

## EDUCATION ISSUES REGARDING STUDENTS IN DSCYF CUSTODY

The following information was taken from:  
 Special Education Regulations Delaware’s Administrative Code Title 14 Education 900 Special Populations  
 Delaware State Code Title 14 Education  
<http://regulations.delaware.gov/AdminCode/title14/900/index.shtml#TopOfPage>

<b>EDUCATION RIGHTS FOR STUDENTS IN FOSTER CARE</b>			
<b>ISSUE AREAS</b>	<b>SECTION 504 STUDENTS</b>	<b>SPECIAL EDUCATION STUDENTS</b>	<b>GENERAL EDUCATION STUDENTS</b>
<b>FREE APPROPRIATE PUBLIC EDUCATION “FAPE”</b>	<ul style="list-style-type: none"> <li>A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. 34 C.F.R. 104.33</li> </ul>	<ul style="list-style-type: none"> <li>FAPE means special education and related services that:                             <ul style="list-style-type: none"> <li>Are provided at public expense under public supervision and direction, and without charge;</li> <li>Are available to all children residing in Delaware beginning no later than the child’s 3<sup>rd</sup> birthday through the school year in which the student turns 21;</li> <li>Meet the standards of the DOE, including the requirements of these regulations;</li> <li>Are individualized to meet the unique needs of the student with a disability.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
<b>WHO IS ELIGIBLE?</b>	<ul style="list-style-type: none"> <li>Any student with a disability that substantially impairs a major life activity, who requires an accommodation to ensure equal access to the educational program.</li> </ul>	<ul style="list-style-type: none"> <li>Children under 3 years of age (identified/served by Child Development Watch).</li> <li>Children age 3-5.</li> <li>Students from age 5-21 (through the end of the student’s 21<sup>st</sup> birthday).</li> </ul>	<ul style="list-style-type: none"> <li>Every child has a right to attend school. Attendance is mandatory through age 16, but optional after age 16.</li> </ul>
<b>HOW DOES A STUDENT BECOME ELIGIBLE FOR SERVICES?</b>	<ul style="list-style-type: none"> <li>A student is eligible for a 504 Plan based upon parental (or DFS) request <u>and</u> the school is provided with documentation of a disability that “substantially limits one or more major life activity.”</li> <li>The school may also recommend</li> </ul>	<p><u>Evaluations</u></p> <ul style="list-style-type: none"> <li>An evaluation for Special Education Services may be requested by school staff or the student’s parent/Educational Surrogate Parent.</li> <li>The school must determine if an evaluation is warranted based on a review of data on the student’s performance.</li> <li>The school must obtain parent permission before conducting an initial evaluation for Special Education Services.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>

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<p><b>HOW DOES A STUDENT BECOME ELIGIBLE FOR SERVICES? (CONTINUED)</b></p>	<p>a 504 Plan for the student.</p> <ul style="list-style-type: none"> <li>• A 504 Plan requires a periodic re-evaluation but no timeframes are specified for when this must occur.</li> <li>• A student in foster care with a 504 Plan does <u>not</u> need an educational surrogate parent.</li> </ul>	<ul style="list-style-type: none"> <li>• The evaluation is not the same as testing. The evaluation will consist of a review of all data which may or may not include administering a specific test.</li> <li>• The student must be re-evaluated every three years (or sooner if warranted based on data) to determine continued eligibility for Special Education Services.</li> </ul> <p><u>Eligibility</u></p> <ul style="list-style-type: none"> <li>• When/after an evaluation for Special Education Services has been completed, the IEP team must meet to determine if the student is eligible for services as a student with a disability in one or more of the following categories in accordance with the Delaware Administrative Code:               <ul style="list-style-type: none"> <li>➤ Autism</li> <li>➤ Developmental Delay</li> <li>➤ Deaf Blind</li> <li>➤ Emotional Disturbance</li> <li>➤ Hearing Impaired</li> <li>➤ Learning Disability</li> <li>➤ Orthopedic Impairment</li> <li>➤ Other Health Impaired</li> <li>➤ Visual Impairment including Blindness</li> <li>➤ Preschool Speech Delay</li> <li>➤ Speech and/or Language Impairment</li> <li>➤ Mild Intellectual Disability</li> <li>➤ Moderate Intellectual Disability</li> <li>➤ Severe Intellectual Disability</li> <li>➤ Traumatic Brain Injury</li> </ul> </li> </ul>	

