

**Fostering Connections and the Every Student Succeeds Act:  
Joint Guidance for School Stability of Children and Youth in Foster Care**

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**OCTOBER 2017**



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# Fostering Connections and the Every Student Succeeds Act: Joint Guidance for School Stability of Children and Youth in Foster Care

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## I. Introduction

Children and youth in foster care are among the most vulnerable populations in this country. Children and youth in out-of-home care average one to two residential placement changes per year, a rate of mobility greater than their peers not in foster care. According to the Adoption and Foster Care Analysis and Reporting System data in 2014, approximately 415,000 children were in foster care and nearly 270,000 were in elementary and secondary schools. Children in foster care experience much higher levels of residential and school instability than their peers. In one study<sup>1</sup>, 75 percent of children in foster care made an unscheduled school change in one school year, compared to less than 40 percent for children not in foster care. Furthermore, those students in foster care at age 17 were less likely to graduate from high school; with only 65 percent graduating by age 21 compared to 86 percent among all youth ages 18 to 24.

Of the more than 5,000 children and youth in foster care in Virginia, approximately 80 percent are school-aged (ages 4-17). Statistics show that close to 64 percent of youth in care experience two or more foster home placements throughout the duration of one foster care episode, indicating the vital need to provide stability for these youth wherever possible. Stability can be promoted by maintaining a predictable and familiar school environment, when in the youth's best interest, where the youth is known, cared for, and supported.

For children and youth in foster care, a change in *home* placement frequently results in a change in *school* placement. The educational impact of every school change is significant. Each time students enter new schools they must adjust to different curricula, different expectations, new friends, and new teachers. Keeping children in the same school:

- provides continuity in education;
- maintains important relationships at school;
- provides stability during a traumatic time for the children; and
- improves educational and life outcomes.

This joint guidance document represents collaboration between the Virginia Department of Education (VDOE) and the Virginia Department of Social Services (VDSS) to implement the provisions of the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (Fostering Connections) and the Title I, Part A provisions in the *Every Student Succeeds Act* (ESSA) to ensure school stability for students in foster care. This guidance applies to initial and subsequent residence placements while children are in foster care.

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<sup>1</sup> National Center for Education Statistics (2014). *Digest of education statistics*, 2014 104.40.

Retrieved from [https://nces.ed.gov/programs/digest/d15/tables/dt15\\_104.40.asp?current=yes](https://nces.ed.gov/programs/digest/d15/tables/dt15_104.40.asp?current=yes)

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The guidance applies to all children and youth in foster care who attend preschool programs administered by local school divisions or the Virginia Department of Education and public K-12 education programs that are administered by local education agency<sup>2</sup> (LEA) or state education agency (SEA) regardless of whether they enter foster care through:

- court commitments (e.g., abuse, neglect);
- voluntary entrustment agreements when the parents request the Local Department of Social Services (LDSS) to assume custody of the children temporarily or permanently; or
- voluntary noncustodial agreements with the parents to place the children in foster care while the parents retain legal custody and LDSS assumes placement, care and case management responsibilities.

### **II. Federal and State Statutory Requirements**

**A. The federal *Fostering Connections to Success and Increasing Adoptions Act of 2008* (Fostering Connections) (P.L. 110-351, Section 204) requires child welfare agencies to provide:**

*(i) assurances that the 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*

*(ii)(I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the child remains in the school in which the child is enrolled at the time of placement; or (II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.*

**B. The federal *Every Student Succeeds Act of 2015* (ESSA) (P.L. 114-95) provides a parallel mandate for state and local departments of education to provide educational stability for youth in foster care.**

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<sup>2</sup> Virginia refers to LEAs as school divisions.

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ESSA reauthorizes and amends the *Elementary and Secondary Education Act of 1965* and includes new foster care provisions that complement requirements in the Fostering

Connections Act and emphasize shared agency responsibility and decision making. All education stability provisions had to be implemented by December 10, 2016. These provisions are under Title I, Part A and include:

- Local Title I plans must contain an assurance that the LEA will collaborate with the state or local child welfare agency to:
  - Designate a point of contact if the corresponding child welfare agencies notifies the LEA, in writing, that it has designated a point of contact for the LEA.
  - Within one year of enactment, develop and implement procedures for how transportation to maintain foster youth in their schools of origin, when in their best interest, will be provided, arranged and funded, which must:
    - Ensure that youth in foster care who need transportation to the school of origin promptly receive it in a cost-effective manner, and in accordance with the child welfare agency's authority to use child welfare funding available under section 475(4)(A) of Title IV-E of the Social Security Act to provide transportation.
    - Ensure that if there are additional costs incurred in providing transportation to the school of origin, LEAs will provide it if:
      - they are reimbursed by the child welfare agency;
      - the LEA agrees to pay the costs; or
      - the LEA and the child welfare agency agree to share the costs.
- Beginning with the 2017-18 school year, achievement and adjusted cohort graduation rates must be disaggregated for students in foster care and reported in School Quality Profiles.

