

Foster Care Education Legal Review

The following legal review uses excerpts and summations from both federal and state law.

Federal Definition and Washington State Definition

Federal Definition -

The requirements for ensuing educational stability for children in foster care under section 1111(g)(1)(E) of the ESEA apply to all children in foster care enrolled in schools in the state education agency. 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 and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made. (45 C.F.R. § 1355.20(a)). You can find the federal guidance [here](#).

State Definition -

Students in foster care are defined as **"students who are the subject of a dependency proceeding"**, which means a child or youth who is located in Washington state, and who is:

- (a) The subject of a shelter care or dependency order issued pursuant to chapter 13.34 RCW or an equivalent order of a tribal court of a federally recognized Indian tribe; or
- (b) Eligible for benefits under the federal foster care system as defined in RCW 28B.117.020.

This also includes Unaccompanied Refugee Minors.



Foster Care Liaisons and Building Points of Contact

RCW 28A.320.148 - Foster care liaison—Building point of contact.

For the purpose of addressing education barriers for students who are the subject of a dependency proceeding, **each school district must:**

(a) **Designate a foster care liaison** to facilitate district compliance with state and federal laws related to students who are the subject of a dependency proceeding; and

b) collaborate with the department of children, youth, and families, the appropriate federally recognized Indian tribe, or the state agency responsible for the implementation of the unaccompanied refugee minors program.

The role and responsibilities of a foster care liaison may include:

- Coordinating the implementation of state and federal laws related to students who are the subject of a dependency proceeding;
- Coordinating with foster care education program staff at the office of the superintendent of public instruction;
- Attending training and professional development opportunities to improve school district implementation efforts;
- Serving as the primary contact person for representatives of the department of children, youth, and families;
- Leading and documenting the development of a process for making best interest determinations in accordance with RCW 28A.225.350;
- Facilitating immediate enrollment in accordance with RCW 28A.225.330;
- Facilitating the transfer of records in accordance with RCW 28A.150.510 and 28A.225.330;
- Facilitating data sharing with child welfare agencies consistent with state and federal privacy laws and rules;
- Developing and coordinating local transportation procedures;
- Managing best interest determination and transportation cost disputes according to the best practices developed by the office of the superintendent of public instruction;
- Ensuring that students who are the subject of a dependency proceeding are enrolled in and regularly attending school, consistent with RCW 28A.225.023; and
- Providing professional development and training to school staff on state and federal laws related to students who are the subject of a dependency proceeding and their educational needs, as needed.

Each K-12 public school in the state must establish a building point of contact in each elementary school, middle school, and high school. These points of contact must be appointed by the principal of the designated school, in consultation with the district foster care liaison, and are responsible for coordinating services and resources for students in foster care.

The district foster care liaison is responsible for training building points of contact.

The office of the superintendent of public instruction shall make available best practices for choosing and training building points of contact to each school district.

School of Origin

RCW 74.13.550 - Child placement—Policy of educational continuity

It is the policy of the state of Washington that, whenever practical and in the best interest of the child, **children who are the subject of a dependency proceeding shall remain enrolled in their schools of origin.**

RCW 74.13.631- Students subject to a dependency proceeding—School placement options

Consistent with the provisions for making best interest determinations, the department shall provide students who are the subject of a dependency proceeding with the opportunity to remain enrolled in their school of origin, unless the safety of the student is jeopardized, or a relative or other suitable person placement approved by the department is secured for the student, or it is determined not to be in the student's best interest.

If the parties in the dependency case disagree regarding which school the student should be enrolled in, the student may remain enrolled in the school of origin until the disagreement is resolved in court, unless the department determines that the student is in immediate danger by remaining enrolled in the school of origin.

Best Interest Determination

RCW 26A.225.350 - Students subject to a dependency proceeding—Best interest determinations.

The requirements for making best interest determinations for students who are the subject of a dependency proceeding may also be applied to students who are the subject of a federally recognized tribal court shelter care or dependency order that is the equivalent of a shelter care or dependency order.

Best interest determinations should be made as quickly as possible in order to prevent educational discontinuity for the student.

