



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Local Financial Impact Review – Issued April 23, 2019

Educational Services for Students in Foster Care and State Care





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April 23, 2019

His Excellency, Charles D. Baker, Governor
The Honorable Karyn E. Polito, Lieutenant Governor
The Honorable Karen E. Spilka, President of the Senate
The Honorable Robert A. DeLeo, Speaker of the House
Honorable Members of the General Court

Dear Colleagues:

Massachusetts was the first state in the nation to recognize public education as a right for its children, and granted its communities the responsibility for providing this service. For over a century we have worked on how to support and fund educational services for children in foster care. It is my privilege to submit this study of the ways in which state regulation and financing of Massachusetts' commitment to our most vulnerable of students can be enhanced successfully and efficiently. This study offers several recommendations for ways that the state can improve educational services for these students—and help school districts, educators, social workers, and advocates respond to the needs and expectations of the students they serve. This report is offered at a time of intense discussion of how the state meets its responsibility to aid public education. I hope it helps to focus attention on this significant challenge that crosses the lines of child welfare and education policy.

I would like to offer my sincere appreciation to the dozens of state and school district officials across the Commonwealth who assisted the Office of the State Auditor (OSA) in the development of this study. I am also grateful to the staff of the Massachusetts Department of Elementary and Secondary Education and the Department of Children and Families for the significant data and analysis they offer about our children and our schools. It is important to note the commitment and contribution of those who serve our vulnerable children in the field and those who advocate on behalf of children and families in the courts and communities.

This report has been undertaken pursuant to Section 6B of Chapter 11 of the Massachusetts General Laws, which grants OSA's Division of Local Mandates (DLM) authority to review any law or regulation that has a significant financial impact on local government, including school districts. Copies of the report are available on OSA's website, www.mass.gov/auditor, or by calling DLM at (617) 727-0025.

Please do not hesitate to reach out to my office with any questions or comments. As always, thank you for your continued support of our shared effort to improve the success, accountability, transparency, and efficiency of Massachusetts state government.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

CWA	Child Welfare Agency
DCF	Department of Children and Families
DESE	Department of Elementary and Secondary Education
DLM	Division of Local Mandates
ESEA	Elementary and Secondary Education Act
ESSA	Every Student Succeeds Act
IEP	Individualized Education Plan
LEA	Local Education Agency (School District)
SEA	State Education Agency (DESE)

GLOSSARY OF TERMS

District of Origin

“District of Origin” is the term of art used in federal legislation and regulatory guidance. In the Massachusetts context, it refers to the district where the student’s parents or legal guardian resides (with some exceptions) and where the student attended school before placement in foster care.

District of Placement

“District of Placement” refers to a community, other than the “District of Origin,” where the child is placed to live with a foster care family or in a congregate care facility.

ABOUT THE DIVISION OF LOCAL MANDATES

The Division of Local Mandates (DLM) was established by Proposition 2½, an initiative to limit property tax increases, in order to determine the financial impacts of proposed or existing state laws, regulations, and rules on cities and towns. Proposition 2½ limits a city or town’s authority to raise real estate and personal property taxes. Under the strict limits on taxing authority set by Proposition 2½, cities and towns could no longer simply raise property taxes to fund state-mandated programs. Thus, DLM was created to respond to municipal petitions to determine whether a state mandate falls within the purview of the Local Mandate Law.

The Local Mandate Law, Section 27C of Chapter 29 of the Massachusetts General Laws, generally provides that post-1980 laws, regulations, or rules that impose service or cost obligations on cities, towns, regional school districts, or educational collaboratives and meet certain thresholds shall be effective only if locally accepted or fully funded by the Commonwealth. Any protected party aggrieved by such a law, regulation, or rule may petition DLM for a determination of whether the law, regulation, or rule constitutes a mandate and to make a cost determination of the state funding necessary to sustain a mandate.

In 1984, the Massachusetts General Court expanded DLM’s powers of review by authorizing DLM to examine any state law or regulation that has a significant local cost impact, regardless of whether it satisfies the more technical standards under the Local Mandate Law. This statute is codified as Section 6B of Chapter 11 of the General Laws. Because of this law, DLM releases reports known as “municipal impact studies” or “6B reports,” examining various aspects of state law that may impact municipalities.

Through these functions, DLM works to ensure that state policy is sensitive to local fiscal realities so that cities and towns can maintain autonomy in setting municipal budget priorities.

EXECUTIVE SUMMARY

The education of children in foster care and state care presents an extraordinary challenge to the school systems of Massachusetts. Students transitioned into foster care have been traumatized, taken from the homes they have known, and frequently moved during their time in the programs. To have any measure of academic success, these vulnerable children require high levels of educational and emotional support. Federal law and regulation, along with state law and regulation in the areas of both child welfare and K-12 education, provide a complicated context for the required academic and human services.

Educational success for this vulnerable population is guided by birth families, foster families, child welfare officials, state education administrators, and local school personnel. Competing priorities among these stakeholder groups make this a difficult policy area to describe and one that can lead to less than optimal outcomes. Research from the Division of Local Mandates has a unique perspective on this policy area through its charge to measure the impact of state law and policy on municipalities. This report results from discussions with a wide range of participants in this system. We reflect on issues of school finance, as well as operations related to education and child welfare.

The Commonwealth is in the midst of a major policy discussion regarding how best to update the funding formula for public education. Since the passage of the Education Reform Law in 1993, which helped address the concerns expressed by the Supreme Judicial Court in the McDuffy decision, the Commonwealth has been an active participant in funding local public education. Over time, the funding has increased, but not at the rate of inflation in the provision of educational services. This has led to the Foundation Budget Review Commission recommendations and several proposals to change funding levels and components of the aid formula.

Beyond the Foundation Budget, there are several provisions of law that are not currently funded by the Commonwealth that involve significant expenditures by municipalities, including the provision of educational services for children in foster care. In law, the Commonwealth promises to reimburse school districts for the significant cost of educating students who are originally from outside the community. This component has not been funded for many years. There are also education-related challenges facing children in foster care that are shared by those in the broader school population, including the provision of counseling and mental health services, out-of-district transportation, and the availability of educational records. This report contains a series of findings and recommendations that shine a light on

ideas to improve the system, and spark a conversation, leading to better outcomes for these vulnerable children and the communities that care for them.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 31	Local school districts expend significant resources to fund educational services for students in foster care.
Recommendation Page 31	The state should assume the full expense of providing educational services to students in foster care and state care.
Finding 2 Page 32	School district officials devote considerable time and effort to ensuring that children in foster care are receiving the right educational services.
Recommendations Page 32	<ol style="list-style-type: none">1. The Department of Children and Families (DCF) and Department of Elementary and Secondary Education (DESE) should collaborate on maintaining a dynamic list of students in foster care and their current placements, as well as their schools of origin.2. The Commonwealth should implement an electronic backpack for foster care students.3. There is a need for resources to support proper education credentialing.
Finding 3 Page 34	DCF should ensure that its staff is trained and follows the procedures in the DCF/DESE joint guidance from January 2018.
Recommendations Page 34	<ol style="list-style-type: none">1. DCF and DESE should jointly provide training to DCF and school district staff on how to collaborate on placement decisions (best-interest determinations) and how student information should flow.2. DESE and DCF should encourage the use of Special Education Surrogate or Guardian Ad Litem arrangements for students in foster care.3. DCF should encourage proper team “meetings” to make decisions on the special education Individualized Education Plans for students in foster care per guidance.4. DCF should provide proper written documentation to districts alerting them to the gain or loss of students.

Finding 4 Page <u>36</u>	Proper transportation arrangements are a challenge for districts that must return students to their schools of origin.
Recommendations Page <u>36</u>	<ol style="list-style-type: none">1. The Commonwealth should provide transportation funding for children in foster care.2. DCF and DESE should complete the process to provide proper documentation for the Commonwealth to receive reimbursement for transportation expenses under Title IV-E of the Social Security Act.3. The legislature and stakeholders should continue the work of the commission examining school transportation operations and funding.4. In addition to fully funding required transportation reimbursements, the legislature should consider funding an appropriate number of subject matter experts for DESE to provide substantial technical assistance to districts as they seek to control costs while enhancing service delivery.

SITUATIONAL ANALYSIS

Purpose of the Study

The education of children in foster care and state care presents an extraordinary challenge to the school systems of Massachusetts. Students transitioned into foster care have been traumatized, taken from the homes they have known, and frequently moved during their time in the programs. To have any measure of academic success, these vulnerable children require high levels of educational and emotional support. Federal law and regulation, along with state law and regulation in the areas of both child welfare and K-12 education, provide a complicated context for the required academic and human services.

Educational success for this vulnerable population is guided by birth families, foster families, child welfare officials, state education administrators, and local school personnel. This report tries to make the narratives of these stakeholders as understandable as possible while not losing sight of the data and the underlying goals of the system: promoting the education and welfare of the child. The research from the Division of Local Mandates (DLM) has a unique perspective on this policy area through its charge to measure the impact of state law and policy on municipalities. The report results from discussions with a wide range of participants in this system. The report contains a series of findings and recommendations that shine a light on ideas and spark a conversation, leading to improvements for everyone involved in this system.

Fundamentally, the system is challenged by a series of disconnected parts:

- systemic communication and cooperation gaps between child welfare and local education staff,
- unclear direction from federal law that governs foster care and education responsibilities for the state and local schools,
- a shortage of resources to fund transportation requirements,
- increasing demand for services as the foster care population grows, and
- disproportionate impacts on resource-constrained communities.

This is not a new challenge. Starting in 1896, the Commonwealth of Massachusetts took steps to ensure that the educational needs of students in foster care were met by cities and towns. Section 7 of Chapter 76 of the Massachusetts General Laws provides a reimbursement mechanism to school districts that

host students placed by the state in a district other than their district of origin.¹ Section 11 of the same chapter spells out a commitment to provide funding to school districts for students in state custody that attend a school district other than their district of origin. These items are consistent with the constitutional and legal provisions of Section 1 of Chapter 69 of the General Laws, which states that “a paramount goal of the commonwealth [is] to provide a public education system of sufficient quality to extend to all children . . . the opportunity to reach their full potential and to lead lives as participants in the political and social life of the commonwealth and as contributors to its economy.” With this context as backdrop, the purposes of this study are to:

1. identify those aspects of state law, regulation, and policy that pertain to the provision of educational services to students in foster care and state care;²
2. make recommendations for changes designed to enhance the Commonwealth’s efforts to support and improve the availability, quality, and cost-effectiveness of elementary and secondary education for these vulnerable children; and
3. examine the current cost impacts of relevant state law and policy on local school districts that serve students in state care and foster care.

