of this section, in which the child has been placed: (a) by the person or agency having legal custody of the child pursuant to a court order, or (b) by a state agency having legal custody of the child pursuant to the provisions of Title 10A of the Oklahoma Statutes. Upon request of the foster parent, the residence of a child in foster care for school purposes may be changed to the school district in which the child resided prior to being placed in foster care or the school district in which the previous foster family home of the child is located. [70 O.S. § 1-113 School Laws of Oklahoma 2016]
<b>Receiving school</b>	The school where the foster child is placed/enrolled due to the foster care parent’s residency.
<b>Types of Foster Care: Family Foster Care</b>	Provides 24-hour-a-day substitute temporary care and supportive services in a home environment for children in OKDHS custody, from birth to 18 years of age.
<b>Types of foster care: Interstate Compact on the Placement of Children (ICPC)</b>	A law enacted by all 50 states, the District of Columbia and the U.S. Virgin Islands which ensures protection and services to foster children placed into and out of Oklahoma. These placements are made only in the event that an appropriate placement cannot be found in the home state and there exists an appropriate out-of-state placement with which the child has an existing connection, be it family member or other individual with close kinship ties. The decision about whether or not to place a foster child across state lines is made by the child’s caseworker. To be considered as a possible ICPC foster care placement for a custody child, you must contact the child’s caseworker. If you do not know the name of the child’s caseworker, additional assistance may be available through the <a href="#">State ICPC Offices</a>

<b>Types of Foster Care: Therapeutic Foster Care (TFC)</b>	A residential behavioral management service provided in foster home settings. TFC is designed to serve children ages 3-18 who have special psychological, social, behavioral and emotional needs. Children in TFC can accept and respond to close relationships within a family setting, yet have special needs which require more intensive or therapeutic services than are found in traditional foster care.
<b>Types of Foster Care: Tribal Foster Care</b>	Provides services to Indian children and families in compliance with federal and state regulations. OKDHS seeks to ensure compliance with the federal and state Indian Child Welfare Acts in all program areas. Oklahoma tribes are responsible for certifying tribal foster homes.

## Appendix D (Best Interest Determination)

Though the specific factors may vary depending on context, in order to make a holistic and well-informed determination, a variety of student-centered factors should be considered. These factors include the appropriateness of the current educational setting and proximity of placement. [ESEA section 1111(g)(1)(E)(i)]. Listed in no particular order, these factors may include:

1. Safety considerations;
2. Proximity of the resource family home to the child's present school;
3. Age and grade level of the child as it relates to the other best interests factors;
4. Needs of the child, including social adjustment and well-being;
5. Child's performance, continuity of education and engagement in the school the child presently attends;
6. Child's special education programming if the child is classified;
7. Point of time in the school year;
8. Child's permanency goal and likelihood of reunification;
9. Anticipated duration of the placement;
10. Preferences of the child;
11. Preferences of the child's parent(s) or education decision maker(s)
12. The child's attachment to the school, including meaningful relationships with staff and peers;
13. Placement of the child's sibling(s);
14. Influence of the school climate on the child, including safety;
15. Availability and quality of the services in the school to meet the child's educational and socio-emotional needs;
16. History of school transfers and how they have impacted the child;
17. How the length of the commute would impact the child, based on the child's developmental stage;
18. Whether the child is a student with a disability under the IDEA who is receiving special education and related services or a student with a disability under Section 504 who is receiving special education or related aids and services and, if so, the availability of those required services in a school other than the school of origin; and
19. Whether the child is an EL and is receiving language services, and, if so, the availability of those required services in a school other than the school of origin, consistent with Title VI and the EEOA.