When making best interest determinations, **every effort should be made to gather meaningful input from relevant and appropriate persons on their perspectives regarding which school the student should attend while the subject of a dependency proceeding,** consistent with the student's case plan. Relevant and appropriate persons include:

- Representatives of the department of children, youth, and families for students who are the subject of a dependency proceeding pursuant to chapter 13.34 RCW, or representatives of other applicable child welfare agencies;
- Representatives of the school of origin, such as a teacher, counselor, coach, or other meaningful person in the student's life;
- Biological parents (if their educational rights have not been terminated);
- Foster parents;
- Educational liaisons identified under RCW 13.34.045;
- The student's relatives; and
- Depending on the student's age, the student.

Whenever practical (if there aren't safety issues) and in their best interest, **students who are the subject of a dependency proceeding must remain enrolled in their school of origin.**

Student-centered factors must be used to determine what is in a student's best interest. In order to make a well-informed best interest determination, a variety of student-centered factors should be considered, including:

- How long is the student's current care placement expected to last?
- What is the student's permanency plan and how does it relate to school stability?
- How many schools has the student attended in the current year?
- How many schools has the student attended over the past few years?
- Considering the impacts of past transfers, how may transferring to a new school impact the student academically, emotionally, physically, and socially?
- What are the immediate and long-term educational plans of, and for, the student?
- How strong is the student academically?
- If the student has special needs, what impact will transferring to a new school have on the student's progress and services?
- To what extent are the programs and activities at the potential new school comparable to, or more appropriate than, those at the school of origin?
- Does one school have programs and activities that address the unique needs or interests of the student that the other school does not have?
- Which school does the student prefer?
- How deep are the student's ties to the student's school of origin?
- Would the timing of the school transfer coincide with a logical juncture, such as after testing, after an event that is significant to the student, or at the end of the school year?
- How would changing schools affect the student's ability to earn full academic credit, participate in sports or other extracurricular activities, proceed to the next grade, or graduate on time?

- How would the commute to the school under consideration impact the student, in terms of distance, mode of transportation, and travel time?
- How anxious is the student about having been removed from the home or about any upcoming moves?
- What school does the student's sibling attend?
- Are there safety issues to consider?

The student must remain in the student's school of origin while a best interest determination is made and while disputes are resolved in order to minimize disruption and reduce the number of school transfers.

School districts are encouraged to use any:

- Best interest determination guide developed by the office of the superintendent of public instruction during the discussion about the advantages and disadvantages of keeping the student in the school of origin or transferring the student to a new school; and
- Dispute resolution process developed by the office of the superintendent of public instruction when there is a disagreement about school placement, a best interest determination, or a dispute between agencies.

The special education services of a student must not be interrupted by a transfer to a new school.

If the student's care placement changes to an area served by another school district, and it is determined to be in the best interest of the student to remain in the school of origin, the school district of origin and the school district in which the student is living shall agree upon a method to apportion the responsibility and costs for providing the student with transportation to and from the school of origin. If the school districts are unable to agree upon an apportionment method, the responsibility and costs for transportation shall be shared equally between the districts.

In accordance with this subsection, **the department of children, youth, and families will reimburse school districts for half of all excess transportation costs for students under the placement and care authority of the department of children, youth, and families.**

RCW 71.13.560 - Educational continuity—Protocol development

DCYF's protocols specifying specific strategies for communication, coordination, and collaboration regarding the status and progress of children in out-of-home care placed in the region, and children in the region who are the subject of a dependency proceeding must also include protocols for making best interest determinations for students in out-of-home care, and children who are the subject of a dependency proceeding. **The protocols for making best interest determinations must be implemented before changing the school placement of a student.**

RCW 74.13.631 - Students subject to a dependency proceeding—School placement options

Consistent with the provisions for making best interest determinations, the department shall provide students who are the subject of a dependency proceeding with the opportunity to remain enrolled in their school of origin, unless the safety of the student is jeopardized, or a relative or other suitable person placement approved by the department is secured for the student, or it is determined not to be in the student's best interest. If the parties in the dependency case disagree regarding which school the student should be enrolled in, **the student may remain enrolled in the school of origin until the disagreement is resolved** in court, unless the department determines that the student is in immediate danger by remaining enrolled in the school of origin.

