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**TO:** District Superintendents, Superintendents of Public Schools and Charter School LEA Administrators

**FROM:** Kathleen R. DeCataldo, 

**DATE:** August 21, 2018

**SUBJECT:** Educational Stability of Students in Foster Care New Law and Guidance Toolkit

This guidance is being issued by the New York State Education Department (“NYSED” or “the Department”) to provide important information about the recent legislation passed as a part of the 2018-19 budget (Part CC of Chapter 56 of the Laws of 2018) to adopt in state law certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the federal Every Student Succeeds Act (ESSA) of December 2015 and clarify the requirements for school districts and charter schools (local educational agencies or “LEAs”) and local departments of social services (“LDSS”). See Appendix A.

The Department in collaboration with the Office of Children and Family Services has developed guidance and resources to assist school districts and LDSS in meeting the new requirements for ensuring educational stability for students in foster care. The guidance and resources are in a toolkit which may be accessed on [NYSED's Foster Care web \(http://www.p12.nysed.gov/sss/pps/fostercare.html\)](http://www.p12.nysed.gov/sss/pps/fostercare.html) page and is also attached here as Appendix B.

### **Background**

Children in New York are removed from home to avoid “imminent danger to the child's life or health”<sup>1</sup> due to, for example, physical and sexual abuse, neglect and abandonment. Children removed from home also experience rupture of relationships with caregivers and other family members, loss of friends and familiar surroundings and loss of daily routines.<sup>2</sup> Children in foster care, compared to their peers not in care, have higher rates of grade retention, lower scores on standardized tests, higher rates of absenteeism, tardiness and truancy, and are more likely to drop out of school.<sup>3</sup> Children in care experience 3 to 4

<sup>1</sup> New York State Family Court Act §1022.

<sup>2</sup> Walker & Weaver, 2007

<sup>3</sup> Pecora et al., 2005; Smithgall et al., 2004; Vera Institute, 2004; Yu, Day & Williams, 2002.

changes in placements while in care (median) and 1 to 2 placement changes per year (average).<sup>4</sup> School mobility, the usual result of a change in placement, disrupts exposure to key concepts, is linked to lower tests scores and repeating grades, and is linked to dropping out of school.<sup>5</sup> Keeping children in the same school when removed from home maintains connections with teachers, friends, the school nurse, school counselors, coaches, extracurricular activities and provides consistency in curriculum. Students who feel connected to their schools are more likely to succeed academically and graduate, less likely to be truant, be involved in fighting and bullying, less likely to use substances or become pregnant.<sup>6</sup>

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) and ESSA require state and local education agencies to collaborate with state and local departments of social services to promote school stability and educational success for students in foster care.

In 2015, the Field Memo titled "[School Transportation for Students in Foster Care](#)", addressed how transportation should be arranged in different scenarios for students placed in foster care, including situations involving a student being placed in a foster care setting that is located in a different school district than where the student attended school at the time of placement. To the extent that memo provided recommendations for how transportation for students placed in foster care should be arranged and paid for that differs from the requirements of Chapter 56 of the laws of 2018, Part CC, it is superseded by the new law.

### **Definitions**

**Student in Foster Care:** a child who is in the care and custody or custody and guardianship of a local commissioner of social services or the commissioner of the office of children and family services.

**School District of Origin:** the school district in which the student was attending a public school or preschool on a tuition-free basis or was entitled to attend at the time of placement into foster care.

**School District of Residence:** the school district in which the child is residing due to foster care placement.

**School District of Attendance:** The school district where the student placed in foster care is enrolled after a Best Interest Determination is made.

**School of Origin:** 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. For a student in foster care who completes the final grade level

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<sup>4</sup> Yu, Day & Williams, 2002; U.S. Department of Health and Human Services, 2005

<sup>5</sup> Yu, Day & Williams, 2002; U.S. DHHS, 2005; Wood et al., 1993; Rumberger et al., 1999; Rumberger & Larson, 1998; Audette, Algozzine & Warden, 1993; Benson et al., 1979; Kerbow, 1996.

<sup>6</sup> Lonzak et al, 2002; Samdel et al, 1998; Cannell et al, 1995; Schapps, 2003. (students in the general population.)

served by the school of origin, the term school of origin shall include the designated receiving school at the next grade level.

### **Choice of District and School**

**Initial Placement in Foster Care:** The LDSS in consultation with the LEA which the student currently attends, shall designate either the school of origin or school district of residence for a student to attend, based upon a best interest determination made by the LDSS. The student is entitled to attend the school of origin, or any school in the district of residence where the foster care placement is located to which any other students in that district are entitled to attend, including a preschool. The student has the right to attend such school until the end of the school year in which foster care placement ends and for one additional year if that year is the terminal year for the student in that school building.