Education of Children in Foster Care: An Introduction

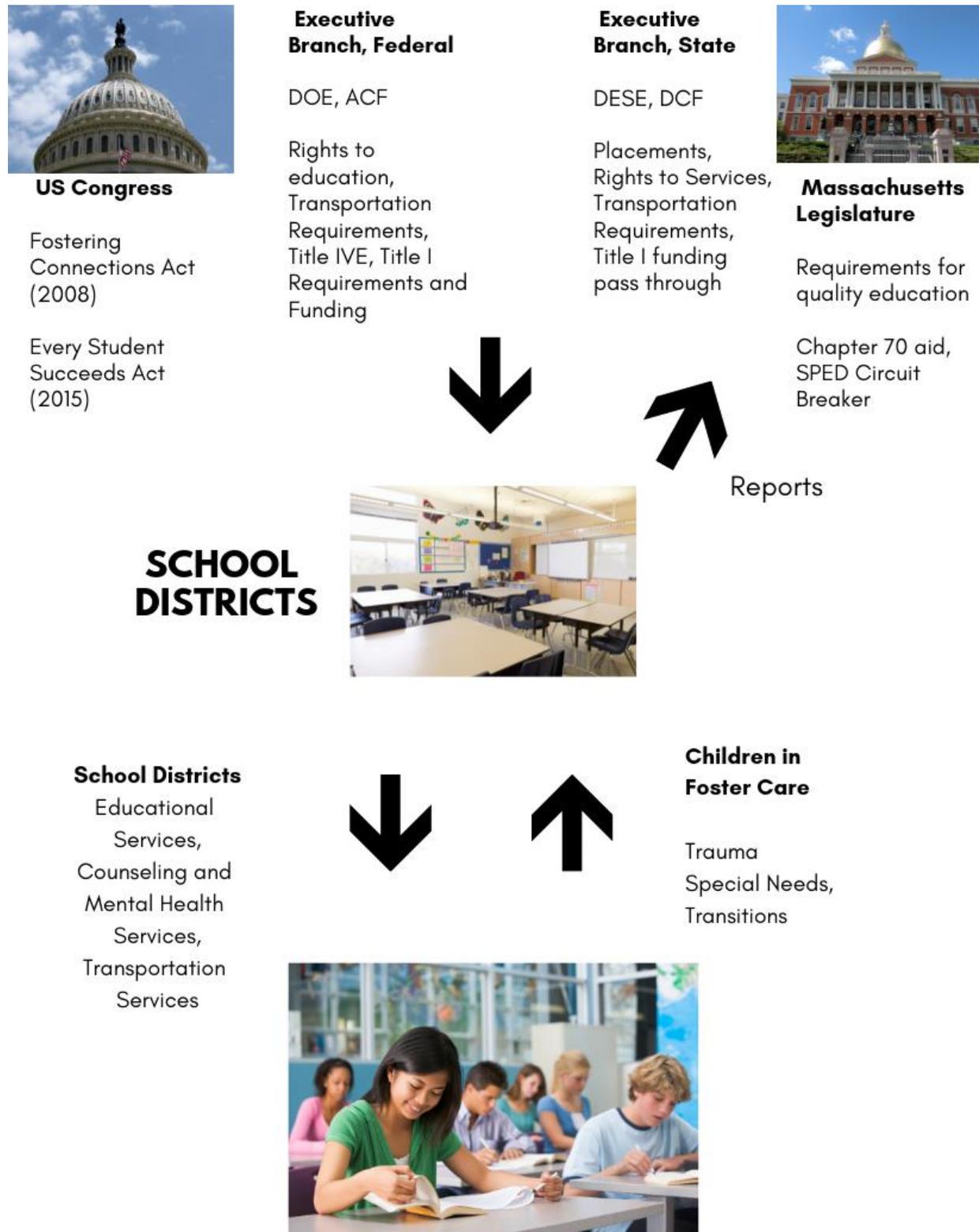
The education of children in foster care is a subject governed by federal and state child welfare laws, as well as federal and state education laws. It is a service delivered at the intersection of numerous government agencies, including the US Department of Health and Human Services, the US Department of Education, the Massachusetts Department of Children and Families (DCF), the Massachusetts Department of Elementary and Secondary Education (DESE), and local school districts. The federal government provides states with overarching laws, regulations, and policies that govern the treatment of children in foster care. These federal requirements must be interpreted and implemented by the state of Massachusetts and by local school districts. Given the complexity and overlap of these rules, there is confusion about how Massachusetts and local school districts should implement federal policies such as school transportation and its funding. Additionally, because services to children in foster care

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1. “District of Origin” is the term of art used in federal legislation and regulatory guidance. In the Massachusetts context, it refers to the district where the student’s parents or legal guardian reside (with some exceptions). This is in contrast to a “District of Placement,” which implies a community, other than the “District of Origin,” where the child is placed to live with a foster care family.
 2. In this report, we will use the term “foster care” to refer to the broad range of living situations that fall under the federal and state definitions. This term will also include students in other types of institutional settings that constitute state custody and control. This does not include children involved with the Division of Youth Services or Department of Mental Health.

are governed by numerous entities at the state and local levels—including DCF, DESE, and the school districts—there can be disconnects in how these government agencies interact with each other to fulfill the needs of these students. Some of these interactions relate to funding of services; some relate to the planning and delivery of the services themselves.

To break this subject into its components, this report includes diagrams to illustrate the obligations of the different government entities and the problems that arise in this system. In Figure 1, the discrete actors are arranged to show relationships of rights and responsibilities. The balance of this section will be organized to mirror those relationships. It will cover the challenges for students and their caregivers, the federal government’s role, the state government’s role, and the impact on school districts—including thoughts on mandates in this area of education policy.

Figure 1—Relationships of governments, school districts, and students in foster care



Children in Foster Care

From the founding of Massachusetts, its people made a policy decision to provide all children in the Commonwealth with a free and quality public education to ensure that Massachusetts would have a well-educated citizenry.³ In addition to Massachusetts' own constitutional and legal commitments to educating children, through the participation of Massachusetts in federal programs the state further bound itself to an appropriate level of educational services for various types of children and families that may have needs beyond those of the average student. In that context, the Commonwealth receives significant federal funding to support the foster care program, as well as grants for elementary and secondary education that require specific actions by the state and municipalities to maintain eligibility.

While educating children to become engaged citizens requires educators to provide a certain amount of care and resources, vulnerable student populations require special care and additional resources to achieve outcomes that could be described as successful. Vulnerable populations include students with special needs, English language learners, children from economically disadvantaged backgrounds, homeless students, children in foster care, and children with court involvements. Children in foster care have specific challenges that are recognized in law and regulation, which flow from a rich research history that catalogues the challenges faced by these students. Because of the high number of changes in placement, foster children experience a higher rate of school transfers, which researchers have

Sidebar I—Transitions and educational outcomes

A study from the University of Northern Colorado found that children subject to multiple school transfers while in foster care experienced lower academic performance and lower graduation rates.¹ Depending on the study, students have been shown to lose from three months to one year of academic achievement per transition. Similarly, statistics in Massachusetts show that, for all students, the higher the number of high schools attended, the lower the graduation rate.² As a group, students in foster care also tend to have lower scores on MCAS tests. National statistics show that students coming from foster care have a low rate of college completion.³ According to statistics from the Annie E. Casey Foundation, children who “age out” of foster care comprise 63% of Massachusetts children in foster care, while the nationwide number is 51%. By age 21, 73% of students in foster care in Massachusetts have achieved a high-school diploma or GED, while nationwide the number is 76%. To comply with federal law, there will be more detailed information forthcoming from DESE on the educational outcomes for children in foster care.

1. (Clemens & Sheesley, 2016)
2. (Massachusetts Department of Elementary and Secondary Education, 2018)
3. (Massachusetts Children Law Center, accessed 2018)

3. Mass. Const., Part II, c. 5, § 2; G.L. c. 69, § 1; *McDuffy v. Sec’y of Executive Office Educ.*, 415 Mass. 545, 606 (1993) and G.L. c. 69, § 1.

demonstrated can have a negative effect on education outcomes.⁴ The evidence strongly suggests that, for these at-risk students, specific student-level and school-level interventions are required to compensate for the lack of consistency in curriculum (because of the changes in placements) and to boost achievement both in K-12 education and beyond. To provide the necessary support, school districts allocate additional resources to support the educational stability and success of these students. This is why federal law mandates that the default position is to keep the child in their school of origin (where they resided before their placement in foster care) absent a determination by relevant stakeholders that the child's best interest is served by attending school in the district of foster care placement.

Data from DESE indicates that for a broad population of students in state care, defined as DCF involved and measured across a recent five-year period (a total of approximately 15,000 children), there are a variety of education outcomes that are significantly different from those of the general student population. For example, DCF involved children attend multiple schools, suffer chronic absenteeism, experience significant discipline incidents, and have a school dropout rate significantly higher than the general population of students. The high school graduation rate is significantly lower. All these outcomes are consistent with national literature discussed in Sidebar 1. As of the end of the 2017–2018 school year, Massachusetts counted approximately 6,800 school-age students⁵ in foster care or under state care, which are included in the statistics referenced above.

Both nationally⁶ and in the Commonwealth, the number of students in foster care declined from peaks reached in the early 2000s until the totals bottomed out in 2011–2012. Since that period, however, there has been a steady increase in the number of children in foster care. As shown in Table 1, the number of school-age children in foster care in Massachusetts has risen 20% since 2012.