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<b>MEETINGS</b>	<ul style="list-style-type: none"> <li>No prior notice requirement.</li> <li>Relevant individuals may be invited to attend a meeting as needed including the foster parent, related services staff, guidance counselor, DFS worker, AGAL/CASA, etc.</li> </ul>	<p><u>IEP Team</u></p> <ul style="list-style-type: none"> <li>The school is required to invite the following people to be part of the IEP team to determine eligibility for special education services:               <ul style="list-style-type: none"> <li>Parent/Education Surrogate Parent (ESP)</li> <li>Administrator/Administrative Designee</li> <li>Regular Education Teacher</li> <li>Special Education Teacher</li> <li>Professional Qualified to Interpret Evaluation Results</li> </ul> </li> <li>Others may also be invited to attend as needed including the foster parent, related services staff, guidance counselor, school nurse, DFS worker, AGAL/CASA, etc.</li> <li>Parents must be given a 10 day notice in writing of the IEP meeting or waive his or her right to the 10 day notice if the meeting is held sooner.</li> </ul>	<ul style="list-style-type: none"> <li>No prior notice requirement.</li> <li>Others may also be invited to attend as needed including the foster parent, related services staff, guidance counselor, DFS worker, AGAL/CASA, etc.</li> </ul>
<b>COMPONENTS OF THE PLAN</b>	<ul style="list-style-type: none"> <li>The 504 Plan offers accommodations to ensure that the student has equal access to the educational process, such as special seating, use of a calculator, untimed tests, wheel chair accessibility, or peanut-free zones.</li> <li>There is no requirement to monitor the student's progress as the purpose of the Plan is to ensure equal access.</li> </ul>	<p><u>Development of the Individualized Education Program</u></p> <ul style="list-style-type: none"> <li>Once determined eligible for Special Education Services, the IEP team must develop an Individualized Educational Program (IEP). The IEP includes the following components:               <ul style="list-style-type: none"> <li>Data Considerations</li> <li>Other Factors to Consider</li> <li>Needs</li> <li>Services/Aids/Accommodations/Modifications</li> <li>Present Levels of Performance</li> <li>Standards-Based Annual Goals/Benchmarks</li> <li>Related Services</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>

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<b>COMPONENTS OF THE PLAN (CONTINUED)</b>		<ul style="list-style-type: none"> <li>➤ Additional Considerations (transportation, state-wide testing accommodations, etc.)</li> <li>➤ Placement</li> <li>➤ Transition Services – 14 yrs/7<sup>th</sup> gr and older</li> <li>• The school is required to invite the following people to be part of the IEP team to develop an IEP:               <ul style="list-style-type: none"> <li>➤ Parent/ESP</li> <li>➤ Administrator/Administrative Designee</li> <li>➤ Regular Education Teacher</li> <li>➤ Special Education Teacher</li> </ul> </li> <li>• Others that may also be invited to attend as needed including the foster parent, related services staff, guidance counselor, school nurse, DFS worker, AGAL, etc.</li> <li>• The parent must be given a 10 day notice in writing of the IEP meeting or waive their right to the 10 day notice if the meeting is held sooner.</li> <li>• The school must send parents benchmark updates at the time of the report card. These may be sent with the report card or individually at the time the report card is issued.</li> <li>• The IEP must be reviewed at least annually.</li> </ul>	
<b>BEHAVIOR CONCERNS</b>	<ul style="list-style-type: none"> <li>• Students must not be punished or discriminated against based on their disability.</li> <li>• There is no requirement for a functional behavior assessment or a behavior intervention plan for students with behavior issues; however, one can be requested.</li> </ul>	<ul style="list-style-type: none"> <li>• When students who receive Special Education Services demonstrate behaviors that adversely impact their performance and academic achievement, the IEP team may wish to meet to review the IEP to ensure that behavioral concerns are addressed.</li> <li>• The IEP team may also choose to conduct a Functional Behavior Assessment and to develop a Behavior Intervention Plan.</li> </ul>	<ul style="list-style-type: none"> <li>• Students must follow the school code of conduct. However, if students display behavior concerns, then an educator or a caregiver can request a behavior support plan.</li> </ul>

