

School districts have 10 days to dispute notice of financial responsibility for foster care tuition

By the New York State
Association of School Attorneys

In recent years, the commissioner of education and the courts have been called upon to decide a number of disputes involving who must bear the cost of instruction of students placed in foster care. The relevant statute, Education Law section 3202(4)(f), requires social services agencies to determine the student's "school district of origin;" then send a letter assigning financial responsibility to that district.

In many cases, a failure to respond to such letters within 10 days has resulted in school districts paying tuition for foster care students placed in other school districts, with no opportunity to dispute the facts. Patterns in commissioner's decisions make it clear that it is important for school officials to be familiar with this law.

NYS law and foster care children

More than 8,000 students were admitted into foster care in New York State in 2019, according to the state Office of Children and Family Services (OCFS). In the 43% of cases located outside New York City, either OCFS or a county Department of Social Services enrolls the student in the foster family's local school district. This "district of residence" is often different from the student's "district of origin" as identified by the social services agency.

Upon enrollment, the social services agency is obligated by the law to send a letter to what it believes to be the school district of origin (let's call it District A) stating it will have to pay tuition for the child at their new school in District B (the district of residence).

Upon its receipt of the notice (typically the "DSS-2999" form), District A has 10 days to submit "additional evidence" to the social services agency. If the district fails to do so, the agency's determination becomes final and the original written notice is deemed final notification of such determination.

Unfortunately, it is common for school districts to ignore receipt of a DSS-2999 form. Often, school officials first become aware of the situation when they receive a tuition bill from another school district (the district of residence). By that time, it is far too late to dispute the designation to the social service agency, the commissioner of education or the courts.

Not that school districts haven't tried. The commissioner has routinely rejected appeals by school districts that claim they were incorrectly designated as the school district of origin but failed to contest the designation within the prescribed 10-day period. Being unaware of the deadline is not a sufficient excuse, according to the commissioner. Even if the district can persuade the social service agency that it made a mistake, the commissioner has refused to intervene when statutory deadlines have been missed.

If a school district meets its deadline and responds to a DSS-2999 form within 10 days, two levels of appeal are possible. First, the social service agency has five days from receipt of any additional evidence to make a "final determination" on the issue of the student's legal residence at the time he or she entered foster care. In the event the public agency decides to adhere to its original designation, the designated school district of origin has 30 days to commence an appeal to the commissioner.

By the same token, the failure of a social services agency to meet deadlines can affect the outcome. The commissioner may hold the social services agency fiscally responsible in the event it fails to (1) make reasonable efforts to identify the school district of origin, (2) provide timely notice to the school



district of origin, or (3) render its final determination in a timely manner.

Some common fact patterns in cases

School attorneys have become familiar with fact patterns in cases involving foster care tuition.

In one all-too-common fact pattern, a county department of social services (DSS) designates District A as the school district of origin with respect to a foster care student and sends a notification. More than one year later, District A receives a reimbursement request from District B, where the student is now attending (i.e. the school district of residence). At this point, District A denies responsibility for the student's tuition and contacts DSS to ensure District B's bill was correct. DSS responds by faxing an "updated" DSS-2999 form designating a third district – District C – as the student's correct school district of origin. District B subsequently invoices the newly designated District C for reimbursement costs.

But the dispute has not been resolved. District C denies responsibility, leading District B to file an appeal pursuant to section 310 of the Education Law.

Who is financially responsible here? In such cases, the commissioner has held that DSS's issuance of a "corrected" DSS-2999 form was "ultra vires" and had no legal effect. Therefore, the initial designation of District A as school district of origin was final.

District A, at this point, has no legal recourse. Its failure to respond within 10 days to the original notification means that it remains financially responsible for the student's tuition to attend District B.

In another fact pattern, District X receives an invoice from District Y for a foster care student's tuition. When District X replies that there must be some mistake, District Y forwards a copy of a DSS-2999 form designating District X as the school district of origin. However, DSS never sent this notice to District X. Officials determine that the student's only connection with District X was a temporary stay in a homeless shelter located in District X before entering foster care and enrolling in kindergarten in District Y.

After some unproductive correspondence with DSS, District X asks the commissioner of education to intervene and correct the obvious error.

In these cases, the commissioner has ruled in favor of District X. The commissioner has (1) declined to dismiss the district's appeal as untimely because DSS failed to make reasonable efforts to identify the student's school district of origin, failed to timely notify District Y that it had been so designated, and failed to make a timely final determination when District Y protested the designation; (2) held that District X could not be the student's school district of origin because the student never resided in District X, which requires physical presence in the district and an intent to remain there; and (3) assigned financial responsibility during the pendency of the appeal to DSS on account of its failure to comply with its obligations under the law.

Accordingly, while a school district's failure to adhere to the statutory process can disqualify such district from later claiming it was incorrectly designated, a timely response to the public agency can not only preserve such district's rights under the statute but can effectively serve to shift the commissioner's focus to the actions of the

social services agency, which must be reasonable and in compliance with its statutory obligations.

Options for districts seeking tuition reimbursement

Another perspective on such cases is that of the district of residence, which is seeking tuition reimbursement for the enrolled foster care student. How should one proceed?

The first step is sending an invoice, in a timely fashion, to the designated school district of origin. After that, you should pay close attention to the relevant timeframes within which you may enforce your reimbursement claim. Claims for foster care tuition payments pursuant to section 3202(4)(f) become due at the completion of the school year. An appeal to the commissioner seeking to enforce (or dispute) a claim for payments must be commenced within 30 days of the end of the school year, while state court actions must be filed within one year of the date that payment was denied.

Be sure to send your invoice early enough in the school year to allow sufficient time for the designated school district of origin to contest its designation and for the public agency to issue a final determination prior to the conclusion of the school year.

If the designated school district of origin does not respond or believes that it is not responsible for the student(s) at issue, ascertain whether the designated school district plans on submitting additional information to the public agency establishing that it is not the correct school district of origin, then continue to monitor the situation. If the designated school district does not contest its designation within 10 days of receiving the notice of its designation, you have until 30 days after the end of the school year to file a section 310 appeal to enforce your claim for reimbursement, or one year from the date payment was denied to sue in state court pursuant to Education Law section 3813(2-b).

Alternatively, if the designated school district timely contests its designation and the public agency identifies a different school district of origin, you should be prepared to promptly invoice the newly designated school district, which would have the same rights under section 3202(4)(f) as the originally designated district.

Finally, do not allow yourself to lose out on reimbursement as a result of another party's failure to follow the statutory process. If, for example, the designated school district of origin expresses its intent to challenge its designation but fails to submit additional evidence to the public agency within 10 days of receiving notice of its designation, or if the public agency fails to make a final determination within five days of receiving such additional evidence, the relevant time frames within which you may challenge a denial of payment remain unchanged. Accordingly, unless the public agency designates a new school district of origin following a timely challenge by the originally designated district, any cause of action for reimbursement continues to be against such originally designated district, subject to the statutes of limitation noted above.

If you believe your school district has been erroneously designated as the school district of origin or are faced with another district's refusal to pay for educational services provided to foster care students located in your district, don't hesitate to contact your school attorney to help you determine your next steps.



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