

Foster Care and Special Education

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Applicable Laws

Fostering Connections Act of 2008

Ark. Code Ann. Sec. 9-28-112 through 114 (2011)

Uninterrupted Scholars Act (USA) (2013)

Every Student Succeeds Act (ESSA) (2015)



Fostering Connections Act of 2008

First federal law to require efforts to ensure educational stability for foster students.

“Foster care” means 24-hour substitute care for children placed away from their parents/guardians and for whom the child welfare agency has placement and care responsibility.

Includes foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes.



Fostering Connections Act

Requires that foster students remain in the school of origin if in the student's best interest.

Requires LEAs and CWAs to collaborate to address how transportation to the school of origin will be provided, arranged, and funded.

Requires prompt enrollment in and transfer of records to a new school, if in the student's best interest.



Ark. Code Ann. Sec. 9-28-112

Requires DHS and school districts to work together for the best interest of any child placed in DHS custody.

Requires DHS to inform a child's current school district, by the next business day, if:

- DHS exercises a 72-hour hold on a child or a court places a child in DHS custody;
- A foster child transfers to a new placement; or



Ark. Code Ann. Sec. 9-28-112

- DHS reasonably believes or knows that a foster child has experienced a traumatic event (may disclose to school counselor).

The counselor may then share that information with the principal and teachers, if appropriate.



Ark. Code Ann. Sec. 9-28-113

Requires continuity of educational services for students in foster care by ensuring that the foster student:

- Remains in the school of origin whenever possible;
- Is moved to a new school in a timely manner when necessary, appropriate, and in the best interest; and
- Has access to the same academic resources, services, and extracurricular activities available to all students.



Ark. Code Ann. Sec. 9-28-113

Requires school districts to work with DHS to develop a transportation plan to ensure continuity of education services, to the extent reasonable and practical.

Encourages the district to arrange for transportation to enable the student to remain in school of origin.

Requires the district to provide transportation if reasonable and practical and if an additional expense will not be imposed on the district.



Ark. Code Ann. Sec. 9-28-113

Requires each district to identify a foster care liaison to:

- Ensure and facilitate the timely school enrollment of each foster child;
- Assist a foster child who transfers between schools by ensuring the transfer of credits, records, grades, and any other relevant school records; and
- Expedite the transfer of records.
 - 3 days to request
 - 10 days to provide



Ark. Code Ann. Sec. 9-28-113

Requires a new school to immediately enroll a foster child even if the child is unable to provide required clothing or records.

Prohibits the lowering of a foster student's grades due to absence from school due to:

- change in enrollment; or
- attendance at court-ordered counseling or treatment.



Uninterrupted Scholars Act (2013)

Amended FERPA to permit educational agencies to disclose, without parent/student consent, education records of students in foster care to state child welfare agencies.

Applies to IDEA as well.



Every Student Succeeds Act (ESSA)

Enacted on December 10, 2015.

Amends provisions of Title I of ESEA related to students in foster care, which become effective Dec. 10, 2016, to reinforce the mandates of the Fostering Connections Act.

Added requirement that SEAs and LEAs report annually on academic achievement and graduation rates for children in foster care as a separate subgroup to show how foster students are performing relative to their peers.

SEAs and LEAs should then use the data to determine and address any deficiencies.



ESSA

Adds requirement that LEAs receiving Title IA funds collaborate with state or local child welfare agencies on local procedures for transportation for students in foster care.

Must 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 time in foster care.



ESSA

Amends section 725 of the McKinney-Vento Homeless Assistance Act, removing children “awaiting foster care placement” from the definition of “homeless children and youth” for purposes of the Education for Homeless Children and Youths (EHCY) program.

Becomes effective December 10, 2017, because AR has defined “awaiting foster care placement” in statute.



Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care

Issued by USDE and USDHHS on June 23, 2016.

[http://www2.ed.gov/policy/elsec/leg/essa/
edhhsfostercarenonregulatorguide.pdf](http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf)



Considerations for LEAs in Developing Transportation Procedures for Students in Foster Care under the ESSA of 2015

Joint guidance issued by The School Superintendents Association and the National Association for the Education of Homeless Children and Youth in April 2016.



Individuals with Disabilities Education Act (IDEA)

IDEA requires that all eligible children with disabilities have available to them a free appropriate public education (FAPE), including special education and related services designed to meet the particular needs of each child with a disability.



Children with disabilities who are homeless have the same right to FAPE under IDEA as non-homeless children with disabilities.

Homeless children with disabilities and their parents are subject to the same IDEA protections and requirements as children with disabilities and their parents who are not homeless.



Surrogate Parent

If a child with a disability is an unaccompanied homeless youth, 34 CFR §300.519(a)(4) requires the public agency to ensure that the youth's rights are protected by assigning a surrogate parent to represent the child in all matters relating to —

- 1) The identification, evaluation, and educational placement of the child; and
- 2) The provision of FAPE to the child.



Surrogate Parent

Public agencies must ensure that a person selected as a surrogate parent—

- 1) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
- 2) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
- 3) Has knowledge and skills that ensure adequate representation of the child.



Surrogate Parent

However, in the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (1), until a surrogate parent can be appointed that meets all of the requirements.



OSEP *Letter to Bowman* – Aug. 5, 2013

Answers questions regarding students with disabilities who are also homeless.





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