### **C. The *Code of Virginia* reinforces Fostering Connections and ESSA for educational stability.**

Section 22.1-3.4(B) states:

*The sending and receiving school divisions shall cooperate in facilitating the enrollment of any child placed in foster care across jurisdictional lines for the purpose of enhancing continuity of instruction. The child shall be allowed to continue to attend the school in which he was enrolled prior to the most recent foster care placement, upon the joint*

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*determination of the placing social services agency and the local school division that such attendance is in the best interest of the child.*

Section 22.1-3.4(D) states:

*"Receiving school division" means the school division in which the residence of the student's foster care placement is located. "Sending school division" means the school division in which the student last attended school.*

Section 63.2-900.3 of the *Code*, as amended by the 2012 General Assembly, states:

*When placing a child of school age in a foster care placement, as defined in § 63.2-100, the local social services agency making such placement shall, in writing, determine jointly with the local school division whether it is in the child's best interests to remain enrolled at the school in which he was enrolled prior to the most recent foster care placement, pursuant to § 22.1-3.4.*

### **III. Interagency Collaboration**

Fostering Connections and ESSA recognize that the school setting is often the most stable environment for students in foster care. To the extent feasible and appropriate, a student must remain in his or her school of origin to reduce the number of school moves. Fostering Connections clearly outlines child welfare agencies' responsibilities for students in foster care. Fostering Connections requires child welfare agencies to develop a foster care service plan that includes an emphasis on school stability. ESSA requires that school personnel have a major role in supporting educational stability that is in each student's best interest.

LDSS and school divisions must work together to jointly determine school placement that is in the best interest of each child in foster care when a residence changes. Every school division has designated a foster care liaison to serve as a resource in facilitating the best interest determination in his or her community. LDSS have designated educational stability liaisons to ensure educational stability policies and procedures are followed. Job descriptions for these liaisons can be found in Appendix E.

When making the decision about an appropriate residence for a child in foster care, LDSS case workers are required by Fostering Connections to consider the appropriateness of the student's current educational setting and the distance from the new residence to the school in which the student is currently enrolled. When the LDSS case worker determines the most appropriate residence for the child, federal and state law require the LDSS case worker and the appropriate foster care liaison work together to jointly determine the student's best interest for school placement. The main objective of this coordination is to ensure educational stability for children in foster care, including students with disabilities served under the *Individuals with Disabilities*

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*Education Act of 2004 (IDEA) or the Rehabilitation Act of 1973, as amended. The presumption is that the student will remain in the school where he or she is currently enrolled, unless contrary to the student's best interest.*

### **IV. Overview of Sequence and Timeframe**

The School Placement Process Flowchart on page 6 provides a visual summary of the process described below:

1. Residence Determination: The LDSS case worker determines the most appropriate residence for the child.
2. School Placement Determination: The School Division foster care liaison and the LDSS case worker jointly determine the student's best interest for school placement.
3. Subsequent Actions: The LDSS or the school division provides transportation to remain in current school or immediately enrolls the student in the new school of residence.

**See flowchart on next page**

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### School Placement Process for Students in Foster Care

A student in foster care needs an initial or change in residence.

- The LDSS case worker notifies the current school that the student needs an initial or change in residence.
- The school provides the LDSS case worker with information regarding the appropriateness of the student's current educational setting.
- The LDSS case worker determines most appropriate residence for student, taking into account information provided by school and proximity to the current school.
- LDSS case worker makes the residence placement and, within 72 hours, notifies the foster care liaison(s) of student's new residence and need for joint determination of student's best interest for school placement and notifies the LDSS educational stability liaison.
- Complete FC/ESSA Form A-17.

The LDSS case worker collects information from the student, parents, and other possible BID members using communication options in Guidance.

The foster care liaison shares information with the school of origin (SOO) transportation designee to identify options according to the local Title I Plan.

The foster care liaison collects information from appropriate school and division staff, including an IEP team representative if the student has an IEP.

The SOO transportation designee provides the foster care liaison with possible transportation options.

Taking into account input from all members, the LDSS case worker and foster care liaison jointly determine if the student's best interest is to remain in current school.  
Complete FC/ESSA Form B-17 2017.

No

LDSS case worker notifies school division and school of child's new residence of need to enroll student.

LDSS case worker, foster parent or LCPA presents child for immediate enrollment in school of residence with required information and certifications. Present completed FC/ESSA Form C -17.

School of residence immediately enrolls student.

Sending school expedites transfer of school records to receiving school. (within 5 days)

LDSS case worker provides receiving school any missing required documentation.

Note: Some steps may occur concurrently.

As quickly as possible. Within 3 work days of residence change.

Yes

Student remains in current school.

The school division explores options to support SOO transportation and notifies the LDSS case worker.

If the school division does not have any options or cannot provide complete coverage, LDSS arranges and pays for transportation for the child using Title IV-E funds or requesting CSA funds.

When "specialized" transportation is indicated in child's IEP, the school division responsible for FAPE arranges and pays for transportation.

No later than beginning of the next school day

Within 30 days

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### **V. Details for School Placement Process**

#### **A. Residence Determination**

The LDSS case worker convenes a Family Partnership Meeting before moving the child or youth to a new residence. The purpose of the meeting is to engage the child or youth, family, and community members, as appropriate, in determining the most appropriate residence to help achieve safety, a permanent family, and lifelong connections for the child or youth. The LDSS case worker and the school where the student is currently enrolled must work together to help inform this decision-making process. The school must provide information about the appropriateness of the student's current educational setting. The LDSS case worker must consider this information, the distance from potential placements to the student's current school, and other critical factors in making the placement decision. The foster care liaison may be asked to attend the Family Partnership Meeting (or a portion of the meeting), or the school may provide this information through an alternative method.