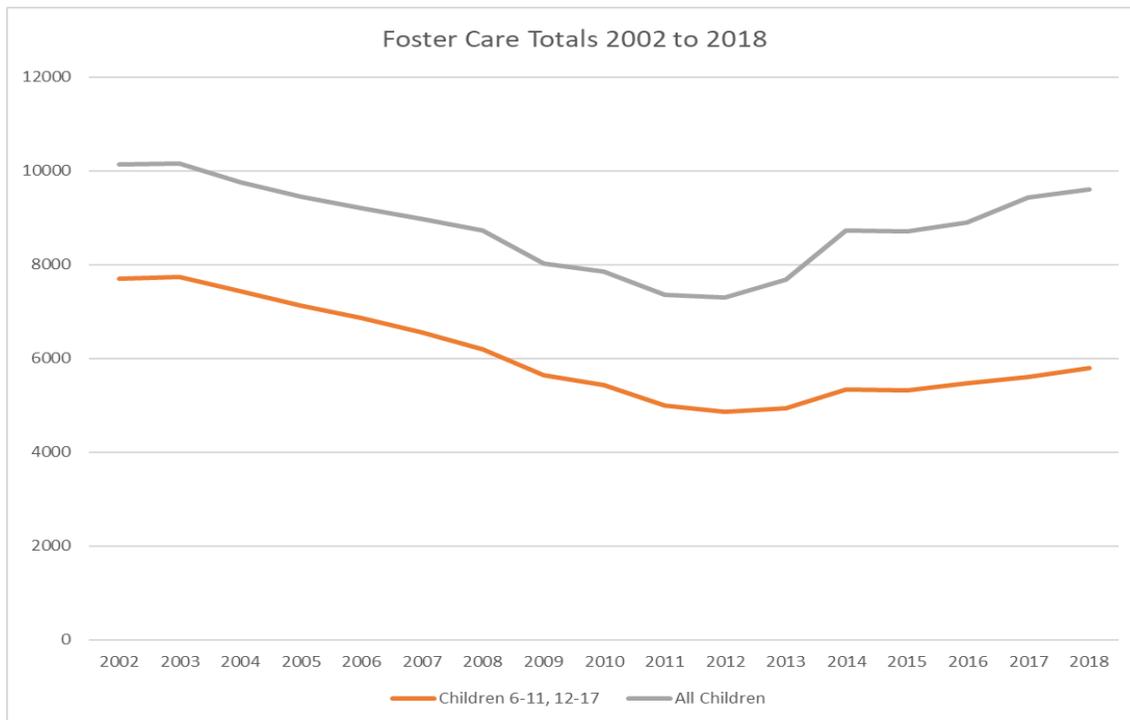
Table 1—Number of school-age students in foster care in Massachusetts and all children in foster care.⁷
(Source: Massachusetts Department of Children and Families Quarterly Reports)

4. (Kristine Ferrer, 2013)

5. (Massachusetts Department of Children and Families Interview, 2018)

6. (US Department of Health and Human Services, 2017)

7. The numbers in the table reflect students in the typical age range for K-12. DCF counts more as there are students in younger and older ranges that have access to school resources.



The trend in Massachusetts is similar to the trend nationally. The federal Administration of Children and Families reports that the top reasons for placement in foster care include neglect, parents with substance abuse problems, and caretaker inability to cope.⁸ Children in foster care are placed in a range of living situations with varying relationships. Some are placed with family members, others in traditional foster care families, and others in institutional or congregate care settings. The range of services required for educational success will vary among students and has a financial and operational impact on school districts. As discussed in the next section, the federal government provides protections for students that states and school districts must follow in the educational process.

Federal law and regulation has changed over the past decade

During the past decade, the legislative and executive branches of the federal government have taken steps to protect the overall welfare and educational rights of children in foster care. There have been two major pieces of legislation that contribute to the governance in this policy area. This section describes each in turn and discusses what changes in practice they have prompted at the state and

8. (Administration of Children and Families HHS, 2017)

school-district levels. The federal government has significant power in these areas because of the substantial funding it provides for both foster care and K-12 public education.

Fostering Connections Act

In October 2008, the US Congress passed, and President George W. Bush signed, the Fostering Connections to Success and Increasing Adoptions Act. The law stated that educational success for students in foster care is dependent on the cooperation between child welfare agencies (CWA) and local education agencies (LEA).⁹ The law also included a commitment to allowing a student to remain in the school within the district of origin, unless a change is determined to be in the best interest of the child. As part of that commitment, it laid out the process by which the CWA, state education agency (SEA), and LEAs could apply for funds set aside for expenses related to transportation of students back to their school of origin if the student meets the Title IV-E requirements.^{10 11} However, the requirements for action in this law were directed to the CWAs instead of to state and local education agencies,¹² as there was no impact of the law on education funding. The law did create an opportunity for the CWA and LEAs to cooperate on reimbursement for the transportation costs. Massachusetts is in the process of modifying its federal plan to allow for these expenses. The reimbursement may run as high as 25% of the \$3.2 million expended by districts during the 2017–2018 school year. The district detail is included in Appendix E.

9. The term “Local Education Agency” comes from federal law and refers to a school district or local education agency responsible for providing elementary or secondary education services. In the Massachusetts case, this means a municipally based or regional school district and includes vocational-technical districts.

10. (Administration of Children and Families HHS., 2010)

11. (American Bar Association, Children’s Law Bureau, 2017)

12. (Stoltzfus, 2012)

Every Student Succeeds Act

In December 2015, President Barack Obama signed the Every Student Succeeds Act (ESSA). ESSA reauthorized the Elementary and Secondary Education Act (ESEA) and directed the federal government to strengthen the rights to educational services for students in foster care.¹³ The act returned attention to the role of SEAs and LEAs in supporting educational continuity for students in foster care transition. The federal legislation reaffirmed the commitment that CWAs and LEAs should cooperate on the best possible educational arrangement for students in foster care. The law's default position is that a student should have the right to remain in their school of origin (the school the child was attending at the time of placement into foster care or before the most recent change in residential placement) absent a finding that it is in the best interest of the student to be enrolled in their placement community's school system. This is an instruction consistent with the commitment to limit the educational transitions of students in foster care. It implies the need for transportation policies and resources to make the commitment of best interest a reality.

According to the ESSA, if a student is changing schools because of the best-interest determination, the student should be immediately enrolled in the local school, even when necessary documentation, such as the child's special education plan or academic history, is not available. Further, the federal law states that the LEA and CWA should cooperate on transportation funding to the extent that school transportation is required for the student's educational opportunity. The law also reaffirmed the availability of forms of reimbursement for transportation through Title I (ESEA) and Title IV (Social Security Act). However, the 2015 law does not allow for the

Sidebar II—Safe and Supportive Schools

In addition to the issues and efforts highlighted in this report, the Commonwealth began a "safe and supportive" schools effort in 2008. According to the law, "Safe and Supportive Schools shall mean schools that foster a safe, positive, healthy and inclusive whole-school learning environment that . . . integrates services and aligns initiatives that promote students' behavioral health, including social and emotional learning, bullying prevention, trauma sensitivity, dropout prevention, truancy reduction, children's mental health, foster care and homeless youth education, inclusion of students with disabilities, positive behavioral approaches that reduce suspensions and expulsions and other similar initiatives."

A commission was established to advise DESE on the implementation of the safe and supportive school framework. The commission includes a range of stakeholders at the statewide and local level. There are also behavioral health professionals from within the school system including school psychologists and social workers. The law calls for cooperation with DCF and other child welfare agencies. Among the outcomes from this work are a district assessment tool and grants for self-assessment and implementation of the framework developed to promote inclusiveness. In fiscal year 2017 there were 17 grants awarded that totaled \$400,000. In fiscal year 2018 the appropriation total was \$500,000, and in fiscal year 2019 the total grants will increase to \$700,000.

13. (Ann Whalen, US Department of Education 2016)

provision of funds for educational services beyond those that are allowed under Title I.¹⁴ Title I authorizes the expenditure of funds for services to support students from low-income families, particularly those in danger of not meeting state educational standards.¹⁵ While Title I funds may be used to offset transportation costs for students in foster care, the limited funds are already allocated to educational services for these and other students; the reality is, therefore, that funds for transportation must come from another source.

The federal law includes a broad definition of “children in foster care,” stating that this legal category 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 pre-adoptive homes.”¹⁶ Massachusetts confirmed this inclusive approach in recent guidance from then–Acting DESE Commissioner Wulfson in conjunction with DCF.¹⁷

After the 2015 passage of ESSA, the Obama Administration worked to resolve and clarify various regulatory and guidance issues. A guidance document was published in June 2016 that required all local education agencies accepting Title I funds to provide a plan for transportation back to the district of origin unless another placement is deemed to be in the best interest of the child.¹⁸ Later in 2016, the US Department of Education released a summary letter and regulations related to ESSA that offered further explication of the division of financial responsibilities between LEAs and the CWAs. While the regulatory document tried to clarify how ESSA was supposed to operate regarding the details of transportation reimbursement, the regulations remain unclear because, at the beginning of the Trump Administration, the Congress passed and the President signed into law a disapproval bill pursuant to the Congressional Review Act.¹⁹ This leaves state and local education agencies without regulations and forced to interpret the language of the federal law regarding responsibility for transportation. This issue is discussed below in terms of the impacts on local school district services and budgets.

14. There is a technical change to the way students awaiting a foster care placement (such as in the STARR program) are treated by the McKinney-Vento Act. These students are no longer considered homeless, so their transportation expenses would not be covered under the homeless student transportation reimbursement. We do not anticipate this change involves a large amount of money. However, the legislature only funds homeless student transportation at a 35% reimbursement level.

15. (US Department of Education, *Improving Basic Programs Operated by Local Educational Agencies*, 2018)

16. (Cornell School of Law, *Legal Information Institute*, 2018)

17. (Massachusetts Department of Elementary and Secondary Education, January 2018)

18. (Ann Whalen, US Department of Education, 2016)

19. (US Department of Education, *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, 2016)

State law and regulation and the declining commitment to funding these services

Because the state accepts funds from the federal government through Title IV-E of the Social Security Act for the foster care program and Title I of the ESEA for public schools, it must cooperate on the enforcement of federal rules. For example, because the law requires administrative resources to support these educational services, DESE has a coordinator for the education of foster children and DCF has an education coordinator. There is a broad array of requirements for rights to educational services under the state constitution, law, and regulation. For children in foster care, these rights are buttressed by general requirements for education in Massachusetts, as well as special provisions for their status in state care. Joint guidance was issued by DESE and DCF in January 2018 to clarify for school districts their responsibilities under federal and state law, including the appointment in each district of a point-of-contact for the education of students in foster care.

