



NATIONAL ASSOCIATION FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH

*NAEHCY's Every Student Succeeds Act Resource Series*

## **TITLE I, PART A FOSTER CARE SAMPLE DISPUTE RESOLUTION PROCESS**

### **BACKGROUND**

This document suggests a sample process to resolve disputes related to school selection (best interest) or enrollment for a child in foster care.<sup>1</sup> It was developed in consultation with state and local McKinney-Vento experts from around the country. It includes important elements for timely and fair dispute resolution and adheres to the legal requirements of the Every Student Succeeds Act. While state and local education agencies (SEAs and LEAs) are welcome to adopt this process in its totality, many states and LEAs will want to adjust elements of this sample to accommodate their particular conditions. In particular, some elements that may need to be revised include:

- While the suggested timelines are intended to ensure prompt dispute resolution, they may need to be adjusted. In particular at the state level, it may be advisable to provide a process for the Chief State School Officer or designee (for example, the Foster Care Point of Contact) to render an interim decision pending the final decision by the panel.
- Decision-makers at the state level and potentially in the LEA may be adjusted based on the size of the LEA and SEA, as well as other factors.<sup>2</sup>
- At both the local and state level, many adjustments may be advisable depending on dispute processes already in place. In particular, it is worth considering: what Title I, due process or other dispute processes already are in place and/or legally required at the local and state levels; whether those processes are appropriate for disputes related to school selection or enrollment for a child in foster care; and whether those processes can be adapted to be made appropriate.

This document also contains a sample process to resolve disputes between LEAs and child welfare agencies regarding implementing local transportation procedures and calculating and paying for additional costs of transportation for children in foster care (see “Inter-Agency Transportation Dispute Process,” page 6).

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<sup>1</sup> “Foster care” means 24-hour substitute care for children placed away from their parents or guardians and for whom the child welfare agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this 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). U.S. Departments of Education and Health and Human Services (2016). Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, Question 1.

<sup>2</sup> While federal guidance suggests the child welfare agency is better positioned to be the final decision maker regarding best interest determinations, it specifies that state law or policy can dictate otherwise. Based on our experience with the McKinney-Vento Act, we suggest the SEA be the final decision maker. U.S. Departments of Education and Health and Human Services (2016). Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, Question 18.

## THE DISPUTE RESOLUTION PROCESS

If an LEA seeks to place a child in foster care in a school other than the school of origin or the school requested by the educational decision-maker<sup>3</sup>, the educational decision-maker shall be provided written notice of his/her right to appeal the decision (see *Appendix A for a sample written notice*), including:

1. The contact information for the LEA foster care point of contact (if the LEA has designated a point of contact after receiving written notice from the child welfare agency that it has designated a point of contact for the LEA) and the SEA foster care point of contact.
2. An explanation of the reasons for the LEA's decision.
3. A step-by-step description of how to dispute the LEA's decision (Level I procedure), including a dispute form (see *Appendix B for a sample dispute form*).
4. An explanation that if the educational decision-maker chooses to initiate a dispute, the student shall remain in the school of origin, receiving all appropriate educational services, until the dispute reaches its final resolution.
5. Timelines for resolution of the dispute at each level.
6. Notice of the right to appeal to the SEA if the local-level resolution is not satisfactory.

### Level I: LEA Superintendent or Designee

#### 1. Initiating the Level I Dispute

To dispute an LEA's decision related to school selection (best interest) or enrollment for a child in foster care, an educational decision-maker must request dispute resolution in writing by submitting a dated appeal letter specifying the school in which enrollment is sought and the basis for seeking enrollment in that school. The appeal letter must include the name and contact information (phone, email and mailing address) for the educational decision-maker.

The educational decision-maker must submit the appeal letter within ten (10) school days of receiving from the LEA written notice of the right to dispute the decision. The letter may be submitted via an email with the subject "Foster Child Appeal," or delivered to any school to the attention of the superintendent. Regardless of how the appeal letter is submitted, the school or LEA shall ensure the LEA's superintendent or designee receives it immediately.

The submission of the appeal letter by email or delivery to any school initiates the dispute. From that point, the student shall remain in the school of origin until the dispute

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<sup>3</sup> The local child welfare agency shall inform the LEA promptly of the name and contact information of the appropriately designated or appointed educational decision-maker for every child in foster care enrolled (or seeking enrollment) in the LEA.



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reaches its final resolution. The student shall be provided with all appropriate educational services for which the student is eligible during the pendency of the dispute. Students attending their school of origin during the pendency of the dispute will be entitled to receive transportation. The LEA will provide or arrange transportation during the dispute; however, the child welfare agency is responsible for paying additional costs<sup>4</sup> of transportation during the pendency of disputes. Once the dispute is resolved, transportation will be provided pursuant to the local transportation procedures developed collaboratively between the LEA(s) and local child welfare agencies.