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DUE PROCESS  DUE PROCESS (CONTINUED)	<ul style="list-style-type: none"> <li>Failure to abide by a 504 Plan should be reported to the School District 504 Coordinator or to the U.S. Department of Education Office of the Civil Rights.</li> </ul>	<ul style="list-style-type: none"> <li>The first step to addressing concerns is to request an IEP team meeting.</li> <li>If concerns continue to exist, the parent may wish to request that the building principal or the Director of Special Education Services attend the IEP team meeting.</li> <li>Parents may also choose to contact the Parent Information Center (PIC) or request mediation through SPARK at the University of Delaware for support in addressing concerns.</li> <li>Parents may also file a due process complaint relating to:               <ul style="list-style-type: none"> <li>Identification,</li> <li>Evaluation, or</li> <li>Educational placement of a student with a disability, or</li> <li>The provision of FAPE to the student</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>An informal notice is required for disciplinary action resulting in removal of 10 days or less. The informal notice must include 1) information about code of conduct rules prior to violation; 2) verbal or written notice of the violation; and 3) a chance for the student to give his/her side of the story. A formalized hearing is required for significant disciplinary action which results in removal from the regular education setting for more than 10 days.</li> </ul>
DISCIPLINE	<ul style="list-style-type: none"> <li>Students with a 504 Plan are entitled to some protections including a meeting and a manifestation determination review to determine if the action was a manifestation of the student's disabilities. However, if the offense/conduct is not related to the disability then no protections are afforded to the student under 504.</li> <li>When students are disciplined, the school district must conduct a manifestation determination</li> </ul>	<ul style="list-style-type: none"> <li>Schools may "change the placement" of a student with a disability for disciplinary reasons <i>if</i> there has been a determination that the student's conduct was <u>not</u> a manifestation of the student's disability. Otherwise, the student is entitled to stay put in the placement.</li> <li>A change of placement occurs when the student is removed for more than 10 consecutive school days or when a series of removals constitute a pattern and total more than 10 days in a school year (with the exception of behaviors such as weapons, drugs, or serious bodily injury).</li> <li>Even if the conduct is a manifestation of the student's disability, the school may still remove the student for 45 days if the conduct involved:               <ul style="list-style-type: none"> <li><b>Dangerous Weapon:</b> means a weapon, device, instrument,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>If the student is in general education without special accommodations, the school will follow the School Code of Conduct.</li> <li>A student who has not yet been identified as eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may still be afforded protection if:               <ul style="list-style-type: none"> <li>The school had advanced knowledge that the student</li> </ul> </li> </ul>

