

Education Law

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# AALRR Alert



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## Federal Government Issues Guidance on Ensuring Educational Stability for Children in Foster Care

On June 23, 2016, the U.S. Departments of Education and Health and Human Services issued joint guidance on the new provisions in the Every Student Succeeds Act of 2015 (“ESSA”) for supporting students in foster care. This guidance is the first in a series of guidance documents that will be released by the Department of Education regarding the ESSA.

In December 2015, Congress passed the ESSA, which reauthorized the Elementary and Secondary Education Act of 1965 (“ESEA”). Title I, Part A of ESEA sets forth the new protections for children in foster care, which take effect on December 10, 2016, and complement those in the Fostering Connections to Success and Increasing Adoptions Act of 2008. These provisions emphasize the importance of collaboration and joint decision-making between educational agencies and child welfare agencies.

The joint guidance explains the unique needs of children in foster care and provides clarity as each state educational agency (“SEA”),

local educational agency (“LEA”), and child welfare agency moves toward implementation of Title I.

Using a question and answer format, the joint guidance focuses on nine features of Title I: (1) educational stability, including the importance of keeping foster youth in their schools of origin unless it is determined to be in their best interest to change schools; (2) school of origin and durational requirements; (3) best interest determination, including a list of factors to be considered jointly by SEAs, LEAs, and child welfare agencies; (4) dispute resolution when the relevant agencies and interested parties do not agree on the best interest determination, with the understanding that the child welfare agency should be the final decision maker for the best interest determination; (5) transportation when the decision is made for the student to remain at his or her school of origin; (6) immediate enrollment and records transfer when the decision is made to enroll the student in a new school; (7) designation of SEA and LEA points of contact for child welfare agencies, including a list of examples of

the roles and responsibilities of points of contact; (8) student data and privacy requirements; and (9) collaboration, including the goal of cross-training among agencies and the establishment of regional, inter-district, and interstate collaborative working groups, taskforces, and committees.

Based on the significant percentage of children in care who receive special education services, the joint guidance also addresses the legal requirements and other considerations for children with disabilities under Individuals with Disabilities in Education Act and Section 504 of the Rehabilitation Act of 1973. Under IDEA, SEAs and LEAs must make a free appropriate public education available to all eligible children with disabilities in

“Title I emphasizes the importance of collaboration and joint decision-making between educational agencies and child welfare agencies concerning the unique needs of children in foster care.”

the least restrictive environment. For highly mobile children, including children in foster care, emphasis should be placed on timely and expedited evaluations and eligibility determinations. Unless the child's individualized education program requires some other placement, a child with a disability must be educated in the school he or she would attend if not disabled. For children in foster care, this will often be the school of origin, rather than the school of residence.

Some children in foster care are English learners. Public schools must ensure that all English learners, including those in foster care, can participate meaningfully and equally in educational programs.

The Department of Education will soon release additional guidance under ESSA for early learners, homeless children and youth, English learners, high quality teachers and principals, and student support and academic achievement.

Atkinson, Andelson, Loya, Ruud & Romo has extensive experience advising school districts concerning all federal and California requirements related to the education of all students, including children in foster care. For further information, please contact one of the attorneys listed above.