

Federal Update: Summary of New Federal Joint Guidance to Support Students in Foster Care

ESSA Academy

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Kim Humphrey



**SOUTH CAROLINA
DEPARTMENT OF EDUCATION**



Kim Humphrey

**Foster Care Point of Contact and McKinney-
Vento Program Manager, SCDE**

Email: khumphrey@ed.sc.gov

Phone: (803) 734-3759



Agenda

**Overview of the New
Foster Care Guidance**

Next Steps for LEAs



Why Educational Stability Matters

Every time a student changes schools, it can take four to six months to recover academically.

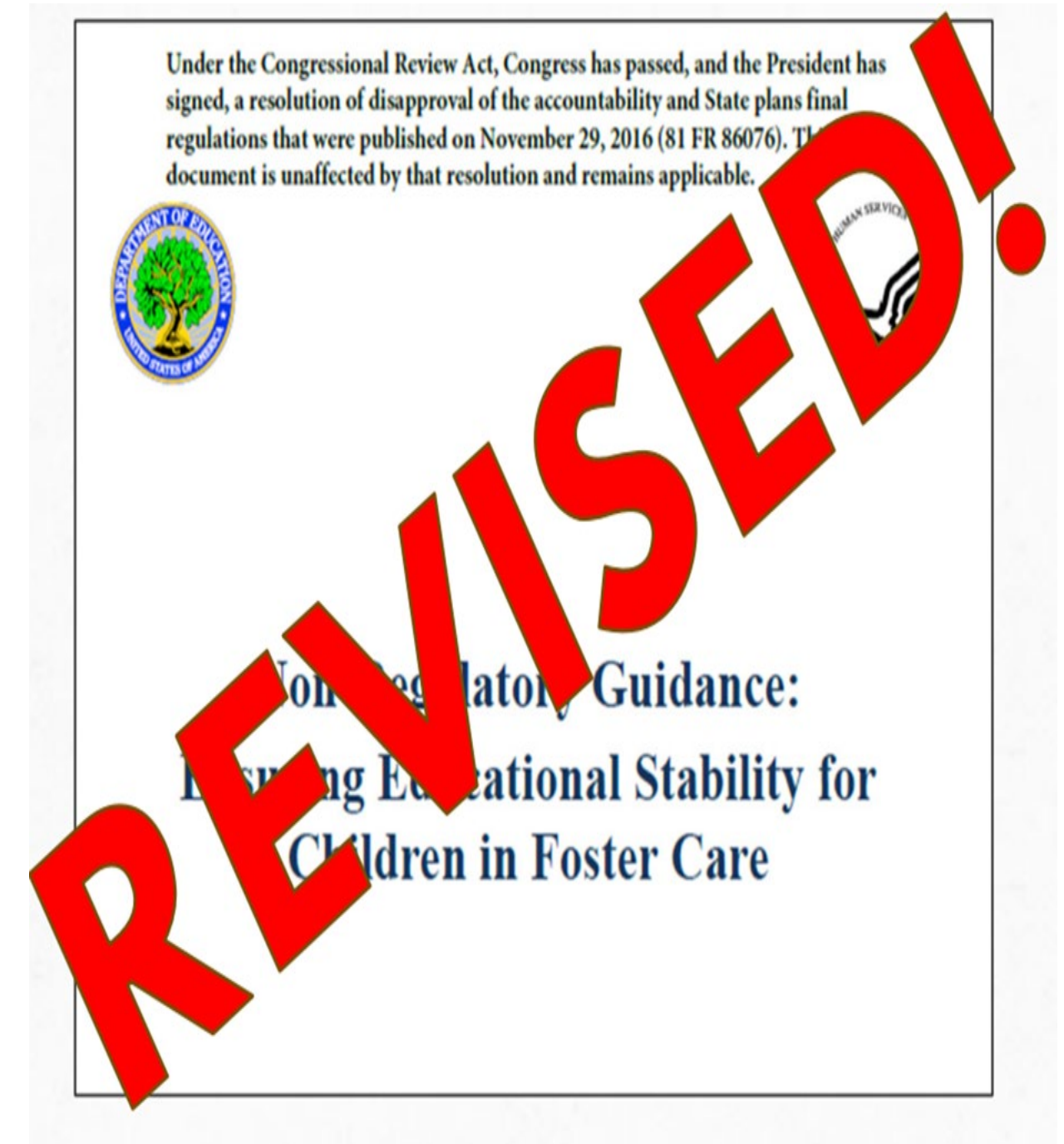
Strategic Goals For Students in Foster Care

- (1) Improve Graduation Rates
(42% in 2022-23)
- (2) Prioritize School Of Origin
(1773 moves in 2022-23)



New Foster Care Guidance

On November 15, 2024, the U.S. Department of Education and the U.S. Department of Health and Human Services released new Non-Regulatory Guidance: Ensuring Educational Stability and Success for Students in Foster Care



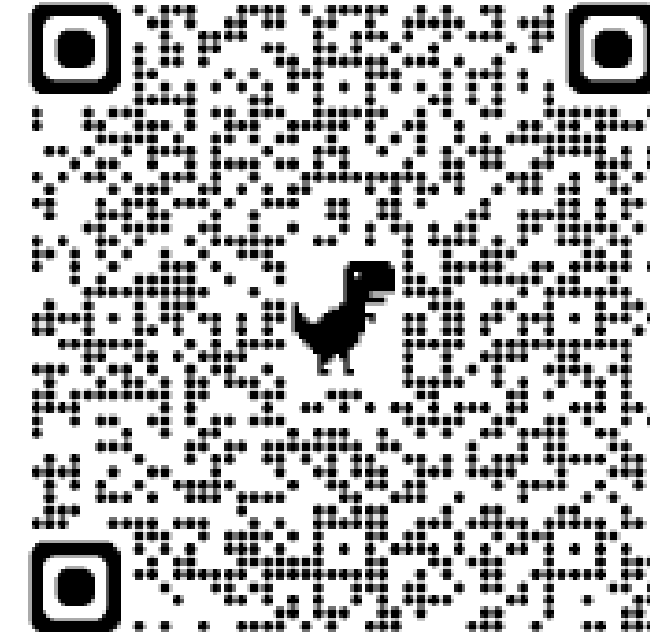
New Non-Regulatory Guidance

Ensuring Educational Stability and Success for Students in Foster Care

Non-Regulatory Guidance



November 2024



<https://www.ed.gov/teaching-and-administration/supporting-students/special-populations/students-foster-care>

The American Bar Association has created two documents to assist with the changes:

[Overall Summary](#)

[2-page Highlights](#)



New Additions

- This guidance updates previous joint guidance from 2016.
- It provides critical new information about how federal laws support students in foster care.
- It is 72 pages with new subjects being addressed compared to the 2016 document (the previous was 28 pages).
- Now includes more information on school stability, academic success, special populations, funding and data collection.

