



## Early Childhood, Special Education and Title Services

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To: Kansas Department for Children and Families; KVC Behavioral HealthCare, Inc.; Saint Francis Community Services; Kansas Association of School Boards; and Kansas School Administrators

From: Colleen Riley, Director; Early Childhood, Special Education, and Title Services

Date: September 22, 2017

Re: Education-Related Requirements for Students in Foster Care

The Every Student Succeeds Act (ESSA) mandates that state educational agencies (SEA) describe the steps the SEA will take to collaborate with child welfare agencies to ensure the educational stability of children in foster. The Kansas State Department of Education (KSDE) appreciates its partnership with the entities running our state foster care system, and is committed to working with these entities and with school districts to help ensure educational stability for students in foster care. This memorandum is intended to provide clarification to school districts on the protections for students in foster care, including students with disabilities, and to ensure that entities running our state foster care system and school district staff know whom to contact at KSDE for support in the following areas.

### **Educational Stability Requirements from the Elementary and Secondary Education Act Amended by (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.

KVC and Saint Francis Community Services will notify the student's school of origin when they become aware that a student may change placements. This is a key opportunity for the school of origin to collaborate with the child placing agency in making a best interest determination. Pursuant to ESSA, the child placing agency will make the final determination if the school of origin and the child placing agency cannot agree what is in the best interest of the student.

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.

For assistance navigating this process, school districts or the child placing agency are welcome to contact KSDE. For more information on this topic, please see the Foster Children page of the KSDE website, <http://www.ksde.org/Default.aspx?tabid=575>.

**KSDE CONTACT:** Doug Boline, KSDE Foster Care Point of Contact, [dboline@ksde.org](mailto:dboline@ksde.org), (785) 296-2600

## **Homeless Requirements from the Elementary and Secondary Education Act Amended by (ESSA)**

As of December 10, 2016, children or youth awaiting foster care placement are no longer considered homeless under ESSA.

For more information on this topic, please see the Homeless Children and Youth page of the KSDE website, <http://www.ksde.org/Default.aspx?tabid=565>.

KSDE CONTACT: Linda Aldridge, [laldrige@ksde.org](mailto:laldrige@ksde.org), (785) 296-1101

## **Suspension or Expulsion of Students with Disabilities who have an Individualized 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 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.

It is important to note that in Kansas foster parents are not presumed to be educational decision makers for a student with a disability that is placed in their foster home. Biological parents retain the right to make educational decisions unless a court orders otherwise. If the student is in a kinship placement, the caregiver can be considered a person acting as a parent for educational decisions if the biological parents are unavailable. If the biological parents are unavailable, and the student is not in a kinship placement, or the school or child placing agency are unsure what type of placement the student is in, schools and child placing agencies may contact Families Together to request an educational advocate for

the student at 800-264-6343 or 785-233-4777. As a result, child placing agencies may want to make foster families aware of the special education disciplinary protections since it is likely the school will call a foster parent to pick up a child that has been suspended or expelled.

For more information on this topic, please see the Chapter 13 of the Kansas Special Education Process Handbook, <http://www.ksde.org/Default.aspx?tabid=598>.

KSDE CONTACTS: Julie Ehler, [jehler@ksde.org](mailto:jehler@ksde.org); Mark Ward, [mward@ksde.org](mailto:mward@ksde.org); or Laura Jurgensen, [ljurgensen@ksde.org](mailto:ljurgensen@ksde.org). (785) 296-7454

### **Foster Care Point of Contact for Districts**

You can access a list of Foster Care Points of Contact for districts on KSDE's website, [http://uapps.ksde.org/Directory\\_Rpts/default.aspx](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." ESSA requires that that local education agencies designate a point of contact. If a district has not designated a point of contact, the Department for Children and Families, KVC, and Saint Francis will contact the superintendent for foster care issues.

The Kansas State Department of Education does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the non-discrimination policies: KSDE General Counsel, Office of General Counsel, KSDE, Landon State Office Building, 900 SW Jackson, Suite 102, Topeka, KS 66612, (785) 296-3201.