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<p><b>DISCIPLINE (CONTINUED)</b></p>	<p>review (MDR) for students with a 504 Plan.</p> <ul style="list-style-type: none"> <li>➤ If the student and parent disagree with the MDR, their only recourse is to file a written complaint with the school district 504 coordinator or with the U.S. Department of Education Office of Civil Rights.</li> <li>➤ The school may unilaterally change the student's placement before conducting any meeting.</li> <li>➤ Schools have an obligation to conduct an evaluation of students with a 504 Plan to determine if misconduct leading to a change of placement is a manifestation of a student's disability.</li> <li>➤ If the behavior is <u>not</u> determined to be a manifestation of a student's disability under a 504 Plan,</li> </ul>	<p>material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.<sup>1</sup></p> <ul style="list-style-type: none"> <li>➤ <b>Drugs:</b> The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. The term "controlled substance" is one identified under schedule I, II, III, IV, or V of 21 U.S.C. § 812(c). These are serious drugs, not cigarettes or alcohol. The term "illegal drug" means a controlled substance, but not one that is legally possessed.</li> <li>➤ <b>Serious Bodily Injury:</b> The student has inflicted serious bodily injury upon another person while at school or a school function as defined in 18 U.S.C. § 1365(h)(3), which is defined as: (A), a substantial risk of death; (B), extreme physical pain; (C), protracted and obvious disfigurement; or (D), protracted loss or impairment of the function of a bodily member, organ, or mental faculty;             <ul style="list-style-type: none"> <li>○ The term "bodily injury" means: (A), a cut, abrasion, bruise, burn, or disfigurement; (B), physical pain; (C), illness; (D), impairment of the function of a bodily member, organ, or mental faculty; or (E), any other injury to the body, no matter how temporary.<sup>2</sup></li> </ul> </li> </ul> <p>• For a student with a disability removed for more than 10 Cumulative Days in a School Year, the school must provide</p>	<p>was a student with a disability before the behavior that precipitated the disciplinary action occurred.</p> <ul style="list-style-type: none"> <li>➤ The parent expressed concern in writing to a school supervisor or administrator, or a teacher reported that the student is in need of special education and related services.</li> <li>➤ The parent of the student requested an evaluation of the student that has not yet been completed.</li> <li>➤ The student's teacher or other school staff expressed specific concerns about a pattern of behavior demonstrated by the student directly to the school's director of special education or other supervisory personnel.</li> </ul> <p><b>Exception:</b></p>

<sup>1</sup> 18 U.S.C. § 930(g)(2).

<sup>2</sup> 18 U.S.C. § 1345(h).

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<b>DISCIPLINE (CONTINUED)</b>	<p>the student may be treated the same as a general education student.</p> <ul style="list-style-type: none"> <li>➤ No protections are afforded to the student and the school's code of conduct must be followed.</li> <li>• If the behavior is determined to be a manifestation of a student's disability, he or she may be entitled to additional supports.</li> </ul>	<p>services that:</p> <ul style="list-style-type: none"> <li>➤ Enable the student to participate in the general education curriculum.</li> <li>➤ Enable the student to make progress toward meeting IEP goals.</li> <li>➤ Provide for a Functional Behavior Assessment (FBA) and Behavior Intervention services such as a Behavior Intervention Plan (BIP) as appropriate to prevent the behavior from recurring.</li> </ul> <p><b>The IEP team determines the services to be provided and the setting in which they will be provided.</b></p> <ul style="list-style-type: none"> <li>• A <b>Manifestation Determination Review</b> meeting must be held within 10 school days of any decision to change the placement. <ul style="list-style-type: none"> <li>➤ Purpose: To determine if the student's behavior is a manifestation of his/her disability.</li> <li>➤ This meeting will determine if the conduct in question was caused by, or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the school's failure to implement the IEP.</li> <li>➤ The team will review all relevant information in the student's file, including the student's IEP, eligibility determination, psycho-educational or other relevant evaluations.</li> <li>➤ If the student is involved with the Division of Prevention and Behavioral Health Services (PBH), the Division of Youth Rehabilitative Services (YRS) case worker, a social worker with the Division of Family Services (DFS),</li> </ul> </li> </ul>	<p>A public agency would not be deemed to have knowledge if the parent of the student:</p> <ol style="list-style-type: none"> <li>(1) Has not allowed an evaluation of the student. Has refused services.</li> <li>(2) The student has been evaluated in accordance and determined to not be a student with a disability in accordance with Delaware Administrative Code.</li> <li>(3) The student may still be evaluated for special education services during the disciplinary period. In a disciplinary case, a special education evaluation must be conducted on an expedited basis.</li> <li>(4) If the student is not determined eligible, discipline is meted out under general education guidelines. However, if the student is deemed eligible, the school must immediately provide a free appropriate public education and develop an individualized education plan.</li> </ol>