#### **Best Practice**

When a change in placement is being considered, the LDSS case worker should e-mail the school principal/designee and copy the foster care liaison and the educational stability liaison to obtain early information that will expedite a best interest determination. Information to request includes:

- grades
- attendance
- any special supports the student receives at school
- discipline record

#### **B. Best Interest Determination (BID) Process**

There should be no gaps in providing an education to students in foster care, and students should remain enrolled in the school of origin while the BID process is completed. Students should not be withdrawn from their current school during the decision making process.

#### **No BID is required when:**

- the new residence is zoned for the current school,
- the student enters a Level C licensed residential placement, or
- a student returns from a residential placement or detention to the SAME foster care placement.
- the distance between the school of origin and the new foster care placement is greater than 100 miles.

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For general education students and students with disabilities, the LDSS case worker and appropriate foster care liaison must work together to determine the student's best interest for school placement and ensure educational stability for the student. *The presumption is that the student will remain in the current school where he/she was last enrolled, unless contrary to the student's best interest.* The LDSS case worker and foster care liaison, in collaboration with the student and other key partners, make a determination as to whether the student should:

- remain in the school where the student was enrolled at the time of placement in the new residence, considering the appropriateness of the educational setting; or
- change schools and enroll in the school of residence for the child's or youth's new residence placement, if remaining in the current school is not in the student's best interest. The student must be enrolled immediately and appropriately with all educational records provided to the new school. It is recommended that the records be received within five days of enrollment.

When placing the child or youth in the new residence, the LDSS case worker is required by state law to document in writing the joint determination with the appropriate school division of whether it is in the student's best interest to remain enrolled in the current school (see § 63.2-900.3 of the *Code of Virginia*).

The joint determination for school placement (BID) should not delay the child's or youth's placement in the new residence. If the joint determination process cannot be completed prior to the placement in the new residence (e.g., an emergency placement to ensure the child's or youth's safety), *the presumption is that the student will remain enrolled in the current school, until the best interest determination process can be completed.*

The LDSS case worker notifies the appropriate school division foster care liaison of the child's or youth's new residence using the Notice of Student Receiving Foster Care Services and Request for Best Interest Determination Participation Form (FC/ESSA Form A-17 in Appendix A). Contact information for school and school division personnel can be found at: <http://www.doe.virginia.gov/directories/index.shtml>.

A link to school division foster care liaisons and educational stability liaisons can be found in the References section under Contact Information.

### **Best Practice**

When the new residence is located in a different school division, it is best practice to notify the foster care liaisons in both divisions using FC/ESSA Form A-17.

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This notice should trigger flagging (or verify an existing flag) in the school division's student record collection system that the student is in foster care.

As quickly as possible (e.g., within three (3) work days), the Best Interest Determination for Foster Care School Placement Form (FC/ESSA Form B-17 in Appendix B) should be used to ensure critical factors are discussed in deciding where the student should be enrolled.

This can be done with a face-to-face meeting, a conference call or other electronic meeting platform. All participants do not need to meet at the same time. Information can be collected via e-mail to ensure the timeline is met. The LDSS case worker is responsible for completing the form and making sure the appropriate participants have had input. The LDSS case worker and foster care liaison have joint responsibility for expediting and completing the process.

### **1. For general education students:**

- The LDSS case worker must contact the student's current school division foster care liaison to convene the best interest determination meeting. A Notice of Student Receiving Foster Care Services and Request for Best Interest Determination Participation Form (FC/ESSA Form A) should be used to document the change of residence and need for a BID.
- The foster care liaison notifies the school of origin transportation designee of the new address to trigger a review of transportation options to and from school that may be available through the school division, following the assurances found in the local Title I, Part A plan.
- As a best practice, the foster care liaison representing the school division for the child's or youth's new residence (if placement crosses school division lines) should be invited. While not the decision-maker, this participation can inform what educational and transportation options are available for the student or expedite a transition, if needed. [Note: If the receiving school division was not invited to participate and the decision is made to change the student's school placement, the receiving school division may dispute the best interest decision.]
- The LDSS case worker and the school division foster care liaison where the student is currently enrolled must coordinate to determine jointly the student's best interest for school placement, in consultation with the student, parents, and other key partners.
- The student should remain in the current school, unless contrary to the student's best interests.

Remember:

Students should not be withdrawn from school until the BID process has been completed.

### **2. For students with disabilities served under IDEA:**

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For students receiving special education, the responsibility for placement determination and the mechanism for making the determination are driven not only by Fostering Connections and ESSA, but also by the state and federal regulations under IDEA. Thus, in determining which

school division to involve in the best interest determination, the school division and LDSS must determine which school division is responsible under IDEA for the student's free appropriate public education (FAPE), and a representative from the student's Individualized Education Program (IEP) team must participate in the decision.