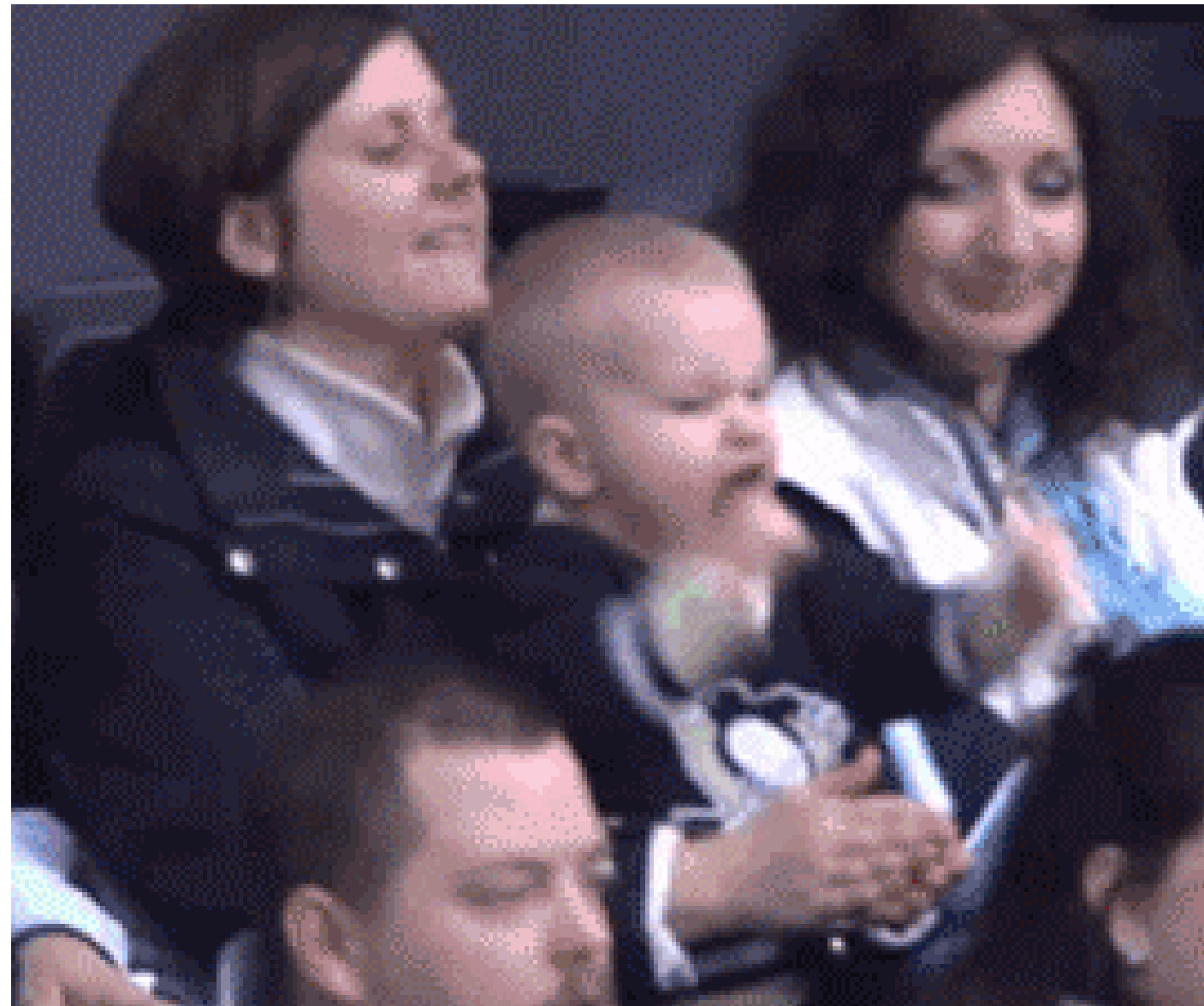


The Guidance Road Map

- The guidance is still written in question-and-answer format.
- Each section has a heading and then breaks into sections with letters and numbers to help the reader follow along.
- In this presentation, most items include the ***letter/number***.
- If you are reviewing the guidance yourself “control f” can locate specific words and phrases when searching for a specific answer. This function has been my friend!



Buckle Up, Baby!



[Image Credit](#)



Title I Educational Stability Provisions (A-H)

APPLICABILITY OF PROVISIONS (A):

- Requirements in ESEA section 1111(g)(1)(E) apply to all children in foster care enrolled in a state educational agency (SEA)
- Additionally, ESEA section 1112(c)(5) applies only to children in foster care attending schools in local educational agencies (LEAs) receiving Title I subgrants.



Definition of Foster Care

The Definition remains unchanged: “foster care” means 24-hour substitute care for children placed away from their parents or guardians and for whom the child welfare agency has placement and care responsibility. (45 C.F.R. § 1355.20(a)). Under this definition, “foster care” includes, but is not limited to, placements in: Foster family homes; Foster homes of relatives (also known as “formal kinship care”); Group homes; Emergency Shelters; Residential Facilities; Childcare Institutions; and Preadoptive Homes.

- *The Title IV-E definition of foster care includes children placed in trial reunifications with their parents when the child welfare agency retains placement and care responsibility.*
(A-1)



Definition of Foster Care cont.

The Title I educational stability provisions apply to children of compulsory school age when they

- (i) enter foster care or
- (ii) experience a change in foster care placement. (A-5, A-3).
 - If a child is currently not enrolled in school, the LEA and local child welfare agency must enroll the child in school. (A-2, A-3)

The compulsory age for SC is 5 to 17, and the maximum limit for free education is 22. Individuals older than 21 years old may attend night school.



State Points of Contact (SEA POC)

The guidance provides examples of the roles and responsibilities of the SEA POC including:

- Collaborating with DSS to issue statewide guidance (***New BID Document***)
- Monitoring LEAs to ensure compliance with Title I (**EOTY Survey**)
- Ongoing strategies for SEA POCs to collaborate with DSS and other SEA staff (**Quarterly interagency meetings and Facilitating trainings**).
(B-2, C-2, C-3).
- Senior leadership in both education and DSS are encouraged to model cross-agency collaboration and prioritize coordination efforts. (C-2).