### Best Interest Determination Evaluation (Sample)

Child's Name: _____ Birthday: _____ Age: _____ Grade: _____ Date: _____ Current District: _____ Current Site: _____ <i>Student will remain in the current school unless consideration of the following factors indicates a change of school placement is in the child's best interest (check all that apply.)</i>			
	School of Origin  ( A )	Receiving School  ( B )	Other Previous School Attended  ( C )
Which school will better meet the relational needs of the child? Select all that apply: <ul style="list-style-type: none"> <li><input type="radio"/> Siblings</li> <li><input type="radio"/> Relationships with peers</li> <li><input type="radio"/> Relationships with staff</li> </ul> Describe the relationship connections at current school: _____ _____ List strategies for maintaining important connections should other best interest determination be made: _____ _____			
Which school will better meet the individual academic needs and challenges of the child? Select all that apply: <ul style="list-style-type: none"> <li><input type="radio"/> IEP</li> <li><input type="radio"/> 504 Plan</li> <li><input type="radio"/> Gifted Program</li> <li><input type="radio"/> Career Tech</li> <li><input type="radio"/> EL Services</li> </ul>			
Which school will better meet the social/emotional needs and challenges of the child? Select all that apply: <ul style="list-style-type: none"> <li><input type="radio"/> Social</li> <li><input type="radio"/> Emotional</li> <li><input type="radio"/> Safety</li> </ul>			

<p>Which school will better meet the unique needs and interests of the child? Select all that apply:</p> <ul style="list-style-type: none"> <li><input type="radio"/> Extracurricular Activities</li> <li><input type="radio"/> Sports</li> <li><input type="radio"/> Other</li> </ul> <p>Student will describe the areas of desired school involvement:</p> <p>_____</p> <p>Which school will best meet the permanency goal and likelihood of reunification with parents or siblings?</p>			
<p>Which school is more appropriate for the child's age and length of travel?</p> <p>Explain: _____</p> <p>_____</p>			
<p>Describe the child's transfer history.</p> <p>_____</p> <p>_____</p>			
<p>Which school does the student prefer to attend?</p> <p>Explain: _____</p> <p>_____</p>			
<p>Which school does the caregiver or current placement provider recommends the student attend?</p> <p>Explain: _____</p>			
<p>Identify strategies for successful transition to new school and/or support in current school: _____</p> <p>_____</p> <p>_____</p>			

**Supporting Documentation**

Attach any supporting documentation used to determine best interest of child:

- Report Cards
- Progress Reports
- Achievement Data (test scores)
- Attendance Data
- IEP or Section 504 Plans
- Other: \_\_\_\_\_

**Determination**

*Based on the information provided and considering the best interest of the child, the team has determined the following school is the most appropriate educational placement for the child:* \_\_\_\_\_

**Team Members:**

LEA representative: \_\_\_\_\_

*Printed name*

*Signature*

CWA representative: \_\_\_\_\_

*Printed name*

*Signature*

Education Decision Maker \_\_\_\_\_

*Printed name*

*Signature*

Other: \_\_\_\_\_

*Printed name*

*Signature*

## Appendix E (Transportation Agreement Sample)

RE: Transportation of Foster Care Students

Dear Superintendent and Child Welfare Agency:

Fostering Connections Act (P.L. 110-351) is a federal law that protects and seeks to promote education stability for foster children. Under this Act, transportation to school must be provided to an enrolled foster care student, even though the student may be physically located in a different school district. Oklahoma law, however, prohibits school buses from crossing the transportation boundaries of another district, with a few exceptions. One such exception is by the mutual agreement of the boards of education. This letter is intended to be a Transportation Agreement designed to comply with legal requirements in the event that a participating school district must provide transportation services to a foster care child who is physically located in another participating school district.

*Every Student Succeeds Act (ESSA), Section 1112(5)(B)* stipulates: “If there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the local educational agency will provide transportation to the school of origin if:

- (I) the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation;
- (II) the local educational agency agrees to pay for the cost of such transportation; or
- (III) the local educational agency and the local child welfare agency agree to share the cost of such transportation.”

In order to comply with ESSA and to ensure educational stability, the receiving Local Educational Agency and the Child Welfare Agency (CWA) should aim for reaching an agreement in regard to how the transportation will be provided, arranged and funded for the duration of the child’s time in foster care. This letter is also intended to be a Transportation Agreement between the LEA and CWA, designed to comply with ESSA requirements in terms of transportation costs.