**Subsequent Changes in Foster Care Placement and Continuing Educational Stability:** The right of a student to educational stability continues through subsequent changes in foster care placement. Based upon the best interest determination of the LDSS, a student in foster care who is moved from one foster care placement to another shall be entitled to attend the school in which the student was last enrolled or attended, or any school that children and youth who live in the attendance area in which the foster care placement is located are eligible to attend, including a preschool. The student has the right to attend such school until the end of the school year in which foster care placement ends and for one additional year if that year is the terminal year for the student in that school building.

### **Point of Contact**

Each LEA must designate a local Point of Contact for students in foster care. The point of contact designated may not be the same person as the McKinney-Vento liaison, unless it is determined that the McKinney-Vento liaison's current duties and responsibilities permit these additional duties.

### **Obligations of School District of Attendance**

**Immediate Enrollment:** If the LDSS determines that the student should attend the school district of attendance, the school must immediately enroll the student, despite the lack of records usually required by the district for enrollment, including proof of residency or immunization, and regardless of whether the student has missed application or enrollment deadlines; unless the student may be excluded temporarily pursuant to Education Law § 906 because of a communicable or infectious disease that imposes a significant risk of infection of others.

**Treatment of Student in Foster Care:** A student in foster care must be treated as a resident of the district for all purposes.

**School Records Request:** The school district must make a written request for the school records of the student to the district where the records are located.

### **Obligations of School District of Origin or District of Attendance**

**School Records Request:** Within 5 days of receipt of a request for records of a student who has been placed, or changed placement, in foster care, the school district must forward a complete copy of the student's records, including, but not limited to: proof of age, academic records, evaluations, immunization records and guardianship papers, if applicable.

### **Transportation by District of Attendance**

Where the best interest determination designates the student's **school of origin** as the school the student should attend, the district of attendance shall arrange for and provide transportation to and from the student's foster care placement and the school of origin. Any cost incurred for transportation up to 50 miles shall be aidable, meaning the school district can receive Transportation State Aid for such costs.

Where the best interest determination designates the student will attend the school district of residence and **not** the school of origin, the school district of residence shall provide transportation to the student on the same basis as a resident student, and any cost incurred up to 50 miles shall be aidable.

Any excess allowable transportation costs associated with transporting a student in foster care (e.g., costs not reimbursed through State Aid, costs not reimbursed through Medicaid for students who receive related services at school billed through Medicaid) shall be split 50-50 between the school district and the social services district, unless they have a written agreement relating to how excess transportation costs should be funded. Excess allowable costs are defined as "the difference between what a school district otherwise would spend to transport a student to his or her assigned school and the cost of transporting a child in foster care to his or her school of origin".

### **Tuition Reimbursement or Cost of Instruction:**

The cost of instruction for a student in foster care is the responsibility of the school district of origin. The new law does not alter the tuition reimbursement mechanism already in place in Education Law §3202(4). It merely changes the terminology. Per Education Law §3202(4), the school district of origin must reimburse the school district of attendance for educational costs if the school district of attendance is not the school district of origin.

Schools are encouraged to thoroughly read the toolkit guidance and review the law with their district's counsel. Questions related to the toolkit may be directed to the following offices:

Transportation questions should be directed to the Office of Pupil Transportation at 518-474-6541 or [transportation@nysed.gov](mailto:transportation@nysed.gov)

Other questions related to foster care should be directed to the Office of Student Support Services at 518-486-6090 or [studentsupportservices@nysed.gov](mailto:studentsupportservices@nysed.gov)

PART CC

51 Section 1. The education law is amended by adding a new section 3244  
52 to read as follows:

53 § 3244. Education of children in foster care. 1. Definitions. For  
54 purposes of this section only, the following definitions shall apply:

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1 a. Child or youth in foster care. For the purposes of this article,  
2 the term "child or youth in foster care" shall mean a child who is in  
3 the care and custody or custody and guardianship of a local commissioner  
4 of social services or the commissioner of the office of children and  
5 family services.

6 b. School district of origin. The term "school district of origin"  
7 shall mean the school district within the state of New York in which the  
8 child or youth in foster care was attending a public school or preschool  
9 on a tuition-free basis or was entitled to attend at the time of place-  
10 ment into foster care when the social services district or the office of  
11 children and family services assumed care and custody or custody and  
12 guardianship of such child or youth, which is different from the school  
13 district of residence.

