

Educational Stability: Remaining in School of Origin; Best Interest Determination

The Every Student Succeeds (ESSA) and the Fostering Connections Acts specifically require that “best interest” determinations be made when deciding whether a child should remain in the current school setting (school of origin) or move to a new school. While the presumption is that children remain in their school of origin, the decision for some children will be that it is in their best interest to be immediately enrolled in a new school. For best interest determination purposes, “school of origin” is the school in which the child was enrolled at the time the child was placed into foster care. If a child’s foster care placement changes while in foster care, the child’s school of origin is the school the child was attending at the time of the placement change.

Before a child is placed in foster care, local DHS should contact the district of origin’s point of contact to inform them the child is being placed in foster care and to arrange a time to make a best interest determination. The best interest determination is a child specific, case-by-case determination of whether remaining in the school of origin is not the in the child’s best interest. The best interest determination shall be made prior to foster care placement, except in the case of an emergency removal. In the case of an emergency removal, the best interest determination shall be made within 5 business days of emergency foster care placement. In addition, the child shall remain in the child’s school of origin pending the outcome of the best interest determination, unless remaining in the school of origin would be detrimental to the child.

Key Decision Making Partners:

In making the best interest determination, local DHS and the district of origin must collaborate to make a decision about whether it is not in the child’s best interest to remain in the child’s school of origin, in consultation with the child and other parties of interest. Key decision making partners could include, but are not limited to:

- 1) Child;
- 2) Child’s birth or adoptive parents (unless rights have been terminated);
- 3) Prior custodian;
- 4) School representative of district of origin;
- 5) School representative of district where child is placed in foster care;
- 6) Local DHS representative;
- 7) Juvenile court representative;
- 8) Guardian ad litem of the child;
- 9) Special education coordinator;
- 10) School social worker;
- 11) School counselor;
- 12) Individual selected by the child;
- 13) Area Education Agency representative;
- 14) Foster care placement representative;
- 15) Service worker; and
- 16) Any individual with information that informs the decision.

Factors in Best Interest Determination for School Placement:

As part of best interest decision, the district of origin and local DHS should consider all relevant factors and information to determine appropriate school placement, including whether it is or is not in the child's best interest to remain in the school of origin. Transportation cost shall not be considered in the best interest determination. Some factors to consider in making a best interest determination include:

- 1) Preference of the child;
- 2) Preference of the child's parents, education decision makers, or both;
- 3) Opinions of informed education or child welfare professionals;
- 4) Attachment to school, including meaningful relationships with peers and staff;
- 5) Meaningful relationships, if any, that the child might have at the proposed new school;
- 6) Placement of siblings;
- 7) School climate, including safety;
- 8) Availability and quality of services in the school to meet the child's educational and socioemotional needs;
- 9) History of school transfers and how they have affected the child;
- 10) Length of the one way commute to school (no longer than 75 minutes for children in secondary school and no longer than 60 minutes for all other children);
- 11) Special education services (ensuring compliance with the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, as well as relevant state statutes and rules);
- 12) ELL services (ensuring compliance with Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974 (EEOA), as well as relevant state statutes and rules);
- 13) Impact on child's ability to earn academic credit, proceed to the next grade, or graduate on time;
- 14) Expected length of the child's placement and the child's permanency plan;
- 15) The child's current academic, disciplinary, and attendance records;
- 16) Availability of comparable coursework in any potential receiving district;
- 17) Extracurricular activities in which the child participates (if a child changes schools because of a foster care placement change, the child is immediately eligible for interscholastic competition);
- 18) Proximity of the school of origin to other services the child needs;
- 19) Ability of the school to implement any required safety plan for the child, such as a court-ordered no-contact order; and
- 20) Presence of child's victims or perpetrators in the school environment.

Dispute Resolution Process:

If the district of origin and local DHS cannot agree on the child's best interest for school placement after making every effort to reach agreement, the district of origin and local DHS should review their MOA and any rules or guidelines provided by the Department of Education and the Department of Human Services for support in resolving their dispute. If the disagreement regarding school placement continues, local DHS is considered the final decision maker in the best interest determination for school placement unless federal or state law dictates otherwise. Local DHS is uniquely positioned to assess vital non-educational factors such as safety, sibling placements, the child's permanency goal, and the other components of the case plan. If local DHS determines the child's safety would be compromised by remaining in the child's school of origin, local DHS' decision stands pending the outcome of the dispute.

If the district of origin still does not agree with the local DHS determination for the child's best interest for school placement, a written request should be immediately submitted to the state level point of contact (State POC) at the Department of Education for review of the best interest determination documentation. The written request should include documentation of:

- The factors that were considered in determining the school placement that is in the child's best interest;
- The team's determination for school placement;
- The participants involved;
- Whether each participant agreed or disagreed with the team's determination;
- The reasons for agreement or disagreement;
- Any additional information pertinent to the dispute; and
- Efforts made to resolve the dispute.

After receiving a request for review, the State POCs from the Department of Education and the Department of Human Services shall review the best interest determination documentation and return a resolution to the dispute within five business days of receipt of the request. During the dispute resolution process, the student should remain in the school in which he or she was enrolled at the time of placement.