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		<p>counselor/therapist, the parent, or Relative Caregiver may wish to invite them to participate in the meeting.</p> <ul style="list-style-type: none"> <li>➤ If a parent disagrees with the decision regarding placement or the manifestation determination, they may appeal the decision by requesting a hearing.</li> <li>➤ The school may also request a hearing if it believes that the student is "substantially likely to injury himself/herself or others."<sup>3</sup></li> <li>➤ If the student receives special education through an IEP, the district can unilaterally move the student to an interim placement for 45 days, but would still need to hold a Manifestation Determination Review meeting. If the conduct is determined to be a manifestation of the student's disability, the IEP team will conduct a functional behavior assessment (unless already conducted) and develop a behavior intervention plan. If a behavior intervention plan had already been in place, the IEP team will review and revise as necessary.</li> </ul>	

<sup>3</sup> 20 U.S.C. § 1415(k)(3)(A) and (B).



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### SPECIAL EDUCATION ISSUES FOR STUDENTS IN DSCYF CUSTODY

#### **How can I help a student if he/she is falling behind or struggling in school?**

- Determine what supports or services are in place to help the student.
- Arrange to meet with the teacher to discuss how to support the student's success in school.
  - Ask about how the foster parent or you can assist.
  - Ask about support programs, like tutoring or Response to Intervention (RTI), to help the student.
  - Ask if the student has received, or would benefit from, a special education evaluation for either an Individual Education Plan (IEP) or a 504 Plan.
- If the student has an ESP (Education Surrogate Parent), address these questions through the ESP.

#### **Who has education rights when a student is in DSCYF custody?**

- The parent makes education decisions unless the parent's rights have been terminated, the court has explicitly prohibited the parent from making educational decisions, or an Educational Surrogate Parent (ESP) already exists.
  - A parent is:
    - ✓ A biological or adoptive parent of a child;
    - ✓ A guardian authorized to act as a child's parent or authorized to make educational decisions for the child BUT not the State if the child is a ward of the State;
    - ✓ An individual acting in the place of a biological or adoptive parent and with whom the child lives – A Relative Caregiver's School Authorization is needed;
    - ✓ An individual who is legally responsible for the child's welfare; or a
    - ✓ A surrogate parent who has been appointed by the Dept. of Education (The appointment occurs after the individual participates in training with PIC and is recommended to be an ESP by PIC.)
  - If the parent's rights have been terminated, the parent **does not have the right to authorize special education services for the student:**

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- ✓ If the student receives special education, the DFS worker and the AGAL/CASA may NOT sign in the role of the parent. Only an ESP may sign when a parent's rights have been terminated or the parent is unavailable to participate in the student's education.
- If the parent does not cooperate or follow up on education issues, it may be appropriate to ask the Family Court or the School District to facilitate appointment of an ESP by the DOE if the student receives special education or needs to be evaluated for special education. Alternatively, if the student has a relative caregiver (and lives with the Relative Caregiver while in DSCYF custody), that individual can step in and help with educational issues.
- If you desire to serve in the role of Education Surrogate Parent then take the Education Surrogate Parent Training through the Parent Information Center. Parent Information Center of Delaware, Inc.