### **2a. For the student with a disability served under IDEA whose new residence is in the *current* school division:**

When a special education student's new residence is in the current school division but not zoned for the current school, the LDSS case worker must contact the student's current school division foster care liaison to begin the best interest determination process (using FC/ESSA Form A-17). The student should remain in the current school unless contrary to the student's best interest. If a change in school placement is being considered, a representative who can speak to the student's needs and services found in the IEP must participate in the determination. The foster care liaison and LDSS case worker, after considering input from all parties, make the BID decision, emphasizing stability and least restrictive environment (LRE), within three work days. The LDSS case worker is responsible for completing the Best Interest Determination for Foster Care School Placement Form (FC/ESSA Form B-17). If the conclusion of the BID process is that no change in school is needed, no IEP meeting is necessary and the current IEP remains in effect. If a change in schools is determined to be in the student's best interest, the receiving school adopts the current IEP unless there is a change in program.

### **2b. For the student with a disability served under IDEA whose new residence is in a *different* school division:**

In cases where the student's new residence is in a different school division, state regulations governing special education provide that **the school division where the student's new residence is located is responsible for FAPE**. Representatives from the sending and receiving school divisions who can speak to the student's needs and services found in the IEP must participate in the BID. The LDSS case worker must contact the school division foster care liaison where the student is currently enrolled, *and* the school division foster care liaison for the student's new residence, to begin the best interest determination process (using the Notice of Student Receiving Foster Care Services Form, FC/ESSA Form A-17). The student should remain in the current school unless contrary to the student's best interest. The foster care liaison for the new residence and LDSS case worker, after considering input from all parties, make the BID decision, emphasizing stability and least restrictive environment, within three work days. The LDSS case worker is responsible for completing the Best Interest Determination for Foster Care School Placement Form (FC/ESSA Form B-17).

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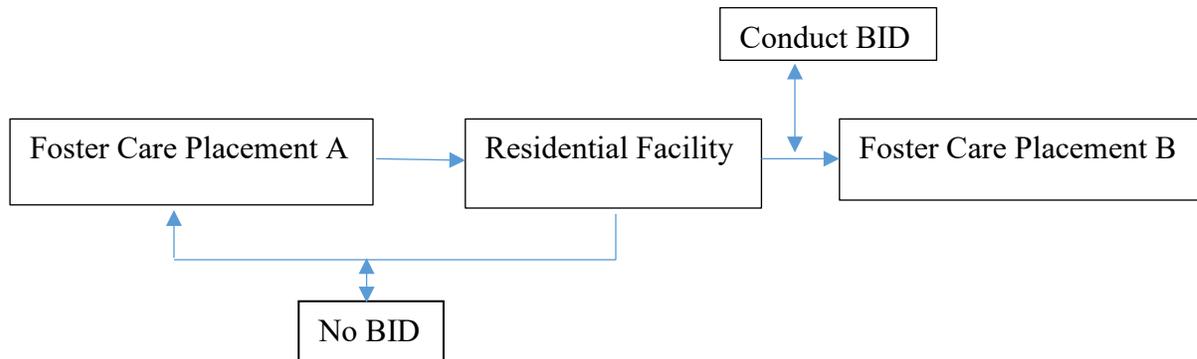
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- The foster care liaison in the school division of the student's new residence and the LDSS case worker are the BID decision makers.
  - If the decision supports remaining in the school of origin, consistent with Virginia Special Education Regulation 8 VAC 20-81-30 C8 & 9, the school division of the student's new residence is responsible for FAPE and must adopt the IEP until it completes a transfer IEP even though the student will not physically be attending school in the receiving school division. If there are questions regarding which school division is responsible for FAPE, the Virginia Department of Education Office of Student Services should be contacted.
  - If the BID supports a transfer to the receiving school, the receiving school immediately enrolls and provides educational services comparable to the current IEP until a transfer IEP is completed within 30 days.
    - If the IEP team in the division where the student's new residence is located determines that the student needs to be placed in a private day or residential facility for educational reasons, the responsibility for FAPE shifts to the school division served by the LDSS that has responsibility for the care of the student.

### **3. Special Cases**

- For students who were in foster care at the time of commitment to the Department of Juvenile Justice or who have been in detention for more than 30 days, the Procedures for the Re-enrollment of Youth Released From the Custody of the Department of Juvenile Justice and Returned to Public Schools ([Re-enrollment Process](#)) must be followed. A BID should be completed concurrently. The school of origin is the last school attended prior to commitment.
- If the student is in detention for less than 30 days and returns to the same foster care placement, no BID is required. If the student has a new foster care placement that is not in the same school zone and is less than 100 miles from the school of origin, the BID process described above should be followed.
- When a student is discharged from a residential facility to a different foster care placement, the LDSS case worker must notify the school division where LDSS has custody and the local school division of residency for the new foster care placement of the need to conduct a BID (FC/ESSA Form A-17).
- If the student is leaving a residential placement and returns to the same foster care placement where the student resided prior to the residential facility, no BID is required and the student should enroll in the last school attended prior to the residential placement. If the student has a new foster care placement, the BID process described above should be followed.

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NOTE: Residential placements are *not* considered schools of origin or receiving schools. While staff in these placements has important information about the student, the LDSS case worker and the school division foster care liaison are the decision makers. See Form FC/ESSA D-17 in Appendix D.

### Best Practice

When changes in placement occur over the summer, the student's last school is still the school of origin and the BID process should be followed at the time the residence changes. Delaying the process until it is almost time for school to begin can cause significant delays and backlog of cases to be reviewed by school division staff. Foster care liaisons are encouraged to have designees appointed to address requests for BIDs received during the summer that may occur when the liaison is unavailable.