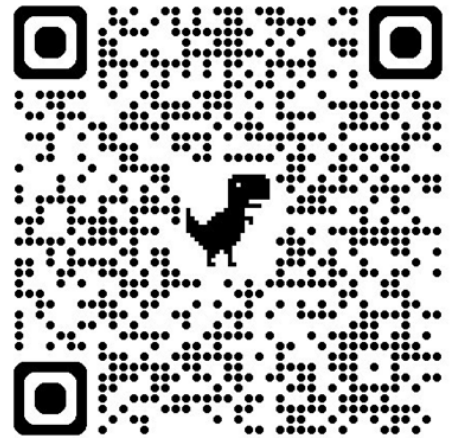


Local Points of Contact (LEA POC)

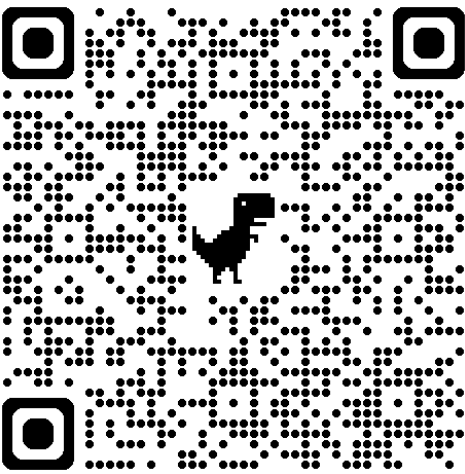
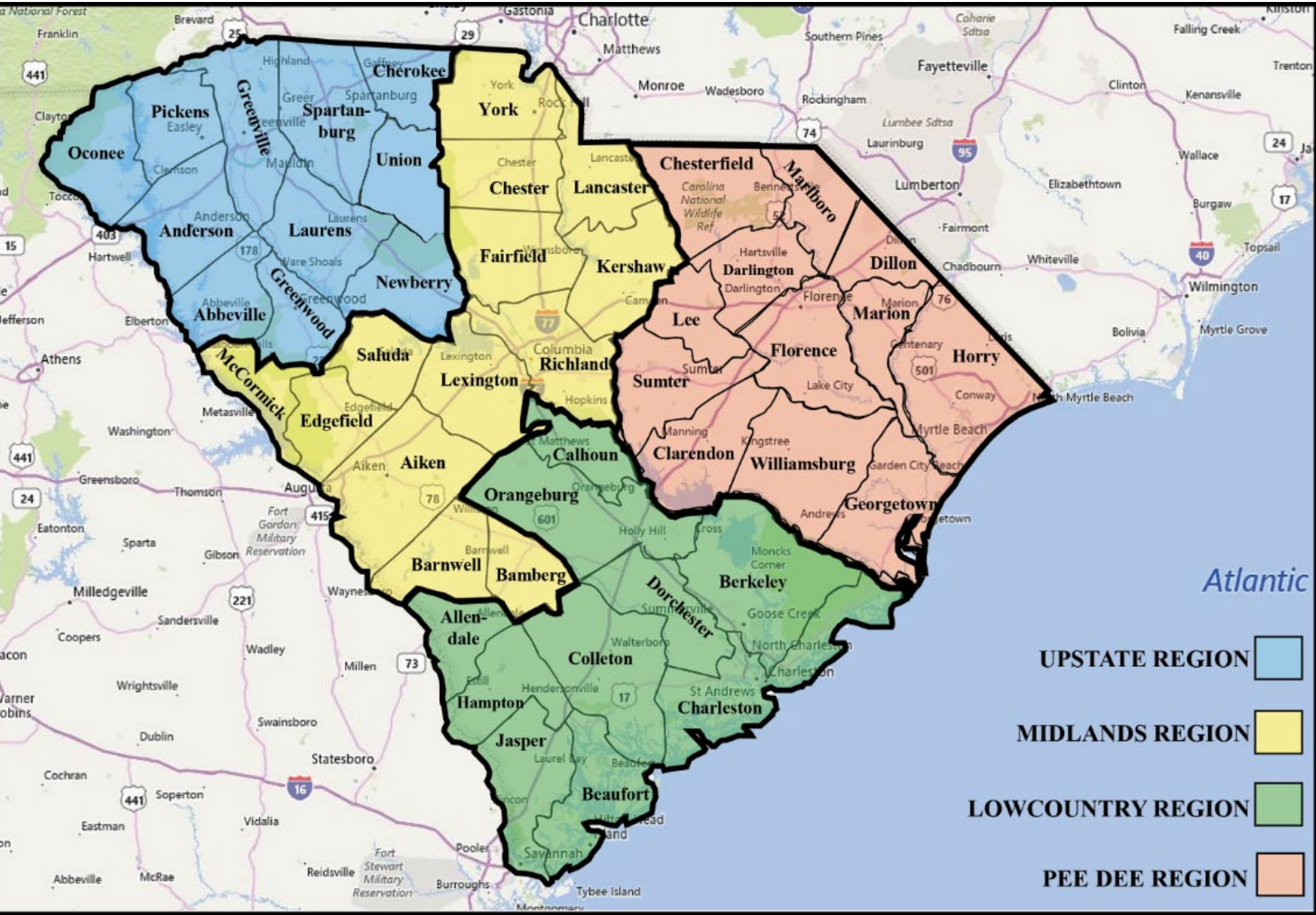
LEAs are required to designate a POC (B-3).

The guidance details the roles and responsibilities of LEA POCs:

- Develop policies and procedures that layout the Best Interest Determination (BID) process. *(Include Role Specific actions and appropriate Timelines)*
- Facilitate record transfers *(3 business days)*
- Providing training to school-based staff on the needs of students in foster care. *(B-4) (including Immediate Enrollment)*
- LEAs receiving Title I subgrants must collaborate with DSS to implement the Title I educational stability provisions (including transportation). (C-4, C-5, C-6).



