



State of Arizona
Department of Education



November 2019

Alert to Special Education Directors and Program Administrators: FAPE Obligation for Students Living in Group Homes

In an effort to ensure compliance with the Every Students Succeeds Act (ESSA) and the Individuals with Disabilities Education Act (IDEA), ADE/ESS in collaboration with ADE/Foster Care, is issuing guidance relating to students with disabilities living in group homes.

Under IDEA, “parent” is defined as (34 C.F.R. 300.30):

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
- (5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

Under ESSA, students placed in foster care¹ should have their “school of origin”² considered the default option for enrollment purposes, based on the best interest of the child (ESEA 1111(g)(1)(E) as amended by ESSA).

Under both ESSA and IDEA, a parent (as defined above) would retain educational decision-making authority, even when a child is placed in a group home. Under ESSA, this includes decisions regarding enrollment in school. When a child is placed in a group home and parental rights *have not been severed*, the parent retains educational decision-making and therefore, the obligation of enrollment and provision of FAPE would be based on the residence of the student’s parent(s) and the best interest of the child. This is strengthened by the ESSA **requirement of default consideration for the student’s “school of origin.”**

In a situation where a child is placed in foster care and parental rights *have been severed*, the obligation under ESSA to consider “school of origin” is still a requirement, but the enrollment requirement and obligation of FAPE may shift to the district boundaries where the foster home is located and/or the district boundaries within which the student’s foster parent resides and the best interest of the child, if the student has been assigned a foster parent.

Note: Under state statute, there is no specific authority for group home staff to make special educational decisions on behalf of a child, especially when parental rights have not been severed. Where no parent can be identified or located, appointment of a surrogate parent may be appropriate.

ADE/ESS suggests public education agencies (PEAs) review enrollment policies, procedures, and practices to ensure compliance with ESSA and IDEA as they relate to students with disabilities placed in group homes. Additional resources regarding ESSA and Foster Care can be found at the following link: <https://www.azed.gov/fostercare/>.

¹ 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. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed, and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made. (45 C.F.R. § 1355.20(a))

²The school of origin is the school in which a child is enrolled at the time of placement in foster care. If a child’s foster care placement changes, the school of origin would then be considered the school in which the child is enrolled at the time of the placement change. (<https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>)