If you wish to participate in the Agreement, please have this document approved by the board of education and provide me with a signed copy of the Agreement. I will then provide each of the participating parties with an executed copy.

Respectfully,

*Name*

Foster Care Coordinator

*School District Name*

\_\_\_\_\_  
*Child Welfare Agency Name*

Transportation cost agreed to: \_\_\_\_\_

Attest: \_\_\_\_\_  
*Board clerk*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Receiving School District Name*

Transportation cost agreed to: \_\_\_\_\_

Attest: \_\_\_\_\_  
*Board clerk*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
*School District Name*

Attest: \_\_\_\_\_

*Board clerk*

Date: \_\_\_\_\_

## Appendix F (Complaint Guidelines)

### SUBCHAPTER 10. FOSTER CARE EDUCATION COMPLAINT GUIDELINES

#### 210:40-10-1. Purpose

Every effort must be made to resolve the complaint or dispute at the Local Educational Agency level and Child Welfare Agency (CWA) level before it is brought to the Oklahoma State Department of Education (OSDE). It is the responsibility of the Local Educational Agency (LEA) to inform the complainant of the LEA's Complaint Resolution Procedures when a question concerning the education of a foster child or youth arises.

#### 210:40-10-2. School District Level & Child Welfare Agency

The following rule is a complaint resolution process recommended by the Oklahoma State Department of Education (OSDE) when a dispute arises regarding the education of a foster care child or youth. To ensure the educational stability of children and youth in foster care, each Local Educational Agency (LEA) shall develop a Foster Care Plan and review it annually. If any disputes arise, such as Transportation Costs, Best Interest Determination, School of Origin, etc., the following shall be followed:

(1) Contact the foster care LEA Point of Contact (POC). The foster care point of contact serves as a liaison between the foster care child and the school the child attends. If the complainant does not know who the LEA POC is, someone in the school or in the superintendent's office shall direct him or her to the designated POC.

(A) Request access to or a copy of the district board of education policies addressing the education of foster care children and youths and review them. Make an appointment with the foster care coordinator to discuss the complaint.

(B) If the dispute is not resolved after the initial discussion with the foster care POC, the complainant may file a formal complaint in writing to the foster care POC for further review.

(C) The LEA POC shall present a proposed resolution or a plan of action to the complainant. The LEA shall give a written resolution of the dispute or a plan of action within five (5) to ten (10) business days from the date the complaint was received by the foster care POC.

(2) If the dispute is not resolved at the foster care POC level, the complaint shall be forwarded to the superintendent of the LEA for review. The superintendent may consult with the Local CWA to resolve the dispute. The superintendent shall meet with the complainant to discuss the dispute, and then shall give a written resolution within five (5) days from the date when the complaint was received.

(3) If the dispute is not resolved at the district superintendent level, the complainant may take the matter before the school district's board of education for resolution.

The final written resolution at the district level shall indicate complainant's agreement or disagreement of the resolution.

#### 210:40-10-3. State Level

If the dispute is not resolved in a satisfactory manner at the school district level, the complaint shall be brought to the OSDE. Complaints made under this process must be made in writing and signed by the complainant. The following steps are to be taken:

(1) Fill out the complaint form found on the OSDE's website. Address the complaint to:

*Oklahoma State Department of Education  
Office of Federal Programs  
2500 N. Lincoln Boulevard  
Oklahoma City, OK 73105  
(405) 521-2846*

Include in the complaint:

