

FACT SHEET



Students with Disabilities in Foster Care

SPECIAL EDUCATION AND TITLE SERVICES

Educational Stability Requirements from Every Student Succeeds Act (ESSA)

A student is entitled to enroll or remain in their school of origin, unless a determination is made that it is not in the student's best interest to attend the school of origin. The school of origin is the school that the student is enrolled in at the time the student comes into foster care or changes placement.

If it is not in the student's best interest to remain in the school of origin, then the student is to be immediately enrolled in the receiving school even without the normal school records. The receiving school must immediately contact the school last attended by the student to obtain the student's records.

Who Can Make Educational Decisions?

Unless determined otherwise, the biological parent still retains the authority to make educational decisions for a student in foster care. K.S.A. 72-961 defines parent as it relates to students with exceptionalities.

Other educational decisions makers, if the parent is unknown, unavailable, or parental rights have been severed could be:

- A **Guardian** if Guardianship has been completed and is documented with "Letters of Guardianship" issued by a court.
- A **person acting as a parent**, which is a person, such as a grandparent, stepparent or other relative with whom a child lives, or a person other than a parent who is legally responsible for the welfare of a child.
- **Education Advocate** if appointment as an education advocate has been completed and is documented with a Letter of Appointment from Families Together.
- A **foster parent, only** if the foster parent has been appointed by Families Together as the student's education advocate.
- **The student at age 18** unless a court determines the student to be incompetent.

If a parent is unknown or unavailable, and the school believes the student to be in foster care, the school should contact Families Together at (785) 233-4787 to request the appointment of an educational advocate.

Foster Care Points of Contact for Districts

A list of Foster Care Points of Contact for districts can be found on KSDE's website, http://uapps.ksde.org/Directory_Rpts/default.aspx.

Under the Organizational Directory Report, you can generate a list for all districts or one district by selecting the Foster Care Points of Contact radio button and then clicking "Run Report."

If a district has not designated a point of contact, DCF, KVC, Inc., and Saint Francis Community Services will contact the superintendent for foster care issues.

Are Students in Foster Care Homeless?

Children or youth awaiting foster care placement are not considered homeless under ESSA.

Educational Records

The Family Educational Rights and Privacy Act (FERPA) governs the disclosure of education records of students with disabilities in the custody of the Kansas Department for Children and Families (DCF), including disclosure to a contracted child welfare case management provider (caseworker).

The legal educational decision maker is the person who can authorize any release of student records. The Uninterrupted Scholars Act, enacted in 2013, amended FERPA. This amendment permits, but does not require, a school district to disclose, without consent, student education records to a caseworker or other representative of a state or local child welfare agency or tribal organization authorized to access the student's case plan "when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student." This amendment does not permit disclosure of student education records to foster parents. It only permits disclosure of student information to case workers or other authorized representatives of DCF who have the right to access the student's case plan.

KSDE suggests that when school districts receive a request for student education records from a case worker or other representative of DCF or DCF's contracted providers without a release signed by the student's parent or education advocate, school district personnel obtain verification from DCF in writing, on DCF letterhead, of all of the following:

1. The person to whom the records are to be disclosed is a caseworker or other representative of the state child welfare agency (DCF) or tribal organization, such as KVC Inc., or Saint Francis Community Services;



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2. the person to whom the records are to be disclosed has the right to access the student's case plan; and
3. DCF or the tribal organization is legally responsible for the care and protection of the student under state law, as evidenced by written verification on official agency letterhead or a copy of the court order that shows that DCF or the tribal organization is legally responsible for the care and protection of the student pursuant to state law.

Each request for records, including requests which are denied, should be permanently maintained in the student's educational file.

For additional guidance, two offices within the U.S. Department of Education released joint guidance on the amendments to FERPA by the Uninterrupted Scholars Act. The U.S. Department of Education's joint guidance from the Family Policy Compliance Office and the Office of Special Education and Rehabilitative Services can be found at

<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterru- pted-scholars-act-guidance.pdf>.

Suspension or Expulsion of Students with Disabilities who have an Individual Education Program (IEP)

When a child with a disability violates a school's code of conduct, that behavior could result in suspension or expulsion. **Students, including students in foster care, with IEPs for a disability are entitled to the disciplinary protections of special education law.**

A student with a disability may be **suspended 10 days or less** in a school year without educational services. Any part of a school day counts as a full school day. If a school notifies a parent or foster parent to pick up the student

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from school for any part of the day for discipline reasons, this is considered a suspension even if the school district does not refer to the action as a suspension.

If a suspension will result in the **11th cumulative school day of suspension**, school officials must determine what services are needed for the student to participate in the general education curriculum (although in another setting) and progress toward meeting the annual goals on their IEP. School officials would determine what services will be provided and where. Services could be provided on school property or in the community. Days of short-term suspensions cumulate based on the school year, not by district. This is important to keep in mind for students in foster care because if a child moves from district to district and is suspended in different districts that count of school days suspended does not start over when a child enrolls in a different district.

If one suspension consists of more than 10 consecutive school days or the student is subjected to a series of short-term suspensions that show a pattern of removal constituting a change of placement, the student is entitled to a manifestation determination. Factors a school should consider when determining whether a series of short-term suspensions show a pattern of removal constituting a change of placement are whether each incident of misconduct involves substantially the same behavior, the length of each suspension, the total amount of time the child is suspended, and the proximity of the suspensions to one another. In these situations, special education services necessary for the student to participate in the general education curriculum (although in another setting) and progress toward meeting the annual goals on their IEP must begin immediately. The IEP team must meet to determine if the behavior is a manifestation of the student's disability.

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