

# STUDENTS IN FOSTER CARE RECEIVING SPECIAL EDUCATION



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ARIZONA DEPARTMENT OF EDUCATION  
EXCEPTIONAL STUDENT SERVICES & UNIQUE POPULATIONS  
UPDATED 12/2021

## Learning Outcome/Disclaimer

- To provide school personnel, agencies, and parents with information, clarification, and guidance relating to students in foster care receiving special education
- This is meant to be technical assistance and should not be construed as legal guidance



## Foster Care Definition

- Foster Care- 24-hour (a day) substitute care for children placed away from their parents or guardians and for whom the child welfare agency (DCS, tribal, or local) has placement and care responsibility



# Child Welfare Agencies in AZ



In Arizona we have multiple child welfare agencies (CWA)

- The state child welfare agency
  - Department of Child Safety (DCS)
- Tribal child welfare agencies
- Local child welfare agencies

## Purpose of the IDEA

- To ensure that all children with disabilities have available to them FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living



## IDEA Definition of Parent



- A biological or adoptive parent
- A foster parent
- A guardian generally authorized to act as the child's parent or authorized to make educational decisions (not the state)
- An individual acting in the place of a biological or adoptive parent
- A surrogate parent

# HOW CAN THE CHILD WELFARE AGENCY HELP THE SCHOOL DETERMINE THE IDEA PARENT?

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- Provide the name and contact information of the student's IDEA parent
- Provide relevant information
  - Court orders suspending/terminating parental rights
  - Documentation that parents are unidentifiable or their location is unknown
  - Foster parent information
  - Legal guardian paperwork as it relates to educational rights
- Collaborate with the school and ADE to appoint a surrogate parent

## WHEN CAN THE FOSTER PARENT ACT AS IDEA PARENT?

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- Biological parents' rights have been severed and the student is placed with a foster parent
  - Surrogate Parent is needed for students placed in group homes
- Biological parent still has rights but is not "attempting to act as parent" and the student is placed with foster parent
  - Document all attempts to try to involve biological parent(s)
  - If biological parents' still have their rights and they are attempting to act as parent, they must be considered the IDEA parent
- If a judicial decree or order identifies the foster parent as the IDEA parent

## When can Group Home/Congregate Care Staff act as IDEA Parent?

- **Never**
- Group home staff do not fall under the definition of IDEA parent
- Federal law specifically prohibits employees of the State Education Agency, the child's school, or employees of any agency involved in the child's education or care from serving as the child's surrogate parent



# WHAT NOTIFICATION MIGHT THE PEA RECEIVE WHEN A STUDENT IS PLACED IN FOSTER CARE?

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- For students in DCS custody, the **Notice to Provider** is the document that authorizes caregivers to enroll the child in school and obtain medical care for the child. It includes:
  - DCS Specialist's contact information
  - Specifications about contact with the child's family
  - Child's health coverage identification number
  - **The Notice to Provider Form does not grant educational rights**
- For students in the custody of Tribal and local CWAs, those agencies may have a similar form that authorizes caregivers to enroll the child in school and obtain medical care for the child

## WHO HAS EDUCATIONAL RIGHTS WHEN THE STUDENT IN FOSTER CARE IS A WARD OF THE TRIBE?

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- The Indian Child Welfare Act (ICWA) provides that an Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child
- Under ICWA, it outlines that Indian tribes can assign nearly any individual under their purview to meet many definitions of parent under the IDEA under the governance of their laws
  - This could be the Tribal Child Welfare Agency staff or case managers

## WHEN IS A SURROGATE PARENT NEEDED?

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Each public agency must ensure that the rights of a child are protected when–

- No IDEA parent can be identified
- The public agency, after reasonable efforts, cannot locate a parent
- The child is a ward of the State under the laws of that State
- The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act

# How is a surrogate parent appointed?

- Appointment by ADE
  - School Applies
- Appointment by the Court
  - CWA motions the court
- Surrogate parents are only appointed when no other parent option is available



State of Arizona  
Department of Education

## NOTICE OF APPOINTMENT OF SURROGATE PARENT

Date: Today's Date

To Whom It May Concern:

It has been determined that Student Name, DOB Student DOB, enrolled in School District, requires a surrogate parent in accordance with federal law (34 C.F.R § 300.519) and state law (A.R.S § 15-763.01). The Arizona Department of Education, by and through this notice, hereby appoints Surrogate Parent to represent the student in special education matters, effective immediately. This appointment will remain in effect until such time as a *Notice to Terminate* is received and processed by this office.

If you have any questions about this notice or the special education process, please contact the Surrogate Parent Program Coordinator at (520) 770-3175 or via email at [SurrogateParents@azed.gov](mailto:SurrogateParents@azed.gov).