Chapter 70 formula and reimbursement for educational services

As shown in Appendix C, the state law regarding the education of children in foster care has been amended 17 times since its original passage in 1896. While some of the statutory revisions represent little more than nomenclature changes, some have been more substantial. In 1977, for example, the legislature extended reimbursement to cover costs for education in secondary schools in addition to the previous commitment for elementary grades. That commitment lives on in the current statute and—of equal importance—is included in Section 96 of Chapter 71 of the Acts of 1993 (a part of the Education Reform Act), this responsibility did not disappear as a result of the establishment of education reform in 1993 as the legislature continued to fund these provisions through fiscal year 2001 (see Appendix B).

In addition to the calculation of state aid for school districts based on enrollment, there are increases based on other demographic factors including the number of economically disadvantaged students in the school district. The count of foster children per district is included in the economically disadvantaged supplement. However, since the estimates from state child welfare and education officials ranges from 45% to 50% of the students in foster care requiring special education services (see the section below on special education services and costs), LEAs report that merely including these students in the “economically disadvantaged” count is insufficient to help pay the real cost of education. The details of the system are summarized in Table 2, below.

Section 7 of Chapter 76 of the Massachusetts General Laws (as described above on pages 4 and 5) was intended to provide a per-student reimbursement to communities for educating foster children using the average-per-pupil cost of educating a child in that community. The reimbursement provision covers those districts impacted by placements of children not previously residents of the community by paying them an amount, per placed student, equal to the average spent, per student, on all students in the district. The economically disadvantaged formula varies the amount depending on the demographics of the community, with some districts getting more funds and others less. In all cases, the total aid for a foster child would be less than the district spends to educate the child, as Chapter 70 funding varies based on the district’s overall enrollment and calculated ability to pay for the child’s education.

Table 2—Funding of educational services for students in foster care

Funding Source	Issue/Challenge	Shortfall
Foundation Budget—Chapter 70 Aid	The 6,800 children in foster care are mobile and may not remain in communities for long periods. May not be counted in October 1 census in proper districts.	Districts are not receiving the reimbursement under Chapter 76, Section 7, which applies to students placed outside their district of origin. According to DESE, foundation budget formula replaces this reimbursement but does so at varying rates based on community characteristics.
Foundation Budget—Economically Disadvantaged Supplement	Students may have multiple placements during the year and therefore funds may not go to district offering services.	Districts are concerned about the accuracy of the count. Children in foster care will have high service needs that cost more than reimbursement.
Special Education Circuit Breaker	Children in foster care experience higher use of IEP-related services than the student population as a whole.	Reimbursement for foster students, homeless students, and wards of the state totaled \$17 million in fiscal year 2017. In these cases, districts must absorb the first \$44,000 of expenses (or four times the average statewide foundation budget amount).
School Transportation	Districts must pay to transport students from district of placement to district of origin.	DESE reports from school districts during the 2017–2018 school year total \$3.2 million in expenses.
Chapter 76, Section 7 Reimbursement	MGL promises reimbursement for educational services provided to students placed by DCF in new district.	This commitment has not been funded since fiscal year 2001.

State regulations and determining the financially responsible district

In addition to legislative action, educational services for children in foster care / state care are also impacted by regulation. Effective July 1, 2018, the Board of Elementary and Secondary Education implemented amendments to state regulations²⁰ that include clarifications on programmatic and financial responsibilities for districts involved in the education of students in foster care / state care. Updated in response to ESSA, the new set of regulations combines considerations for children in need of special education services with students in foster care / state care.

Among the 2018 changes is a redefinition of what constitutes the district financially responsible for the special education services of a student in foster care / state care. For students placed and attending school in a district other than the district of residence for the student's birth parent(s) or guardian(s), the latter district is responsible for the costs of special education.²¹ This provision offers a set of solutions for the potentially complex process of determining the residence of the parent(s)/guardian(s) of children in foster care / state care. The state has the authority to assign responsibility for the student to a district under certain limited circumstances.²² Moreover, the regulations provide for the circumstance in which the custodial parent or guardian "resides in an institutional setting in Massachusetts, including, but not limited to, a correctional facility, a hospital, a nursing home or hospice, or a mental health facility, a halfway house, a pre-release center or a treatment facility."²³ The district of residence before commitment is the responsible party. This decision has a major impact on district finances and therefore also increases the incentive for districts to challenge the determination of responsible district. This is a question resolved by DESE, which estimates there are 400 such determinations each year for the totality of students in special education. DESE has also confirmed that it has decided on 73 such appeals so far this academic year for students in foster care and it characterizes this as an "uptick."²⁴

The school district determined to be financially responsible absorbs the special education costs (up to four times the statewide average of the foundation budget amount or what is approaching \$46,000 per year) and transportation costs (see below), and the complex nature of reimbursements may mean that the districts are underfunded or improperly funded.

20. (Massachusetts Department of Elementary and Secondary Education, 2018)

21. 603 CMR 28.10(5)(b)(2)

22. 603 CMR 28.10(8)

23. 603 CMR 28.10(8)(c)(6)

24. (Massachusetts Department of Elementary and Secondary Education, 2019)

Transportation funding and arrangements impacts educational stability

ESSA created a window in which SEAs were to implement the educational stability provisions of the law. For Massachusetts, this implied a change in practice for the documentation of transportation expenses related to maintaining relocated students in their schools of origin. ESSA recognized the challenges faced by districts in maintaining students in appropriate educational settings and called for close cooperation between the CWA, SEA, and LEA to ensure enrollment in the school of origin or proper placement in the new district of residence. Under ESSA, educational placement remains a joint decision of the parties, but the availability and cost of transportation should not be a factor in the decision, while time of transportation can be a consideration.²⁵ Further, ESSA requires LEAs receiving Title I funds to collaborate with the SEA and CWA to “develop and implement clear written procedures governing how transportation” for children in foster care will be provided.²⁶ This is a critical issue as there are resources required to transport a child back to the district of origin and to maintain educational stability.

The DESE/DCF guidance states that “Absent other agreements between districts and DCF, the district of origin is responsible for providing transportation to and from the school of origin.” This squarely places the financial burden of transportation on the school districts. Yet the federal law is explicit regarding this issue: in the absence of funding from the CWA or agreement between the CWA and LEA, the LEA is not responsible for providing transportation for students beyond its normal requirement.²⁷ This means districts must accommodate students on a normal route or with small variation of an existing route. Nothing in law justifies the expanded mandate for school districts to absorb out-of-district transportation expenses for these students. Districts are absorbing the cost of transportation for many students in the process of bringing them back to their district of origin in order to maintain educational stability.

School districts are continuing to wrestle with these and similar categories of transportation expenses. Several requirements under Massachusetts law mean that school districts provide transportation beyond the district including McKinney-Vento homeless students, special education students in various out-of-district programs, vocational-technical students studying out of district, and students in charter schools. Districts report difficulty sustaining these transportation requirements, particularly for one-to-one trips out of district. This difficulty is especially acute for longer distances and as the districts get

25. (Massachusetts Department of Elementary and Secondary Education, Office of Student and Family Support, 2018)

26. (Ann Whalen, 2016)

27. (US Department of Education, Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, 2016)

closer to the end of the school year. A variety of factors can exacerbate the challenges, including a shortage of trained drivers (particularly those that can transport students with special needs) and a lack of competitive bidders on school transportation contracts in general. Sometimes these efforts are deemed ineligible for reimbursement by the Commonwealth or the reimbursement covers only a small percentage of cost despite provisions in Massachusetts General Law that promise higher levels of support. Although both McKinney-Vento and regional school district transportation costs are supposed to be fully reimbursable, state support in both categories is subject to annual appropriation. In fiscal year 2017, the school districts and municipalities in Massachusetts spent over \$744 million on school transportation as shown in Table 3.

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Table 3—Massachusetts School Transportation Breakout fiscal year 2017 from DESE Schedule 7

	Sum of Amount	Description	Reimbursable?	Actually Reimbursed?	Law
4000	\$280,101,015	In-District Regular	Y>1.5 mi	Y, RSD only	MGL Chapter 71, Section 7A, 7B; MGL Chapter 71 Section 16C also Island Children
4010	2,039,953	Out-of-District Regular	Y>1.5 mi	N	MGL Chapter 71, Section 7A, 7B; MGL Chapter 71 Section 16C also Island Children
4020	2,806,542	Regular Preschool	Y>1.5 mi	N	MGL Chapter 71, Section 7A, 7B; MGL Chapter 71 Section 16C also Island Children
<u>Regular Subtotal</u>	<u>\$284,947,510</u>				
4070	42,406,795	3-5 year old	Y	N	MGL Chapter 71B, Section 14
4080	164,888,718	Public School programs 6-21	Y	N	MGL Chapter 71B, Section 15
4110	51,622,949	Public Separate day school 6-21	Y	N	MGL Chapter 71B, Section 16
4120	60,955,871	Private Separate day school 6-21	Y	N	MGL Chapter 71B, Section 17
4130	3,204,130	Private Residential school 6-21	Y	N	MGL Chapter 71B, Section 18
4140	652,986	Homebound/hospital 6-21	Y	N	MGL Chapter 71B, Section 19
4150	601,451	Public Residential Institutions 6-21	Y	N	MGL Chapter 71B, Section 20
<u>Special Education Subtotal</u>	<u>\$324,332,900</u>				
4190	32,342,954	VoTech In-district	Y > 1.5 mi	N	MGL Chapter 71 Section 16C
4200	4,410,191	VoTech Out-of-district	Y	Y	MGL Chapter 74, Section 8A
<u>VoTech Subtotal</u>	<u>\$36,753,145</u>				

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4220	6,779,059	Non-public In-district		N	
4230	256,343	Non-public Out-of-District		N	
<u>Non-Public Transportation Subtotal</u>	<u>\$7,035,402</u>				
4250	1,916,923	Racial imbalance	Y	N	MGL Chapter 76, Section 12A
<u>Racial Imbalance Subtotal</u>	<u>\$1,916,923</u>				
4260	<u>\$784,940</u>	Day care transport	N	N	
4270	<u>\$981,633</u>	Other education programs including adult	N	N	
4280	<u>\$18,093,320</u>	Out-of-district Choice and Charter	Y	N	Chapter 76, Section 7B
4283	10,917,554	Homeless Student Out-of-district	Y	Y	Mandate determination 2011
4285	13,233,096	Homeless Student Transportation	Y	Y	Mandate determination 2011
<u>Homeless Subtotal</u>	<u>\$24,150,650</u>				
4310	<u>8,216,990</u>	Reg Transit Assessment			
4320	<u>37,381,490</u>	Transportation services including METCO			Grants
<u>Grand Total</u>	<u>\$744,594,902</u>				

(Source: DESE Annual Report Schedule 7 FY 2017)

Against that \$744 million total, the state reimbursed school districts the following amounts in fiscal year 2017:

- \$63 million for regional transportation to academic regional school districts and vocational-technical school districts;
- \$8.35 million for McKinney-Vento homeless student transportation; and
- \$250,000 for out-of-district vocational-technical transportation.