### C. Factors to Assess in Determining Student's Best Interest for School Placement

According to federal and state law, the child's or youth's safety and permanency plan must be paramount in decision making. Additional factors relevant to school stability when determining the student's best interest for school placement include, but are not limited to:

- preferences of the student and birth parents;
- permanency goals and plan;
- personal safety, attendance, academic progress, and social involvement of the student in the current school;
- student's participation in any specialized instruction;
- the impact transferring the student to a new school may have on the student's needs and progress academically, emotionally, socially, and physically;
- time in the school year;
- distance from the student's current school to the new placement; and
- solutions addressing any practical issues identified, such as travel to the student's current school from the new residence.

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The Best Interest Determination for Foster Care School Placement Form (FC/ESSA Form B-17) should be used to assist the LDSS case worker and the foster care liaison in jointly determining the student's best interest for school placement. This form provides a series of questions that documents the determination process and compliance with federal and state law.

The LDSS case worker is required to document the best interest determination in the child's or youth's case file, including factors considered, participants involved in the collaborative process, the team's determination process for school placement, and the placement decision. Documentation of the best interest determination is maintained in both the LDSS case file for the child or youth and the student's cumulative school record.

### **Best Practice**

If a change in school placement is determined to be in the student's best interest, the Immediate Enrollment of Student in Foster Care Form (FC/ESSA Form C-17 in Appendix C) should be completed and the BID should be attached to the enrollment form for the receiving school.

### **D. Engaging Key Partners in Determining Student's Best Interest for School Placement**

The LDSS case worker should make all reasonable efforts to involve other individuals who have knowledge of the child or youth to participate in the BID. Best practice would be to conduct a BID meeting but information can be shared through conversations, e-mails, and faxes prior to the school and the LDSS case worker making the "joint" school placement decision.

Essential members of the team determination process include:

- the child or youth;
- the child's or youth's birth parent(s);
- an IEP team representative, if needed;
- the LDSS case worker; and
- the foster care liaison.

These essential members should be invited to provide information that will assist in making an appropriate decision for the student. Given the short timeframe for completing the BID, the LDSS case worker should document invitations and whether or not the member was able to participate.

The LDSS case worker should engage the child or youth in discussions to:

- solicit the child's or youth's wishes related to school placement;
- address constructively any concerns the child or youth may have related to school placement;

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- discuss the benefits of having someone participate to help ensure the child's or youth's wishes are communicated; and
- ask who the child or youth would like to participate. The LDSS case worker should arrange for this person's participation.

To share the workload, the foster care liaison and LDSS case worker may want to involve or consult the following people during the best interest determination, as appropriate.

The foster care liaison may consult:

- the foster care liaison from the school of residence for the student's new residence or current school division, as applicable
- classroom teachers
- school social workers
- school counselors
- special education and related service personnel, as appropriate
- transportation designee
- coaches

The LDSS case worker may consult:

- other family members
- foster parents
- current placement provider, and other service providers (e.g., treatment foster care, group home, residential)
- guardian ad litem
- court-appointed special advocate (CASA)
- other adults who are significant to the child or youth and family

While an actual meeting to conduct a BID is best practice, there is recognition that the expedited timeline may limit opportunities to do so. The best interest determination is a process which can occur through conversations and phone calls prior to the foster care liaison and LDSS case worker making the final decision. Participation in the BID process may occur through phone calls, teleconferences, e-mails, written documentation, or other electronic means to increase participation.

### **Best Practice**

To avoid delays, consider training multiple staff who can be a designee for the foster care or educational stability liaison when the liaison is not available.

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### **E. Revisiting a BID**

In addition to the required BID, the process can be used to revisit a determination when concerns arise or during natural breaks such as the transition to a new academic year. The LDSS case worker and foster care liaison acting as the decision maker should agree to initiate the process. Furthermore, a BID may include a temporary decision that will be revisited. The agreed upon timeline to review the decision can be included in the initial BID.

### **VI. Subsequent Actions for a School of Origin Determination**

If the student will remain in the current school, the LDSS is responsible for coordinating transportation to and from the school, unless the student has an IEP with specialized transportation. ESSA requires school divisions to provide assurances that they will collaborate with state and local child welfare agencies to develop and implement clear written procedures for how transportation will be provided, arranged, and funded for the duration of the time the student is in foster care. Procedures must ensure that students will promptly receive transportation in a cost-effective manner by exploring low-cost/no-cost options. School divisions must provide assurances that they will collaborate with LDSS to transport students in foster care following the process outlined in the local Title I, Part A plan.

#### **A. Payment for Regular School Transportation**

The process for payment is the same for general education students and students with disabilities who use regular school transportation. When the transportation designee has identified options, the school division will collaborate with the LDSS to arrange the transportation according to the Title I, Part A plan (which may include LDSS reimbursement for excess cost). When the school division does not have options for transportation the school division can provide, the LDSS must arrange for transportation and payment of transportation expenses for the student to remain in the current school. Reasonable costs shall be paid:

- using Title IV-E for eligible children and youth, consistent with federal and state law/policies; or
- requesting state pool funds through the Children's Services Act (CSA)<sup>3</sup> for non-Title IV-E eligible children and youth, consistent with state law.

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<sup>3</sup> CSA means the *Children's Services Act for At-Risk Youth and Families* that establishes the collaborative administration and funding system for services for certain at-risk youths and their families. §2.2-5200 et seq., *Code of Virginia*.

