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October 12, 2020

TO: Special Committee on Foster Care Oversight

FROM: Mark Ward, Attorney II, Special Education and Title Services (SETS)

SUBJECT: Special Education and Children in Foster Care

In response to a request from the committee for information regarding access to special education services for foster care youth, I am submitting the following information:

1. **FOSTER CARE STATUS FOR CHILDREN IN SPECIAL EDUCATION:**  
There is nothing in either the federal or state law regarding the provision of special education services that refers specifically to children in foster care. Accordingly, a child's status as a child in foster care is irrelevant to the right of the child to receive special education services.
2. **RIGHTS OF CHILDREN WITH DISABILITIES IN FOSTER CARE:** A child with a disability who has an Individualized Educational Program (IEP) and is in foster care, has the same right as any other child with a disability to receive the special education and related services specified in his or her IEP, to receive those services in the Least Restrictive Environment (LRE), and to exercise all of the procedural safeguards related to special education.
3. **RIGHTS OF PARENTS OF CHILDREN WITH DISABILITIES IN FOSTER CARE:** The biological or adoptive parent of a child with a disability, when such child is in foster care, continues to have all of the legal rights of a parent with regard to special education, unless that person does not have legal authority to make educational decisions for the child (due to a court order or decree: such as severance of parental rights or an order specifying another person to act as the parent). In the event that no person who qualifies under the law as a parent is known or is available to serve as a parent, the Kansas State Board of Education (through an authorized designee) appoints an Education Advocate to act as the child's parent. A foster parent may make educational decisions for a child with a disability only if the foster parent has been appointed as the education advocate of the child. The effect of these requirements is that in most cases, a foster parent does not

have authority to make educational decisions for a child with a disability who is in their care.

4. **DISPUTE RESOLUTION:** The parent or the education advocate of a child with a disability may request a mediation session or a due process hearing to resolve educational disputes that have not been resolved informally. In addition, any individual or organization may submit a complaint to the Kansas State Department of Education to allege a violation of special education laws or regulations. It should also be noted that every school district in Kansas has a Director of Special Education, either as a district employee or as a member of a special education cooperative or interlocal organization. These directors are good sources for communicating concerns regarding special education. In addition, the Kansas State Department of Education's Special Education and Title Services (SETS) team responds by telephone and e-mail to questions and concerns of parents, advocates, school district personnel, and others regarding special education issues.
  
5. **COVID-19 IMPLICATIONS:** Guidance from the United States Department of Education (USDE) states that even under the circumstances of COVID-19, IEPs must be implemented. However, the USDE cautions that implementation of an IEP must be done in a manner that is consistent with the health and safety of the child with a disability, the other children in school, and staff members of the school. This guidance clarifies that the instructional methodology for providing special education and related services in an IEP may change under the circumstances related to COVID-19 and may include services provided through distance and on-line instruction. In addition, the guidance states that where there has been an "inevitable delay in providing services," schools will need to make an "individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations." See attached to this document, Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Servicing Children with Disabilities, Office of Special Education and Rehabilitative Services and Office for Civil Rights (March 21, 2020). I have put portions of this document in bold print for emphasis. This document may also be accessed on the Kansas State Department of Education web page, at:

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

\*Also attached to this document is a SETS guidance document, titled: "Students with Disabilities in Foster Care Fact Sheet." This document addresses issues regarding children in foster care, such as Parent's Rights, Points of Contact, Education Records, and Suspension or Expulsion. It can also be accessed on the Kansas State Department of Education web page at:

<https://www.ksde.org/Portals/0/ECSETS/FactSheets/FactSheet-FosterCare-StudentWithDisabilites.pdf>

I will be available for any questions regarding these matters.



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