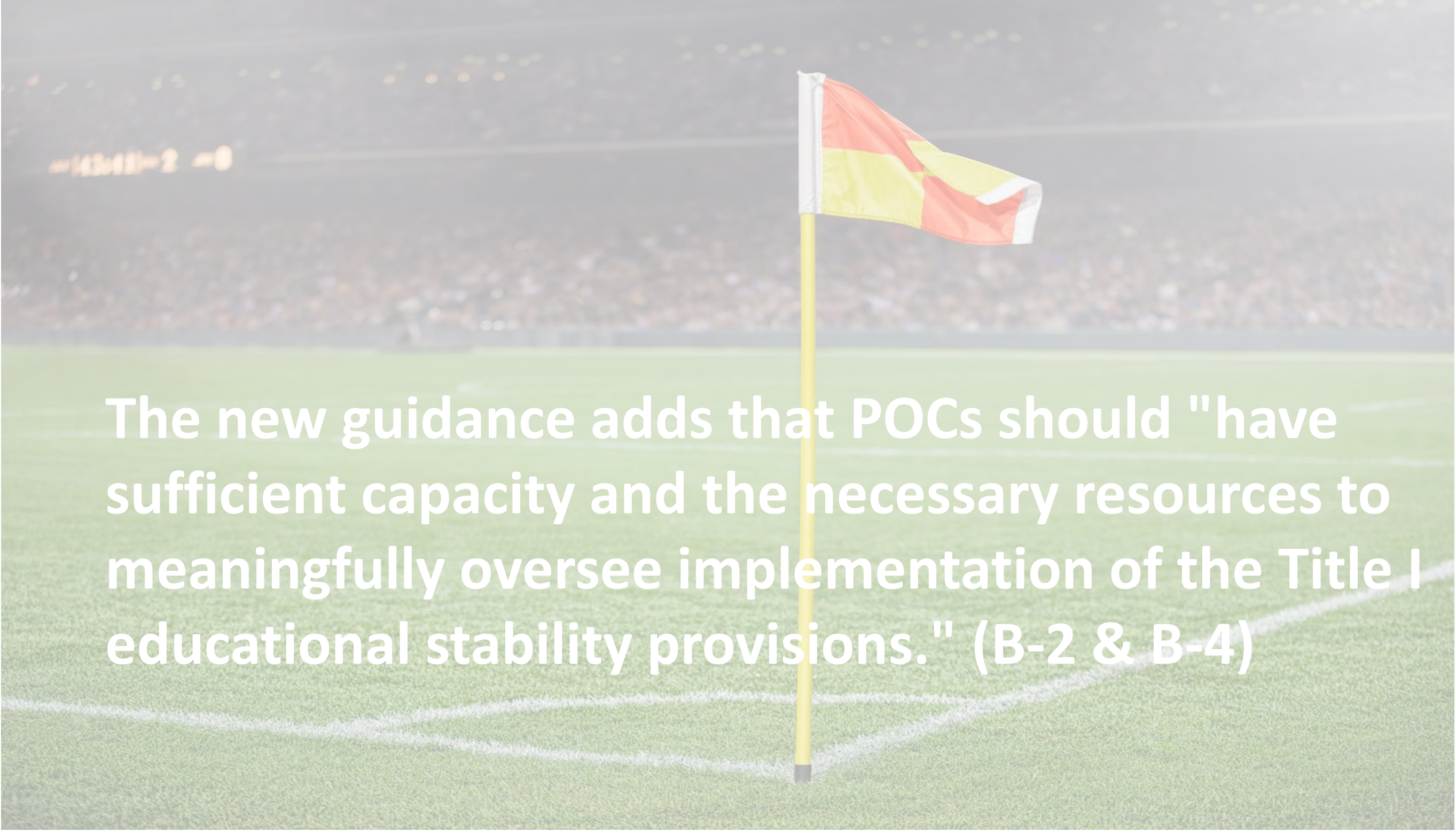
DSS Region State Map



- Shana Charles, State Point of Contact
- ❖ Tahmeka Pigott-Murphy, Upstate
 - ❖ Laverne Latham, Low Country
 - ❖ Brittany Gibson, Pee Dee
 - ❖ Megan Temple, Midlands



Highlight: Points of Contact



The new guidance adds that POCs should "have sufficient capacity and the necessary resources to meaningfully oversee implementation of the Title I educational stability provisions." (B-2 & B-4)



State and Local Points of Contact (B) and Collaboration (C)

Title I requires SEAs to collaborate with State child welfare agencies (DSS), and the new guidance stresses the importance of *interagency collaboration* between DSS and the SCDE. (C-1).

- Both agencies are encouraged to *ensure staff are trained to support the complex needs of students in foster care* (C-8).
- Agencies are encouraged to develop a framework for collaboration that includes other non-agency stakeholders, including legal practitioners and community-based organizations. (C-9).



School of Origin (SOO) (D)

A “school of origin” is defined as “the public school a student is enrolled in when they enter foster care or when they change foster care placements.” (D-1).

A student “must remain in their school of origin for the duration of their time in foster care, unless a determination is made that it is not in their best interest to remain in that school.”

- These provisions apply to feeder school (D-5)
- A student who has never been enrolled in a public school has no SOO and should be immediately enrolled in a new school, even with no records normally required for enrollment. (D-2).
- LEAs are encouraged to allow students to remain enrolled at their SOO through at least the end of the school year and provide transportation.

(D-4, F-15)



Best Interest Determination (BID) (E)

A BID is the process through which the school district and DSS partner with important people in a student's life to determine whether it is in their "best interest to remain at their school of origin or change schools." (E-1).

- A BID is triggered when a student enters foster care or changes foster care placements. (E-2).
- Complete a BID process as quickly as possible, such as "within three business days" of the student's placement in foster care or prior to a planned placement change. (E-3)
- If a student is being placed in a childcare institution (group home), the District and DSS should conduct a BID prior to the student's entry into the institution to determine whether it would be in the student's best interest to attend the public school where the institution is located. (E-5)

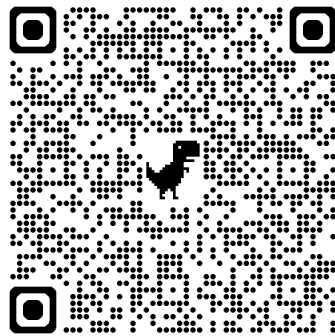


Best Interest Determination Possible Participants (E - 8)

The following table outlines potential participants in the BID process. (This list is not exclusive; all relevant parties should be included in a BID process to the extent practicable.)

The LEA POC and the DSS POC should be involved in all BID meetings (E-8).


- If the LEA designates a BID POC, that representative is sufficient.