14 c. School district of residence. The term "school district of resi-  
15 dence" shall mean the public school district within the state of New  
16 York in which the foster care placement is located, which is different  
17 from the school district of origin.

18 d. Feeder school. The term "feeder school" shall mean:

19 (1) a preschool whose students are entitled to attend a specified  
20 elementary school or group of elementary schools upon completion of that  
21 preschool;

22 (2) a school whose students are entitled to attend a specified elemen-  
23 tary, middle, intermediate, or high school or group of specified elemen-  
24 tary, middle, intermediate, or high schools upon completion of the  
25 terminal grade of such school; or

26 (3) a school that sends its students to a receiving school in a neigh-  
27 boring school district pursuant to section two thousand forty of this  
28 chapter.

29 e. Preschool. The term "preschool" shall mean a publicly funded pre-  
30 kindergarten program administered by the department or a local educa-  
31 tional agency or a Head Start program administered by a local educa-  
32 tional agency and/or services under the Individuals with Disabilities  
33 Education Act administered by a local educational agency.

34 f. Receiving school. The term "receiving school" shall mean:

35 (1) a school that enrolls students from a specified or group of  
36 preschools, elementary schools, middle schools, intermediate schools, or  
37 high schools; or

38 (2) a school that enrolls students from a feeder school in a neighbor-  
39 ing local educational agency pursuant to section two thousand forty of  
40 this chapter.

41 g. School of origin. The term "school of origin" shall mean a public  
42 school that a child or youth attended at the time of placement into  
43 foster care, or the school in which the child or youth was last  
44 enrolled, including a preschool or a charter school. Provided that, for  
45 a child or youth in foster care who completes the final grade level  
46 served by the school of origin, the term "school of origin" shall  
47 include the designated receiving school at the next grade level for all  
48 feeder schools. Where the child is eligible to attend school in the

49 school district of origin because the child was placed in foster care  
 50 after such child is eligible to apply, register, or enroll in the public  
 51 preschool or kindergarten or the child is living with a school-age  
 52 sibling who attends school in the school district of origin, the school  
 53 of origin shall include any public school or preschool in which such  
 54 child would have been entitled or eligible to attend based on such  
 55 child's last residence before the circumstances arose which caused such  
 56 child to be placed in foster care.

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1 2. Choice of district and school. a. Notwithstanding any other  
 2 provision of law to the contrary, the social services district, in  
 3 consultation with the appropriate local educational agency or agencies,  
 4 shall designate either the school district of origin or the school  
 5 district of residence within which the child in foster care shall be  
 6 entitled to attend in accordance with a best interest determination made  
 7 by the applicable social services district or voluntary authorized agen-  
 8 cy, as defined in paragraph (a) of subdivision ten of section three  
 9 hundred seventy-one of the social services law, in accordance with the  
 10 regulations of the office of children and family services. The child  
 11 shall be entitled to attend the school of origin or any school that  
 12 children and youth who live in the attendance area in which the foster  
 13 care placement is located are eligible to attend, including a preschool,  
 14 subject to a best interest determination made by the applicable social  
 15 services district or voluntary authorized agency, as defined in para-  
 16 graph (a) of subdivision ten of section three hundred seventy-one of the  
 17 social services law, for the duration of the child's placement in foster  
 18 care and until the end of the school year in which such child is no  
 19 longer in foster care and for one additional year if that year consti-  
 20 tutes the child's terminal year in such building.

21 b. Notwithstanding any other provision of law to the contrary, where  
 22 the school district of origin or school of origin that a child was  
 23 attending on a tuition-free basis or was entitled to attend when such  
 24 child entered foster care is located in New York state and the child's  
 25 foster care placement is located in a contiguous state, the child shall  
 26 be entitled to attend the school of origin or any school that children  
 27 and youth who live in the attendance area in which the foster care  
 28 placement is located are eligible to attend, including a preschool,  
 29 subject to a best interest determination made by the applicable social  
 30 services district or voluntary authorized agency, as defined in para-  
 31 graph (a) of subdivision ten of section three hundred seventy-one of the  
 32 social services law, for the duration of the child's placement in foster  
 33 care and until the end of the school year in which such child is no  
 34 longer in foster care and for one additional year if that year consti-  
 35 tutes the child's terminal year in such building.