## 2. LEA Decision

The superintendent, or superintendent's designee, will arrange for a personal conference to be held with the educational decision-maker, the student (if appropriate), and at least one representative from the local child welfare agency. The personal conference will be arranged within ten (10) business days of the LEA's receipt of the Level II appeal letter and will take place as expeditiously as possible.

Within five (5) business days of the personal conference, the superintendent, or superintendent's designee, will inform the educational decision-maker of the decision in writing, using the contact information provided in the appeal letter. The superintendent or designee may consult with the LEA foster care point of contact in making the decision. The written decision provided to the educational decision-maker must include:

1. A copy of the complete Level I appeal packet.
2. The decision rendered at Level I by the superintendent or designee and an explanation for that decision.
3. Instructions regarding how to file a Level II dispute, including the name, phone number and email address of the SEA foster care point of contact.

If the educational decision-maker disagrees with the Level I decision and wishes to appeal to Level II, the educational decision-maker shall inform the LEA superintendent or designee of the intent to appeal to Level II within five (5) school days of receipt of the LEA's Level I decision. If the educational decision-maker does not appeal within five (5) school days, the child shall be enrolled and provided all appropriate educational services in the school determined by the LEA. If that school is not the school the child had been attending during pendency of the dispute, the LEA will prioritize minimizing the disruption to the child's education in effecting the transition to the new school.

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<sup>4</sup> Additional costs incurred in providing transportation to the school of origin should reflect the difference between what an LEA otherwise would spend to transport a student to his or her assigned school and the cost of transporting a child in foster care to his or her school of origin. U.S. Departments of Education and Health and Human Services (2016). Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, Question 27.

## **Level II: SEA**

### **1. Initiating the Level II Dispute**

If the student's educational decision-maker disagrees with the decision rendered by the LEA's superintendent at Level I, he/she may appeal the decision to the SEA. To appeal to Level II, an educational decision-maker must request an appeal in writing by submitting a dated appeal letter, which must include:

- The school in which enrollment is sought and the basis for seeking enrollment in that school.
- The name and contact information (phone, email and mailing address) for the educational decision-maker.
- A copy of the previous appeal letter submitted by the educational decision-maker.
- A copy of the decision rendered by the LEA at Level I.

The letter must be submitted via an email to the SEA foster care point of contact, with the subject "Foster Child Appeal." The letter also must be submitted to the LEA superintendent via an email with the subject "Foster Child Appeal," or delivered to any school to the attention of the superintendent. The appeal letter must be submitted to both the SEA and LEA superintendent within five (5) school days of receiving the Level I appeal decision from the LEA.

The LEA has an additional five (5) school days from its receipt of the educational decision-maker's appeal letter to submit its response to the appeal letter to the SEA foster care coordinator, via an email with the subject "Foster Child Appeal." Documents submitted by either party after the applicable deadlines will not be considered.

The student shall remain in the school of origin until the dispute reaches its final resolution. The student shall be provided with all appropriate educational services for which the student is eligible during the pendency of the dispute. Students attending their school of origin during the pendency of the dispute will be entitled to receive transportation. The LEA will provide or arrange transportation during the dispute; however, the child welfare agency is responsible for paying additional costs of transportation during the pendency of disputes. Once the dispute is resolved, transportation will be provided pursuant to the local transportation procedures developed collaboratively between the LEA(s) and local child welfare agencies.

### **2. SEA Decision**

The Level II decision will be made by a three-person panel including the SEA foster care point of contact, another SEA staff, and a representative of the state child welfare agency. The panel shall make a final decision within thirty (30) days of receipt of the dispute.



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The SEA foster care point of contact will forward the final written decision to the educational decision-maker and the LEA superintendent. The written decision must include:

1. A copy of the complete Level II appeal packet.
2. The decision rendered at Level II and an explanation of that decision.

The LEA must implement the SEA's decision in full, immediately.

The SEA shall maintain a record of all disputes related to the children in foster care. **For every type of dispute regarding a child in foster care, the LEA and local child welfare agency must make every effort to resolve the dispute collaboratively at the local level. Documented patterns of excessive disputes to the SEA from particular LEAs and/or local child welfare agencies will be reviewed by the SEA and State child welfare agency and appropriate measures will be taken to ensure compliance by both local agencies.** All parties are encouraged to seek assistance from the Foster Care Point of Contact at the State Education Agency (SEA), and the Education Coordinator at the State Child Welfare Agency (or similar personnel) prior to any dispute.

