

Final ESSA Regulations on Accountability/State Plans: Students Experiencing Homelessness and in Foster Care

November 29, 2016

On November 29, the US Department of Education (ED) published [final regulations](#) to implement the accountability and state plan provisions of the Every Student Succeeds Act (ESSA). These final regulations include new rules related to homelessness and foster care. They are effective on January 30, 2017.

A summary and analysis of the homelessness and foster care regulations are provided below.

I. Transportation to School of Origin for Children in Foster Care - §299.13(c)(ii)

In §299.13(c)(ii), ED included the following regulation for the Title I state plan:

“To ensure that children in foster care promptly receive transportation, as necessary, to and from their schools of origin when in their best interest under section 1112(c)(5)(B) of the Act, the SEA must ensure that an LEA receiving funds under title I, part A of the Act will collaborate with State and local child welfare agencies to develop and implement clear written procedures that describe:

- (A) How the requirements of section 1112(c)(5)(B) of the Act will be met in the event of a dispute over which agency or agencies will pay any additional costs incurred in providing transportation; and
- (B) Which agency or agencies will initially pay the additional costs so that transportation is provided promptly during the pendency of the dispute.”

Analysis of Final Regulation:

This final rule on the transportation of children in foster care to their schools of origin is a marked departure from the U.S. Department of Education’s initial proposal. The final rule also substantially modifies ED’s previously-issued guidance on the same subject.

The final regulation requires LEAs that receive Title I Part A funds to collaborate with State and local child welfare agencies on written procedures that describe how the statutory requirements of ESSA in section 1112(c)(5)(B) will be met in the event of a dispute over which

agency/agencies will pay additional costs of transportation, including which agency/agencies will initially pay additional costs during the pendency of the dispute.

It is important to note:

1) The final regulation references the statutory requirements of ESSA in section 1112(c)(5)(B).ⁱ This section requires LEAs that receive Title I Part A funds to collaborate with child welfare agencies to develop and implement local transportation procedures that must ensure that children and youth in foster care receive transportation to their school of origin, if it is in their best interest; and that, if there are additional costs, LEAs provide transportation only on the condition that the LEA agrees to pay some or all of those costs or the child welfare agency agrees to reimburse the LEA for the costs.

Nothing in the final regulation changes the limited statutory obligations of LEAs to provide transportation if there are additional costs, and only if they are reimbursed or agree to pay for it.

2) The regulations clearly establish no presumption regarding which agency/agencies are responsible for additional transportation costs during disputes. Rather, the regulation requires LEAs that receive Title I Part A funds to collaborate with State and local child welfare agencies to develop procedures that describe which agency/agencies will pay for additional costs during disputes over which agency/agencies must pay.

3) The final regulation contemplates a collaborative process between LEAs and state and local child welfare agencies for developing local transportation procedures. It would be inconsistent with the statute and the final regulation for an SEA to impose a uniform requirement unilaterally on all LEAs in a state to pay for transportation during disputes. Such a unilaterally-imposed requirement would conflict with the requirement for the collaborative development of local transportation procedures addressing how transportation will be provided and who will be responsible for additional transportation costs while disputes are pending.

II. Definitions of Homeless Status and Foster Care Status for Report Cards - §200.30(f)

§200.30(f) clarifies the meaning of the terms “homeless status” and “status as a child in foster care.”

In clarifying “homeless status,” ED uses the definition of homelessness in section 725 of Subtitle VII-B of the McKinney-Vento Act (42 U.S.C. §11434a). This definition is consistent with the statutory definition used by public schools to implement the educational protections in the McKinney-Vento Act, as well as the Individuals with Disabilities Education Act, the Child Nutrition Act, the Head Start Act, and the Higher Education Act.

In clarifying “status as a child in foster care,” ED uses the same meaning as defined in 45 C.F.R. §1355(a):

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the [title IV-E 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.