36 c. Notwithstanding the provisions of paragraph a or b of this subdivi-  
 37 sion, a child in foster care who is moved from one foster care placement  
 38 to another shall be entitled to continue to attend the school of origin  
 39 or the social services district may designate that the child in foster  
 40 care attend any school that children and youth who live in the attend-  
 41 ance area in which the foster care placement is located are eligible to  
 42 attend, including a preschool, subject to a best interest determination  
 43 made by the applicable social services district or voluntary authorized  
 44 agency, as defined in paragraph (a) of subdivision ten of section three  
 45 hundred seventy-one of the social services law, for the duration of the  
 46 child's placement in foster care and until the end of the school year in  
 47 which the child is no longer in such foster care placement and for one

48 additional year if that year constitutes the child's terminal year in  
 49 such building.

50 d. Upon notification of the designation made by the social services  
 51 district for a foster care youth, the designated school district of  
 52 attendance shall immediately:

53 (1) enroll the child or youth in foster care even if the child or  
 54 youth is unable to produce records normally a requirement for enroll-  
 55 ment, such as previous academic records, records of immunization and/or  
 56 other required health records, proof of residency or other documentation

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1 and/or even if the child has missed application or enrollment deadlines  
 2 during any period of placement in foster care, if applicable. Provided  
 3 that nothing herein shall be construed to require the immediate attend-  
 4 ance of an enrolled student lawfully excluded from school temporarily  
 5 pursuant to section nine hundred six of this chapter because of a commu-  
 6 nicable or infectious disease that imposes a significant risk of  
 7 infection of others;

8 (2) treat the child or youth in foster care as a resident for all  
 9 purposes; and

10 (3) make a written request to the school district where the child's  
 11 records are located for a copy of such records.

12 e. Within five days of receipt of a request for records in accordance  
 13 with subparagraph three of paragraph d of this subdivision, the school  
 14 district shall forward, in a manner consistent with state and federal  
 15 law, a complete copy of the records of the child or youth in foster care  
 16 including, but not limited to, proof of age, academic records, evalu-  
 17 ations, immunization records, and guardianship papers, if applicable.

18 f. Where the school of origin is a charter school, the school district  
 19 designated pursuant to this subdivision shall be deemed to be the school  
 20 district of residence of such child for purposes of fiscal and program-  
 21 matic responsibility under article fifty-six of this chapter and shall  
 22 be responsible for transportation of the child in foster care. If the  
 23 designated school district of attendance is not the school district of  
 24 origin, the designated school district of attendance may seek reimburse-  
 25 ment from the school district of origin in accordance with the  
 26 provisions of subdivision four of section thirty-two hundred two of this  
 27 article.

28 g. Notwithstanding any other provision of law to the contrary, each  
 29 local educational agency, as such term is defined in subsection twenty-  
 30 six of section ninety-one hundred one of the Elementary and Secondary  
 31 Education Act of 1965, as amended by the Every Student Succeeds Act of  
 32 2015, shall designate a local educational agency point of contact for  
 33 children and youth in foster care. Provided that such point of contact  
 34 shall not be the same as the liaison designated pursuant to the subtitle  
 35 B of title VII of the McKinney-Vento Assistance Act, unless the McKin-  
 36 ney-Vento liaison has sufficient ability to carry out the responsibil-  
 37 ities of the McKinney-Vento liaison in addition to the responsibilities  
 38 of the point of contact for children and youth in foster care.

39 3. Reimbursement. The tuition costs of the education of such child or  
 40 youth in foster care shall be borne in accordance with the provisions of  
 41 paragraph d of subdivision four of section thirty-two hundred two of  
 42 this article.

43 4. Transportation. a. Notwithstanding any other provision of law, any  
 44 child or youth in foster care who requires transportation in order to  
 45 attend a school of origin designated pursuant to subdivision two of this

46 section, shall be entitled to receive such transportation pursuant to  
 47 this paragraph. The designated school district of attendance shall  
 48 provide transportation to and from the child's foster care placement  
 49 location and the school of origin. Any cost incurred for such transpor-  
 50 tation that is allowable up to fifty miles each way pursuant to the  
 51 applicable provision of parts two and three of article seventy-three of  
 52 this chapter or herein, shall be aidable pursuant to subdivision seven  
 53 of section thirty-six hundred two of this chapter, provided that the  
 54 approved transportation expense shall not exceed an amount determined by  
 55 the commissioner to be the total cost for providing the most cost-effec-

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1 tive mode of such transportation in a manner consistent with the commis-  
 2 sioner's regulations.

3 b. Notwithstanding any other provision of law, where any child or  
 4 youth in foster care attends the school district of residence and such  
 5 child does not attend the school of origin, such school district shall  
 6 provide transportation to such child on the same basis as a resident  
 7 student. Any cost incurred for such transportation that is allowable  
 8 pursuant to the applicable provisions of parts two and three of article  
 9 seventy-three of this chapter or herein, shall be aidable pursuant to  
 10 subdivision seven of section thirty-six hundred two of this chapter,  
 11 provided that the approved transportation expense shall not exceed an  
 12 amount determined by the commissioner to be the total cost for providing  
 13 the most cost-effective mode of such transportation in a manner consist-  
 14 ent with the commissioner's regulations.

