



**Arizona Department of Education  
Kathy Hoffman, Superintendent of Public Education**

**Exceptional Student Services  
Arizona Technical Assistance System  
(AZ-TAS)**

**Students in Foster Care  
Receiving Special Education**

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## Purpose of this Document

This document was developed to provide school personnel, agencies, and parents with information, clarification, and guidance relating to students in foster care receiving special education. This AZ-TAS document is meant to be technical assistance and should not be construed as legal guidance. Legal citations are included for reference points.

## Important Acronyms

ADE—Arizona Department of Education  
BID—Best Interest Determination  
CWA—Child Welfare Agency  
DCS—Department of Child Safety  
EEOA—Equal Educational Opportunities Act  
EL—English Learner  
FAPE—Free Appropriate Public Education  
ICWA—Indian Child Welfare Act  
IDEA—Individuals with Disabilities Education Act  
IEP—Individualized Education Program  
LEA—Local Education Agency  
PII—Personal Identifiable Information  
SEA—State Education Agency  
SOO—School of Origin  
USA—Uninterrupted Scholars Act

## Definition of Foster Care

“Consistent with the Fostering Connections Act, “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, childcare institutions, and pre-adoptive homes.”<sup>1</sup>

## Child Welfare Agencies in Arizona

In Arizona we have multiple child welfare agencies (CWA):

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

## The Purpose of the IDEA

The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”<sup>2</sup>

## The IDEA Definition of Parent

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.<sup>3</sup>

## How the Child Welfare Agency Can Help the School to Determine the IDEA Parent

- Provide schools with the name and contact information of a parent who can consent to or refuse special education evaluations and/or services for children in out-of-home care.<sup>4</sup>
- The CWA “shall promptly notify the child’s public education agency of the name and contact information for the child’s parent, unless a court has ordered otherwise.”<sup>5</sup>
- If a public education agency notifies the [CWA] that the child requires an initial evaluation for special education and related services and the parent identified cannot be located or does not attempt to participate, the [CWA] shall promptly notify the public education agency of a parent who can consent to or refuse the initial evaluation.<sup>5</sup>
- The DCS or CWA Specialist should assist the LEA to determine the necessity of a surrogate parent, by providing relevant information such as:
  - court orders suspending/terminating a parent’s educational rights
  - documentation that the parent is unidentifiable
  - documentation that the parent’s whereabouts are unknown
  - foster parent/kinship caregiver information
  - legal guardian paperwork as it relates to educational rights<sup>4</sup>

## When the Foster Parent Can Be the IDEA Parent

If the biological parents still have their educational rights, they are the IDEA parent. “Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate.”<sup>6</sup>

In instances where the biological parent still has educational rights, but the biological parent is not “attempting to act as the parent,”<sup>7</sup> the foster parent can act as the IDEA parent.

- In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place with the biological parent, such as—
  - Detailed records of telephone calls made or attempted and the results of those calls;
  - Copies of correspondence sent to the parents and any responses received; and
  - Detailed records of visits made to the parent’s home or place of employment and the results of those visits.<sup>8</sup>

If biological parents’ rights are severed and the student is with a foster parent, not a group home, the foster parent can act as the IDEA parent.

If a judicial decree or order identifies [the foster parent] to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the [IDEA parent].<sup>9</sup>

#### When Group Home/Congregate Care Staff Can 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, personnel at 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.<sup>35</sup>

#### Notification That the LEA Might Receive When a Student is Placed in Foster Care

For students in DCS custody, “the Notice to Provider form is a document that authorizes caregivers to enroll the child in school and obtain medical care for the child. The child’s assigned DCS specialist will give you a Notice to Provider form when the child is placed in your home. The Notice to Provider form includes the DCS Specialist’s contact information, specifications about contact with the child’s family, and the child’s health coverage identification number.”<sup>32</sup>

#### **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.

### Educational Rights When the Student in Foster Care is a Ward of the Tribe

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 who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.”<sup>16</sup>

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.