Stefanie Sharkey  
Surrogate Parent Program Coordinator  
Exceptional Student Services  
Arizona Department of Education

CC: Surrogate Parent  
LEA Rep

# WHO CAN REQUEST A SPECIAL EDUCATION EVALUATION FOR A STUDENT IN FOSTER CARE?

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- Either a **parent** of a child or a **public agency** may initiate a request for an initial evaluation to determine if the child is a child with a disability
- Group Home staff are not considered a Parent under this definition
- CWAs are not considered a Parent or a Public Agency under this definition

## Who can examine records of a student in foster care?



- The parents of a child with a disability must be afforded an opportunity to inspect and review all education records
- Agency caseworkers or other representatives who have the right to access a student's case plan if the State or local CWA or tribal organization is legally responsible for the care and protection of the student

## Who should participate in special education meetings for a student in foster care?

- Required:

- Parent of the child
- General education teacher
- Special education teacher
- Representative of the public agency
- Individual who can interpret evaluation results
- Whenever appropriate, the child with a disability

- At the discretion of the parent or the agency, examples of others
  - Related service personnel
  - Child/family advocates
  - Court Appointed Special Advocates (CASA)
  - CWA staff
  - Foster parent if biological parent still has rights
  - Community members
  - Language interpreters

# School, Private School, & School of Origin Defined

- "School" or "public school" means any public institution established for the purposes of offering instruction to pupils
- "Private school" means a nonpublic institution where instruction is imparted (ex. THE ACES)
- "School of origin" is the school in which a child is enrolled at the time of placement in foster care or foster care placement change



What is the school of origin if the student is enrolled in an approved private day school?

# Approved Private Day School

- When a student is enrolled in an approved private day school, the school of origin is the public school that would have placed the child
- This aligns between the state definition of “school” vs “private school” under the expanded details for “school of origin”

## WHEN DOES THE STUDENT STAY IN THE SCHOOL OF ORIGIN?

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- The student remains in the school of origin unless a determination is made that it is not in such student's best interest to attend the school of origin
- To the extent feasible and appropriate, an LEA must ensure that a child remains in his or her school of origin while the disputes are being resolved to minimize disruptions and reduce the number of moves between schools

## ESSA Requirements for Tribal CWA

- The foster care school stability provisions within ESSA apply to students in the custody of the tribal CWA as well



# Best Interest Determination (BID)

CSO-1388A (6-17) ARIZONA DEPARTMENT OF CHILD SAFETY  
**BEST INTERESTS DETERMINATION AND TRANSPORTATION PLAN**

Best Interests Determination: Foster Student School of Origin Date: / /

STUDENT NAME: CURRENT SCHOOL: GRADE:

PARENT: CURRENT CAREGIVER:

DCS SPECIALIST: LIA POINT OF CONTACT:

Remaining in the School of Origin Considerations	Transferring to a New School Considerations
<input type="checkbox"/> Student desires to remain in school of origin	<input type="checkbox"/> Student desires to move to new school
<input type="checkbox"/> Parent desires student to remain in school of origin	<input type="checkbox"/> Parent desires student to move to new school
<input type="checkbox"/> Personal safety of the student <i>The school of origin has advantages for the safety of the student.</i>	<input type="checkbox"/> Personal safety of the student <i>The new school has advantages for the safety of the student. The student has destructive or dangerous relationships at the school of origin.</i>
<input type="checkbox"/> Student's need for special instruction <i>The student's need for special instruction, such as Section 304 or special education and related services, can be met better at the school of origin.</i>	<input type="checkbox"/> Student's need for special instruction <i>The student's need for special instruction, such as Section 304 or special education and related services, can be met better at the new school and can be implemented immediately upon entry to the new school.</i>
<input type="checkbox"/> English Language Learners <i>Is the student an English Language Learner, and if so, is the school of origin equipped to meet the ELL needs or other language needs of the student?</i>	<input type="checkbox"/> English Language Learners <i>Is the student an English Language Learner, and if so, is the new school equipped to meet the ELL needs or other language needs of the student?</i>
<input type="checkbox"/> Continuity of Instruction <i>Change in school may interrupt academic progress or result in loss of credits. The student has been in this environment for an extended period of time.</i>	<input type="checkbox"/> Continuity of Instruction <i>Student has attended the school of origin for only a brief time. Change in school will not impact academic progress or credits earned.</i>
<input type="checkbox"/> Age and connections of the student <i>Student is older, maintaining friends and contacts with peers and staff is critical to the student's school experience and participation. Student has siblings in the same school.</i>	<input type="checkbox"/> Age and social connections of the student <i>The student is younger or has no positive connection to a particular peer or social group, or to school staff. Student has siblings in same school and contact presents concerns.</i>
<input type="checkbox"/> Academic Strength and Grade Placement <i>The student is struggling academically and is not at grade level, and is likely to fall further behind if transferred to another school.</i>	<input type="checkbox"/> Academic Strength and Grade Placement <i>The student's academic performance is strong and at grade level, and is likely to recover from a school transfer.</i>
<input type="checkbox"/> Mobility, social and emotional state <i>The child has experienced numerous school changes, is suffering from the effects of mobility, has developed strong ties to the current school, or involved in school related or extra-curricular activities.</i>	<input type="checkbox"/> Mobility, social and emotional state <i>The child seems to be coping adequately with mobility; does not feel strong ties to the current school, or is not involved in school related or extra-curricular activities.</i>
<input type="checkbox"/> Distance of the commute and its impact on the student's education and/or special needs <i>The advantage of remaining in the school of origin outweighs any potential disadvantages presented by the length of the commute.</i>	<input type="checkbox"/> Distance of the commute and its impact on the student's education and/or special needs <i>The length of the commute will negatively impact the student's concentration, attitude, or readiness for school, or is inappropriate for the student's age or other reasons.</i>
<input type="checkbox"/> Length of anticipated stay in current placement <i>The student's current living situation continues to be uncertain. The student will benefit from the continuity offered by remaining in the school of origin.</i>	<input type="checkbox"/> Length of anticipated stay in current placement <i>The student's current living situation appears to be stable and unlikely to change. The student will benefit from developing relationships with school peers who live in his or her community school.</i>