15 c. Excess allowable transportation costs beyond those reimbursed in  
 16 paragraphs a and b of this subdivision resulting from the attendance of  
 17 a child or youth in foster care shall be shared between the social  
 18 services district responsible for the foster care costs of the child or  
 19 youth and the designated school district of attendance equally. Excess  
 20 transportation costs shall mean the difference between what a school  
 21 district otherwise would spend to transport a student to his or her  
 22 assigned school and the cost of transporting a child in foster care to  
 23 his or her school of origin; except as otherwise reimbursed under para-  
 24 graph a or b of this subdivision and as further defined in regulations  
 25 of the commissioner. The school district and local social services  
 26 district are expected to consider and utilize all allowable funding  
 27 sources, including any available federal funds, to cover additional  
 28 transportation costs. Provided however that school districts and social  
 29 services districts that have written agreements relating to how excess  
 30 transportation costs should be funded, that both entities have agreed to  
 31 and are consistent with the requirements in subparagraph five of para-  
 32 graph c of section one thousand one hundred twelve of title twenty of  
 33 the Elementary and Secondary Education Act of 1965, as amended by the  
 34 Every Student Succeeds Act of 2015, filed with the department and the  
 35 office of children and family services shall not be subject to this  
 36 paragraph. In the absence of such a shared agreement, such school  
 37 districts and local departments of social services are subject to the  
 38 provisions of this paragraph.

39 d. Where the child has been placed in foster care in a contiguous  
 40 state and has designated a school of origin located in the state of New  
 41 York, the designated school district of attendance in New York state  
 42 shall collaborate with the social services district to arrange for  
 43 transportation.

44 5. Each child or youth in foster care to be assisted under this

45 section shall be provided services comparable to services offered to  
 46 other students in the school selected under this section, including the  
 47 following: transportation services; educational services for which the  
 48 child or youth meets the eligibility criteria, such as services provided  
 49 under Title I of the Elementary and Secondary Education Act of 1965 or  
 50 similar state or local programs; educational programs for children with  
 51 disabilities; educational programs for English learners; programs in  
 52 career and technical education; programs for gifted and talented  
 53 students; and school nutrition programs.

54 6. The commissioner, in consultation with the office of children and  
 55 family services, may promulgate regulations to carry out the purposes of  
 56 this section.

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1 § 2. Subdivision 4 of section 3202 of the education law, as added by  
 2 chapter 867 of the laws of 1973 and renumbered by chapter 563 of the  
 3 laws of 1980, paragraph a, the opening paragraph of paragraph e, the  
 4 opening paragraph of paragraph f and subparagraph (viii) of paragraph f  
 5 as amended and paragraph f as designated by chapter 82 of the laws of  
 6 1995, paragraphs e and g as amended and subparagraphs (i), (ii), (iii),  
 7 (iv), (v), (vi) and (vii) of paragraph f as added by chapter 170 of the  
 8 laws of 1994, and paragraph g as relettered by chapter 82 of the laws of  
 9 1995, is amended to read as follows:

10 4. a. Definitions. For purposes of this subdivision only, the follow-  
 11 ing definitions shall apply.

12 (i) The term "school district of origin" shall mean the school  
 13 district within the state of New York in which the child or youth in  
 14 foster care was attending a public school or preschool on a tuition-free  
 15 basis or was entitled to attend when the social services district or  
 16 office of children and family services assumed responsibility for the  
 17 placement, support and maintenance of such child or youth, which is  
 18 different from the school district of residence.

19 (ii) School district of residence. The term "school district of resi-  
 20 dence" shall mean the public school district within the state of New  
 21 York in which the foster care placement is located, which is different  
 22 from the school district of origin.

