

**Memorandum of
Understanding**

Between

The Montana Office of Public
Instruction

and

The Department of Public
Health and Human Services

May 2022



This agreement is between the Office of Public Instruction and the Department of Public Health and Human Services. The intent of this agreement is to implement the requirements to ensure educational stability of children in foster care, as set forth in the Every Student Succeeds Act ("ESSA"), Pub. L. 114-95, and the Fostering Connections to Success and Increasing Adoptions Act of 2008 ("Fostering Connections"), Pub. L. 110- 351.

Authority:

Federal Law	Montana State Law
<ul style="list-style-type: none"> • PL 110-351 Fostering Connections Act • PL 112-278 Uninterrupted Scholars Act • PL 114-95 Every Student Succeeds Act 	<ul style="list-style-type: none"> • MCA 20-1-213 Student Records • MCA 2-10-121 Transportation

I. Agreement

The parties acknowledge that they will review and update this MOU annually, if necessary.

II. Single Point of Contact

The Office of Public Instruction will make sure school districts designate its required single point of contact for foster care matters and make that individual's contact information publicly available. Department of Public Health and Human Services will designate its required point of contact for foster care matters and make that individual's contact information publicly available.

The individuals designated as the point of contact for Department of Public Health and Human Services and the LEA need to have sufficient capacity and the necessary resources to fulfill their duties under ESSA. Duties of the point of contact include, but are not limited to:

- a) Notifying LEA point of contact when the child enters or changes foster care placement;
- b) Coordinating student information and services between the Department of Public Health and Human Services/LEA point of contact;
- c) Facilitating immediate enrollment in the school district and transfer of records;
- d) Facilitating data sharing between Department of Public Health and Human Services/LEA and addressing data obstacles;
- e) Facilitating implementation of transportation procedures;
- f) Preventing and resolving best interest and transportation disputes;
- g) Monitoring attendance and enrollment of children in foster care; and
- h) Providing professional development and technical assistance regarding school stability and educational supports for children in foster care to LEA colleagues, Department of Public Health and Human Services local staff, child welfare providers, youth, foster care providers, and foster parents.

The District will promptly notify the local Department of Public Health and Human Services point

of contact and the Office of Public Instruction's point of contact whenever the single point of contact is changed, and will make that new individual's contact information publicly available.

In making the single point of contact's contact information publicly available, the District will, at a minimum, include that information on its web page and in its annual notices to students and parents.

Any rules adopted or guidance issued by the Office of Public Instruction and Department of Public Health and Human Services on single point of contact shall be deemed a part of this agreement.

III. Educational Stability: Remaining in School of Origin; Best Interest Determination

The District and the Department of Public Health and Human Services assure that all children in foster care will remain in their school of origin, unless their best interests required otherwise. For this purpose, "school of origin" is the school in which the child was enrolled at the time the child was placed into foster care. If a child's foster care placement changes while in foster care, the child's school of origin is the school the child was attending at the time of the placement change. The school of origin may be a school within the District or it may be a school within another school district.

In considering whether a child with a disability's best interest requires attendance in a different school, the District shall ensure compliance with the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, as well as relevant state statutes and rules.

In considering whether a child who is an English learner's best interest requires attendance in a different school, the District shall ensure compliance with Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974 (EEOA), as well as relevant state statutes and rules.

The Department of Health and Human Service, the District, and any other school district involved shall collaborate to make a decision about whether it has been established that it is in the child's best interest to not remain in the child's school of origin. The District and the Department of Public Health and Human Services agree to consider all relevant factors and information to determine whether it is in the child's best interest not to remain in the school of origin. Any rules adopted or guidance issued by the Office of Public Instruction and the Department of Public Health and Human Services on making best interest determinations shall be deemed a part of this agreement. Transportation cost shall not be considered in the best interest determination.

This best interest determination shall be made prior to foster care placement, except in the case of an emergency removal. In the case of an emergency removal, the best interest determination shall be made within 5 business days of emergency foster care placement. As a matter of best practice, the best interest determination should always be revisited at least ten school days before the end of a major grading period (trimester or semester) to ensure a smooth transition to another school if the decision indicates a change is needed.

Unless not feasible and appropriate, the child shall remain in the child's school of origin pending the outcome of the best interest determination, including any dispute resolution pursuant to paragraph VIII of this agreement.

IV. Educational Stability: Immediate and Appropriate Enrollment

If it is in the child's best interest not to attend the school of origin, the child is entitled to immediate and appropriate enrollment.

For purposes of this agreement, "immediate" means as soon as the best interest determination has been made, and without regard to whether records, forms, tuition, fees, or costs typically associated with school enrollment have been provided.

For purposes of this agreement, the District shall ensure that it transfers records for within-District school transfers, that it transmits records to another District if the child's best interests requires attendance in a school in another school district, and that it requests records for children who are coming from another school district. MCS 20-1-213 requires records transfers to occur within five days of any change in school of attendance.

For purposes of this agreement "appropriate" means that covered children are "regularly attending and fully participating in school and that their educational needs are being met." Any rules adopted or guidance issued by the Office of Public Instruction and the Department of Public Health and Human Services on making decisions about the appropriateness of enrollment shall be deemed a part of this agreement.