Participants from the LEA	Participants from the child welfare agency	Additional participants, if relevant
<ul style="list-style-type: none">• LEA POC• Teachers and school leaders• Coaches and mentors• Counselors or other school-based mental health professionals such as school social workers or school psychologists• English Learner staff members, if relevant• Special education staff members and providers, if relevant• LEA representatives from IEP/504¹⁷ and placement team, if applicable• School of origin representatives with knowledge about the student	<ul style="list-style-type: none">• Local child welfare agency POC• Student's caseworker	<ul style="list-style-type: none">• The student¹⁸• Parents• Current and future caregivers (includes foster parents, relatives and/or legal guardians)• Education attorney• Student's attorney• CASA• Guardian ad litem• Mental health professional• Translator



Highlight: BID Timelines



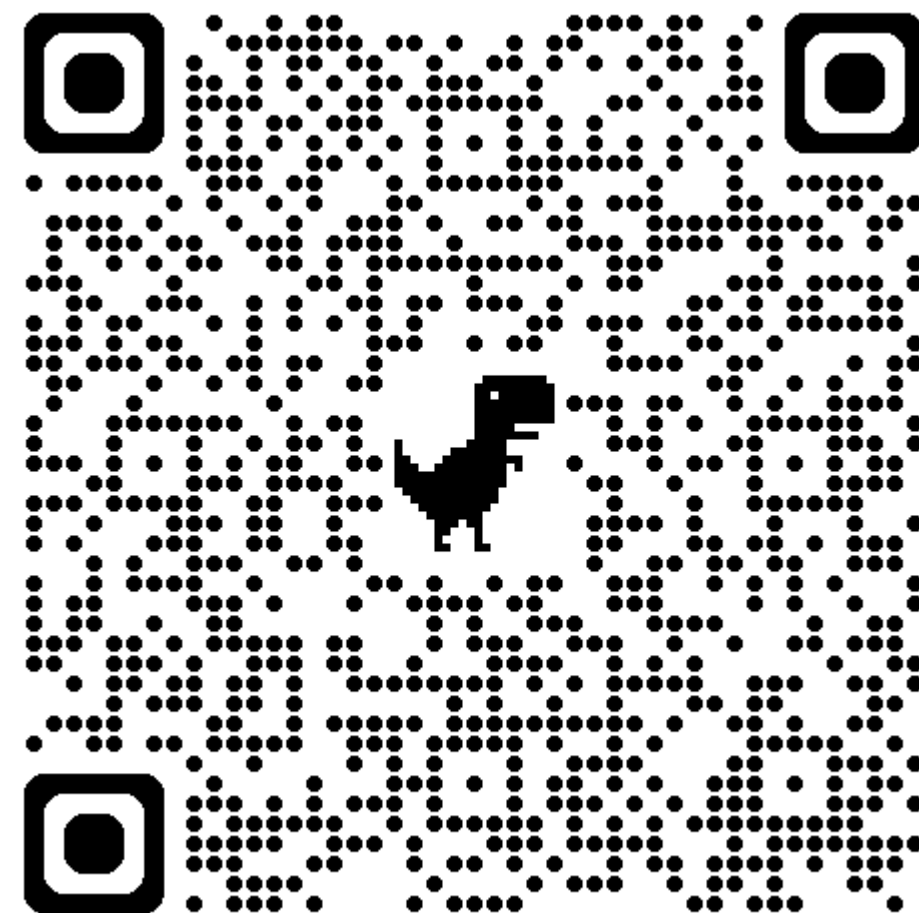
The new guidance encourages best interest determinations to be completed within 3 business days.
(E-3)



New Forms Started SY 2024-25



BID Form



School of Origin Transportation (F)

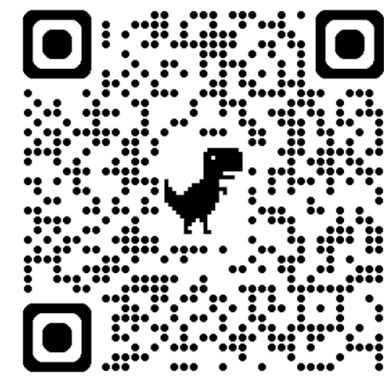
School of origin transportation is transportation to and from the school a child is enrolled in “at the time the child enters foster care or experiences a change in placement.” (F-1).

- Districts are required to “collaborate with DSS to develop and implement clear written procedures” on how transportation will be “provided, arranged, and funded” (F-2)
- Procedures must ensure the transportation is prompt, cost-effective, and that either the LEA pays, DSS agrees to reimburse the LEA, or both share the cost. (F-2)
- While not required when students exit foster care, the LEA is encouraged to provide transportation to the school of origin through the end of the school year in which the student exits foster care. (F-15)