## **INTER-AGENCY TRANSPORTATION DISPUTE PROCESS TO RESOLVE DISPUTES BETWEEN LEAs AND CHILD WELFARE AGENCIES REGARDING TRANSPORTATION**

ESSA requires LEAs and child welfare agencies collaboratively to develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the children's time in foster care. To ensure the children receive transportation and that both the LEA and child welfare agencies are working to ensure educational stability, these transportation procedures should:

- Describe how the child welfare agency is implementing its requirements to develop a plan for ensuring the educational stability of each child in foster care, including ensuring that each placement of every child takes into consideration the proximity to the school of origin (see the Fostering Connections to Success and Increasing Adoptions Act).
- Ensure that children in foster care needing transportation to the school of origin will promptly receive it.
- Ensure that transportation is provided in a cost-effective manner.
- Address how the child welfare agency will use foster care maintenance payments and administrative funds to pay for transportation to the school of origin (see sections 475(1)(G) and (4)(A) of the Social Security Act (42 U.S.C. 675(1)(G) and (4)(A)).
- Specify how "additional costs" of transportation will be calculated, to delineate clearly the LEA's responsibility to provide transportation when there are no additional costs<sup>5</sup>.
- Specifically describe how transportation to the school of origin will be provided in situations where there are no additional costs.
- Specifically describe those situations (if any) for which the LEA has agreed to pay additional costs, or share additional costs with the child welfare agency.
- Specify the timing and procedures for the child welfare agency to reimburse the LEA for transportation costs.

LEAs and child welfare agencies must make every effort to collaborate in serving children in foster care. When a dispute arises between the agencies over paying the costs of transportation, the LEA and local child welfare agency must make every effort to resolve the dispute collaboratively at the local level. **Documented patterns of excessive disputes to the SEA from particular LEAs and/or local child welfare agencies will be reviewed by the SEA and State child welfare agency and**

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<sup>5</sup> Additional costs incurred in providing transportation to the school of origin should reflect the difference between what an LEA otherwise would spend to transport a student to his or her assigned school and the cost of transporting a child in foster care to his or her school of origin. U.S. Departments of Education and Health and Human Services (2016). Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, Question 27.

**appropriate measures will be taken to ensure compliance by both local agencies.**

The SEA and State child welfare agency may establish a Memorandum of Understanding regarding appropriate measures to limit disputes and ensure compliance by both LEAs and local child welfare agencies. All parties are encouraged to seek assistance from the Foster Care Point of Contact at the State Education Agency (SEA), and the Education Coordinator at the State Child Welfare Agency (or similar personnel) prior to any dispute.

**In addition, under no circumstances shall the dispute delay or interrupt the provision of transportation for a child to the school of origin.** To ensure no such disruption, the agency that had been paying for transportation prior to the dispute will continue to pay until the dispute is resolved. If transportation was not provided previously, the LEA will arrange and provide the transportation and the child welfare agency will reimburse the LEA for additional costs, while payment disputes are being resolved.

Disputes between LEAs and child welfare agencies regarding implementing the local transportation procedures, calculating and paying for additional costs of transportation to the school of origin for children in foster care, or other inter-agency transportation disputes will be resolved by a three-person panel including the SEA foster care point of contact, another SEA staff, and a representative of the state child welfare agency. Either an LEA or a local child welfare agency can bring a transportation payment dispute to the SEA by submitting a dispute resolution request to the SEA foster care point of contact via an email with the subject "Foster Child Transportation Dispute." The dispute resolution request must include:

- A complete explanation of the basis of the dispute, with all pertinent facts.
- The name and contact information of the people who have been addressing the dispute thus far on behalf of both the LEA and the local child welfare agency (phone, email and mailing address).
- Details of how the agencies have attempted to resolve the dispute at the local level prior to appealing to the state.

Within ten (10) days of receipt of the dispute resolution request, the SEA foster care point of contact will contact the party that did not submit the request (either the LEA or child welfare agency) identifying the subject matter of the dispute and inviting that party to submit any information pertinent to the dispute. The party will have ten (10) days to submit its explanation of the dispute, with all pertinent facts. Documents submitted by either party after the applicable deadlines will not be considered.

The panel shall make a final decision within thirty (30) days of receiving all information related to the dispute. The SEA foster care contact will forward the written decision and an explanation of that decision to the appropriate parties at both the LEA and local child welfare agency. The decision shall be the final resolution.



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Appendix A  
Sample Written Notice Template

DATE

To: EDUCATIONAL DECISION-MAKER NAME

Delivered via: *(preferably a reliable email address to ensure delivery)*

NAME school district has determined that the appropriate school placement for STUDENT NAME is SCHOOL NAME. We understand this is neither the school of origin nor the school requested by the student's educational decision-maker. Therefore, we are providing this explanation of our decision and information about how the educational decision-maker may appeal the decision.

We have determined that it is in the student's best interest to attend SCHOOL NAME because:

The educational decision-maker may appeal this decision by completing the attached Dispute Form, signing it, dating it, and submitting it by DATE (insert date ten school days from date of this letter).

