



# FOSTER CARE STUDENT RIGHTS



In December 2015, Congress passed the [Every Student Succeeds Act](#) (ESSA), which reauthorized the Elementary and Secondary Education Act (ESEA), instituting new protections for children in foster care. These provisions complement those in the [Fostering Connections Act](#) and require State Education Agencies (SEAs) and districts to work with child welfare agencies to ensure the educational stability of children in foster care.

The rights students in foster care are granted under ESSA include immediate enrollment in schools regardless of access to records or additional requirements, free transportation to and from school, automatic eligibility for free meals services, and support engaging in academically and socially enriching activities offered by their school district. The SEA must also ensure any data collected on this focal student group is disaggregated.

## WHAT IS FOSTER CARE?

Within the context of ESSA, *foster care* means “substitute care for children placed by the Department of Human Services or a tribal child welfare agency away from their parents and for whom the department or agency has placement and care responsibility, including placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive homes.” This does not apply to students in foster care via voluntary placement.

Voluntary Placement describes a circumstance where “the sole reason for [the parent or guardian] placing the child in a foster home, group home, or institutional childcare setting is the need to obtain services for the child’s emotional, behavioral, or mental disorder or developmental or physical disability.” These placements fall under the authority of Oregon Developmental Disability Services ([ODDS](#)). These students are not eligible for services under ESSA, but may be eligible for other school support resources.

## DO YOU KNOW YOUR POINT OF CONTACT?

Each district must appoint a [Foster Care Point of Contact \(FCPC\)](#) to oversee this program at the district level, ensuring that students in foster care are identified and receiving appropriate services. They also may be the primary contact for the Oregon Department of Human Services ([ODHS](#)).

## IMMEDIATE ENROLLMENT

Per ESSA, students in foster care have the right to immediate enrollment, regardless of their ability to produce records or documentation typically required for enrollment. This mirrors the enrollment rights of [McKinney-Vento](#) eligible students, as both groups experience high mobility. Per [OAR 581-021-0255](#), the student’s new Local Education Agency (LEA) must request records from the student’s former educational agency within five days; the former LEA must send the records within five days. Minimizing educational disruption is critical for these students, so it’s important that district policies and practices related to enrollment do not have a disproportionate or inequitable impact on students in foster care.

Another factor to consider when it comes to enrollment is the presence of a Best Interest Finding (BIF). A BIF is a court order that indicates that it is no longer in the student’s best interest to attend their [School/District of Origin](#). This then allows the caseworker to enroll the student in a new school. There should not be delays in this enrollment process, and the enrolling school should take steps to “ensure that children in foster care are regularly attending and fully participating in school and that their educational needs are being met,” per [Federal Guidance](#). This may include providing transportation, timely needs assessments, or other support services.



## FOSTER CARE TRANSPORTATION

Under ESSA, students in foster care have the right to receive transportation to and from their School of Origin, even if they are placed in foster care outside the school district they are attending. The caseworker or ODHS staff must submit a [Transportation Request Form](#); this form should be updated every school year, even if transportation services and custodial status have not changed.

If your district experiences barriers in providing transportation, please reach out to the [ODE Foster Care State Coordinator](#). *It is not considered best practice to decline transportation for a student without providing a reasonable alternative.* This school year, ODHS and ODE will be tracking these cases at the statewide level, to better problem-solve allocation of resources. ODHS and ODE are working on a formal dispute resolution process, which will be implemented upon completion.

Because many aspects of the foster care experience come with a high degree of uncertainty, it is critical that everyone play a role in preserving stability whenever possible. If there are issues related to transportation services, School of Origin, or other foster care-specific matters, please contact the [ODE State Coordinator](#) for support. *Students in foster care should not experience delays in services or disruptions to school attendance and engagement while these matters are being resolved.*

For more information about Transportation Reimbursement, see the [Transportation](#) section of the [ODE Foster Care Webpage](#).

### Q&A

#### **Which students are eligible for School of Origin transportation?**

Students who meet the definition of “foster care” under ESSA are eligible for this transportation. The student’s caseworker must complete the Transportation Request Form in order for these services to be provided. Oregon’s contract goes beyond ESSA to include Trial Reunification after foster care so that thoughtful transitions can occur.

#### **How long can the student receive this service?**

The student can receive this service while they are still in foster care, or during trial reunification with a parent. Once they are no longer in foster care, they are no longer eligible for School/District of Origin transportation specifically, and arrangements should be made with the school and family to determine the most appropriate long-term plan for the student’s education.

#### **What if the student has an IEP? Which program coordinates and funds transportation?**

If the student’s transportation services are coordinated by their IEP team, this would not be considered “School of Origin Transportation.” Consequently, this student’s services would not be included in the [Foster Care Transportation Reimbursement Request Form](#). If transportation is not part of the student’s IEP and was instead requested by the ODHS caseworker via a [Transportation Request Form](#), this would be coordinated by the FCPC & Transportation Department, and would be eligible for School of Origin Transportation Reimbursement.