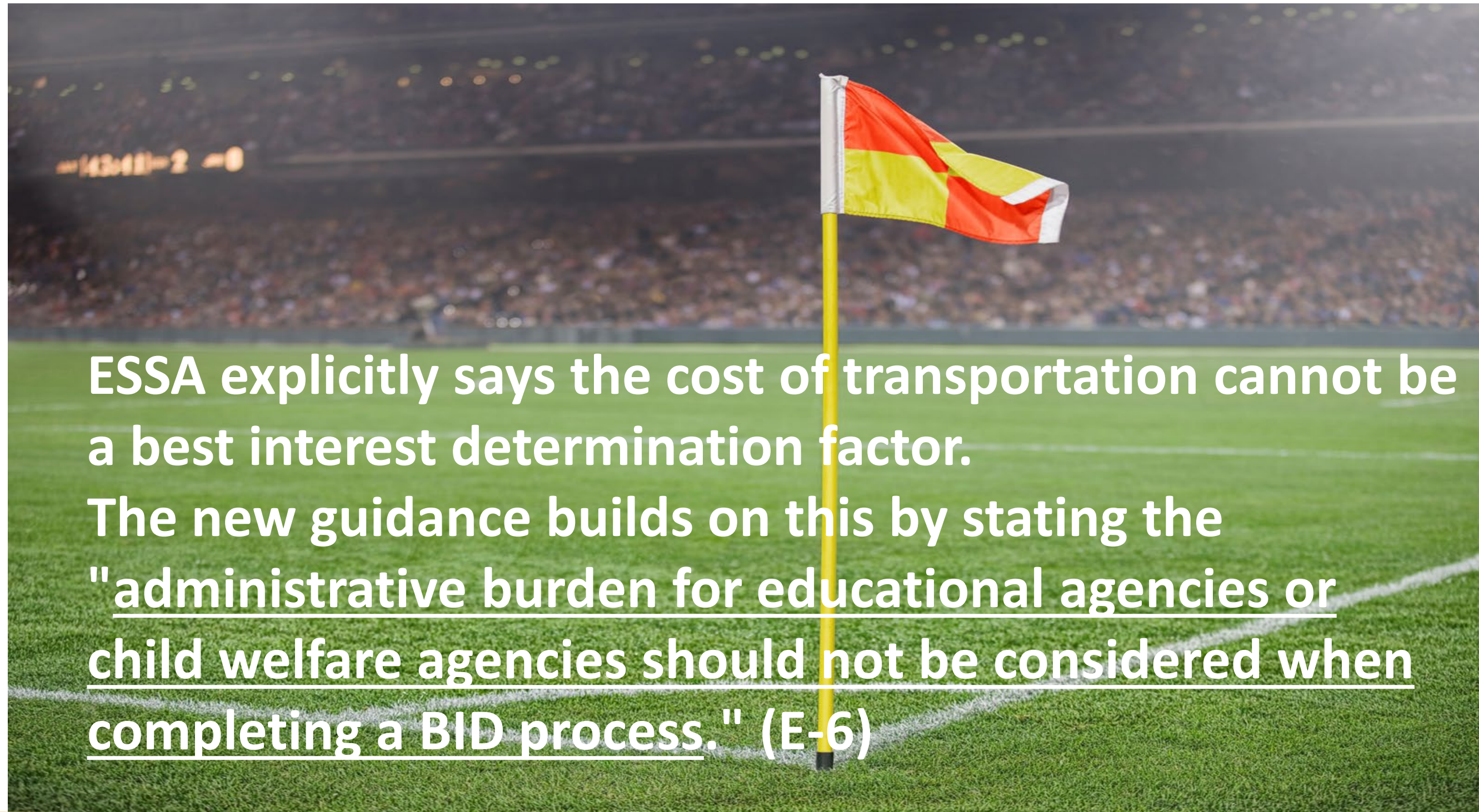


School of Origin Transportation (F) cont.

- School of origin transportation includes transportation for needed academic supports, such as afterschool tutoring and summer learning/enrichment programs. (F-10)
- Districts are also encouraged to provide transportation to school activities like extracurricular activities etc. (F-10).
- South Carolina specific guidance: Districts must have Foster Care Transportation Policies as well as, complete page 4 of the BID for child specific details where transportation is needed.



Highlight: Cost of Transportation AND Burden



ESSA explicitly says the cost of transportation cannot be a best interest determination factor.

The new guidance builds on this by stating the "administrative burden for educational agencies or child welfare agencies should not be considered when completing a BID process." (E-6)



Transportation Policy Items

- ✓ How disputes will be resolved
- ✓ How transportation will be provided for necessary out-of-school supports, and whether transportation will be provided for extracurricular activities. (F-6)
- ✓ Details on how a student's transportation must be "promptly" received e.g., within three business days" (F-3).
- ✓ Should define transportation's additional costs as the difference between what a District otherwise would spend to transport a student to their assigned school and the cost of transporting a child in foster care to their school of origin. (F-8).



Transportation Policy Items Cont.

- ✓ Who oversees coordinating?
- ✓ How additional costs will be covered
- ✓ Lists potential low-cost transportation options. (F-7).
- ✓ The transportation should be age and developmentally appropriate. (F-2) and address safety.
- ✓ Districts are encouraged to work with other Districts and DSS to establish inter-LEA transportation procedures. (F-11)
- ✓ Transportation procedures should be reviewed annually. (F-9)



Transportation Policy Items Cont.

- ✓ The school of origin transportation requirements apply regardless of whether an LEA provides transportation for students who are not in foster care. (F-4).
- ✓ These requirements also apply to charter schools considered to be an LEA by the SEA. (F-5).
- ✓ SEAs are responsible for monitoring LEAs' transportation procedures and ensuring they are effectively implemented. (F-13).
- ✓ Certain federal funds may be used to support additional school of origin transportation costs, including Title IV-E funds, Title I funds, and IDEA funds if transportation is listed as a related service on the student's IEP, or in cases where a student does not have an IEP but an "incidental benefit" is provided to a nondisabled student in foster care. (F-16, F-17).



Page 4 of BID Transportation Plan

Best Interest Determination Decision

☒ The student will remain in the current school:

Is transportation needed?

☐ Yes

☒ No

If yes, transportation will be provided by:

How long will this transportation be provided?

☐ The rest of the semester

☐ The rest of the school year

☒ Other:

Who is/are responsible for transportation costs?

☐ LEA

☐ DSS

☐ DSS/LEA sharing cost

☐ Other:

Address of Placement:

☐ There will be a change of school placement:

New School:

New District:

Enrollment Date:

Person responsible for enrollment:

Attach student schedule if applicable:

☐

Immediate Enrollment (G)

If a BID results in a determination that it is not in a student's best interest to remain at their school of origin, the new LEA must immediately enroll the student in a new school. (G-1)

- *A student is not fully enrolled if they are “not attending school or fully participating in classes, extracurricular activities, and out-of-school and summer opportunities.” (G-2).*
- Enrollment must occur even without typically required documentation AND the enrolling school must contact the school of origin for relevant records, which the SOO is encouraged to provide “within three business days.” (G-1, G-3, G-4).



Immediate Enrollment (G) cont.

Review and revise enrollment policies to remove any barriers to immediate enrollment and records transfer for students in foster care. (G-7).

- For ongoing enrollment, additional documentation and records may be required.
(G-5, G-6)
- Frontline staff and those handling enrollment should be aware of these requirements.
- Goal for 2025-26 add Foster Care to the enrollment survey



Highlight: Define Immediate!