Total reimbursement thus represents less than 10% of overall local spending on school transportation. Moreover, transportation is not an allowable category of expense against required school spending by districts (similar to capital expenses, grants, and revolving funds). Another way of looking at the \$744 million is that it represents 12.55% of spending beyond the requirement for a local contribution for fiscal year 2017.²⁸

The school year that ended in June 2018 was the first year that Massachusetts added the category of transportation for foster children educated in the school or district of origin and subject to transportation to its reporting of education expenses by district. The total reported by districts amounts to just over \$3.2 million. These are the students identified in Scenarios 1 and 2 below. Federal and state law require the ability for students in foster or state care to stay not just in their districts of origin but also in their schools of origin. This implies that there will be some intra-district, as well as the reported inter-district, transportation costs if the student is living in a school zone different from the one of enrollment. This number will increase as districts get more accustomed to the reporting requirement and any applicable reimbursement policy.

School districts provide critical services for students in foster care with few additional resources

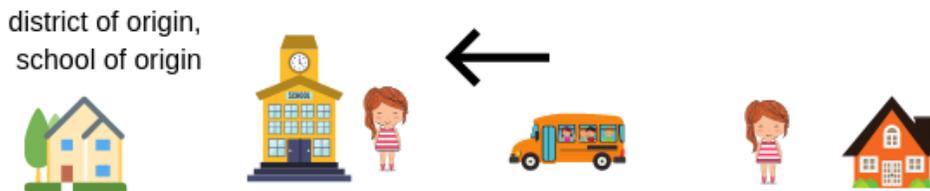
School districts in the Commonwealth provide a deep set of educational and support services to children in foster care and manage compliance with federal and state law and regulation. For example, each district is required to have a foster care point of contact in addition to a homeless student education point of contact. With limited resources, school districts navigate the requirements for the success of their students in foster care. Central to this challenge is the participation of districts in the best-interest determinations for student educational placements. There are three broad scenarios for making these decisions about where students in foster care should attend school and what services are necessary for the child's success. Each of these scenarios has the possibility of generating a different set of financial and programmatic impacts:

Scenario 1—The student is placed in foster care within the same school district where they lived before entering foster care or because of change in foster care placement. There is no tuition impact, but there is a **potential transportation** impact under current law if the student requires transportation outside the

28. (Massachusetts Department of Elementary and Secondary Education School Finance, 2017)

norm offered to any student in the district, e.g., there is no bus route between the new home and the child's original school.

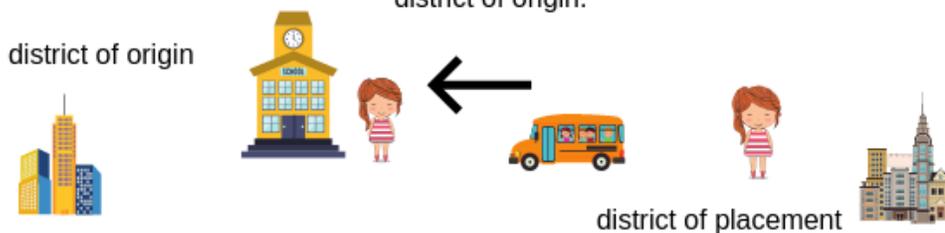
Scenario 1 - Student placed in new home within the same school district



There is a potential transportation impact from this move if the student remains in the previous school.

Scenario 2—The student is placed in foster care in a school district other than the one where they are currently enrolled while the student remains in the school / district of origin. There is a **transportation impact because the district of origin must bus the student to and from the new residence**, but there is no tuition impact under current law.

Scenario 2 - Student placed in new home in another school district (in another city or town) while the student remains enrolled in their current school in their district of origin.



There is a transportation cost impact from this move on the school district of origin as the student rides the bus from one district to another each day.

Scenario 3—The student is placed in foster care in a school district other than the one where they are currently enrolled and enrolls in the new district appropriate to the residence of the foster family or group home. There is a **tuition impact** because the new district has to fund the student's education, but there is no transportation impact under current law.

Scenario 3 - Student placed in new home in another school district. The student transfers school to the district of placement.



There are tuition cost impacts of this move on the district of placement, which are discussed in the body of the report.

Financial impacts on districts

The students covered by scenario 3 are those who should be addressed by the funding offered by Section 7 of Chapter 76 of the Massachusetts General Laws. Given the mobility of the students and their families, it is difficult for districts to track down the information on the previous residence of the birth families and determine the district of origin for students in foster care. This system of allocating costs has a substantial financial impact on districts receiving students with high special needs, as these vulnerable children are relatively costly to educate. The current system for school finance which is based on the school census of October 1 and the foundation budget formula does allocate some level of state aid to districts providing educational services to students in foster care (assuming that students are not reassigned during the year). The amount of money is related to the number of students in foster care and the level of foundation aid (Chapter 70) received by the community.²⁹ The foundation budget system approaches funding from a different perspective than the one framed by laws related specifically to educational services for students in foster care. It is, however, consistent with the legislative language implemented in recent years regarding the Chapter 70 formula (which is updated each year in an outside section of the budget).³⁰ It leaves districts with significant expenses for education and support services, as well as special education costs.

Best-interest determinations require collaborative decision-making.

According to federal law and state guidance, both the district of origin and the district of placement should participate in best-interest determinations for students in foster care. The January 2018

29. (Massachusetts Department of Elementary and Secondary Education, 2017)

30. (Commonwealth of Massachusetts, 2018)

guidance, cited above, includes DCF, the districts, parents/guardians, and education decision-makers as participants in the best-interest determination discussions. Because of the cost implications and complexity of these decisions, such collaboration is important to arrive at the correct decision for the student's academic life and to properly weigh potential challenges for the student. Some of these students face deep emotional challenges that require high-level interventions because of trauma from family actions and separation.³¹ School districts reported that the best-interest meetings were not an interactive process, and school districts were not encouraged to participate in a meaningful way. District officials reported that even when they were consulted, DCF did not take account of their feedback on what the district believed was in the best educational interest of the student. Additionally, some school district officials believed that the best-interest determination needed to have a formalized process, which they believed was currently lacking. While this process may take time, DESE/DCF guidance reinforces that the student should continue to attend the school of origin while the best interest is being determined.

Special education services and costs

There are substantial numbers of children in foster care that require special education services. DESE estimates that approximately 45% of the students in foster care require an Individualized Education Plan (IEP), which results in a range of additional services for children. Some of these requirements can be met by in-district resources, while others may result in out-of-district placements in collaboratives or private schools, including residential settings. Costs for these out-of-district placements can vary from \$50,000 per year for placement in out-of-district day schools to over \$300,000 for residential placements.

Districts providing special education services to students in foster care placed in their schools may use the special education bill-back process.³² This means that districts with programmatic responsibility can bill the districts that, under regulation, bear the financial responsibility for educating these students. While this does occur in some cases under established DESE procedures (across the entirety of special needs students, not just foster care), some districts report that they do not actually receive the payments for which they are eligible. DESE and some districts have also indicated that there are informal agreements among districts *not* to bill each other for these services, due to the costs of the administrative services necessary to effectuate the payments, and the belief that over time the in-

31. (Massachusetts Advocates for Children, 2013)

32. (Massachusetts Department of Elementary and Secondary Education, 2018)

district special education costs will even out. However, for higher-cost, out-of-district placements, the private schools or special education collaboratives bill the financially responsible district directly.

These placement decisions are often made without the participation of the district that is financially responsible for the student. (When the student is attending school in the district of foster care placement, the district of origin remains financially responsible for the special education costs—see the graphic for Scenario 3.) There is also special help to districts that host students who have high special needs that trip the special education circuit breaker.³³ These districts receive 100% reimbursement of costs above four times the statewide average of the foundation budget (roughly \$11,000 x 4). To receive the higher level of state reimbursement, districts must properly identify students as being in foster care, homeless, or in state custody. The total for fiscal year 2018 for students in these categories was over \$17 million. In addition, as noted earlier, the special circumstances of children in foster care make them statistically more likely to qualify for other forms of special needs support, since they may also be English language learners, homeless, or simply struggling to maintain pace educationally with their peers.

Collaboration on behalf of the student is required according to federal and DCF education regulations, which stipulate that the social worker be excluded from decision-making on behalf of the student with an IEP or under evaluation for an IEP.³⁴ This implies important roles for the parent, foster parent / guardian, or Special Education Surrogate Parent as well as coordination with school district personnel. School districts report that the Special Education Surrogate Parent program does help with the process and results in stronger plans for the student.

Unfunded mandates and Section 7 of Chapter 76 of the General Laws

On March 28, 2018, the Mayor of Greenfield petitioned the State Auditor's DLM regarding the Commonwealth's failure to reimburse the Greenfield Public Schools for educational services provided to students in foster care in out-of-district placements covered by the provisions of G.L. c. 76, § 7.³⁵ Greenfield indicated that in fiscal year 2015, it spent \$709,931.24 to provide educational services to students placed in foster care in Greenfield. Greenfield believed that the failure to fund the provisions of Section 7 imposed a direct service or cost obligation on the Greenfield Public Schools in contravention of

33. (Massachusetts Department of Elementary and Secondary Education, School Finance, 2008)

34. (US Department of Education, Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, 2016)

35. Letter from William Martin, Mayor, City of Greenfield to Suzanne M. Bump, State Auditor (Mar. 28, 2018) (on file with Division of Local Mandates)

the Local Mandate Law, G.L. c. 29, § 27C. The dollar figure from Greenfield came from applying the formula posed in G.L. c. 76, § 7 (average cost to educate all students in the district times the number of students educated in their schools whose district of origin was not Greenfield). This is an illustration of Scenario 3 from above.