### When a Surrogate Parent is Needed

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

- No parent (as defined in §300.30) 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<sup>10</sup>

The education surrogate parent has the same rights and responsibilities as a biological parent or guardian in special education matters relating to the student, including the right to represent the student with regard to identification, evaluation, and educational placement.<sup>10</sup>

### How a Surrogate Parent is Appointed to the Student

**Appointment by ADE:** After the public agency has determined the need for a surrogate parent, they will reach out to potential surrogate parents to confirm one for their student. The school will then submit an application to ADE. ADE will process the application and issue a Notice of Appointment, granting the Surrogate Parent educational rights to the student. For more details on this process, please reach out to the Surrogate Parent Program Coordinator at ADE. ([SurrogateParents@azed.gov](mailto:SurrogateParents@azed.gov), 520.770.3175)

**Appointment by the Court:** If it is in the best interest of the child, “the DCS Specialist will request the Assistant Attorney General to file a motion to suspend the parent’s special education rights and authorize another individual to serve in this role.”<sup>4</sup>

### Who Can Request a Special Education Evaluation for a Student in Foster Care

Either a **parent**<sup>3</sup> of a child or a **public agency**<sup>12</sup> may initiate a request for an initial evaluation to determine if the child is a child with a disability.<sup>11</sup>

- 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 with respect to

1. The identification, evaluation, and educational placement of the child
2. The provision of FAPE to the child.<sup>13</sup>

The USA (Uninterrupted Scholars Act) permits, but does not require, educational agencies and institutions to disclose PII (Personal Identifiable Information) from the education records of students in foster care placement without getting prior consent of the parent or eligible student. The educational agency or institution may disclose PII to an agency caseworker or other representative who has 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.<sup>14</sup>

### Who Should Participate in Special Education Meetings for a Student in Foster Care

The public agency must ensure that the IEP Team for each child with a disability includes<sup>15</sup>

- Parent of the child<sup>3</sup>
- 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, other individuals who have knowledge or special expertise regarding the child.<sup>15</sup> Examples include
  - 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 or Public School, Private School, and School of Origin Defined*

"**School**" or "**public school**" means any public institution established for the purposes of offering instruction to pupils.<sup>31</sup>

"**Private school**" means a nonpublic institution where instruction is imparted.<sup>39</sup>

"The **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."<sup>17</sup>

### *The School of Origin if the Student is Enrolled in an 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.

### *When the Student Stays in 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.<sup>18</sup>

The SEA and its LEAs should collaborate "to ensure the educational stability of children in foster care, including assurances that—

- (i) any such child enrolls or remains in such child's school of origin, unless a determination is made that it is not in such child's best interest to attend the school of origin, which decision shall be based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;
- (ii) when a determination is made that it is not in such child's best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment;
- (iii) the enrolling school shall immediately contact the school last attended by any such child to obtain relevant academic and other records."<sup>19</sup>

### *How ESSA and its SOO Requirement Applies to Students in the Custody of Tribal CWAs*

The requirements for ensuring educational stability for children in foster care under section 1111(g)(1)(E) apply to all children in foster care enrolled in schools in the SEA. Consistent with the Fostering Connections Act, "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, childcare 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 or that 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.<sup>1</sup>

### [Best Interest Determination \(BID\)](#)

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 or origin or go to a new school.

“...the decision shall be based on all factors relating to the child’s best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.”<sup>19</sup>

### [DCS BID Form](#)<sup>36</sup>

#### [When the Best Interest Determination \(BID\) Should 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 placements.

