

## Updated Guidance

# Educational Stability for Youth in Foster Care

The purpose of this guidance is to replace prior guidance regarding time in transit and safety considerations of children and youth in foster care.

ESEA § 1111(g)(1)(E)(i) requires that each state education agency (SEA), in collaboration with the state child welfare agency, ensure that students entering foster care or experiencing a change in foster care placement remain in their schools of origin unless it is determined to be in their best interest to leave the school of origin. This determination must be **“based on all factors relating to the child’s best interest.”**<sup>1</sup>

The Tennessee Department of Education has previously issued guidance indicating that best interest determination (BID) meetings are not required in certain circumstances including (i) if the foster home is outside of a 60-minute ride from the school of origin or (ii) if the Department of Children’s Services (DCS) believes a student is not safe in the school of origin.

The BID must be based on all factors relating to the child’s best interest, including consideration of the appropriateness of the current educational setting and proximity to the school in which the child is enrolled at the time of placement. **Therefore, a BID may not be ruled out based on one or two factors listed above but must instead consider all factors relating to a child’s best interest each time a BID is made.** These factors may also include:

- Safety considerations based on the child’s welfare;
- Preferences of the child;
- The child’s permanency goal and expected date of achieving permanency;
- Preference of the child’s parent(s) or educational decision-maker(s);
- Placement of the child’s sibling(s);
- Whether transferring schools will positively impact the child emotionally, socially, or academically;
- How the length of the commute would impact the child, based on the child’s developmental stage;
- History of school transfers and how they have impacted the child;
- How long the child has attended the school of origin, the child’s attachment to the school of origin, and the child’s involvement in school-related or extra-curricular activities;
- The availability and quality of the services in the school to meet the child’s educational and socioemotional needs;

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<sup>1</sup> Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care. Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015 (2016). U.S. Department of Education and U.S. Department of Health and Human Services. [https://oeso.ed.gov/files/2020/09/Non-Regulatory-Guidance\\_06-23-2016.pdf](https://oeso.ed.gov/files/2020/09/Non-Regulatory-Guidance_06-23-2016.pdf).

- To the extent that information is available, whether the new school is able to meet the student’s academic needs, including the student’s need for special instruction or special education and related services; and
- Whether the child is an English learner (EL) and is receiving English as a second language services, and, if so, the availability of those services in a school other than the school of origin.<sup>2</sup>

While 60 minutes in transit and safety may not be single factors used to eliminate or provide an exception to the need for a BID, LEAs are reminded of T.C.A. § 49-6-2105 which states “No pupil shall be allowed to remain in transit to or from school on a school bus more than one and one-half hours in the morning or one and one-half hours in the afternoon.” This particular statute may be a factor to consider when conducting BID meetings. Additionally, if there is disagreement regarding school placement, DCS should be considered the final decision-maker.<sup>3</sup>

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<sup>2</sup> Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care. Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015 (2016). U.S. Department of Education and U.S. Department of Health and Human Services.

<sup>3</sup> Ibid