Number of Pupils	Tuition Cost	Total
47	\$15,104.92	\$709,931.24

This is not the first time DLM has received a petition regarding G.L. c. 76, § 7. In 1989, DLM received a petition from the City of Worcester that raised 11 items of concern, including issues related to special education notifications, language education in schools, and testing preparation.^{36 37 38} These issues were later reviewed by the Supreme Judicial Court in 1994.

Application of the Local Mandate Law to Foster Care Student Reimbursement under G.L. c. 76, § 7

In general terms, the Local Mandate Law, G.L. c. 29, § 27C, provides that any post-1980 state law, rule, or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth or be made conditional to local acceptance. Pursuant to the Local Mandate Law, any community aggrieved by an unfunded state mandate may petition the Superior Court for an exemption from complying with the mandate until the Commonwealth provides sufficient funding. Before taking this step, a city or town may request an opinion from DLM as to whether the Local Mandate Law applies in a given case and, if so, a determination of the cost for complying with the unfunded mandate. DLM's deficiency determination is *prima facie* evidence of the amount of funding necessary to sustain the local mandate.³⁹ Alternatively, a community may seek legislative relief. However, the Local Mandate Law does not apply to all laws governing local activity. Laws that notably fall outside the scope of the Local

36. City of Worcester: In Re City of Worcester and Certain Laws and Regulations Relative to Public Education (Office of the State Auditor May 9, 1990) (on file with the Division of Local Mandates).

37. Letter from Jordan Levy, Mayor, City of Worcester to A. Joseph DeNucci, State Auditor (June 19, 1989) (on file with the Division of Local Mandates).

38. It should be noted that part of Worcester's concerns was the promulgation of regulations that ended intra-district transfers that were used to support the education services provided to children in state care. Additionally, Worcester believed that a statutory change in G.L. c. 76, § 7 that amended the state reimbursement from the full cost of educating a student to the average cost of educating a student in the district was a mandate under the Local Mandate Law. This change could have had a serious impact on the funding of the services, as students with special needs can be significantly costlier to educate than the average students in a district.

39. See M.G.L. c. 29, § 27C (e).

Mandate Law are federal laws and regulations and laws regulating the terms and conditions of municipal employment.⁴⁰

To determine whether the anticipated local cost impact of a state law, rule, or regulation is subject to the Local Mandate Law, we apply the framework for analysis developed by the Supreme Judicial Court in *City of Worcester v. the Governor*. Of particular relevance to this petition, the challenged law must take effect on or after January 1, 1981; must be either a new law or a change in a law that rises to the level of a new law; and must result in a direct service or cost obligation that is imposed by the Commonwealth, not merely an incidental local administration expense.⁴¹ Moreover, the legislature, in enacting the challenged law, must not have expressly overridden the Local Mandate Law.⁴²

In 1994, the Supreme Judicial Court reviewed whether Section 7 of Chapter 76 of the General Laws is an unfunded mandate in *Worcester*. In the *Worcester* decision, the Supreme Judicial Court found that G.L. c. 76, § 7 did not constitute an unfunded mandate because the 1983 amendments to Section 7 of Chapter 76 did not constitute substantive amendments that imposed new obligations on Worcester.⁴³

Reviewing this matter in the light of the Supreme Judicial Court's decision, the post-1980 amendments to Chapter 76, § 7 do not impose any new obligations on Greenfield that would trigger the Local Mandate Law. The state's assurance that it will pay for the education of students in state care that are placed in a school district other than their home school district dates back to 1896.⁴⁴ ⁴⁵ While Section 7 of Chapter 76 has been amended numerous times over the years, the last substantive amendment occurred in 1978 and required the state to reimburse a school district for the educational expenses of all children placed by the state in foster care outside their home town; previously, reimbursements were only for children over the age of 5.⁴⁶ To trigger the Local Mandate Law, there must be a change in a state law, regulation, or rule that imposes a new obligation on a city or town. Since there have been no

40. *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 697 (1985); *City of Cambridge v. Attorney General*, 410 Mass. 165, 170 (1991).

41. *City of Worcester v. the Governor*, 416 Mass. 751, 754-755 (1994).

42. *Lexington*, 393 Mass. at 698; *Sch. Comm. of Lexington v. Commissioner of Education*, 397 Mass. 593, 595 (1986).

43. *Worcester*, 416 Mass. at 759.

44. St. 1896, c. 382, available at <http://archives.lib.state.ma.us/actsResolves/1896/1896acts0382.pdf>.

45. Chapter 382 of the Acts of 1896 required the state to reimburse cities and towns for the education of children in state care between the ages of 5 and 15 who were placed by the state in a municipality other than that of their home. The reimbursement rate was 50 cents for each week a child was attending school in a district that was not their home school district.

46. St. 1978, c. 367, § 67, available at <http://archives.lib.state.ma.us/actsResolves/1978/1978acts0367.pdf> and St. 1921, c. 272 available at <http://archives.lib.state.ma.us/actsResolves/1921/1921acts0272.pdf>.

substantive post-1980 changes that impose a new obligation on Greenfield, the Local Mandate Law does not apply to G.L. c. 76, § 7.

Summary

We have reviewed significant issues regarding the roles of the major participants and policymakers who contribute to choices about providing and paying for educational services for children in foster care. These roles and some of the major issues are presented in Table 4. Highlighted is the need for closer cooperation between state agencies and school districts on decisions affecting the educational placement and services required by the children in foster care. Lack of resources, both money and time, contributes to the disconnection. In the following section of the report, we discuss findings and recommendations aimed at improving the provision of services, efficiency of serving student needs, and a more equitable funding stream for local services.

Table 4—Roles and responsibilities of participants in the education of students in foster care

Policy Participant	General Responsibility	Challenge	Governing Documents
Local School Department	Classroom instruction	6,800 students statewide	Mass. Const., Part II, c. 5, § 2; G.L. c. 69, § 1; <i>McDuffy v. Sec’y of Executive Office Educ.</i> , 415 Mass. 545, 606 (1993) and G.L. c. 69, § 1.
Local School Department	IEP	Roughly half of students in foster care require special education IEPs	Special Education Regulations, 603 CMR 28.10
Local School Department	Mental health counseling services		
Local School Department	Counseling services for placement and to gain academic credit for previous courses in other districts		
Local School Department	Transportation to school of origin	Unreimbursed expense	January 2018 document by DESE and DCF, previous training
Local School Department	Out-of-district placements to collaboratives or special schools	Students in foster care have a higher than average incidence of these placements	Special education regulations, 603 CMR 28.10
Local School Department	Determines financial responsibility of district based on residence of parents	Requires knowledge of community of origin of parents at time of child’s entry into foster care	Revised DESE regulations July 2018
Local School Department	Determines program responsibility based on residence of student		Revised DESE regulations July 2018
DCF	Supervision of foster care program		

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Policy Participant	General Responsibility	Challenge	Governing Documents
DCF	Residential Placements		
DCF	Transportation funding	Providing transportation services through social workers and contractors, no reimbursement to local districts	January 2018 document by DESE and DCF, previous training, federal laws
DCF	Best-interest determination	Uneven implementation of cooperative decision-making	
DCF	Sets standards with DESE for educational services for foster children		January 2018 document by DESE and DCF
DESE	Sets standards with DCF for educational services for foster children		January 2018 document by DESE and DCF
DESE	Collects data on educational performance, transportation costs	First year coming	
DESE	Provides dispute resolution on financial and programmatic responsibility		
Federal Government	Law and regulation regarding foster care, from 2008	Foster Connections Act promotes educational stability	Public Law No: 110-351 (10/07/2008)
Federal Government	Law and regulation regarding education services, from 2015	ESSA broadly defined students in foster care	Public Law No: 114-95 (12/10/2015)

FINDINGS AND POLICY RECOMMENDATIONS

1. Local school districts expend significant resources to fund educational services for students in foster care.

Providing educational services to students in foster care poses a financial strain on local districts that is not offset by local tax revenue or funding by the state. Moreover, school districts cannot adequately budget for children in foster care because foster care placements are often unexpected. Additionally, children in foster care have a higher-than-average likelihood of requiring special education services and therefore incur higher average costs than those incurred for non-foster students. Currently, the state pays some money toward meeting these costs when districts receive a low-income supplement for students in foster care and when the state picks up a portion of their Individualized Education Plan (IEP) costs under the special education circuit breaker. Because of the state’s allocation formula, it is not clear whether this distribution of foundation budget aid reflects the true cost impact of state care / foster care students on the districts that serve them. Given the high rate of placement changes and the concentration of facilities such as group homes in lower-income communities, it is unlikely that the distribution of these high-need students is random; a narrow set of cities and towns—often less-affluent communities—bear a heavier share of these costs.

Recommendation

1. The state should properly calculate and assume the full expense of providing educational services to students in foster care and state care. These expenses should include the costs of assessments, regular day and special education services as well as out-of-district placements, transportation, and mental health services. Because of the nature of foster care placements, school districts cannot budget for the influx of unexpected students during the school year. Thus, the state should comply with its obligations and the spirit of Section 7 of Chapter 76 of the Massachusetts General Laws and reimburse districts for the cost of educating students in foster care and state care. In recognition that the provisions of the General Laws go back over a century and that the nature of these placements has changed significantly within the past several decades, this recommendation explicitly recognizes that “education expenses” include all education-related costs associated with the imposition of federal requirements and the decision-making of the Department of Children and Families (DCF) regarding each foster child’s residential situation. Direct state funding of these services will allow for a more accurate allocation of funds to affected communities. Funding from the state will also lessen the administrative

time lost by central office staff trying to determine the district financially responsible for each student and seeking reimbursements after the fact. In Appendix D, there is a simple model used to estimate costs to the Commonwealth for this recommendation. Estimated total costs less the estimated existing payments would net to approximately \$56 million annually. More accurate data on student placements would sharpen this estimate.

2. School district officials devote considerable time and effort to ensuring that children in foster care are receiving the right educational services.