BEST INTERESTS-SCHOOL PLACEMENT: START DATE: / /

STUDENT:  Agree  Disagree Parent:  Agree  Disagree

DCS Specialist:  Agree  Disagree LIA POC:  Agree  Disagree

- The BID is a process where the school and the child welfare agency collaborate in determining the best interest of a child in foster care
- It is to determine if the student will stay in the school of origin or go to a new school
- **The BID is not the appropriate time to request special education services or changes to the IEP; that is for the IEP team to decide during an IEP meeting**
- [DCS BID Form](#)

## When should the BID take place?

- The BID should take place as early as possible when it is known that a student in foster care is moved, either due to entering the foster care system or changing foster care placements

**As**

**Early**

**As**

**Possible**

## Factors that should be considered in the BID

- Child's Preferences
  - Attachment to School
  - Relationships with Peers and Staff
  - School Climate
- Parent or EDM Preferences
- Placement of sibling(s)
- Safety
- Availability and quality of the services to meet educational and socioemotional needs
- History and impact of school
- Impact of length of the commute

- Whether the student is receiving services [IDEA, 504, EL] and availability of those required services in a school other than the school of origin
- Transportation costs **should not be** considered when determining a child's best interest
- **The BID is not the appropriate time to request special education services or changes to the IEP; that is for the IEP team to decide during an IEP meeting**

# SPECIAL CONSIDERATIONS AND LEGAL REQUIREMENTS WHEN MAKING THE BID

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- Eligible students with disabilities retain their right to receive a FAPE in the least restrictive environment
- When making decisions regarding the educational placement of students with disabilities under IDEA and Section 504, the LEA must ensure that all required special educational and related services and supports are provided in the least restrictive placement where the child's unique needs, as described in the student's IEP or Section 504 plan, can be met

# Who should attend the BID of a student in special education?



- **Required**

- Child welfare agency
- Representative from the school of origin

- **Recommended**

- Representative from possible new school
- Child, when appropriate
- Biological parents, when appropriate
- Foster parents
- Surrogate Parent or EDM (if one is appointed)
- CASA (if one is appointed)
- Child's Attorney
- Guardian ad litem
- Relatives or others who might support the child

## WHO HAS FINAL SAY IN THE BID?

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- **The child welfare agency (CWA) should be considered the final decision maker** in making the best interest determination
- The CWA is uniquely positioned to assess vital non-educational factors such as safety, sibling placements, the child's permanency goal, and the other components of the case plan
- The CWA also has the authority, capacity, and responsibility to collaborate with and gain information from multiple parties, including parents, children, schools, and the court in making these decisions

## What happens with the IEP when a student changes schools?

IEPs for children who transfer public agencies **in the same State**

- Adopts the child's IEP from the previous public agency or
- Develops, adopts, and implements a new IEP

IEPs for children who transfer **from another State**

- Conducts an evaluation (if determined to be necessary by the new public agency) and
- Develops, adopts, and implements a new IEP, if appropriate

## TRANSMITTAL OF RECORDS

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- **Within five school days** after enrolling a transfer pupil, a school shall request directly from the pupil's previous school a certified copy of the pupil's record, including
  - IEP
  - Supporting documents
  - Any other records relating to the provision of special education or related services to the child
- The previous public agency in which the child was enrolled shall comply and forward the record **within ten school days** after receipt of the request

Who coordinates transportation when the child remains in the school of origin?