The new guidance clarifies that "immediate" means as soon as practicable and uses 3 business days as an example. (G-2)



New Section: Ensuring Academic Success (I – K)

Attendance (I)- Students in foster care face unique barriers to school attendance and are more likely to be chronically absent than their peers. (I-1)

- ✓ Sharing a student's attendance information with DSS Caseworker (I-2, I-3)
- ✓ Track chronic absenteeism data for students in foster care, mitigate patterns. (I-2)

Supportive and Inclusive Learning Environments (J)- Districts are encouraged to address the disproportionate discipline of students in foster care. (J-1)

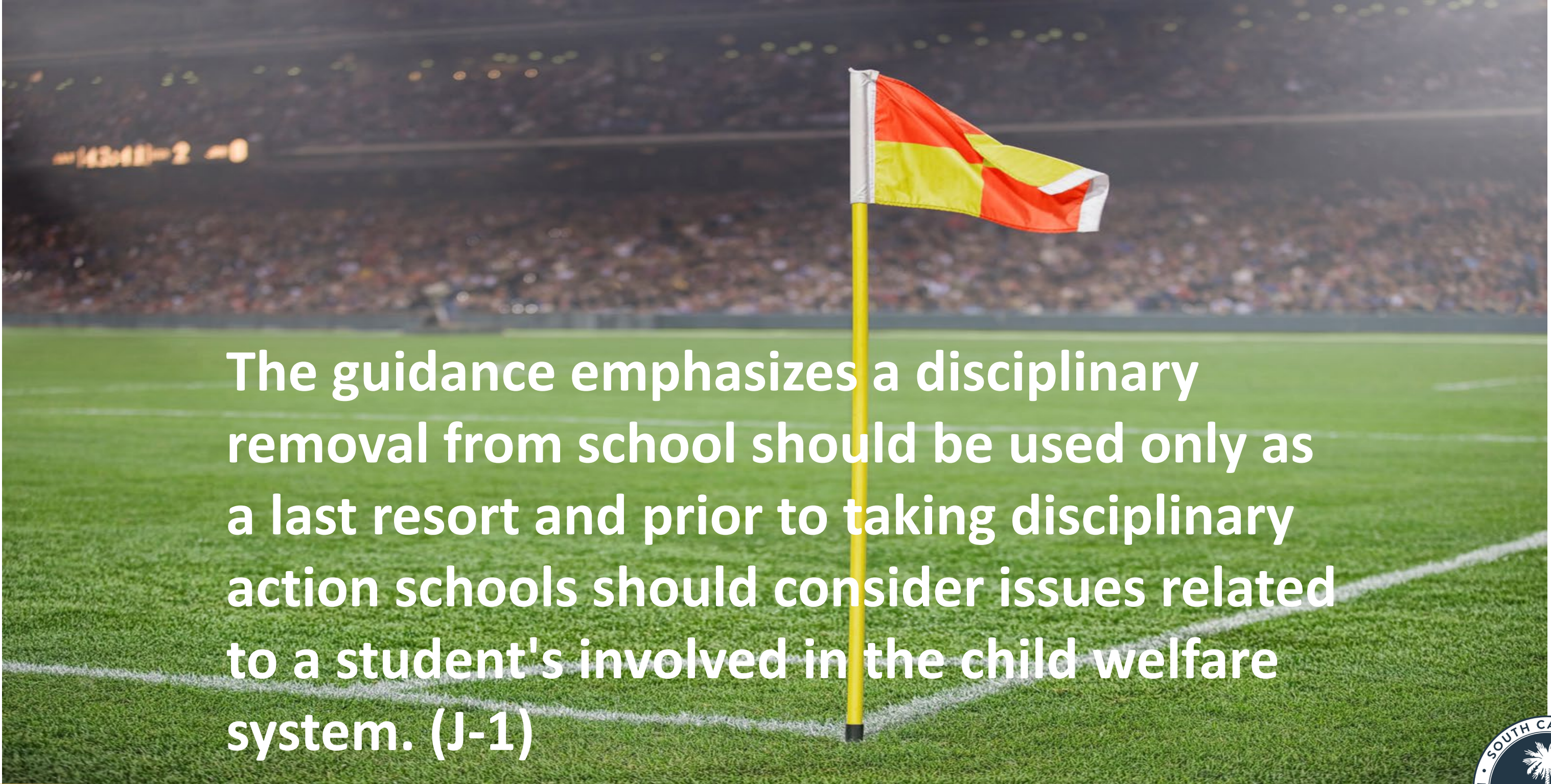
- ✓ Track Discipline data for students in foster care, reduce exclusionary discipline patterns

High School Completion and Transitions (K)- Districts are encouraged to establish policies to ensure students in foster care receive credit for all coursework, graduation policies do not unduly burden students in foster care. (K-1, K-2, K-3)

- ✓ Provide opportunities for students to recover missed credits
-



Highlight: Academic Success



The guidance emphasizes a disciplinary removal from school should be used only as a last resort and prior to taking disciplinary action schools should consider issues related to a student's involved in the child welfare system. (J-1)



Special Populations (L - M)

Students with Disabilities (L) -There are unique barriers faced by students with disabilities, who comprise a significant percentage of students in foster care. (L-1)

- ✓ Students in foster care with disabilities who change schools should receive appropriate special education services and modifications at their new school (L-2, L-3, L-7) with the Least Restrictive Environment.
- ✓ L-4 defines who can act as a “parent” for students with disabilities in foster care under Part B of IDEA

Multilingual Learners (MLs) (M) -Public schools must ensure MLs can participate meaningfully and equally in educational programs under Title VI of the Civil Rights Act of 1964 (Title VI) and the Equal Educational Opportunities Act of 1974 (EEOA).

- ✓ School stability provisions for ML students may include involving translators and considering language needs during the BID process and provision of transportation. (M-1, M-2)



Special Populations (N - O)

McKinney-Vento (MV) (N)-There are circumstances in which a student in foster care may also be eligible for services under MV, including when a student runs away from their foster caregivers or when a natural disaster displaces a student and their foster caregivers. (N-1). Districts and DSS are encouraged to establish a transition process for school of origin transportation when a student exits MV by entering foster care. (N-2). Foster care and MV staff are encouraged to collaborate to connect students to programs, share information, and coordinate with community-based providers. (N-3).

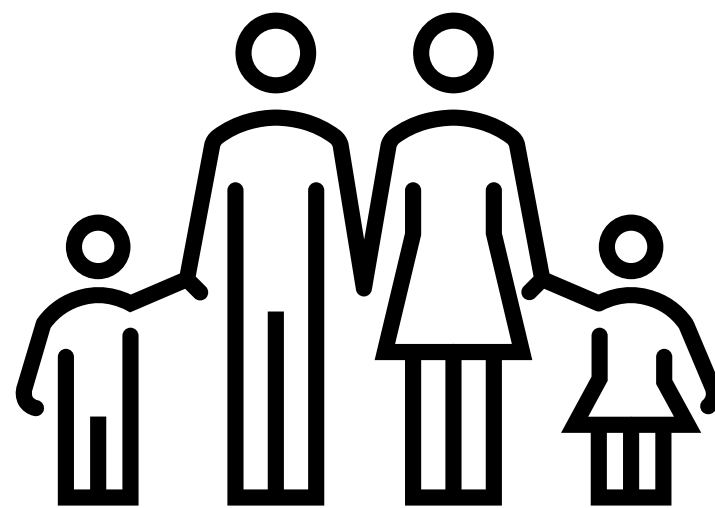
Juvenile Justice Involvement (DJJ) (O)- Districts, DSS, and DJJ are encouraged to develop procedures for students transitioning between these systems to promote educational stability and to develop data-sharing routines to ensure relevant educational records are immediately transferred. (O-3). A student in foster care also may be eligible to receive Title I, Part D funds, which provide educational and related services to support the education of students who are neglected, delinquent, or at-risk. (O-2).