- (A) A detailed description of the dispute;
  - (B) The name(s) and age(s) of the children involved;
  - (C) The name(s) of involved school district personnel and the district(s) they represent;
  - (D) A description of attempts that were made to resolve the issue at the school district and child welfare agency level.
- (2) The foster care POC at OSDE will inform the involved parties and the child welfare agency of the complaint. The POC will gather needed information including documentation and statements of the parties, and may conduct an independent investigation through an on-site visit, if necessary.
- (3) Within thirty (30) days after receiving and investigating a complaint, the OSDE-POC will make a determination regarding the allegations on the complaint and will inform the parties, in writing, of the decision.
- (4) If a complainant disagrees with the decision, the complainant may, within ten (10) working days, appeal the decision to the State Superintendent of Public Instruction. This appeal must be in writing and state the reasons why the complainant disagrees with the decision.
- (5) Within thirty (30) days after receiving the appeal, the State Superintendent of Public Instruction will render a final decision and notify the complainant and all other interested parties in writing. Although the standard procedure allows thirty (30) days for a response, every effort will be made to resolve the complaint in the shortest possible time.
- (6) While the dispute is ongoing, the child(ren) in question must be enrolled in and attending school. If the dispute revolves around which school is the school of best interest for the child, the child shall remain in the school they currently attend until the dispute is resolved, unless arrangements already implemented allow the child to attend the school of origin.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION  
OFFICE OF FEDERAL PROGRAMS  
FOSTER CARE COMPLAINT FORM**

**1) Please provide the Name, Date of Birth, and Grade Level for the child involved.**

First Name: [Click here to enter child's first name](#)

Last Name: [Click here to enter child's last name](#)

Date of Birth: [MM/DD/YYYY](#)

Grade Level: [Click here to enter child's grade level](#)

**2) The name(s) of involved school district personnel and the district(s) they represent.**

School District Name: [Click here to enter the school district name](#)

School District Personnel: [Click here to enter personnel's name](#)

**3) Please provide a description of the attempts that were made to resolve the issue at the school district and child welfare agency level. *(Please attach any supporting documentation to this form.)***

[Click here to enter text.](#)

**4) Please provide a brief description on any resolutions to the issue provided by the district.**

[Click here to enter text.](#)

**5) Please provide a detailed description of the dispute. *(Use additional space, if needed.)***

[Click here to enter text.](#)

Address the complaint to:  
*Oklahoma State Department of Education  
Office of Federal Programs  
State Foster Care Coordinator  
2500 N. Lincoln Boulevard  
Oklahoma City, Oklahoma 73105*

## Appendix G (Student Data Accessibility, Transparency and Accountability Act)

70 O.S. § 3-168 (OSCN 2016), Student Data Accessibility, Transparency and Accountability Act of 2013

### 210:1-3-8.1. Student Data Accessibility, Transparency and Accountability Act

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning:

(1) **“Personally Identifiable Information”** shall have the meaning set forth in 34 C.F.R. § 99.3;

(2) **“School official”** shall mean the officials within an educational agency or institution, including, but not limited to, teachers, who are determined by the agency or institution to have legitimate educational interests in Personally Identifiable Information pursuant to the provisions of 34 C.F.R. § 99.31(a)(1);

(3) **“Student data”** shall have the meaning set forth in 70 O.S. § 3-168(A)(7).

(b) **Annual inventory of student data collection.** The State Board of Education shall create and/or update and publish a data inventory and dictionary or an index of individual student data elements with definitions of individual student data fields currently collected by the State Department of Education in its student data system.

(1) The inventory or index required to be created and published by this subsection shall include:

(A) Any student data required to be reported by state and federal education mandates;

(B) Any student data, if any, which have been proposed for inclusion in the student data system with a statement regarding the purpose or reason for the proposed collection; and

(C) Any student data, if any, that the State Department of Education collects or maintains with no current purpose or reason.

(2) The inventory or index required to be created and published by this subsection shall identify which student data elements were collected by the State Department of Education on or before July 1, 2013. All data elements identified as a student data element collected by the State Department of Education on or before July 1, 2013, shall be considered an “existing collection of student data” exempt from the provisions of (c) of this Section pertaining to collection of “new student data.”

(c) **Collection of new student data – limits.** New collections of student data shall be subject to the following procedures:

(1) For purposes of this subsection, a “new collection of student data” shall mean any new data object (i.e., category of student data) added to the student information system.

