UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY & SECONDARY EDUCATION

December 5, 2016

Dear Chief State School Officers,

Title I, Part A (Title I) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA)[1], now contains key protections for children in foster care that require State and local educational agencies (SEAs and LEAs) to collaborate with child welfare agencies to ensure the educational stability of children in foster care. These provisions build upon the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections), the Federal child welfare law that requires child welfare agencies to collaborate with educational agencies to ensure educational stability for children in foster care. Together, the new Title I foster care requirements and Fostering Connections ensure that children in foster care experience minimal educational disruption as the result of foster care placement and receive the same opportunities as their peers to develop the skills necessary to be successful in school and life.

To facilitate a smooth transition to the new foster care educational stability requirements under Title I, the U.S. Department of Education (ED) placed a condition on each SEA's fiscal year 2016 Title I grant award that requires each State to ensure that it implements the requirements under ESEA sections 1111(g)(1)(E) and 1112(c)(5)(B) by no later than December 10, 2016. We would like to take this opportunity to remind you of this timeline and encourage you to work with LEAs in your State to support effective implementation of these requirements. For more information on the effective date of the educational stability provisions, please review the Dear Colleague Letter issued jointly by ED and the U.S. Department of Health and Human Services (HHS) on June 23, 2016.

ESEA EDUCATIONAL STABILITY PROVISIONS

At the State level, section 1111(g)(1)(E) of the ESEA requires an SEA to collaborate with the State agency responsible for administering State plans under parts B and E of Title IV of the Social Security Act to ensure the educational stability of children in foster care. More specifically, each SEA must ensure that:

- A child in foster care will enroll or remain in the child's school of origin, unless a determination is made that it is not in the child's best interest to attend that school;
- If a determination is made that it is not in the child's best interest to remain in the school of origin, the child will be immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment; and
- A new (enrolling) school immediately contacts the school of origin to obtain relevant academic and other records.

In addition, the SEA must designate an employee to serve as a point of contact (POC) for child welfare agencies and to oversee implementation of the educational stability provisions. This POC cannot be the same person as the State Coordinator for the Education of Homeless Children and Youths under section 722(d)(3) of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act).

[1] Citations to the ESEA in this letter refer to the ESEA as amended by the ESSA.

At the local level, section 1112(c)(5) of the ESEA requires an LEA that receives Title I funds to collaborate with the State or local child welfare agency 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 time in foster care; and
- Designate a POC if the corresponding child welfare agency notifies the LEA in writing that it has designated an employee to serve as a POC for the LEA.

Transportation is a central component of educational stability and may be needed in order to fulfill the requirements that ensure educational stability for children in foster care. Accordingly, as part of regulations governing State plans under the ESEA published on November 29, 2016, an SEA must ensure that the transportation procedures developed by LEAs in collaboration with State and local child welfare agencies describe how the requirements of ESEA section 1112(c)(5)(B) will be met in the event of a dispute over which agency or agencies will pay any additional costs incurred in providing transportation. The transportation procedures must also describe which agency or agencies will initially pay the additional costs so that transportation is provided promptly during the pendency of the dispute (34 C.F.R. § 299.13(c)(1)(ii)) (see http://www2.ed.gov/policy/elsec/leg/essa/essaaccountstplans1129.pdf for the complete regulations).

We understand that developing transportation procedures involving multiple school districts and child welfare agencies can be complex. The LEA and child welfare agency should make every possible effort to reach agreement regarding how transportation will be provided, arranged, and funded by exploring a variety of options and tailoring how transportation will be provided based on the unique circumstances of the child. For example, in some cases the foster parent may be willing and able to transport the child to the school of origin. In another situation, transportation could be provided by utilizing the LEA's pre-existing bus routes.

We encourage SEAs to actively support LEAs as they develop and implement transportation procedures. To accomplish this, SEAs should take such measures as:

- Developing a transportation procedures template or model agreement for LEAs to ensure uniformity across districts.
- Collaborating with State child welfare agencies to provide guidelines about what should be included in the transportation procedures.
- Sharing examples of promising cost-sharing practices from across the country.
- Developing a transportation procedures checklist to use during Title I, Part A monitoring of LEAs.

We also recommend that SEAs, in collaboration with State child welfare agencies, establish uniform, statewide policies if the LEAs and local child welfare agencies cannot come to an agreement on how to share any additional transportation costs at the local level. An SEA and State child welfare agency may establish a statewide dispute resolution process that could include a transportation funding default, such as the LEA and local child welfare agency evenly splitting the additional costs. Alternatively, the SEA and State child welfare agency may come to a joint decision to allocate responsibility for the additional costs based on other factors, such as:

- The LEAs and local child welfare agencies could share the costs based on an agreed-upon distance (e.g., the LEA pays for transportation costs up to a certain number of miles, and the child welfare agency pays the remaining transportation costs).
- The LEAs and child welfare agencies could share the costs based on the length of time the child requires transportation (e.g., the LEA pays transportation costs for the first six months of a child's

placement, and the child welfare agency pays for transportation costs beyond six months of a child's placement).

REMOVAL OF AWAITING FOSTER CARE PLACEMENT

The ESEA also amended section 725(2) of the McKinney-Vento Act by removing children "awaiting foster care placement" from the definition of "homeless children and youths" for purposes of administering the Education for Homeless Children and Youths program. This change takes effect for covered States—i.e., those that have defined or described the term "awaiting foster care placement" in statute or regulation—on December 10, 2017; the change takes effect for non-covered States on December 10, 2016. Thus, children who are awaiting foster care placement must be served under the McKinney-Vento Act until at least December 10, 2016. However, regardless of a State's status as covered or non-covered, SEAs and LEAs must meet the Title I requirements for all children in foster care, including those awaiting foster care placement, beginning on December 10, 2016. Children who are currently eligible for McKinney-Vento services because they are awaiting foster care placement should have a seamless transition to receiving services under Title I, and there should be no gaps in their transportation coverage. It is important to note that children awaiting foster care placement may still be covered under the McKinney-Vento Act if they qualify under another definition of homeless, such as being doubled-up or living in a shelter.

JOINT GUIDANCE AND TECHNICAL ASSISTANCE

On June 23, 2016, ED and HHS issued non-regulatory joint guidance to both clarify the educational and child welfare agency roles in implementing the Title I foster care educational stability provisions and to elevate promising practices from the field. Since the release of the joint guidance, ED again partnered with HHS to host a five-part webinar series; each webinar focused on distinct ESSA educational stability requirements and also allowed States an opportunity to hear about promising practices being implemented by their peers in the field. The joint guidance and webinar recordings are available on our ESSA website. ED will continue to provide support and guidance in the upcoming months as questions arise.

In order to make the best use of the transition period, ensure we are sharing information directly with the right person, and facilitate efficient and effective implementation of these provisions, we ask you to please provide the name and contact information for your State POC to ED on or before December 16, 2016. This information may be provided directly to your contact in ED's Office of State Support at OSS.[State name]@ed.gov.

Thank you for your work every day to improve educational outcomes for children in foster care.

Sincerely,

Ann Whalen
Senior Advisor to the Secretary
Delegated the Duties of Assistant Secretary for Elementary and Secondary Education

cc: State Title I Directors