Special Populations (Q)

Preschool-Aged Students-Preschool students in foster care are eligible to receive Title I services on the same basis as other students who attend a Title I school. (R-2, R-3).

If a District offers a public preschool education, it must implement the Title I educational stability provisions for children in foster care in preschool, including ensuring that a child in foster care remains in their preschool of origin, unless a determination is made that it is not in the child's best interest. (See ESEA section 1111(g)(1)(E)).



Funding (R – S)

Title I Part A of the ESEA (R) - Educational agencies can use Title I funds to cover “additional costs” incurred in providing school of origin transportation or to fund positions LEA POCs (R-1). In addition, students in foster care are eligible to receive Title I services on the same basis as other students who attend a Title I school. (R-2, R-3).

Title IV, Part A of the ESEA (S) - LEAs have flexibility in how they utilize these funds and are encouraged to involve stakeholders with expertise in the foster care system as part of the program’s required stakeholder engagement and comprehensive needs assessment. (S-2).



Funding (T – V)

21st Century (T)- These programs may benefit students in foster care by providing programs that address the unique academic and social-emotional needs and may include opportunities for parents and caregivers. (T-1, T-4). 21st Century funds may be used for reasonable costs to transport participating students to and from a 21st Century program. (T-3). FC POCs are encouraged to assist students in foster care in accessing 21st Century programs and work with staff to ensure that the unique needs of students in foster care are addressed. (T-4).

Title IV-E (Social Security Act) (V)- DSS has access to these funds for students that qualify (unfortunately not all students are eligible). These funds cover the costs associated with maintaining a child in a foster care placement (which can include supplies and transportation).



Highlight: Funding Note



The guidance cautions some of these funding streams are only available for certain eligible students, not all students in foster care.



Data Collection (W – X)

Educational agencies are encouraged to use data-driven program implementation to track progress of students in foster care over time, improve service delivery, and guide cross-system collaboration. (W-1)

Districts should track (W-2):

- ✓ Demographic data
- ✓ Levels of academic performance
- ✓ Chronic Absenteeism (X-2)
- ✓ Education/special education-related data
- ✓ Educational stability provisions
- ✓ Outcomes of BIDs
- ✓ School of origin transportation
- ✓ School enrollment/discontinuity (Are timelines followed)
- ✓ Additionally apply data from community-based and advocacy organizations (X-8)



Data Reporting (X)

State and Local Districts must include student achievement and high school graduation rates disaggregated by student groups, including students in foster care, on Title I State and local report cards. (X-1) (while ensuring that such information does not reveal personally identifiable information about students (X-2))

- **New this past school year - ED *Facts* now includes: Enrollment counts for LEAs that receive Title I subgrants. (X-3)**

DSS must include certain education records as part of a child's case plan and required to submit certain data to the Adoption and Foster Care Analysis and Reporting System (AFCARS) twice a year. (X-5, 6)

- ✓ The names/addresses of the student's educational providers
- ✓ The student's school record and grade-level performance
- ✓ Student's current level of schooling
- ✓ The highest grade completed
- ✓ If the student has/had an IEP or IFSP



Data Sharing (Y)

Interagency Data Sharing Routines: Educational agencies are encouraged to collaborate with child welfare agencies and develop interagency data-sharing routines to identify students in foster care. (Y-2)

- This is how we have the Monthly Foster Roster
- New ways of sharing data are being explored at the state level!

The guidance lists factors to consider in developing interagency data-sharing agreements (Y-4, Y-5, Y-6):

- ✓ Data elements
- ✓ Frequency of exchange
- ✓ Data use
- ✓ Access by third parties



Data Privacy (Z)

Under the Family Educational Rights and Privacy Act (FERPA), an educational agency generally may not disclose education records or personally identifiable information (PII) to a third party unless the student's parent provides written consent. (Z-1).

- ✓ However, there are exceptions to FERPA that may permit education agencies to disclose PII of a student in foster care without a parent's consent, including disclosing PII to another school for enrollment purposes and, pursuant to the Uninterrupted Scholars Act amendment to FERPA, to a child welfare agency representative legally responsible for a student's care to address a student's educational needs.¹⁴ (Z-1, Z-2, Z-3).



Next Steps

- ✓ Read through the guidance yourself (There maybe items not mentioned today that are in the new guidance)
- ✓ What LEA policies need an update or change?
- ✓ What procedures could be put in place to reduce barriers and follow timelines?
- ✓ How can the State Foster Care Team help?



Important Links and Guidance

- [Dear Colleague Letter \(ED\)](#)
- [Children's Bureau Letter \(DHHS\)](#)
- [Every Student Succeeds Act \(ESSA\)](#)
- [SCDE Foster Care Website](#)
- [Best Interest Determination Important Information](#)
- [Best Interest Determination Placement Forms](#)
- [Immediate Enrollment Form](#)
- [District Foster Care Liaison List](#)
- [Non-Regulatory Guidance - U.S. Department of Education](#)



Questions



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DSS and SCDE Foster Care Team

**Shana Charles, DSS
Statewide Education
and Non-Citizen
Advocate**

Shana.Charles@dss.sc.gov

**LaVerne Latham, DSS
Regional Education
Specialist & Non-Citizen
Advocate
Low Country**

Laverne.P.Latham@dss.sc.gov

**Tahmeka Pigott-Murphy, DSS
Regional Education
Specialist & Non-Citizen
Advocate
Upstate**

Tahmeka.Pigott-Murphy@dss.sc.gov

**Kim Humphrey,
SCDE
Foster Care Point of
Contact**

khumphrey@ed.sc.gov

**Brittany Gibson, DSS
Regional Education
Specialist & Non-
Citizen Advocate
Pee Dee**

Brittany.Gibson@dss.sc.gov

**Megan Temple, DSS
Regional Education
Specialist & Non-
Citizen Advocate
Midlands
(Currently on Leave)**

Megan.Temple@dss.sc.gov





ed.sc.gov