23 b. Except as provided in subdivision five of this section, the cost of  
 24 instruction of [~~pupils placed in family homes at board by a social~~  
 25 ~~services district or a state department or agency]~~ children in foster  
 26 care shall be borne by the school district [~~in which each such pupil~~  
 27 ~~resided at the time the social services district or state department or~~  
 28 ~~agency assumed responsibility for the placement, support and maintenance~~  
 29 ~~of such pupil; provided, however, that such cost of instruction shall~~  
 30 ~~continue to be borne, while such pupil remains under the age of twenty-~~  
 31 ~~one years, by any social services district or state department or agency~~  
 32 ~~which assumed responsibility for tuition costs for any such pupil prior~~  
 33 ~~to January one, nineteen hundred seventy-four]~~ of origin. Where a  
 34 [~~pupil is placed pursuant to this subdivision outside the pupil's school~~  
 35 ~~district of residence at the time of such placement]~~ school district  
 36 other than the school district of origin is designated in accordance  
 37 with paragraph e of subdivision two of section thirty-two hundred  
 38 forty-four of this article, the cost of instruction shall be borne by  
 39 the [~~district of residence]~~ school district of origin and the tuition  
 40 paid to the designated school district [~~furnishing instruction]~~ of  
 41 attendance shall be computed as provided in paragraph d of this subdivi-  
 42 sion, except that, where the [~~family home at board]~~ foster care place-

43 ment receives program support from a child care institution affiliated  
 44 with a special act school district as defined in subdivision eight of  
 45 section four thousand one of this chapter, and the [~~board of education~~  
 46 ~~of such district furnishing instruction~~] designated school district of  
 47 attendance, upon the recommendation of its committee on special educa-  
 48 tion, contracts for such pupil's education pursuant to paragraph c, d,  
 49 e, or f of subdivision two of section forty-four hundred one of this  
 50 chapter or for a nonresidential placement pursuant to paragraph l of  
 51 such subdivision, costs incurred shall be reimbursed in accordance with  
 52 paragraph e of this subdivision. Notwithstanding any inconsistent  
 53 provision of law, where the permanent residence of a pupil is outside of  
 54 the state, the school district in which the pupil was located at the  
 55 time the public agency placed such pupil shall be deemed the [~~district~~  
 56 ~~of residence~~] school district of origin of such pupil for purposes of

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1 this subdivision and shall be responsible for the cost of instruction of  
 2 such pupil.

3 [~~b~~] c. Children cared for in free family homes and children cared for  
 4 in family homes at board, when such family homes shall be the actual and  
 5 only residence of such children and when such children are not supported  
 6 and maintained at the expense of a social services district or of a  
 7 state department or agency, shall be deemed residents of the school  
 8 district in which such family home is located.

9 [~~e. Children cared for in free family homes and children cared for in~~  
 10 ~~family homes at board, when such family homes are not the actual and~~  
 11 ~~only residences of such children and when such children are not~~  
 12 ~~supported and maintained at the expense of a social services district or~~  
 13 ~~of a state department or agency, and who apply for the first time for~~  
 14 ~~admittance to the schools of the district in which such family home is~~  
 15 ~~located during the school year 1973-1974 shall be admitted upon terms~~  
 16 ~~and conditions including the payment of tuition, established by the~~  
 17 ~~board of education of such school district, unless such board of educa-~~  
 18 ~~tion shall establish to the satisfaction of the commissioner that there~~  
 19 ~~are valid and sufficient reasons for refusal to receive such children.]~~

20 d. For the purposes of this subdivision, tuition shall be fixed in an  
 21 amount which represents the additional operating cost to the designated  
 22 school district of attendance resulting from the attendance of a child  
 23 for whom tuition is required, computed in accordance with a formula  
 24 established by the commissioner of education.

25 e. Where the [~~board of education of a school district furnishing~~  
 26 ~~instruction for a pupil placed pursuant to this subdivision in a family~~  
 27 ~~home at board~~] designated school district of attendance for a child or  
 28 youth in foster care that receives program support from a child care  
 29 institution affiliated with a special act school district, other than  
 30 the board of the pupil's school district of [~~residence~~] origin as  
 31 defined in paragraph a of this subdivision, upon the recommendation of  
 32 its committee on special education, contracts for the instruction of  
 33 such pupil pursuant to paragraph c, d, e, or f of subdivision two of  
 34 section forty-four hundred one of this chapter or for a nonresidential  
 35 placement pursuant to paragraph l of such subdivision, such board shall  
 36 submit a claim to the commissioner for current year reimbursement of  
 37 costs incurred for such pupil. The commissioner shall pay such claim in  
 38 accordance with the applicable provisions of section thirty-six hundred  
 39 nine-b of this chapter and shall be reimbursed by the school district  
 40 identified as the pupil's school district of [~~residence~~] origin as

41 defined in paragraph a of this subdivision. The commissioner shall  
 42 deduct the amount of such claim from moneys otherwise due the school  
 43 district of [~~residence~~] origin.