School districts must devote a significant amount of staff time to organizing appropriate services for students in foster care and state care. Whenever school district officials learn that a student in foster care or state custody has entered their jurisdiction, they must obtain pertinent student records from prior school placements. They must then determine the student's district of origin before entering into discussions with DCF and other stakeholders about what educational setting, and which services, are in the student's best interest. If the outcome of these discussions is a decision to keep the child in their school of origin, or that the student's IEP requires other out-of-district services or placements, the district must next arrange special transportation services. In making these arrangements, school districts sometimes receive inconsistent information that can require additional time and effort to address. Some districts report that they receive no notification from DCF when a student in foster care arrives in or leaves the district. Other districts report that they bear the burden of establishing and maintaining communications with DCF through interactions that are based mostly on interpersonal relationships, rather than formal, established procedures. Moreover, several districts reported that they have informed DCF that a foster student has been absent from school (sometimes for periods in excess of 40 days), only to find that DCF has not acted on that report, or has not acted promptly to work with the district on the absenteeism issue. Finally, the slow transmission of student records can result in duplicative testing and assessments that delay the placement of a student in an appropriate educational setting while increasing the cost of providing services.

Recommendations

1. DCF and the Department of Elementary and Secondary Education (DESE) should collaborate on maintaining a dynamic list of students in foster care and their current placements, as well as their schools of origin and other data. The maintenance of a master list of students in foster care would save staff time tracking attendance and missing students. We recommend a report format that can be used

as a fallback by districts if the proper paperwork does not appear to notify the school of changes. Such a list would serve as an important building block for ongoing analysis that would reveal factors such as geographic concentration of students, rates of transition, percentages of students with IEPs, percentages with out-of-district placement, transportation expenses, and other information that would be helpful to statewide decision-makers in planning for funding and implementation of these critical services. Maintaining such a list would also alleviate concerns by the school districts over the current accounting for students in the economically disadvantaged category. The state has made progress to identify more students in the category but stakeholders are still concerned that this has not been fully fixed. This data will account for students in foster care while additional progress is made for all students in the economically disadvantaged category. The Commonwealth is responsible for reporting to the federal government on the educational outcomes for students in foster care. These statistics would be valuable to policymakers as discussions progress on how local schools can best meet requirements for federal and state compliance. All due care should be taken to protect the privacy of students and families in this data compilation.

2. The Commonwealth should implement an electronic backpack for foster care students. This system allows school districts to access information quickly as students come into their domain. This system has been implemented in various counties in California, and there are active proposals in front of the Massachusetts legislature to implement such a system. Federal law requires that a school district that receives a child in foster care request the educational records of the student from the prior district. The absence of records must not prevent the student from immediate enrollment in the new district but can slow the placement process, as well as the implementation of the student's IEP, if applicable. If the records were online, properly secured, and consistently updated, districts would save time currently spent on record requests and retrieval. Such a database would also be a significant time-saver for the social workers who are charged with helping to facilitate this process.

3. There is a need for resources to support proper education credentialing. Students whose educational outcomes are challenged by frequent changes in school settings need assistance in making sure that what they have achieved is properly reflected in their record. With the enactment of Chapter 108 of the Acts of 2012, Massachusetts joined an interstate effort to support this goal for children in military families. The effort helps students and families garner credit and meet graduation requirements, even offsetting MCAS testing, based on assessments completed elsewhere. A similar

program exists for children of families that work in agricultural industries and are subject to seasonal movement. This type of effort would be useful for students in foster care and homeless students.

3. DCF should ensure that its staff is trained and follows the procedures in the DCF/DESE joint guidance from January 2018.

The January 2018 document replaced a policy document published by DCF in 2014. While the previous DCF policy (Policy #97-002) had specific and detailed procedures on the steps its staff should follow to support the educational needs of children in DCF's care, the joint guidance restates some responsibilities and is written in clearer language. The responsibilities for local districts and DCF field staff are documented in detail and include:

- local district foster care point-of-contact responsibility to obtain education records and information,
- cooperation among all parties to make a best-interest determination as to whether to enroll the child in a new district,
- DCF staff identification of the appropriate educational or special education decision-maker for the child, and
- cooperation among "the parties who are best situated to understand the child's unique needs."

However, some critical policies have not been implemented fully or are inconsistently implemented by DCF's regional and area offices and local school districts. As a result, relationships between school districts and DCF vary from area to area within the Commonwealth. For example, Springfield is very positive about the relationship the district has with the DCF field offices. However, other school districts reported that they were not made aware when a foster care student was placed in or removed from a school district. In some cases, districts have not been provided with pertinent educational information for students or allowed to meaningfully participate in the best-interest-of-the-child determinations regarding educational placements. Many districts emphasized that interpersonal relationships between the district and DCF staff determined the level of responsiveness that the district received. Inconsistent implementation of DCF policies and procedures results in confusion regarding how decisions are to be made and raises the possibility of conflict among decision-makers.

Recommendations

- 1. DCF and DESE should jointly provide training to DCF and school district staff on how to collaborate on placement decisions (best-interest determinations) and how student information should flow.**

Better training by state agencies for participants in the decision-making process for students in foster care can serve both to rationalize the process and to improve cooperation across organizations, thereby resulting in better placements and services for children. DESE informs us they are working on a much needed checklist of steps for the best-interest determination. Through this training, documentation, and ongoing supervision, DCF and DESE management should encourage the establishment of direct communication between counterparts in the field (DCF regional offices and school districts). The current relationship between Springfield and DCF can serve as a model for how these interactions can be managed more consistently across the Commonwealth. If implementation of this recommendation, and those that follow, require additional resources, the legislature should carefully examine those requests to provide support for these essential services.

2. DESE and DCF should encourage the use of Special Education Surrogate or Guardian Ad Litem arrangements for students in foster care. School district personnel report that these arrangements have been of value in protecting and executing IEPs and other education strategies for students. This arrangement is critical, as federal law prohibits the social worker from being a decision-maker regarding special education programs and placements.

3. DCF should encourage proper team “meetings” to make decisions on the special education IEPs for students in foster care per guidance. The guidance document from January 2018 requires “decisions should be made collaboratively by the parties who are best situated to understand the student’s unique needs.” While resource-intensive, this level of cooperation is required to meet the needs of the students. While the hope is for consensus, “DCF is considered the final decision maker in making the best interest determination” if there is disagreement, but disagreement assumes consultation.

4. DCF should provide proper written documentation to districts alerting them to the gain or loss of students. This is promised in documents from both DCF and DESE, yet districts frequently do not receive these “LEA” forms. As noted in a prior recommendation under Finding 2, a statewide database of these placements would help correct this information deficiency while providing critical data for more informed decisions about the services needed to support this vulnerable population.

4. Proper transportation arrangements are a challenge for districts that must return students to their schools of origin.

As mentioned in the narrative above, the two major pieces of federal legislation—Fostering Connections (2008) and the Every Student Succeeds Act (ESSA) (2015)—codified as policy that transitions in educational placements for students in foster care should be minimized and that, unless otherwise determined, remaining in the school of origin is deemed to be in the best interest of the student. This arrangement implies that the district of origin has responsibility to transport the student between the new placement home and the school of origin. For larger districts, this might mean transport within the confines of the school district. For most children, these arrangements will require transportation between districts. Providing transportation between districts is challenging for several reasons. Educational transportation companies have difficulties finding drivers and vehicles. The requirement for foster children results in large numbers of point-to-point trips, which have a relatively high cost. Additionally, a significant number of students require special equipment or a single-occupant vehicle to meet needs of their IEP. Because school districts have significant difficulties finding transportation services for these students, and are left with no alternative, DCF has indicated that its professional staff spend significant time transporting students to school placements. While contemplated in federal law, this expends time that could be spent on activities more closely aligned with the agency’s mission. It is understood that some of the school transportation provided by social workers relates to emergency placements and that they are providing services for students that are housed temporarily while awaiting a more permanent foster setting.

Recommendations

1. **The Commonwealth should provide transportation funding for children in foster care.** School districts do not have control over whether a foster care student is placed into or removed from the district. Because the foster care population is fluid, it is difficult for a school district to budget properly for unexpected transportation costs of students in foster care or state custody. Direct and full funding of transportation will remedy these problems while equitably and accurately allocating costs.⁴⁷ The initial year’s expenses are documented in Appendix E.

47. It should be noted that the Commonwealth’s failure to provide funding for the transportation of foster care students may be an unfunded mandate under the Local Mandate Law, G.L. c. 29, § 27c. This is a similar situation to that of the McKinney-Vento finding by Auditor Bump in 2011-2012. As the requirement is tied to federal funding under Title I, the need to provide transit to these students means this could potentially be a requirement passed by the state to local districts

2. DCF and DESE should complete the process to provide proper documentation for the Commonwealth to receive reimbursement for transportation expenses under Title IV-E of the Social Security Act. While the reimbursement only offers a portion of the funds expended, it could help offset some of the expenses incurred by school districts to comply with state and federal laws. We applaud DCF and DESE for the effort underway to modify the federal plan to allow for reimbursement to Massachusetts for expenses incurred by school districts.

3. The legislature and stakeholders should continue the work of the commission examining aspects of school transportation operations and funding. The expense of out-of-district transportation requires a comprehensive examination that includes not only costs related to foster and state care but also McKinney-Vento, vocational, and special education requirements. There are also significant in-district transportation requirements for regional and municipally based school districts. The state's fiscal year 2019 budget includes a requirement for a legislative commission with membership that includes education community stakeholders to examine a set of these issues. This is an excellent approach that deserves speedy action.

4. In addition to fully funding required transportation reimbursements, the legislature should consider funding an appropriate number of subject matter experts for DESE to provide substantial technical assistance to districts as they seek to control costs while enhancing service delivery. For example, DESE does not currently possess the staff resources to provide transportation planning expertise to districts. The lack of this type of technical resource means many districts are on their own in terms of best practices and strategies to manage operating costs. There is still widespread concern among school districts about the lack of competitive bidders for transportation contracts. There is a clear need for the Commonwealth to assist districts in developing strategies to increase the supply of transportation bidders and, through regulation or regional cooperation, control the soaring cost of out-of-district services.

without offsetting funding. Massachusetts received over \$220 million in Title I, Part A grants in each of the fiscal years 2016, 2017, and 2018.

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APPENDIX A

We want to offer our sincere appreciation to the following organizations and individuals that provided information, sat for interviews, and generally shared their views on the challenges and opportunities for education of our foster children in Massachusetts. These organizations and individuals, along with their staffs and community advocates, provided significant information that we used in this report.