- **The local education agency (LEA) and the child welfare agency (CWA)**
- The LEA and CWA must collaborate to determine how transportation will be provided, arranged, and funded for the duration of the child's time in foster care

# HOW SHOULD THE LEA PAY FOR TRANSPORTATION IN A COST-EFFECTIVE MANNER?

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- Pursue existing & low or no-cost options
  - Examples include:
    - Child may be dropped off at a school bus stop
    - Public transportation options
    - Transported by the foster parents or other family member
    - Pre-existing bus routes or stops close to the new foster care placement
    - IDEA funds may be used to pay for transportation services **if the child's IEP Team determines transportation is a related service** that is required for a child with disabilities in foster care to receive FAPE
- If there are additional costs incurred, the LEA will provide transportation to the school of origin if
  - CWA agrees to reimburse the LEA for the cost of such transportation
  - The LEA agrees to pay for the cost of such transportation
  - The LEA and the CWA agree to share the cost of such transportation

# Sample Procedure Transportation Plan

- ADE's Foster Care Education Program has provided a [Sample Procedure Document](#) to access the most cost effective and prompt way to provide transportation to the school of origin
- <https://cms.azed.gov/home/GetDocumentFile?id=597f4e8a3217e1026864bad1>

## Sample Procedure

### Transportation Plan to Ensure School Stability for Individual Students in Foster Care

Once a child in foster care is identified, the Local Educational Agency's (LEA) Foster Care Point of Contact (POC) shall be notified. The LEA Foster Care POC will execute the procedure for ensuring children in foster care that need transportation to their 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)) & how that transportation will be provided, arranged, and funded.

Local Educational Agency: [Click here to enter text.](#)

- School (Name and Contact Info): [Click here to enter text.](#)
- LEA Foster Care POC (Name and Contact Info): [Click here to enter text.](#)
- Transportation Office contact (Name and Contact Info): [Click here to enter text.](#)
- Student(s) (Name and DOB): [Click here to enter text.](#) Grade: [Click here to enter text.](#)
- Placement/Caregiver (Name and Contact Info): [Click here to enter text.](#)
- Child Welfare Agency (CWA) POC (Name and Contact Info): [Click here to enter text.](#)
- CWA Specialist (Name and Contact Info): [Click here to enter text.](#)
- CWA Specialist's Supervisor (Name and Contact Info): [Click here to enter text.](#)

Placement/Caregiver Address: [Click here to enter text.](#)

School Address: [Click here to enter text.](#)

#### Procedure

- Is the foster child placed in this LEA's district boundaries (if applicable)? YES  NO
- If yes, this LEA shall transport this student in the same manner as the rest of their students. If this LEA does not have boundaries or does not transport their students continue with this procedure.
  - If no, continue with this procedure.

# HOW LONG DOES THE LEA HAVE TO PROVIDE TRANSPORTATION SERVICES TO THE SCHOOL OF ORIGIN FOR THE STUDENT IN FOSTER CARE?

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- For the duration of the time the child is in foster care
  - If the child changes foster care placements, a new BID is completed to determine if the student remains in the school of origin or is immediately enrolled into a new school
- When a child exits foster care the LEA should
  - Continue to prioritize the child's educational stability
  - Consider each child's best interest on a case-by-case basis
  - Make every effort to continue to ensure transportation is provided through the end of the school year, if needed, when remaining in the school of origin would be in the child's best interest

ANY QUESTIONS?

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## ADE Specialist Contact Information

- Joey Taylor
- (602) 542-3569
- [FosterCare@azed.gov](mailto:FosterCare@azed.gov)
- [Foster Care Website](#)
- <https://www.azed.gov/fostercare>

- Stefanie Sharkey
- (520) 770-3175
- [SurrogateParents@azed.gov](mailto:SurrogateParents@azed.gov)
- [Surrogate Parent Website](#)
- <http://www.azed.gov/specialeducation/surrogate/>

## More Contact Information

- ESS Main Line
  - (602) 542-4013
  - [ESSInbox@azed.gov](mailto:ESSInbox@azed.gov)
  
  - [Find your LEA's Foster Care Liaison](#)
    - <https://www.azed.gov/fostercare/foster-care-liaisons>
- DCS Main Line
  - (602) 255-2500
  - [DCS Field Offices Contact Information](#)
    - <https://dcs.az.gov/about/offices>
  - [DCS Regional Contacts for School Stability](#)
    - <https://www.azed.gov/fostercare>