This definition is consistent with federal child welfare regulations and explicitly includes children placed in emergency shelters. It also specifies that a child can be considered to be in foster care regardless of whether the placement is licensed or payments are being made.

III. High School Graduation Rates for Youth Experiencing Homelessness and Youth in Foster Care – §200.34(e)

In §200.34(e), ED included the following regulation:

“In reporting graduation rates disaggregated by each subgroup of students described in § 200.16(a)(2), homeless status, and status as a child in foster care, a State and its LEAs must include students who were children with disabilities, English learners, children who are homeless (as defined in § 200.30(f)(1)(ii)), or children who are in foster care (as defined in § 200.30(f)(1)(iii)) at any time during the cohort period.”

The nature of homelessness and placement in foster care leads many students to move in and out of these situations over the course of their school careers. Therefore, a graduation rate that only included students whose most recent status prior to exiting high school was homeless or in foster care would fail to capture students who were homeless or in foster care earlier in high school, as well as those who dropped out of school prior to 12th grade.

In light of the well documented negative impact of homelessness and foster care on graduation rates from high school, we applaud ED’s requirement to disaggregate graduation rates for children who are homeless or in foster care at any time during the cohort period in order to avoid significant undercounting of such students.

IV. The Consolidation of the McKinney-Vento Act’s Education for Homeless Children and Youths Program into the Consolidated State Plan under ESSA - §§299.13, 299.19(b)(7)

The final regulations permit the McKinney-Vento Act’s Education for Homeless Children and Youths program to be included in a state’s consolidated plan [§299.13(j)], or submitted as an individual program state plan [§299.13(k)].

If the McKinney-Vento program is submitted as an individual program state plan, the plan must address all State plan or application requirements, including all required statutory and programmatic assurances. §299.13(k).

If the McKinney-Vento Act program is submitted as part of a consolidated state plan, specific requirements must be included in a consolidated state plan. These requirements are described in §299.19(b)(7), and include descriptions of:

- The procedures the SEA will use to identify homeless children and youths in the State and assess their needs;
- Programs for school personnel (including liaisons designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Act, principals and other school leaders, attendance officers, teachers, enrollment personnel, and specialized instructional support personnel) to heighten the awareness of such school personnel of the specific needs of homeless children and youths, including such children and youths who are runaway and homeless youths;
- SEA procedures to ensure that--
 - Disputes regarding the educational placement of homeless children and youths are promptly resolved;
 - Youths described in section 725(2) of the McKinney-Vento Act and youths separated from the public school are identified and accorded equal access to appropriate secondary education and support services, including by identifying and removing barriers that prevent youths described in this paragraph from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with State, local, and school policies;
 - Homeless children and youths have access to public preschool programs, administered by the SEA or LEA, as provided to other children in the State;
 - Homeless children and youths who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities; and
 - Homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, and local nutrition programs; and
- SEA strategies to address problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays and retention, consistent with section 722(g)(1)(H) and (I) of the McKinney-Vento Act.

V. Supporting All Students – §299.19(a)(1)

§299.19 requires each SEA to describe in its consolidated state plan how it will use funds under the programs included in its consolidated state plan to ensure that all children have a significant opportunity to meet challenging state academic standards and career and technical standards. The regulation requires the SEA to describe how, when developing its state strategies, the SEA considered the academic and non-academic needs of subgroups of students. Homeless children

and youth, and children and youth in foster care, are included among the subgroups in this regulation.

Homeless children and youth, and children and youth in foster care, have significant unmet academic and non-academic needs. We are pleased to see the inclusion of homeless children and youth and children and youth in foster care in this final rule.

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ⁱ (c) ASSURANCES.— (1) IN GENERAL. Each local educational agency plan shall provide assurances that the local educational agency will— ...

(5) collaborate with the State or local child welfare agency to—...

(B) by not later than 1 year after the date of enactment of the Every Student Succeeds Act, 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 time in foster care, which procedures shall—

(i) ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act (42 U.S.C. 675(4)(A)); and

(ii) ensure that, 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....