Unless otherwise directed by the court, the educational responsibilities of DCYF for preschool and school-aged students residing in out-of-home care are the following:

- To collaboratively discuss and document school placement options and plan necessary school transfers during the family team decision-making meeting;
- To notify the receiving school and the school of origin that a youth residing in foster care is transferring schools;
- To request and secure missing academic records or medical records required for school enrollment within ten business days;
- To document the request and receipt of academic records in the individual service and safety plan;
- To pay any unpaid fees or fines due by the student to the school or school district;
- To notify all legal parties when a school disruption occurs; and
- To document factors that contributed to any school disruptions.

Enrollment

RCW 28A.225.330 - Enrolling students from other districts—Requests for information and permanent records—Immunity from liability—Rules.

When enrolling a student who has attended school in another school district, the school enrolling the student may request the parent and the student to briefly indicate in writing whether or not the student has:

- (a) Any history of placement in special educational programs;
- (b) Any past, current, or pending disciplinary action;
- (c) Any history of violent behavior, or behavior listed in RCW 13.04.155;
- (d) Any unpaid fines or fees imposed by other schools; and
- (e) Any health conditions affecting the student's educational needs.

The school enrolling the student shall request the student's permanent record including records of disciplinary action, history of violent behavior or behavior listed in RCW 13.04.155, attendance, immunization records, and academic performance from the school the student previously attended. If information is requested, the **information shall be transmitted within two school days after receiving the request and the records shall be sent as soon as possible.**

A school may not prevent students who are the subject of a dependency proceeding from enrolling if there is incomplete information.

Upon enrollment of a student who is the subject of a dependency proceeding, **the school district must make reasonable efforts to obtain and assess that child's educational history in order to meet the child's unique needs within two business days.**

Records

RCW 28A.150.510 - Transmittal of education records—Disclosure of education records—Data-sharing agreements.

In order to effectively serve students who are the subject of a dependency proceeding, education records shall be transmitted to the department of children, youth, and families, the appropriate federally recognized Indian tribe, or the state agency responsible for the implementation of the unaccompanied refugee minors program **within two school days after receiving the request.**

The department of children, youth, and families is authorized to disclose education records it obtains pursuant to this section to a foster parent, guardian, or other entity authorized by the department to provide residential care to the student.

The department is also authorized to disclose education records it obtains pursuant to this section to those entities with which it has contracted, or with which it is formally collaborating, having responsibility for educational support services and educational outcomes of students who are the subject of a dependency proceeding.

Attendance

RCW 28A.225.023- Review of unexpected or excessive absences-Support for youth's school work.

A school district representative or school employee shall review unexpected or excessive absences with students who are the subject of a dependency proceeding and adults involved with the students, to include the students' caseworkers, educational liaisons, attorneys if appointed, parents or legal guardians, and foster parents or the persons providing placement for the students.

The purpose of the review is to determine the cause of the absences, taking into account: unplanned school transitions, periods of running from care, inpatient treatment, incarceration, school adjustment, educational gaps, psychosocial issues, and unavoidable appointments during the school day.

A school district representative or a school employee must proactively support the students' school work so the student does not fall behind and to avoid suspension or expulsion based on truancy.

WAC 392-401-015 - Definition of absence from in-person instruction

A student is absent from in-person instruction when the student is:

- (1) Not physically present on school grounds; and
- (2) Not participating in the following activities at an approved location:
 - (a) Instruction; or
 - (b) Any instruction-related activity; or
 - (c) Any other district or school approved activity that is regulated by an instructional/academic account

WAC 392-401-016 - Definition of absence from synchronous and asynchronous instruction

A student is absent from synchronous online instruction when the student does not log in to the synchronous meeting/class and/or when there is no evidence that the student accessed the planned asynchronous activity.

Evidence of student participation in asynchronous activities must occur daily, within a twenty-four-hour time frame of when the participation is planned or expected.

WAC 392-401-020 – Excused absences

Absences due to the following reasons must be excused:

- Absence directly related to the student's homeless or foster care/dependency status

WAC 392-401-040 - Student absences—General requirements

Students shall not be considered absent if:

- The student has been suspended, expelled, or emergency expelled
- The student is receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and
- The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.

