APPENDIX A

**Question and Answer Guide on the Implementation of Amendments to Special Education Regulations, 603 CMR 28.10, to Align with ESSA Foster Care Provisions**

# ****Effective Date****

**Question: *If DCF places a student with an IEP in a foster home this summer, will the amended regulations apply to determine district responsibility for the student’s special education services?***

**Answer:** It depends on the specific date upon which the student moves into the DCF foster home. If the move occurs on or after July 1, 2018, the amended regulations will apply. If the move occurs prior to July 1, 2018, even if the 2017-2018 school year has concluded, then the current version of Section 28.10 will apply. The amended regulations will govern any change DCF may make to the student’s foster care setting subsequent to July 1, 2018.

**Question: *After July 1, 2018,*** *may a district seek review of an assignment that the Department made prior to July 1, 2018, on the basis that applying the amended regulations to the same factual scenario would result in a different assignment?*

**Answer:** No. Although Section 28.10(8)(f) provides that a school district “may seek review of the Department’s assignment under the procedures of 603 CMR 28.10(8) at any time that the district has information that was not available to the Department at the time the assignment was made,” the amended regulations are not information that was previously unavailable to the Department. The Department will not change previous determinations of district responsibility made under the version of 28.10 in effect prior to July 1, even if application of the amended regulations would result in a different assignment.

**Move-In Law**

**Question:** *Do the amended regulations alter or affect the application of M.G.L. c. 71B, Section 5, known as the “move-in law”?*

**Answer:** No, the amended regulations do not affect the applicability of the “move-in law.” Please direct questions regarding the applicability of the move-in law to a specific student, including any concerns about how amended Section 28.10 interacts with the move-in law, to the Office of Special Education Planning and Policy at [leaassignment@doe.mass.edu](mailto:leaassignment@doe.mass.edu).

# ****Non-DCF Foster Care****

**Question:** *Do the amended regulations apply to students placed in Department of Youth Services (DYS) foster homes?*

**Answer:** No. The amended regulations apply only to students in foster care as that term is defined in Section 28.10(5)(b): “24-hour substitute care for children placed away from their parents or guardians and for whom the Department of Children and Families 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, child care institutions, and preadoptive homes.” Under the amended regulations, children under DCF care who are “awaiting foster care” in a temporary care unit are considered students in foster care.

# ****ESSA Issues****

**Question:** *Do the amended regulations address responsibility for transportation when a student is attending school in one district and living in a foster home located in another district?*

**Answer: No. The amended regulations are intended to address responsibility for special education services only, and do not address transportation that is not an IEP service.** Transportation for students in foster care is addressed in the [ESSA guidance](http://www.doe.mass.edu/sfs/foster/guidance.docx) issued jointly by DCF and DESE.

**Question:** *After a student exits foster care, due to adoption or to return to their biological parents, does ESSA require the student to remain in the school they are attending*?

**Answer**: The amended regulations do not address this issue, as they apply only to school district responsibility for special education services. The ESSA guidance document referenced above addresses this issue on page 5.

**Question:** *Do the amended regulations address how districts can work with DCF to ensure its best interest determinations and related decisions do not unnecessarily impact or disrupt districts’ programmatic and fiscal planning?*

**Answer:** No, as this is not the purpose of Section 28.10. However, the [ESSA guidance](http://www.doe.mass.edu/sfs/foster/guidance.docx) provides information on DCF’s duty to engage in outreach and collaboration with stakeholders, including school districts, as well as information on dispute resolutions procedures.

# Factual Scenarios

**Question:** *The IEP of a student in foster care requires a day school program, but DCF relocates the student to a special education residential school program for clinical (non-educational) reasons. If DCF also concludes it is in the student’s best interest to attend school at the residential program, how should the district(s) responsible for the student’s special education services respond?*

**Answer:** DCF cannot change the type of special education placement required by a student’s IEP; only the student’s IEP Team may determine the type of special education placement necessary to implement the IEP. Thus, the student’s IEP remains in effect, and the programmatically responsible school district must ensure the student continues to receive a special education day school type of program until the Team may decide to change the student’s special education program and placement. Under the amended regulations, the district in which the student was residing prior to the relocation to the residential school would remain programmatically responsible for special education services, and the district in which the parent(s) reside would be financially responsible. See 603 CMR 28.10(5)(b)(3).