If the educational decision-maker chooses to initiate a dispute, the student shall remain in the school of origin, receiving all appropriate educational services including transportation, until the dispute reaches its final resolution. Once the Dispute Form is received, the superintendent or designee will arrange for a personal conference with the educational decision-maker, the student (if appropriate), and at least one representative from the local child welfare agency within ten (10) business days, and the conference will take place as expeditiously as possible. Within five (5) business days of the personal conference, the superintendent or designee will inform the educational decision-maker of the decision in writing. The educational decision-maker will be able to appeal to the State if the local resolution is not satisfactory.

If you have questions about this decision or how to appeal it, please contact:

LEA FOSTER CARE POC NAME  
EMAIL  
PHONE NUMBER

SEA FOSTER CARE POC NAME  
EMAIL  
PHONE NUMBER





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## Appendix B Sample Dispute Form Template

To appeal the district's decision, please complete this form and submit it by the date indicated on the Written Notice you received from the school. You may submit this form by any of the following methods:

- Scan and email it to EMAIL ADDRESS with the subject "Foster Child Appeal";
- Return the paper form to any school in this school district; or
- Submit the paper form directly to the office of the superintendent at ADDRESS.

Student Name: \_\_\_\_\_

School in which enrollment is sought: \_\_\_\_\_

I am the educational decision-maker for this student, and I believe the school in which we are seeking enrollment is in the student's best interest because:

I believe the student has a right to attend this school because:

If you would like to provide additional information, please attach it to this form.

The student shall remain in the school of origin, receiving all appropriate educational services including transportation, until the dispute reaches its final resolution. Once this Dispute Form is received, the superintendent or designee will arrange for a personal conference with the educational decision-maker, the student (if appropriate), and at least one representative from the local child welfare agency within ten (10) business days, and the conference will take place as expeditiously as possible. Within five (5) business days of the personal conference, the superintendent or designee will inform the educational decision-maker of the decision in writing. The educational decision-maker will be able to appeal to the State if the local resolution is not satisfactory.

Educational decision-maker name: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

## Appendix C Legal Framework

### Every Student Succeeds Act

“Each State plan shall describe--

...

(E) the steps a State educational agency will take to ensure collaboration with the State agency responsible for administering the State plans under parts B and E of title IV of the Social Security Act (42 U.S.C. 621 et seq. and 670 et seq.) to ensure the educational stability of children in foster care, including assurances that—

(i) any such child enrolls or remains in such child’s school of origin, unless a determination is made that it is not in such child’s best interest to attend the school of origin, which decision shall be based on all factors relating to the child’s best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;

(ii) 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 a new school, even if the child is unable to produce records normally required for enrollment; ...”

ESSA Section 1005, 20 U.S.C. 6311(g)(1)(E)

### U.S. Department of Education and U.S. Department of Health and Human Services (2016). Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care.

“The SEA should coordinate with the State or tribal child welfare agency to develop and disseminate uniform guidelines for implementing the Title I educational stability provisions. Developing uniform statewide policies and procedures for ensuring educational stability for children in foster care, as many States have already done under the Fostering Connections Act, will facilitate successful implementation at the local level. This is particularly important given the shared agency responsibility for educational stability under Title I and the Fostering Connections Act, and because a single LEA or local child welfare agency will likely have to collaborate with multiple partner agencies in implementing these provisions. Due to the high mobility of children in foster care, State guidance is crucial for consistency across school districts.” (Question 3).

### **“What process should SEAs and LEAs use when making the best interest determination?”**

The law does not prescribe a specific process, but we encourage SEAs to work with the State or tribal child welfare agencies to establish guidelines to be used by LEAs and schools in coordination with local child welfare agencies to guide the decision making process.” (Question 13).



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“However, 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).” (Question 18).

“We encourage SEAs to include guidelines for how additional costs for transportation will be funded and to establish a mechanism or policy for LEAs to resolve interagency disputes related to transportation costs.” (Question 21).

“[W]e encourage the SEA, in partnership with State and tribal child welfare agencies and key decision-makers such as the governor, to develop a uniform State process for resolving such disputes.” (Question 28).

“We encourage SEAs and LEAs to collaborate with child welfare agencies to develop a dispute resolution process at the local level for parties to address disagreements over the best interest determination decision.... Once the decision is made, a written explanation should be provided to all involved parties.” (Question 19).

“To the extent feasible and appropriate, an LEA must ensure that a child remains in his or her school of origin while the disputes are being resolved to minimize disruptions and reduce the number of moves between schools.” (Question 20).

“[T]he LEA must provide or arrange for adequate and appropriate transportation to and from the school of origin while any disputes are being resolved.” (Question 32).