In considering the appropriateness of enrollment for a child with a disability, the District shall ensure compliance with the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, as well as relevant state statutes and rules, including that the appropriateness of such enrollment is determined by the IEP team required by the applicable statute.

In considering the appropriateness of enrollment for a child who is an English learner, the District shall ensure compliance with Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974 (EEOA), as well as relevant state statutes and rules.

V. Transportation

The District and the Department of Public Health and Human Services adopt the following written procedures for providing, arranging, and funding transportation for children who are in foster care to remain in their school of origin.

Transportation under this agreement shall be provided in a "cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act." Districts shall use existing transportation routes and arrangements, to the extent available and practicable. Districts shall consider the needs of children in foster care when establishing transportation routes and arrangements. Districts shall cooperate with other districts to ensure their joint compliance with

this requirement.

The District and the Department of Public Health and Human Services shall collaborate to establish the most effective means of transportation available. The means of transportation could include school transportation vehicles, public or regional transportation, and/or foster care providers. The local point of contact in the District of origin shall coordinate the transportation of the child between the school of origin and the foster placement.

Additional costs incurred in providing transportation to maintain a child who is in foster care in the child's school of origin shall be the financial responsibility of the parties as indicated below:

- 1) For a child with an intra-district foster care placement entry/ change, the District of origin is responsible for transportation costs;
- 2) For a child with a foster care placement entry/change to a District contiguous to the District of origin, the District of origin is responsible for the transportation costs;
- 3) For a child with a foster care placement entry/ change to a District not contiguous to the District of origin, the Department of Public Health and Human Services is responsible for the lesser of actual daily additional transportation costs or the identified maximum daily rate multiplied by the number of days the child is actually transported as determined by the guidance of the Office of Public Instruction, Department of Public Health and Human Services and the District of origin is responsible for the difference between the total actual additional transportation costs and the Department of Public Health and Human Services portion;
- 4) For a child with a foster care placement entry/change to a District outside the State of Montana, Department of Public Health and Human Services is responsible for the lesser of actual daily additional transportation costs or the identified maximum daily rate as articulated through guidance provided by the Office of Public Instruction and the Department of Public Health and Human Services and the District of origin is responsible for the difference between the total daily actual additional transportation costs and the Department of Public Health and Human Services portion; and
- 5) For all other foster care placement entry/ changes not covered above, the District of origin and the Department of Public Health and Human Services shall share the transportation costs equally.

The District of origin shall track the additional transportation costs and report them to their state level point of contact for review. The process of tracking and reporting additional transportation costs shall be established in time and manner by the Office of Public Instruction and the Department of Public Health and Human Services through guidance.

Disputes about transportation shall be resolved pursuant to paragraph VIII of this agreement. During the pendency of any dispute under this paragraph, the District of origin shall provide transportation if the district operates the school of origin.

The District hereby agrees to waive any local policy, practice, or procedure that would serve as a barrier to providing transportation pursuant to this paragraph, such as restrictions on its vehicles

entering other districts' boundaries or other district vehicles entering its boundaries.

Any rules adopted or guidance issued by the Office of Public Instruction and the Department of Public Health and Human Services on foster care placement transportation shall be deemed a part of this agreement.

VI. Sharing Information and Data; Protecting Personally Identifiable Information and Maintaining Confidentiality

The District shall provide such information to the Office of Public Instruction and the Department of Public Health and Human Services as necessary for the Department of Public Health and Human Services to incorporate educational needs and concerns into the case plan or other plan for each child subject to this agreement. This disclosure of information is specifically authorized by the Uninterrupted Scholars Act, a 2013 amendment to the Family Educational Rights and Privacy Act ("FERPA").

The Department of Public Health and Human Services shall provide to the District such information as required to effectively participate in making a best interest determination and for "immediate and appropriate" enrollment in school for each child subject to this agreement without requiring a release. This disclosure of information is specifically authorized by MCA 20-1-213, as well as being required by ESSA. The Department of Public Health and Human Services recognizes that the privacy protections required by FERPA are comparable to the privacy protections required by section 217.30. All HIPAA protected health and child abuse information still requires a release to be shared.

Consistent with Agreement and with state and federal law, the District and the Department of Public Health and Human Services shall protect confidential information from redisclosure unless specifically authorized by this agreement and state and federal law. The District and the Department of Public Health and Human Services shall report unauthorized releases of exchanged data to the other party and cooperate in taking appropriate corrective action.

Any rules adopted or guidance issued by the Office of Public Instruction and the Department of Public Health and Human Services on sharing information and data shall be deemed a part of this agreement.

VII. Dispute Resolution

If the district of origin and local Department of Public Health and Human Services cannot agree on the child's best interest for school placement after making every effort to reach agreement, the district of origin and local Department of Public Health and Human Services should review their MOA and any rules or guidelines provided by the Office of Public Instruction and the Department of Public Health and Human Services for support in resolving their dispute. If the disagreement regarding school placement continues, local Department of Public Health and Human Services is considered the final decision maker in the best interest determination for school placement unless federal or state law dictates otherwise.