A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.

WAC 392-401-045 - Multitiered system of support for attendance

School districts must implement these minimum requirements of a multitiered system of support for attendance to address barriers to student attendance, provide timely interventions and best practices to reduce chronic absenteeism and truancy.

Multitiered systems of support must include:

- Monitoring daily attendance data for all students who are absent, whether the absence is excused or unexcused;
- A process to contact families (in the case of foster care students, DCYF must be contacted also) and verify current contact information for each enrolled student that includes multiple attempts and modalities in the parent's home language;
- Differentiated supports that address the barriers to attendance and participation that includes universal supports for all students and tiered interventions for students at-risk of and experiencing chronic absence, including school and district attendance or engagement teams, connecting to community resources, and community engagement boards; and

- A process for outreach and reengagement for students who have been withdrawn due to nonattendance and there is no evidence that the student is enrolled elsewhere. This outreach and reengagement process must include:
 - (i) A school and/or district point person/people to maintain the list, keep it updated, and coordinate the outreach;
 - (ii) School or district staff assigned to conduct the outreach and attempts at reengagement in coordination with community partners or other programs;
 - (iii) Multiple methods of communication and outreach in a language or mode of communication that the parent understands including phone calls, texts, letters, and home visits;
 - (iv) Referral to community-based organizations;
 - (v) Documentation of the attempts to reach student and family; and
 - (vi) Follow the required steps to address unexcused absences in chapter 28A.225 RCW, including early communication to parents, holding parent conferences and administering a truancy screener to understand the underlying reasons for the absences, and providing evidence-based or best practice interventions, even if the student has been withdrawn due to nonattendance.

Chapter 28A.225 RCW – Compulsory school attendance and admission

This chapter highlights interventions to reduce absences, truancy petitions, and re-engagement requirements.

You can find attendance resources and guidance from OSPI [here](#).

Grade Level Progression and Graduation

RCW 28A.320.192 - On-time grade level progression and graduation of students who are homeless, subject to a dependency proceeding, at-risk youth or children, or have been released from an institutional education facility—Rules.

School districts must incorporate the procedures in this section for the purpose of eliminating barriers and facilitating the on-time grade level progression and graduation of students who are homeless, **the subject of a dependency proceeding**, at-risk youth or children in need of services, and students who are in or have been released from an institutional education facility.

School districts must waive specific courses required for graduation if similar coursework has been satisfactorily completed in another school district or must provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school district, the receiving school district must provide an alternative means of acquiring required coursework so that graduation may occur on time.

School districts must consolidate partial credit, unresolved, or incomplete coursework and provide opportunities for credit accrual in a manner that eliminates academic and nonacademic barriers for the student.

For students who have been unable to complete an academic course and receive full credit due to withdrawal or transfer, **school districts must grant partial credit for coursework completed before the date of withdrawal or transfer and the receiving school must accept those credits**, apply them to the student's academic progress or graduation or both, and allow the student to earn credits regardless of the student's date of enrollment in the receiving school.

Should a student who is transferring at the beginning or during the student's junior or senior year be ineligible to graduate from the receiving school district after all alternatives have been considered, **the sending and receiving districts must ensure the receipt of a diploma from the sending district if the student meets the graduation requirements of the sending district.**

Should a student have enrolled in three or more school districts as a high school student and have met state requirements but be ineligible to graduate from the receiving school district after all alternatives have been considered, **the receiving school district must waive its local requirements and ensure the receipt of a diploma.**

Please also refer to [On-Time Grade Level Progression and Graduation of Highly Mobile Students](#)

DCYF

RCW 28A.225.360- Students in out-of-home care—School districts and the department of children, youth, and families collaboration

School districts must collaborate with the department of children, youth, and families (DCYF).

RCW 74.13.560 - Educational continuity—Protocol development

The administrative regions of DCYF shall, in collaboration with school districts within their region, **develop protocols specifying specific strategies for communication, coordination, and collaboration** regarding the status and progress of children in out-of-home care placed in the region, and children in the region who are the subject of a dependency proceeding. The purpose of the protocols is to **maximize the educational continuity and achievement for the children**. The protocols must include methods to assure effective sharing of information, consistent with RCW 28A.225.330.