#### **What role do BIFs play with respect to transportation services?**

When it is determined by the Juvenile Court that it is no longer in the student’s best interest to attend their School/District of Origin, a court order is put in place to allow the caseworker to enroll the student in a new school/district. These students should be immediately enrolled in their new school, and if transportation is requested, this should be coordinated as quickly as possible to minimize educational disruption.

#### **Who pays for transportation?**

The district providing transportation will pay for the service, and may receive reimbursement upon completion of the [Foster Care Transportation Reimbursement Request Form](#). This applies to charter schools as well.

## DISTRICT POLICIES & IMPACT

Due to the unique circumstances and experiences of students in foster care, it is important to consider how district policies and protocols impact these students and their families. It is recommended by both federal and state entities that districts examine current policies to ensure they do not create added barriers for highly mobile student groups.

These may include disciplinary policies and related practices, attendance policies, school transfer policies and agreements. Each district should also have a clear protocol for tracking [School Notification Forms](#) from caseworkers and ways to flag students in foster care in data systems.

Federal Programs Monitoring is another avenue through which district policies are evaluated. To learn more about Foster Care Program Monitoring, visit the [ESEA Federal Programs Page](#).

### Want to Learn More?

*ODE hosts Office Hours for Points of Contact on the second Tuesday of every month. Please [join us!](#)*

## STUDENT BELONGING & WELLNESS

Students in foster care demonstrate the lowest graduation rates of any other focal student group in the state of Oregon. For this reason, it is crucial that these students are encouraged to engage in academically and socially enriching activities and that any barriers to their participation are removed.



Students in foster care are also more likely to represent other vulnerable youth populations. These include students who receive Special Education Services, youth with LGBTQ2SIA+ identities, and youth experiencing housing instability. As such, districts should be sure that these, and other vulnerable student groups receive timely needs assessments and that mental and behavioral health services are made accessible.

### Q&A

#### **What rights do students in foster care have related to Special Education?**

Due to high mobility, students in foster care should receive timely and accurate IEP/504 assessments when appropriate. These documents should also be shared as quickly as possible during school movements to avoid delays; however, the absence of an IEP upon enrollment does not negate the student's right to immediate enrollment.

#### **Can students be Foster Care McKinney-Vento eligible simultaneously?**

Yes, if a student in ODHS care and custody becomes unaccompanied or otherwise loses housing, they may have dual eligibility. In these cases, services like transportation should be coordinated & funded by the Foster Care Program. However, these students may also access services reserved only for McKinney-Vento eligible students.

## STUDENT RECORDS

During a Child Protective Services (CPS) investigation when ODHS Child Welfare does not yet have care or custody of the student, ODHS may obtain school records under the health and safety protocol in [ORS 336.187](#). Schools should share these records promptly to help CPS protect the health and safety of the student. Schools may ask the CPS worker to certify in writing that they will not disclose the information to a third party other than another court or juvenile justice agency, or a person or organization providing direct services to the student on behalf of a juvenile justice agency.

When a student is in ODHS care or custody, schools can share records under the federal [Uninterrupted Scholars Act](#). This act created an exception under the [Family Educational Rights and Privacy Act \(FERPA\)](#) for schools to more easily release education records to child welfare agencies without parents' prior written consent. [The School Notification Form](#) can serve as the documentation of legal custody. Please ensure your policies and protocols align with these practices.





## WHAT ROLE CAN YOU PLAY?

### Collaborate

Establish clear communication with caseworkers, Resource parents, and other advocates supporting students in foster care.

### Educate

Ensure all district staff are familiar with the FCPC's role and aware of the rights of students in foster care under ESSA.

### Advocate

Do what you can in your role to advocate for the best interest of students in foster care & their families.

## RESOURCES

- ❖ [ODE Foster Care Webpage](#)
- ❖ [ODHS Child Welfare Education Guidance \(oregon.gov\)](#)
- ❖ [ODE Mental Health and Social Support for Student and Families](#)
- ❖ [ODE LGBTQ2SIA+ Student Success Plan](#)
- ❖ [FACT Oregon: Special Education Services](#)
- ❖ [ODHS Education Rules](#)
- ❖ [Transition Services for Youth with Foster Care Experience](#)
- ❖ [Ensuring Educational Stability for Children in Foster Care \(Non-Regulatory Guidance\)](#)
- ❖ [Foster Care Monitoring Narrative form](#)
- ❖ [ESSA Quick Reference Brief: Set Asides under Title I-A](#)
- ❖ [Stability for Students in Foster Care](#)
- ❖ [Foster Care Points of Contact List](#)
- ❖ [McKinney-Vento Program Webpage](#)
- ❖ [Foster Care Transportation Reimbursement Manual](#)
- ❖ [Foster Care Dear Colleague Letter](#)

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