Although Title I does not prescribe a specific timeline for making a best interest determination, the LEA and CWA should make this determination as quickly as possible in order to prevent educational discontinuity for the child. To the extent feasible and appropriate, the LEA must ensure that a child remains in his or her school of origin while this determination is being made.<sup>33</sup>

#### [What Should Be Factored into the BID](#)

- Preferences of the child
- Preferences of the child’s parent(s) or education decision maker(s)
- The child’s attachment to the school, including meaningful relationships with staff and peers
- Placement of the child’s sibling(s)
- Influence of the school climate on the child, including safety
- The availability and quality of the services in the school to meet the child’s educational and socioemotional needs
- History of school transfers and how they have impacted the child
- How the length of the commute would impact the child, based on the child’s developmental stage

- Whether the child is a student with a disability under the IDEA who is receiving special education and related services or a student with a disability under Section 504 [...] and, if so, the availability of those required services in a school other than the school of origin
- Whether the child is an EL and is receiving language services, and, if so, the availability of those required services in a school other than the school of origin, consistent with Title VI and the EEOA.
- Transportation costs **should not be** considered when determining a child's best interest.<sup>20</sup>

**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.**

### BID Special Considerations and Legal Requirements for Students with Disabilities

Eligible students with disabilities retain their right to receive a free appropriate public education 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.<sup>21</sup>

### Who Should Attend the BID of a Student in Special Education

#### Required<sup>22</sup>

- Child welfare agency
- Representative from the school of origin

#### Recommended<sup>22</sup>

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

### The CWA Has the Final Say in the BID

If there is disagreement regarding school placement for a child in foster care, the child welfare agency should be considered the final decision maker in making the best interest determination [...]. The child welfare agency 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 child welfare agency 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.<sup>23</sup>

### What Happens with the Current IEP When a Student Changes School

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

If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either

- Adopts the child's IEP from the previous public agency
- Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324<sup>29</sup>

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

If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency

1. Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency) and
2. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.<sup>29</sup>

#### **Transmittal of records**

To facilitate the transition for a child described (in the two items above)

1. The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled [...]
2. The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency<sup>29</sup>
3. Within five school days after enrolling a transfer pupil from a private school or another school district, a school shall request directly from the pupil's previous school a certified copy of the pupil's record. The requesting school shall exercise due diligence in

obtaining the copy of the record requested. Notwithstanding any financial debt owed by the pupil, any school requested to forward a copy of a transferring pupil's record to the new school shall comply and forward the record within ten school days after receipt of the request unless the record has been flagged pursuant to section 15-829.<sup>30</sup>

### Who Coordinates Transportation when the Child Remains in the School of Origin **The local education agency (LEA) and the child welfare agency.**

An LEA must collaborate with the State or local child welfare agency to develop and implement clear written procedures governing how transportation to maintain children in foster care in their schools of origin, when in their best interest, will be provided, arranged, and funded for the duration of the child's time in foster care.<sup>24</sup>

These 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
  - (III) the local educational agency and the local child welfare agency agree to share the cost of such transportation.<sup>25</sup>

### How the LEA Should Pay for Transportation in a Cost-Effective Manner

LEA should first pursue existing and low or no-cost options for transportation.

Examples include:

- The child may be dropped off at a school bus stop near the existing transportation system for the school of origin
- Public transportation options exist, if the child is of an appropriate age and has or is able to acquire the skills to utilize such options
- The foster parents or other family member(s) are willing and able to transport the child to school
- There are pre-existing bus routes or stops close to the new foster care placement that cross district boundaries, such as bus routes for magnet schools and transportation for homeless students as required by the McKinney-Vento Act

- The child is already eligible for transportation covered by other programs. For example, 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 in order for a child with disabilities in foster care to receive FAPE<sup>26</sup>

In addition to State and local funds that may be available for providing transportation, certain Federal funds may be available to cover additional transportation costs to maintain children in foster care in their schools of origin.<sup>27</sup>

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
- (III) the local educational agency and the local child welfare agency agree to share the cost of such transportation<sup>25</sup>

If there are transportation costs disputes, “the LEA must provide or arrange for adequate and appropriate transportation to and from the school of origin while any disputes are being resolved.”<sup>34</sup>