44 f. The identity of the school district of [~~residence at the time the~~  
 45 ~~public agency placed the pupil pursuant to paragraph a or paragraph e of~~  
 46 ~~this subdivision~~] origin shall be established in accordance with the  
 47 following procedure:

48 (i) Within ten days of the placement of such pupil, the public agency  
 49 or its designee shall give written notice of such placement to the board  
 50 of education of the school district believed to be the school district  
 51 of [~~residence~~] origin. Such notification shall include the name of the  
 52 pupil and any particulars about the pupil that pertain to the identifi-  
 53 cation of the school district as the school district of [~~residence~~]  
 54 origin as defined in paragraph a of this subdivision.

55 (ii) A board of education of a school district which receives notifi-  
 56 cation pursuant to subparagraph (i) of this paragraph may submit to the

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1 public agency, within ten days of its receipt of such notice, additional  
 2 evidence to establish that it is not the pupil's district of [~~residence~~]  
 3 origin as defined in paragraph a of this subdivision. Any evidence so  
 4 submitted shall be considered by the agency prior to making its final  
 5 determination, which shall be made no later than five days after the  
 6 agency's receipt of such additional evidence. In the event such school  
 7 district fails to submit additional evidence within such ten day period,  
 8 the determination of the public agency shall be final and the notifica-  
 9 tion provided pursuant to subparagraph (i) of this paragraph shall be  
 10 deemed final notification of such determination.

11 (iii) If, upon its review, the public agency determines that the  
 12 school district notified pursuant to subparagraph (i) of this paragraph  
 13 was not the pupil's district of [~~residence~~] origin, the public agency  
 14 shall send notification to the correct school district, in the form  
 15 prescribed by subparagraph (i) of this paragraph. Alternatively, if,  
 16 upon its review, the public agency determines that the school district  
 17 originally designated pursuant to subparagraph (i) of this paragraph is  
 18 the pupil's district of [~~residence~~] origin, the public agency shall  
 19 notify such district in writing of its final determination.

20 (iv) The board of education of the school district finally determined  
 21 by the public agency to be the pupil's school district of [~~residence~~]  
 22 origin may appeal such determination to the commissioner within thirty  
 23 days of its receipt of final notification pursuant to this paragraph.  
 24 Such an appeal shall be conducted in the same manner as an appeal from  
 25 the actions of local school officials pursuant to section three hundred  
 26 ten of this chapter, except that the factual allegations of the peti-  
 27 tioner shall not be deemed true in the event the public agency elects  
 28 not to appear in the appeal. The petitioner shall join as a party to the  
 29 appeal any other school district suspected to be the pupil's actual  
 30 school district of [~~residence~~] origin.

31 (v) If the commissioner finds that the school district notified pursu-  
 32 ant to subparagraph (i) or (iii) of this paragraph was not the pupil's  
 33 school district of [~~residence~~] origin as defined in paragraph a of this  
 34 subdivision and that the correct school district was not joined as a  
 35 party to the appeal, the commissioner shall direct the public agency to  
 36 notify the correct school district pursuant to subparagraph (i) of this  
 37 paragraph.

38 (vi) Notwithstanding any inconsistent provisions of law, during the

39 pendency of all proceedings to review a denial of financial responsibil-  
 40 ity, the commissioner shall issue an interim order assigning such finan-  
 41 cial responsibility to the school district or, alternatively, upon a  
 42 determination that the public agency failed to make reasonable efforts  
 43 to identify the [~~residence~~] school district of origin of such child, to  
 44 the public agency. In the event the public agency fails to provide  
 45 timely notice pursuant to subparagraph (i) of this paragraph, or fails  
 46 to render its final determination in a timely manner, the public agency  
 47 responsible for such pupil's residential placement shall reimburse the  
 48 commissioner for the payments made to the district furnishing instruc-  
 49 tion pursuant to this paragraph during the pendency of all proceedings  
 50 or for the duration of the current school year, whichever is longer, and  
 51 the state comptroller shall withhold such amount from any moneys due the  
 52 county or the city of New York, on vouchers certified or approved by the  
 53 commissioner, in the manner prescribed by law or shall transfer such  
 54 amount from the account of such state department or agency upon certifi-  
 55 cation of the commissioner, and such funds shall be credited to the

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1 general support for public schools local assistance account of the  
 2 department.

3 (vii) Any final determination or order of the commissioner concerning  
 4 the school district of [~~residence~~] origin of any pupil under this  
 5 section may only be reviewed in a proceeding brought in the supreme  
 6 court pursuant to article seventy-eight of the civil practice law and  
 7 rules. In any such proceeding under such article seventy-eight, the  
 8 court may grant any relief authorized by the provisions of section  
 9 seventy-eight hundred six of such law and rules and may also, in its  
 10 discretion, remand the proceedings to the commissioner. A local social  
 11 services commissioner or any state department or agency placing pupils  
 12 pursuant to this subdivision is a proper party in any such appeal or  
 13 proceeding.