WAC 110-148-1525 - What are the educational and vocational instruction requirements for children in care?

(2) Home schooling, private schooling, and alternative learning experience instruction are prohibited for all children in the care and custody of the department, unless approved by a court ruling

Educational Liaison

RCW 13.34.045 - Educational liaison—Identification.

The department must identify an educational liaison for youth in grades six through twelve who are subject to a proceeding under this chapter and who meet one of the following requirements:

- All parental rights have been terminated;
- Parents are unavailable because of incarceration or other limitations;
- The court has restricted contact between the youth and parents; or
- The youth is placed in a behavioral rehabilitative setting and the court has limited the educational rights of parents.

The purpose of identifying the educational liaison at each hearing during the dependency case is to determine if the identified educational liaison remains appropriate for the case as youth change placements.

It is presumed that the educational liaison is the youth's parent. If a youth's parent is not able to serve as the educational liaison, the department must identify another person to act as the educational liaison. It is preferred that the educational liaison be known to the youth and be a relative, other suitable person, or the youth's foster parent. Birth parents with a primary plan of family reunification may serve as the educational liaison.

The identified educational liaison should be a person committed to providing enduring educational support to the youth. If the department is not able to identify an adult with an existing relationship to the youth who is able to serve as the educational liaison, the court may appoint another adult as the educational liaison, such as the court-appointed special advocate if applicable, but may not appoint the youth's caseworker.

In the event that any party disagrees with the department's recommendation, the court shall determine who will serve as the educational liaison based on who is most appropriate and available to act in the youth's educational interest.

RCW 28A.300.590 - Educational outcomes—Program of education for dependent youth—Responsibilities of department of social and health services, superintendent of public instruction, and nongovernmental entity—Reports. *[Treehouse Education Advocacy]*

The office of the superintendent of public instruction shall, in consultation with the department of social and health services, comply with all requirements necessary to maximize federal reimbursement for the program of education coordination for youth. The contract between the office of the superintendent of public instruction and the nongovernmental entity (currently [Treehouse](#)) must be outcome driven with a stated goal of reducing educational barriers to youth success.

The nongovernmental entity or entities selected by the office of the superintendent of public instruction must have demonstrated success in working with foster care youth and assisting foster care youth in receiving appropriate educational services, including enrollment, accessing school-based services, reducing out-of-school truancy interventions, and attaining high school graduation.

The selected nongovernmental entity or entities must provide services to support individual youth upon a referral by a social worker with the department of social and health services, school staff, or a nongovernmental agency. These entities must have access to all paper and electronic education records and case information pertinent to the educational planning and services of youth referred and are subject to RCW 13.50.010 and 13.50.100.

Learn more about sharing educational records with Treehouse [here](#).

RCW 28A.300.592 - Educational outcomes—On-site individualized education services for dependent students—Public-private partnership—Reports. *[Treehouse Graduation Success]*

To the extent funds are appropriated for this purpose, the office of the superintendent of public instruction must contract with at least one nongovernmental entity (currently [Treehouse](#)) to improve the educational outcomes of students by providing individualized education services and monitoring and supporting dependent youths' completion of educational milestones, remediation needs, and special education needs.

Services provided by the nongovernmental entity or entities must include:

- Advocacy for foster youth to eliminate barriers to educational access and success;
- Consultation with schools and the department of children, youth, and families caseworkers to develop educational plans for and with participating youth;
- Monitoring education progress and providing interventions to improve attendance, behavior, and course performance of participating youth;
- Facilitating age-specific developmental and logistical tasks to be accomplished for high school and postsecondary success;
- Facilitating the participation of youth with school and local resources that may assist in educational access and success; and
- Coordinating youth, caregivers, schools, and social workers to advocate to support youth progress in the educational system.

The department of children, youth, and families must proactively refer all eligible students thirteen years of age or older to the contractor for educational services. Youth eligible for referral are dependent age thirteen through twenty-one years of age, are not currently served by services, and remain eligible for continuing service following fulfillment of the permanent plan and through initiation of a postsecondary plan.