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.<sup>37</sup>

### How Long the LEA Has to Provide Transportation Services to the School of Origin

An LEA must ensure that a child in foster care needing transportation to the school of origin receives such transportation for the duration of the time the child is in foster care. 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, and, when possible, 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.<sup>28</sup>

### Contact Information

- ADE Foster Care Program Coordinator
  - 602-542-3569
  - [FosterCare@azed.gov](mailto:FosterCare@azed.gov)
- ADE Surrogate Parent Program Coordinator
  - 520-770-3175

- [SurrogateParents@azed.gov](mailto:SurrogateParents@azed.gov)
- ADE ESS
  - 602-542-4013
  - [ESSInbox@azed.gov](mailto:ESSInbox@azed.gov)
- Find your LEA's Foster Care Liaison
  - <https://www.azed.gov/fostercare/lea-child-welfare-agency-points-contact>
- DCS
  - 602-255-2500
  - DCS Field Offices Contact Information
    - <https://dcs.az.gov/about/offices>
  - Regional Contacts for School Stability can be found in the [DCS Notice to LEA & DCS Regional Map](#) on the [ADE Foster Care Website](#)<sup>38</sup>

#### Citations

- 1 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 6, Question 1](#)
- 2 [34 C.F.R. § 300.1\(a\)](#)
- 3 [34 C.F.R. § 300.30\(a\)](#)
- 4 [DCS Website: Special Education and Early Intervention Services for Children in Out-of-Home Care \(Effective Date 2/1/21\)](#)
- 5 [A.R.S. § 8-514.08](#)
- 6 [34 C.F.R. § 300.322\(a\)](#)
- 7 [34 C.F.R. § 300.30\(b\)](#)
- 8 [34 C.F.R. § 300.322\(d\)](#)
- 9 [34 C.F.R. § 300.30\(b\)\(2\)](#)
- 10 [34 C.F.R. § 300.519\(a\)](#)
- 11 [34 C.F.R. § 300.301\(b\)](#)
- 12 [34 C.F.R. § 300.33](#)
- 13 [34 C.F.R. § 300.501\(a\)](#)
- 14 [Guidance on the Amendments to the Family Educational Rights and Privacy Act by the Uninterrupted Scholars Act \(Published 5/27/14\); Page 5-6, Question 4](#)
- 15 [34 C.F.R. § 300.321\(a\)](#)
- 16 [25 U.S.C. § 1911\(a\)](#)
- 17 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 11, Question 10](#)
- 18 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 15, Question 20](#)
- 19 [ESEA Section 1111\(g\)\(1\)\(E\); Page 44/392](#)
- 20 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Pages 11-12, Question 12](#)

- 21 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 13, Question 16](#)
- 22 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Pages 12-13, Question 14](#)
- 23 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 14, Question 18](#)
- 24 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 16, Question 22](#)
- 25 [ESEA Section 1112\(c\)\(5\)\(B\); Page 56/392](#)
- 26 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 17, Question 26](#)
- 27 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 19, Question 30](#)
- 28 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 17, Question 25](#)
- 29 [34 C.F.R. § 300.323\(e-g\)](#)
- 30 [A.R.S. § 15-828\(G\)](#)
- 31 [A.R.S. § 15-101\(22\)](#)
- 32 [DCS Website: What is the Notice to Provider Form?](#)
- 33 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 13, Question 15](#)
- 34 [Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care \(Published 6/23/16\); Page 19, Question 32](#)
- 35 [34 C.F.R. § 300.519\(d\)](#)
- 36 [https://cms.azed.gov/home/GetDocumentFile?id=5c799d221dcb250aec60e3e5](#)
- 37 [https://cms.azed.gov/home/GetDocumentFile?id=597f4e8a3217e1026864bad1](#)
- 38 [https://www.azed.gov/fostercare](#)
- 39 [A.R.S. § 15-101\(21\)](#)