The Honorable Joan Lovely, State Senator

The Honorable Kay Khan, State Representative

The Honorable Paul Donato, State Representative

The Honorable Thomas Walsh, State Representative

Lisa Rosenfeld, Counsel, Joint Committee on Children, Families and Persons with Disabilities

Jeff Wulfson, Deputy Commissioner, Department of Elementary and Secondary Education

Jay Sullivan, Associate Commissioner, Department of Elementary and Secondary Education

Rob O'Donnell, Director of School Finance, Department of Elementary and Secondary Education

Josh Varon, Counsel, Department of Elementary and Secondary Education

Tom Moreau, Assistant Secretary of Policy and Planning, Executive Office of Education

Linda Spears, Commissioner, Department of Children and Families

Andrew Rome, General Counsel, Department of Children and Families

Shirley Fan-Chan, Education Coordinator, Department of Children and Families

Mary Bourque, Superintendent, Chelsea Public Schools

Linda Breau, Deputy Superintendent, Chelsea Public Schools

Gerald McCue, Executive Director, Administration and Finance (retired), Chelsea Public Schools

Kathleen Smith, Superintendent, Brockton Public Schools

June Saba-Maguire, Chief Academic Officer, Brockton Public Schools

Aldo Petronio, Finance Director, Brockton Public Schools

Karen McCarthy, Foster Care Point-of-Contact, Brockton Public Schools

Darryll McCall, Superintendent, Wachusett Regional School District

Kim Merrick, Superintendent, Lenox Public Schools (formerly Wachusett RSD)

Andre Ravenelle, Superintendent (retired), Fitchburg Public Schools

Robert Jokela, Interim Superintendent, Fitchburg Public Schools

Paula Giaquinto, Assistant Superintendent, Fitchburg Public Schools

Jordana Harper, Superintendent, Greenfield Public Schools

Eric Conti, Superintendent, Burlington Public Schools and President of Massachusetts Association of School Superintendents

Tom Scott, Executive Director, Massachusetts Association of School Superintendents and the Executive Board of MASS

Lourdes Soto, Ph.D., Senior Administrator of the Student Assignment Services, Springfield Public Schools

Jeffrey Welch, Senior Administrator of the Parent & Community Engagement Center Operations and Programs, Springfield Public Schools

Glenn Koocher, Executive Director, Massachusetts Association of School Committees

Steve Finnegan, General Counsel, Massachusetts Association of School Committees

Barbara Ripa, Executive Director, Massachusetts Association of Regional Schools

Colin Jones, Senior Policy Analyst, Massachusetts Budget and Policy Center

Jessica Berry, Deputy Director, Children's Law Center of Massachusetts

Amy Karp, Training Director, Commonwealth of Massachusetts CPCS Children and Family Law Program

Marlies Spanjaard, Director of Education Advocacy, EdLaw Project

SEIU Local 509 DCF Chapter President Adriana Zwick; DCF Regional VPs Khrystian King, Ethel Everett, and Marianne Walles; and SEIU Local 509 Deputy Legislative Director Bridget Quinn

APPENDIX B

This Appendix follows the reimbursements that were available from fiscal year 1980 through fiscal year 2001 for the provision of educational services to children in foster care and state care. As mentioned in the body of the report, there is money that flows to school districts to partially reimburse them for the expenses of educating these children.

Line-Item 7061-0009 provides reimbursements to cities, towns, and regional school districts for the tuition of public school children in state custody placed in a city or town that is not their home town as required by G.L. Chapter 76, Section 7.

Line-Item 7028-0302 provides reimbursement for education-related expenses for school-aged children with special needs attending schools under the provisions of G.L. Chapter 71B. The allowable education-related expenses varied from fiscal year to fiscal year.

Line-Item 1599-9100 provides for the pension costs of the local teachers' early retirement program; the remainder of the funds were to be expended to meet the Commonwealth's obligations to reimburse cities, towns, and regional school districts for the tuition of public school children in state custody placed in a city or town that is not their home town, under G.L. Chapter 76, Section 7.

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Fiscal Year	Citation	7061-0009	7028-0302	1599-9100
1980	St. 1979, c. 393	4,000,000	15,388,370	
1981	St. 1980, c. 329	4,000,000	14,552,260	
1982	St. 1982, c. 351	4,000,000	14,394,986	
1983	St. 1982, c. 191	4,000,000	15,443,400	
1984	St. 1983, c. 289	4,000,000	14,743,400	
1985	St. 1984, c. 234	8,200,000	15,400,000	
1986	St. 1985, c. 140	8,200,000	14,551,254	
1987	St. 1986, c. 206	7,500,000	14,287,743	
1988	St. 1987, c. 199	7,300,000	8,163,268	
1989	St. 1988, c. 164	7,300,000	7,750,000	
1990	St. 1989, c. 240	7,300,000	8,000,000	
1991	St. 1990, c. 150	7,000,000	7,000,000	
1992	St. 1991, c. 138	6,720,000	4,139,612	
1993	St. 1992, c. 133		4,139,612	
1994	St. 1993, c. 110		3,708,404	20,000,000
1995	St. 1994, c. 60	2,485,162		40,000,000
1996	St. 1995, c. 38	3,986,947		40,000,000
1997	St. 1996, c. 151	7,508,959		39,500,000
1998	St. 1997, c. 43	16,585,420		
1999	St. 1998, c. 194	17,082,983		
2000	St. 1999, c. 127	17,510,058		
2001	St. 2000, c. 159	17,510,058		

APPENDIX C

As indicated above, there is a substantial legislative history connected to Section 7 of Chapter 76 of the Massachusetts General Laws. Since its enactment in 1896, it has been modified 17 times:

- St. 1896, c. 382, § 1.
- St. 1898, c. 496, § 8.
- R.L. 1902, c. 44, § 4.
- St. 1905, c. 375.
- St. 1911, c. 268, § 2.
- St. 1913, c. 779, § 4.
- St. 1915, c. 78.
- St. 1919, c. 291, cl. (b).
- St. 1919, c. 350, § 87.
- St. 1921, c. 272.
- St. 1930, c. 290.
- St. 1951, c. 579.
- St. 1977, c. 363A, § 55.
- St. 1978, c. 367, § 67.
- St. 1978, c. 552, §§ 26, 27.
- St. 1983, c. 684, § 1.
- St. 1995, c. 5, § 36.
- St. 2008, c. 176, § 74, eff. July 8, 2008

This history illustrates the Commonwealth's longstanding commitment to education of students in foster care and state care. This indicates a substantial history post-education reform.

APPENDIX D

We recognize that better data will contribute to a more credible estimate of the cost of fully funding the range of education services required for the success of these students.

A simple model to estimate cost

There are over 6,800 students in foster care in the Commonwealth. To calculate the cost of educating those students, we selected Pittsfield, a district about the same size in terms of enrollment as the population of students in foster care. We believed that Pittsfield was appropriate as it is in the lowest tenth of districts in terms of income, which makes its demographics similar to those of children in foster care. In fiscal year 2017, the per-pupil expenditure in Pittsfield was \$15,790.17.⁴⁸ This includes general expenditures, grants, and revolving funds covering in-district services. Given the high percentage of students with special needs among the population of foster children, this estimate may be low for per-pupil expenditure. However, this represents a good starting point in the absence of the detailed data that is called for in the report. The estimate would be:

Cost estimate for districts $\$15,790.17 * 6,800 = \$107,373,156$

Less current state aid $\$34,000,000 + \$17,000,000 = \$51,000,000$

Net cost of the recommendation (at a minimum) = \$56,000,000

As we state in the report, there is a wide range of services required to properly support the educational achievement of these students. This involves intense attention from pupil services, guidance, and mental health staff, as well as teachers and aides in the classrooms. The total shown is an estimate of the cost of providing these services and reimbursing school districts for their provision. Some of this money is already spent, as students do appear in the foundation enrollment for school districts. Students are also counted in their district's allocation for special education and economically disadvantaged students. The current average state aid per pupil in the Commonwealth is roughly \$5,000, or in this case \$34,000,000 (across 6,800 students). The average for these students may be higher given the high number of students with special needs and economically disadvantaged students. Moreover, the Commonwealth is offsetting expenses related to high-cost special education services. In the previous fiscal year, that amounted to over \$17,000,000 for a range of students including those in

48. Massachusetts Department of Elementary and Secondary Education, Per Pupil Expenditure Details, 2018

foster care, homeless students, and students in state custody. This means the estimate for the net cost of this recommendation could be \$56,000,000 (plus or minus) annually. This calculation does not include money for the required transportation services.

APPENDIX E

2017–2018 school year foster care transportation costs by school district per Department of Elementary and Secondary Education Schedule 7

Acushnet	\$15,870
Amherst	\$10,349
Arlington	\$10,232
Attleboro	\$51,770
Auburn	\$3,406
Belchertown	\$31,543
Bellingham	\$7,775
Beverly	\$6,136
Boston	\$721,412
Bourne	\$26,925
Brockton	\$292,545
Cambridge	\$11,620
Danvers	\$11,695
Easthampton	\$29,950
Everett	\$141,625
Fall River	\$89,335
Falmouth	\$6,331
Fitchburg	\$195,120
Grafton	\$3,718
Greenfield	\$218,819
Haverhill	\$24,897
Hudson	\$15,496
Kingston	\$49,977
Lawrence	\$96,817
Malden	\$36,951
Mattapoisett	\$11,410
Middleborough	\$43,340
New Bedford	\$133,664
Newton	\$21,072
Northampton	\$9,597

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North Reading	\$14,550
Norwood	\$3,085
Pembroke	\$20,300
Plymouth	\$134,193
Rochester	\$2,625
Sandwich	\$11,023
Shrewsbury	\$12,687
Somerville	\$40,763
Springfield	\$21,221
Taunton	\$40,181
Wareham	\$95,176
Webster	\$37,919
Westborough	\$6,265
Westport	\$5,320
Westport	\$6,175
Winthrop	\$22,823
Amherst-Pelham	\$8,749
Ashburnham-Westminster	\$44,223
Athol-Royalston	\$48,376
Dighton-Rehoboth	\$14,496
Dudley-Charlton	\$67,849
Groton-Dunstable	\$2,272
Gill-Montague	\$8,370
Pioneer Valley	\$14,382
Quabbin	\$3,496
Silver Lake	\$35,605
Spencer-E Brookfield	\$64,266
Triton	\$4,133
Quaboag	\$30,741
Assabet Valley Regional Vocational Technical	\$65,627
Cape Cod Regional Vocational Technical	\$16,901
Tri County Regional Vocational Technical	\$10,762
Total	<u>\$3,243,951</u>