14 (viii) Upon completion of all proceedings to review the denial of  
 15 financial responsibility for the costs of instruction pursuant to this  
 16 paragraph, the commissioner shall refund any payments made by a party  
 17 cleared of such responsibility and shall collect any payments owed by a  
 18 party found to have such responsibility. Where such transactions involve  
 19 a school district liable for reimbursement pursuant to paragraph e of  
 20 this subdivision, the commissioner shall appropriately increase or  
 21 decrease the moneys due a school district by such amount in accordance  
 22 with the provisions of section thirty-six hundred nine-b of this chap-  
 23 ter. Where such transactions involve the public agency making a place-  
 24 ment pursuant to this subdivision, the comptroller shall increase or  
 25 decrease the moneys due such public agency by such amount upon certifi-  
 26 cation of the commissioner, transferring such amount to or from the  
 27 account of such state department or agency to or from the general  
 28 support for public schools local assistance account of the department.

29 g. If within ninety days from the entry of an order or judgment of a  
 30 court of competent jurisdiction or the receipt of a decision of the  
 31 commissioner pursuant to section three hundred ten of this chapter,  
 32 determining the responsibility of a school district to pay tuition for a  
 33 pupil in accordance with the provisions of paragraph a of this subdivi-  
 34 sion or of section five hundred four of the executive law, such school  
 35 district has not made payment to the designated school district [~~provid-~~  
 36 ~~ing instruction to such pupil~~] of attendance, the school district enti-  
 37 tled to such payment may make application to the commissioner to receive

38 a sum in the amount of such tuition from the apportionment of public  
 39 money payable to the school district required to pay such tuition. The  
 40 application for payment shall be accompanied by a certified copy of the  
 41 order or judgment of a court, or a copy of the decision of the commis-  
 42 sioner, and by proof of service by first class mail of a copy of such  
 43 application upon the school district required to pay such tuition.  
 44 Unless the school district required to pay such tuition shall have noti-  
 45 fied the commissioner of such payment within thirty days from the  
 46 receipt of such application, the commissioner shall withhold an amount  
 47 equal to the tuition for such pupil from the public money payable to the  
 48 school district responsible for such tuition and shall pay such amount  
 49 to the school district which has provided instruction to such pupil. The  
 50 commissioner is authorized to promulgate regulations to implement the  
 51 provisions of this paragraph.

52 § 3. Paragraph (a) of subdivision 2 of section 153-k of the social  
 53 services law, as amended by section 2 of subpart B of part K of chapter  
 54 56 of the laws of 2017, is amended to read as follows:

55 (a) Notwithstanding the provisions of this chapter or of any other law  
 56 to the contrary, eligible expenditures by a social services district for

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1 foster care services shall be subject to reimbursement with state funds  
 2 only to the extent of annual appropriations to the state foster care  
 3 block grant. Such foster care services shall include expenditures for  
 4 the provision and administration of: care, maintenance, supervision  
 5 [and], tuition, and transportation costs related to the education of a  
 6 foster child or youth incurred in accordance with paragraph c of subdi-  
 7 vision four of section thirty-two hundred forty-four of the education  
 8 law; supervision of foster children placed in federally funded job corps  
 9 programs; and care, maintenance, supervision and tuition for adjudicated  
 10 juvenile delinquents and persons in need of supervision placed in resi-  
 11 dential programs operated by authorized agencies and in out-of-state  
 12 residential programs; except that, notwithstanding any other provision  
 13 of law to the contrary, reimbursement with state funds pursuant to the  
 14 state foster care block grant shall not be available for tuition expend-  
 15 itures for foster children, including persons in need of supervision and  
 16 adjudicated juvenile delinquents, made by a social services district  
 17 located within a city having a population of one million or more. Social  
 18 services districts must develop and implement children and family  
 19 services delivery systems that are designed to reduce the need for and  
 20 the length of foster care placements and must document their efforts in  
 21 the multi-year consolidated services plan and the annual implementation  
 22 reports submitted pursuant to section thirty-four-a of this chapter.

23 § 4. This act shall take effect immediately, provided however, that  
 24 the amendments to paragraph (a) of subdivision 2 of section 153-k of the  
 25 social services law as made by section three of this act shall be  
 26 subject to the repeal of such section pursuant to section 28 of part C  
 27 of chapter 83 of the laws of 2002, as amended.