

## **Transportation of Children and Youth in Out-of-Home Placement to School of Origin and Related Federal and State Laws**

### **Federal Law Requirements: Every Student Succeeds Act (ESSA)**

ESSA requires Local Education Agencies are required to develop and implemented 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. The citation and quote from ESSA is provided below:

“(B) by not later than 1 year after the date of enactment of the Every Student Succeeds Act, 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, which procedures shall— “(i) ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act (42 U.S.C. 675(4)(A)); and “(ii) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the local educational agency will provide transportation to the school of origin if— “(I) the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation; “(II) the local educational agency agrees to pay for the cost of such transportation; or “(III) the local educational agency and the local child welfare agency agree to share the cost of such transportation.” §1112(c)(5)(B), Every Student Succeeds Act.

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### **Colorado: HB 18-1306 and Transportation**

**Colorado Transportation of Students in Out-of-Home Placement:** During the 2018 session, House Bill 18-1306, “Concerning Ensuring Educational Stability for Students in Out-of-Home Placement” was passed.

**Lawsuit:** Section 7 of this bill made a significant change in the law regarding inter-district student transportation. The Colorado Association of School Boards, the Colorado Association of School Executives, six individual districts, and two resident taxpayers filed an action in Denver District Court (Case No. 2018CV32901) alleging that the new section regarding transportation in HB 1306 is legally void.

**Outcome of lawsuit:** A Denver judge ruled in favor of the plaintiffs, citing that Section 7 was disconnected from the rest of the bill. The rest of the foster youth bill is intact, and the lawsuit only removes Section 7 of the bill.

**CDHS’s response** can be found here: <https://co4kids.org/community/lawsuit-does-not-impact-colorados-ability-improve-educational-stability-students-foster>

**Note:** Regardless of any lawsuits related to Colorado HB 18-1306, school districts and county agencies are required to transport students in foster care to their school of origin when it has been determined to be in their best interest. Transfers may or may not be across district boundaries. Transportation is only required to maintain school stability. This is an ESSA requirement and will remain intact regardless of any state-specific lawsuits.

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## **Colorado specific considerations**

**Transportation Requirements for Colorado Department of Education:** To ensure school districts are meeting ESSA requirements related to students in out-of-home placement, each school district that receives federal funding checked an assurance in the consolidated application for 2018-19. This assurance reads:

*“The LEA/BOCES has adopted policies and practices to ensure that children in foster care will remain, if possible, in the school in which the child is enrolled at the time placement. When remaining in such school is not in the best interest of the child, the LEA will provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school. The LEA has, or will adopt, policies and practices to ensure that the enrolling school will immediately contact the school last attended by the child in foster care to obtain relevant academic and other records. § 1111(g)(1)(E).”*

**Transportation Requirements for Colorado Department of Human Services (CDHS):** CDHS required all county departments of human services to submit written transportation plans with the school districts located within their counties by October 15, 2018.

**Technical Assistance for Transportation Agreements:** CDHS released a sample transportation agreement for counties and school districts to use as an optional guide in creating their transportation plans. CDE and CDHS jointly hosted convenings with counties and school districts since ESSA passed to provide assistance and guidance in developing transportation plans. CDE, CDHS, and CASB have ongoing communication about transportation plans. CASB developed a sample transportation agreement and is currently in communication with CDHS regarding the plan.

**Transportation Funding:** \$2,750,328 was allocated specifically for transportation to school of origin for students in out-of-home placement. This amount came from a transportation needs assessment study CDHS completed in 2017 that estimated the cost to maintain students in out-of-home placement in their school of origin.