(2) Any new collection of student data proposed for addition to the State Department of Education student data system shall be identified and submitted to the State Board of Education for approval no later than December 1 of the year prior to the school year for which the new data collection is proposed to be added.

(3) Any new collection of student data proposed for addition to the State Department of Education student data system shall be submitted to the Governor and the Legislature within one year from the date of approval by the State Board of Education, in accordance with the provisions of 70 O.S.

§ 3-168(C)(7). Until approved by the Governor and the Legislature, any proposed new data collection shall be considered provisional, provided that any proposed new data collection not approved by the Governor and the Legislature by the end of the next legislative session shall be deemed to expire and shall no longer be required by the State Department of Education.

(d) **Disclosure or transfer of student data –limits.** All requests for disclosure and/or transfer of student data collected and maintained by the State Department of Education, including, but not limited to, Open Records Act requests and research requests are subject to the following procedures:

(1) **Confidentiality of student data.** All data which falls within the definition of “student data” set forth in 70 O.S. § 3-168(A)(7) is hereby deemed confidential pursuant to 70 O.S. § 3-168(C).

Accordingly, “student data” are not subject to disclosure by the State Department of Education unless:

(A) The student data are aggregated and any Personally Identifiable Information has been removed in accordance with the procedures set forth in (3) of this subsection;

(B) The student data are otherwise approved for release, sharing, and/or disclosure by the State Board of Education in accordance with the procedures set forth in (4) of this subsection; or

(C) The student data does not have prior approval of the State Board of Education for release, sharing, and/or disclosure, but the release of requested data to the requester does not violate provisions of the Family Education Rights and Privacy Act (FERPA) at 20 U.S.C. § 1232g et seq. or accompanying regulations at 34 C.F.R. Part 99, and the release is limited to one of the following purposes:

(i) Facilitating a student transfer out of state, or assisting a school or school district with locating an out-of-state transfer;

(ii) Facilitating a student’s application to an out-of-state institution of higher education or professional training program;

(iii) Registration for a national or multistate assessment taken by a student;

(iv) Facilitating a student’s voluntary participation in a program for which transfer of that student’s data are a condition and/or requirement of the student’s participation;

(v) The Department enters into a contract that governs databases, assessments, special education or instruction supports with an out-of-state vendor;

(vi) Compliance with federal reporting requirements for students classified as “migrants.”

(2) **Authorized access to confidential student data.** Access to confidential student data in the State Department of Education student information system shall be restricted to:

(A) Employees of the State Department of Education who have been authorized by the Superintendent of Public Instruction to access confidential student data;

(B) Contractors of the State Department of Education who require such access to perform their assigned duties, including staff and contractors from the Information Services Division of the Office of Management and Enterprise Services (OMES) who have been assigned to the State Department of Education, provided that all such individuals shall comply with the terms set forth in the contract governing use and handling of student data;

(C) District administrators, teachers, personnel or other “school officials” under direct control of a school in which the student has been enrolled or in which the student has applied for transfer or enrollment and who require access to confidential student data in order to perform their assigned duties;

(D) A student and/or parents or legal guardians of the student with rights to inspect a student’s own records in accordance with rights afforded by state or federal law;

(E) The authorized staff of any other State of Oklahoma agencies as authorized by law and in accordance with the terms of interagency data sharing agreements; and

(F) The authorized staff of any other entity as necessary to fulfill the purposes set forth in 70 O.S. § 3-168(C)(3) or as otherwise approved by the State Board of Education to access or share student data in accordance with terms of interagency data-sharing agreements.