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The LDSS considers a wide range of options for providing transportation by providers who ensure the child's or youth's safety and well-being. Providers must have a valid driver's license and automobile insurance. The student must be properly secured in a child restraint device consistent with state law.

Payment for reasonable costs must be made to specific providers to transport an eligible child or youth. Individual providers reimbursed at the state mileage rate must submit to the LDSS proof of actual miles driven. Types of providers and reasonable costs may include the following:

- foster parents reimbursed at the state mileage rate;
- friends, relatives and neighbors of the student or foster parent reimbursed at the state mileage rate;
- employees of child placing agencies and residential programs reimbursed at the state mileage rate;
- public transportation paid at the established rate; and
- local school bus with reimbursement made to the local school division's school bus transportation fund (There must be a written and signed agreement/contract between the LDSS and the local school division or the company that manages the school bus system. This document shall be placed in the child's or youth's file at the LDSS.).

### **B. Payment for "Specialized" Transportation Indicated in a Student's IEP**

When a youth entering or in foster care has an IEP that requires "specialized" transportation to the current school, such transportation costs are paid for by the school division responsible for FAPE (as noted previously). Neither Title IV-E funds nor CSA funds can be used for services outlined in an IEP. "Specialized" transportation includes individualized provisions, noted in the IEP, that are needed because of the student's disability and that are necessary to guarantee access to FAPE. Examples include the following. A student requires:

- transportation to an alternative public school. It is recommended that this be written explicitly in the IEP. Even if it is not specifically indicated in the IEP, the school division responsible for FAPE is responsible for the transportation;
- transportation to a private school program (i.e., private day or private residential school). It is recommended that this be written explicitly in the IEP. Even if it is not specifically indicated in the IEP, the school division responsible for FAPE is responsible for the transportation;
- physical accommodations/modifications (e.g., car seat or security devices such as harnesses, brackets, restraints, seatbelts, vests, etc.);
- specialized equipment such as special or adapted bus, lift, or ramp;
- a bus with a two-way radio, phone, or other equipment, in case of emergency;

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- specialized services including personnel to provide assistance or supervision (e.g., aide);
- necessary medical equipment to perform procedures on the bus;
- modification of a school or bus schedule (e.g., partial day attendance, shortened bus ride, etc.).

### **VII. Subsequent Actions for a School of Residency Determination**

If the LDSS and school division jointly determine that remaining in the current school is not in the student's best interest, § 63.2-900.D of the *Code of Virginia* specifies that:

*Within 72 hours of placing a child of school age in a foster care placement, as defined in § 63.2-100, the local social services agency making such placement shall, in writing, (i) notify the principal of the school in which the student is to be enrolled and the superintendent of the relevant school division or his designee of such placement, and (ii) inform the principal of the status of the parental rights.*

This notification can be accomplished with the Immediate Enrollment of Student in Foster Care Form (FC/ESSA Form C-17). The BID should be completed prior to this notification unless one of the conditions that does not require a BID is met.

#### **A. Immediate Enrollment in Student's New School of Residence**

Delays in continuous enrollment in school are not in the best interest of the student, and both federal and state laws prohibit delaying the student's ongoing education. The LDSS case worker should submit the Immediate Enrollment of Student in Foster Care Form (FC/ESSA Form C-17) to the school which provides all required information for school enrollment. The LDSS case worker should print the form on yellow paper to alert the school and distinguish it from other documents.

#### **Best Practice**

To ensure a smooth transition, the completed BID should be attached to the Immediate Enrollment of Student in Foster Care Form (FC/ESSA C-17) for the receiving school. Having both school division foster care liaisons included during the BID process should assist in a smooth transition when immediate enrollment is needed.

The form documents the minimum legal requirements for immediately enrolling the student. The LDSS case worker provides a written statement with the student's name and address, and to the best of the person's knowledge: the student's age, required certifications, and that the student is in good health and is free from communicable or contagious disease (§ 22.1-3.4 of the *Code of Virginia*).

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Upon presentment of the form or the minimum legal requirements, the new school must immediately enroll the student no later than the beginning of the next school day. If, despite all reasonable efforts, school officials are unable to enroll the student by the beginning of the next

school day following presentment for enrollment, the student shall be enrolled no later than the second school day following presentment. In such instances, school officials should document reasons for the delay and attach this information to the Immediate Enrollment Form.

### **Important Enrollment Definitions**

**“Immediate”** means no later than the beginning of the next school day after the presentment for enrollment.

**“Presentment”** means the person enrolling the student has appeared at the school and presented all required information and certifications (§ 22.1-3.4 of the *Code of Virginia*). This can be the adult student, the LDSS case worker, foster parent, birth parent, Licensed Child Placing Agency (LCPA) designee, or group home designee.

**“Enrollment”** means the student is attending classes and participating fully in school activities.

### **B. Ensure Transfer of Additional Documentation**

The sending and receiving school divisions must expedite the transfer of the student’s record in accordance with § 22.1-289(E) of the *Code of Virginia* and the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, as applicable.

If the documents required by the school to enroll the student are not immediately available when the LDSS assumes custody or changes placement of the child or youth, the LDSS case worker must obtain and produce, or otherwise ensure compliance, with these requirements within thirty (30) days after enrollment of the student [§ 63.2-900(D) of the *Code of Virginia*].