If the district of origin still does not agree with the local the Department of Public Health and Human Services determination for the child's best interest for school placement, a written request should be immediately submitted to the state level point of contact at the Office of Public Instruction for review of the best interest determination documentation. The written request should include documentation of the factors considered in determining the school placement, which include:

- The team's determination for school placement;
- The participants involved;
- Whether each participant agreed or disagreed with the team's determination;
- The reasons for agreement or disagreement;
- Any additional information pertinent to the dispute; and
- Efforts made to resolve the dispute.

After receiving a request for review, the State POCs from the Office of Public Instruction and the Department of Public Health and Human Services shall review the best interest determination documentation and return a resolution to the dispute within five business days of receipt of the request. During the dispute resolution process, the student should remain in the school in which he or she was enrolled at the time of placement.

Any rules adopted or guidance issued by the Office of Public Instruction and the Department of Public Health and Human Services on dispute resolution shall be deemed a part of this agreement.

VIII. Miscellaneous Provisions

The parties agree to monitor the implementation of this agreement, meet annually (or more frequently if requested by either party) to discuss its status and any pending disputes, and amend the agreement accordingly.

In case any provision contained in this agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable, or void in any respect; the invalidity, illegality, unenforceability, unlawful, or void nature of that provision shall not affect any other provision and this agreement shall be considered as if such invalid, illegal, unlawful, unenforceable, or void provision had never been included herein.

This agreement does not apply to children in foster care whose school of enrollment when they entered foster care is not a public school. This agreement imposes no obligation on the District to pay private school tuition or to provide transportation to attend the nonpublic school, unless it would have been obligated to provide such transportation pursuant to some other legal authority. In that instance, the Department of Public Health and Human Services or the child's family may voluntarily continue to pay tuition for nonpublic school attendance. In the absence of tuition or a waiver of tuition by the nonpublic school, the District and the Department of Public Health and Human Services shall determine what public school is the appropriate setting to maximize school stability.

This agreement no longer applies once a child is no longer in foster care; however, the District and the Department of Public Health and Human Services shall attempt to allow the child to complete the school year in the school the child was attending upon exit from foster care.

IX. Funding


This MOU does NOT include distribution of funds between the parties

X. Termination


Either party may terminate this MOU with 30 days written notice to the other party.

XII. This MOU shall be effective upon the signature of the authorized officials of both parties and remain in effect until revised by written agreement of the parties or otherwise terminated by either party.

MONTANA OFFICE OF PUBLIC INSTRUCTION

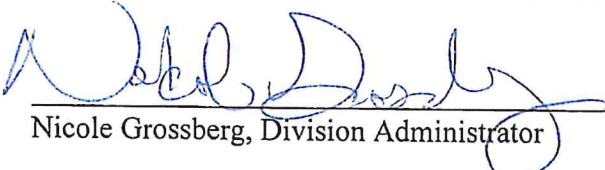


Jack O'Connor, Federal Programs Unit Director 5/31/22
Date



Jamey Petersen, Coordinated School Health Unit Director 6-3-2022
Date

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES



Nicole Grossberg, Division Administrator 5-26-22
Date

Definitions

The following definitions apply to this agreement.

- A. "*Child*" means any individual through age twenty-one who is entitled to a free public education through grade twelve and includes individuals eligible for services under IDEA Parts Band C. 34 C.F.R. § 200.103(a)(1).
- B. "*District*" or "*school district*" includes any public school corporation, whether in Iowa or in another jurisdiction. This includes any preschool program operated by the District, including statewide voluntary preschool program partnerships.
- C. "*Foster Care*" means any out-of-home placement of a child. The term includes:
- The placement of a child into:
 - A family or kinship foster home, as that term is defined in
 - A group foster home, as that term is defined in
 - Any other similar institution having the appropriate qualifications and facilities to provide the necessary and desirable degree and type of care to the child.
 - The placement of a child with a relative other than the relative who had a legal responsibility for providing a home for the child before the child was placed into the custody of the agency which provides child welfare services.
 - An independent living arrangement approved by the agency.
- D. "*Immediate Enrollment*" When it is determined that it is in the best interest of the child to change schools, Immediate Enrollment means the school's legal requirement to immediately enroll the child into the new school regardless of if the new school has received all the child's educational records, school transfer records, immunization records or any other unmet educational or academic requirements. Enrollment for a child in foster care cannot be denied or delayed. The enrolling school shall immediately contact the school of origin to obtain relevant academic and other records and those records will be promptly transferred.
- E. "*Include*" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.
- F. "*School of Origin*" means the public school in which a child was enrolled at the time that the child was placed in foster care or the school in which a child who is in foster care is enrolled at the time of the most recent change in the placement of the child.
- G. "*Best Interest Determination*" a DPHHS **Best Interest Determination** form is used collaboratively by the LEA, the Department of Public Health and Human Services and any other relevant parties to identify whether it is in the best interest of the foster child to remain in their **School of Origin** or, based upon a move to a new foster home

in the zoned school. If a dispute arises about the Best Interest Determination, the Department of Public Health and Human Services will make the final decision regarding the child's school which will be subject to court approval if any party objects.