**(3) Requests for release of student data.** In accordance with the provisions of 70 O.S. § 3-168(C)(2)(c), all requests for release, disclosure and/or transfer of confidential student data shall be denied unless the data or dataset requested for release meets one of the following conditions:

(A) The request is from an individual or entity specifically authorized to access confidential student data pursuant to 70 O.S. § 3-168(C)(2)(a) or (d)(2) of this Section;

(B) The requested data or dataset has been approved for release to the requester by the State Board of Education in accordance with the policies and procedures set forth in (4) of this subsection; or

(C) The requested data or dataset meets all of the following criteria:

(i) The requested data meets the definition of “aggregate data” set forth in 70 O.S. § 3-168(A)(4); and

(ii) All data that falls within the definition of “Personally Identifiable Information” set forth in 34 C.F.R. 99.3 has been removed, suppressed and/or redacted as necessary to ensure no Personally Identifiable Information is included in the student data requested for release;

**(4) Policies and procedures governing approval of release, sharing and/or disclosure of confidential student data by the State Board of Education.** The State Department of Education shall develop a detailed data security plan that complies with the provisions of 70 O.S. §3-168(C)(4) and includes internal policies and procedures governing agency responses to requests for release and/or sharing of confidential student data to persons not authorized to access confidential student data in accordance with (2) of this subsection. Such internal policies and procedures shall meet all of the following requirements:

(A) The policies and procedures shall prohibit release of all data or datasets containing Personally Identifiable Information of one or more students unless all of the following conditions are met:

(i) The release complies with the provisions of the Family Education Rights and Privacy Act (FERPA) at 20 U.S.C. § 1232g et seq. and accompanying regulations at 34 C.F.R. Part 99; and

- (ii) Approval for the release has been obtained from the State Board of Education.
- (B) The policies and procedures shall set forth the requirements of all written agreements.

## Appendix H (Resources)

<sup>1</sup> *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, U.S. Department of Education and U.S. Department of Human Services Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015, June 23, 2016, p.6*

<sup>2</sup> <http://www.okdhs.org/library/policy/Pages/oac340075010009000.aspx>

<sup>3</sup> <http://www.okdhs.org/library/policy/Pages/oac340075160029000.aspx>

<sup>4</sup> *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, U.S. Department of Education and U.S. Department of Human Services Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015, June 23, 2016, p.9*

<sup>5</sup> *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, U.S. Department of Education and U.S. Department of Human Services Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015, June 23, 2016, p.10*

<sup>6</sup> *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, U.S. Department of Education and U.S. Department of Human Services Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015, June 23, 2016, p.21*

<sup>7</sup> *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, U.S. Department of Education and U.S. Department of Human Services Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015, June 23, 2016, p.22*

<sup>8</sup> *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, U.S. Department of Education and U.S. Department of Human Services Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015, June 23, 2016, p.12*

<sup>9</sup> *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, U.S. Department of Education and U.S. Department of Human Services Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015, June 23, 2016, p.14*

<sup>10</sup> O.S. § 24-101.4// *School Laws of Oklahoma 2002*

<sup>11</sup>*Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, U.S. Department of Education and U.S. Department of Human Services Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015, June 23, 2016, p.23*

<sup>12</sup>*Fostering Connection Implementation Toolkit, Section IV: Administration on Children and Families (ACF) Program Instruction: Fostering Connections (Education Stability Provisions), p.3*

<sup>13</sup>*Fostering Connection Implementation Toolkit, Section II: When School Stability Requires Transportation: State Considerations, p.2*

<sup>14</sup>*Fostering Connection Implementation Toolkit, Section II: When School Stability Requires Transportation: State Considerations, p.3*

<sup>15</sup>*Fostering Connection Implementation Toolkit, Section II: When School Stability Requires Transportation: State Considerations, p.4*

<sup>16</sup>*Fostering Connection Implementation Toolkit, Section II: When School Stability Requires Transportation: State Considerations, p.9*

<sup>17</sup>*Fostering Connection Implementation Toolkit, Section II: When School Stability Requires Transportation: State Considerations, p.4*

<sup>18</sup>*Fostering Connection Implementation Toolkit, Section II: When School Stability Requires Transportation: State Considerations, p.5*

<sup>19</sup>*Fostering Connection Implementation Toolkit, Section II: When School Stability Requires Transportation: State Considerations, p.7*