These documents include the student’s:

- birth certificate (§ 22.1-3.1.A of the *Code of Virginia*);
- proof of immunization (§ 22.1-271.2 of the *Code of Virginia*); and
- preschool physical examination (§ 22.1-270 of the *Code of Virginia*).

For students with disabilities, the school division responsible for the student’s IEP and FAPE must ensure that the student receives FAPE even if the required enrollment documents are not immediately available [8 VAC 20-81-30(D)]. Additionally, the school division must also ensure that

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any related IEP requirements are followed, including as necessary, the requirements of Prior Written Notice, and notices of IEP meetings.

The school retains the Immediate Enrollment of Student in Foster Care Form (FC/ESSA C-17) in the student's cumulative record and ensures that the foster care flag is activated in the school division student record collection system. The LDSS must retain a copy of the form for the child's or youth's file, with copies provided to the birth parents, prior custodians, and/or the foster, adoptive or resource parent(s), as appropriate.

### **VIII. Resolving School Placement Disputes**

It is the responsibility of the LDSS and the school division to collaborate in determining the student's best interest for school placement and to resolve any conflict concerning the school placement decision. Any BID decision can be disputed by:

- the LDSS that has custody of the child; or
- the school division acting as the decision maker in the BID process.

If educational stability is disrupted or the BID was required and not conducted, the following parties may dispute the educational placement:

- the student;
- parents of the student, unless educational rights have been terminated;
- the school division that is not the BID decision maker if the foster care placement crosses school division boundaries.

When a BID is challenged, the procedure delineated below should be followed to resolve school placement disputes.

1. During the resolution process, the student *remains* in the school in which he or she was enrolled at the time of placement in the new residence.
2. Transportation to the school of origin must be provided during the dispute process as described in Section VI of this joint guidance document.
3. Within five work days of the best interest determination decision, a dispute may be initiated by any of the parties noted above. A written request to challenge the BID must be submitted to the BID decision-making school division superintendent (or designee) and the LDSS director (or designee, such as the educational stability liaison) to review the best interest determination documentation.

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4. Within ten work days following the submission of a written request, the superintendent and director (or designee) review the Best Interest Determination for Foster Care School Placement Form (FC/ESSA Form B-17) which documents 1) the factors that were considered in determining the school placement that is in the student's best interest; 2) the team's determination for school placement; 3) the participants involved; 4) whether each participant agreed or disagreed with the team's determination; and 5) the reasons for agreement or disagreement. The superintendent and director (or designees) also review any additional information pertinent to the dispute and efforts made to resolve the dispute. They work together to resolve the dispute.
5. If the LDSS director (or designee) and the school division superintendent (or designee) reach consensus regarding the student's best interest for school placement, the LDSS case worker and the foster care liaison are informed of the decision and should implement the appropriate next steps to ensure the student's school placement.
6. If the two parties cannot agree, they should seek guidance and consultation from their respective state agencies. This request is submitted within the same ten-day timeframe. The LDSS submits this request to the Virginia Department of Social Services, Foster Care Unit, while also ensuring that the appropriate Regional Foster Care Consultant has been made aware of the case. Local school divisions submit their requests to the Virginia Department of Education, Office of Student Services.
7. After the Virginia Departments of Education and Social Services work together to provide guidance and technical assistance to the involved local agencies, the school division superintendent (or designee) and LDSS director (or designee), in consultation with the team, make the decision for placement.
8. All written documentation is placed in the student's case file and the student's cumulative record to be available for any required federal reviews.

Note: This dispute process is intended to address school stability and school placement. For students with disabilities, the determination regarding the ability of a student to receive FAPE is the exclusive decision of the student's IEP team. Such a determination may only be challenged through the established dispute resolution mechanisms of special education law – i.e., mediation, a state complaint, or due process hearing. The IEP team determination, or the determination reached through the special education dispute resolution process is final.

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### References

- Federal law requiring educational stability for children and youth in foster care
  - *Every Student Succeeds Act of 2015* [20 USC 6301]
  - *Fostering Connections to Success and Increasing Adoptions Act of 2008* [42 USC 1305]
  - Social Security Act, Title IV, § 475 (1) (G) [42 USC 675]
  - Uninterrupted Scholars Act (USA), [20 USC 1221]
- Virginia Regulations and Guidance
  - Virginia Regulations Governing Special Education Programs for Children with Disabilities, [http://www.doe.virginia.gov/special\\_ed/regulations/state/regs\\_speced\\_disability\\_va.pdf](http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf)
  - Virginia Department of Education Superintendent's Memos
    - No. 272-16, dated October 28, 2016
  - Virginia Department of Social Services Finance Guidelines for Local Departments of Social Services Manual, Section 4.25, LASER Budget Line and Cost Code Descriptions, 811

### Contact Information

VDOE: Office of Student Services: (804) 225-2071  
Project HOPE-Virginia: (757) 221-4002

VDSS: Division of Family Services: (804) 726-7944 or (804) 726-7423

#### Local Liaisons:

School Division Foster Care Liaisons, see contact information at:

[http://www.doe.virginia.gov/support/student\\_family/foster\\_care\\_students/index.shtml](http://www.doe.virginia.gov/support/student_family/foster_care_students/index.shtml)