As a matter of best practice, DCF should communicate with the responsible school districts and residential school **prior** to the student’s relocation, and determine whether the intended residential school setting is willing to provide a day program and services consistent with the student’s IEP. If so, the programmatically responsible district can enter into a written contract with the residential school to do so. If the residential school is not able or willing to do so, and DCF still intends to re-locate the student to the residential school, the programmatically responsible school district must ensure that it provides or arranges the provision of the program and services that the student’s IEP requires. This may require providing supplemental or related services directly or through a contracted vendor. Preferably, the communication among the relevant parties (DCF, residential school, responsible districts) will occur at an IEP Team meeting held prior to the student’s relocation. A representative from the financially responsible school district must be invited to any such meeting.

**Question:** *If a student who has continued to attend the same school after entry into foster care moves to another grade level that would require the student to change schools within the same district (e.g., from middle school to high school) would district responsibility for special education stay the same?*

**Answer:** No. The [ESSA guidance](http://www.doe.mass.edu/sfs/foster/guidance.docx) addresses the timeframe in which students retain their rights under ESSA to continue to attend the school of origin. Those rights would not apply here where the student can no longer attend the same school due to grade advancement. DCF would enroll the student in the district where the foster care setting is located, which is typically a new district. Under the amended regulations, Section 28.10(5)(b)(2) would apply, making the district in which the foster care setting is located programmatically responsible, and the parents’ district financially responsible.

**Question:** *When programmatic and fiscal responsibility for special education services is split between districts, do the amended regulations ensure that the programmatically responsible district does not make service and placement decisions without the knowledge and participation of the fiscally responsible district?*

**Answer:** Yes. The same provisions regarding shared school district responsibility in the current regulations at Section 28.10(4)(a)-(c), have been carried over to the amended regulations in Section 28.10(5)(b)(4)(i)-(iii). These provisions ensure that the fiscally responsible school district is invited to and participates as a member of the student’s IEP Team, and that FAPE is provided to the student through services, placement and location of placement that the financially responsible district has participated in selecting. See Section 28(5)(b)(4)(iii). In addition, all relevant parties, including districts that are or may be financially responsible for special education services, may participate in discussions with DCF regarding its best interest determinations and related school district enrollments for children for whom it has placement and care responsibility.

**Question:** *Do the amended regulations address how a parent(s) move after the student’s entry into foster care might affect district responsibility?*

**Answer:** The amended regulations do not address parental moves after a student’s entry into foster care because it is not necessary to do so. Although a parent’s move may change the specific district that has responsibility, the move itself does not trigger a different application of the regulations, or a different rule on which responsibility would turn. For example, amended 603 CMR 28.10(5)(b)(1) provides that “the school district(s) that was programmatically and financially responsible prior to the student’s entry into foster care or prior to a subsequent change in the student’s foster care setting shall remain responsible for the student’s special education program for as long as the student continues to attend the same school.” If the student had been living with his or her parents in District A prior to entry into foster care, and continues to attend the same school in District A after entry into foster care, then financial and programmatic responsibility would stay with District A under Section 28.10(5)(b)(1), regardless of where the foster care setting is located. If six months later, the student’s parents move to District B, District A would remain programmatically and financially responsible for the student’s special education services, despite the fact that the parents no longer reside in District A. District A would remain responsible as long as the student continues to attend the same school while in foster care. The amended regulation ensures consistency in the student’s relationship with the programmatically responsible district, and predictability for the financially responsible district.

**Question:** *If DCF places a student in foster care in a different region of the school district in which the student is currently enrolled, what are the students’ rights under ESSA?*

**Answer:** Students placed in foster care in a different region of the same school district have the same rights as all other students in foster care. If the district would otherwise assign students in the new region of the district to a different school, the student in foster care may return to his or her school of origin *or* enroll in the school attended by students who reside in the new region of the district. For students who attend a new school following a foster care placement within the boundaries of the same school district, 603 CMR 28.10(5)(b)(2) would apply, making the parents’ district(s) financially responsible. Thus, irrespective of the fact that the student remains enrolled in the same district, because the school of origin has changed the district with financial responsibility may also change if the parents’ district(s) was not previously financially responsible.

**Question:**  *If a student in foster care has previously attended a school other than the school of origin, and if financial responsibility has shifted to the district in which the parents reside under 603 CMR 28.10(5)(b)(2), if the student subsequently changes foster care placement and returns to the school of origin, does financial responsibility return to the district of origin under 603 CMR 28.10(5)(b)(1)?*

**Answer:**  No. Once a student in foster care attends a school other than the school of origin, financial responsibility will remain with the district in which parents reside for as long as the student remains in foster care and throughout any subsequent changes in foster care placement. See 603 CMR 28.10(5)(b)(2). Thus, even if the student has a subsequent change in foster care placement that results in the student returning to the school of origin, financial responsibility will remain with the parent’s district. Should the parents’ residence change, financial responsibility will follow the parents’ new residence.