Educational Stability Liaisons, see contact information at:

<https://dss.virginia.gov/family/fc/>

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### Glossary

**504 Plan** – Falling under Section 504 of the *Rehabilitation Act of 1973*, this plan can help students with learning and attention issues participate in the general education curriculum

**AFCARS** – Adoption and Foster Care Analysis and Reporting System – collects case-level information from state and tribal title IV-E agencies on all children in foster care and those who have been adopted with title IV-E agency involvement

**BID** – Best Interest Determination; also referred to as the *joint determination for school placement*

**CASA** – Court Appointed Special Advocate – community volunteer trained to advocate for the best interests of abused and neglected children

**CSA** – *Children's Services Act for At-Risk Children and Families* – establishes the collaborative administration and funding system for services for certain at-risk youth and their families

**CWA** – Child welfare agency – also referred to as *local department of social services* (LDSS)

**DJJ** – Department of Juvenile Justice – the Virginia DJJ serves court-involved youth throughout the state

**Educational Stability Liaison** – also called *child welfare point of contact* in federal guidance, this is the LDSS designee for ensuring school stability for children and youth in foster care

**English Learners (ELs)** – students identified as having limited English proficiency in speaking, listening, reading, or writing English through procedures established by school districts

**Enrollment** – child is attending classes and participating fully in school activities

**ESEA** – *Elementary and Secondary Education Act of 1965* – provided national education law and commitment to equal opportunity for all students

**ESSA** – *Every Student Succeeds Act of 2015* – reauthorizes ESEA and builds upon certain key areas of ESEA to ensure student success

**Family Partnership Meeting** – structured decision making process to engage family members and key players prior to making a significant change, including a change in placement for a child in foster care

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**FAPE** – Free Appropriate Public Education, an educational right of children with disabilities

**Foster Care Liaison** – also called *educational point of contact* in federal guidance, this is the school division designee for ensuring school stability for children in foster care

**Fostering Connections** – the *Fostering Connections to Success and Increasing Adoptions Act of 2008*

**GAL** – Guardian ad litem – an individual appointed by the court to represent the best interests of a child

**IDEA** – *Individuals with Disabilities Education Act of 2004* – national law amending the *Rehabilitation Act of 1973* and ensuring services to children and youth with disabilities

**IEP** – Individualized Education Program – a written education plan designed to meet the placement and services needs of students with disabilities who need special education

**Immediate enrollment** – enrollment of a student no later than the beginning of the next school day after presentment

**Joint determination for school placement** – also referred to as the *Best Interest Determination (BID)*

**LEA** – Local Education Agency, also referred to as *school division*

**Level C residential facility** – residential, in-patient care with 24-7 therapeutic treatment of severe mental, emotional and behavioral disorders

**LRE** – Least Restrictive Environment – for educational purposes, ensures that students with disabilities are educated in integrated settings, alongside students with and without disabilities, to the maximum extent appropriate

**LDSS** – Local Department of Social Services, also referred to as *child welfare agency*

**Presentment** – the person enrolling the child in school has appeared at the school and presented all required information and certifications

**Prior Written Notice** – written notice that an LEA provides to parents regarding any proposed changes to an IEP, required in certain circumstances

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**Private day and residential schools** – licensed, privately operated schools providing specialized educational services for students with disabilities

**Receiving school division** – public school division in which the student's new or proposed foster care placement is located

**Re-enrollment process** – procedures for re-enrolling youth released from the custody of DJJ and returned to public schools, as provided in joint guidance authored by VDSS and DJJ

**Rehabilitation Act of 1973** – authorized grants to States for vocational rehabilitative services, emphasizing services for those with severe disabilities

**Residence determination** – LDSS determines the most appropriate placement for a child

**School division** – also referred to as the *local education agency* (LEA)

**School placement decision** – school division and LDSS jointly determine the child's best interest for school placement

**School attendance zone** – school a youth would attend based on domicile or residence

**School of origin** – the school in which a student is enrolled at the time of placement in foster care. If a student's foster care placement changes, the school of origin would then be considered the school in which the student is enrolled at the time of placement change.

**Sending school division** – division in which the student last attended public school; also called *school of origin* (SOO)

**SEA** – State Education Agency, also referred to as the *Virginia Department of Education*

**SOO** – school of origin – see definition above

**Specialized transportation** – transportation indicated in an Individualized Education Program (IEP)

**TFC** – Treatment Foster Care – out of home placement provided by specially trained foster parents for children and youth who may have a high level of needs

**Title I** – Title I, Part A of the Elementary and Secondary Education Act, as amended (ESEA) provides financial assistance to local educational agencies

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Title IV-E – part of the Social Security Act that provides a funding stream for foster care costs, requiring specific eligibility criteria

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**Transfer IEP** – when a child with an IEP changes schools or school divisions, the IEP in place will be transferred from school of origin to the new school placement. The IEP team will meet within thirty days of change in placement to review the plan and, if needed, update accordingly.

**Transportation designee** – person responsible for coordinating student transportation within a school division

**VDSS** – Virginia Department of Social Services, also called the *state child welfare agency* in federal guidance

**VDOE** – Virginia Department of Education, also called the *state education agency* (SEA) in federal guidance

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Appendix A

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**Appendix B**

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**Appendix C**

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**Appendix D**

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**Appendix E**

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**Appendix F**