6 Larch Avenue, Suite 404 (Larch Corporate Center)  
Wilmington, DE 19804  
302-999-7394 phone  
302-999-7637 fax  
[www.picofdel.org](http://www.picofdel.org)

### **Who is considered a parent?**

- **“Parent”** means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not a state employee); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver's School Authorization executed in compliance with 14 Del. C. §202(f)(1) is on file; an individual who is otherwise legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 14 Del. Admin. C. §926.19.0 or §639(a)(5).
  - The biological or adoptive parent, when attempting to act as the parent under these regulations, and when more than one party is qualified under this definition to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
  - If a judicial decree or order identifies a specific person or persons to act as the “parent” of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this definition.

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### **When does a student receive an Educational surrogate parent?**

- “Educational Surrogate Parent, “Surrogate Parent” and “ESP” all mean a person appointed by the Department of Education (DOE) to represent a student who receives, or may be in need of, special education and related services in all educational decision making pertaining to the identification, evaluation, and educational placement of the student and the provision of FAPE to the student.
- An ESP may only be appointed when (1) a parent cannot be identified, (2) a parent cannot be located after reasonable efforts, (3) the parental rights of the child’s parents have been terminated and the child has not been adopted, or (4) the child’s parent has consented voluntarily, in writing, to the appointment of an educational surrogate parent. Such consent is revocable by the parent at any time by written notice to the DOE.

### **Does a student with special education need an Educational Surrogate Parent if the student lives with a Relative Caregiver while in DSCYF custody?**

- A surrogate parent is not required for a student who receives, or may be in need of, special education and related services when the student is living in the home of a relative who agrees to act in the place of the parent. However, the Relative Caregiver must fill out a properly executed Relative Caregiver’s School Authorization form.

### **Does a student need an Education Surrogate Parent once he or she turns 18?**

- No. However, the student may be entitled to have an ESP remain on to assist in his/her education. Once the student turns 18, he/she has the right to refuse the appointment of a surrogate parent; the right to participate in the selection of a surrogate parent; and the right to terminate the services of the surrogate parent.

### **What are the qualifications to become an Educational Surrogate Parent?**

- An ESP must be at least eighteen (18) years of age; be a legal resident of the United States; be competent to represent the student; not be an employee of the Department of Education, school district, or any other public or private agency responsible for, or involved in the education or care of the student; have no conflicting interest with the student, and receive training about Delaware and federal law and regulations, including due process procedures, disability conditions, educational programs, and special education services for students with disabilities, as required by the DOE.

### **What other supports can help a student in foster care with an IEP?**

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- You can work with the parent, DFS or the educational surrogate parent (ESP) to request an IEP team meeting to determine whether a functional behavior assessment (FBA) or a behavior intervention plan (BIP) or behavior support plan (BSP) is warranted. The FBA identifies trigger behaviors and helps the IEP team select interventions to directly address the problem behavior. In addition to an FBA, the school must develop a Behavior Intervention Plan (BIP)/behavior Support Plan (BSP) or review and revise the prior plan to appropriately handle misbehaviors.

### **When are homebound services appropriate?**

- Any/all changes in placement are determined by the IEP team based on data.
- The frequency and duration of the homebound services is determined by the IEP team.

## DISCIPLINE ISSUES: ALTERNATIVE SCHOOLS, EXPULSION, AND TRUANCY

### **What are alternative programs?**

- Alternative programs are designed for students with “severe discipline problems,” students who have been expelled from their home schools, those who may be subject to expulsion, and others who have committed serious violations of the local school district discipline code.<sup>4</sup> Expelled/suspended students, who are 16 years old and younger, are presumed to be appropriate for alternative placement unless they are otherwise ineligible (based on specific criminal offenses—see the list below).<sup>5</sup> Most school districts provide alternative education to special and general education students regardless of age. However, pursuant to the statute, general education students over the age of 16 may only be offered alternative placement services on a case by case basis.

Students may not participate in alternative schools if they are expelled for:<sup>6</sup>

- 11 *Del. C.* § 613 Assault in the First Degree; class C felony;
- 11 *Del. C.* § 1457 Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor;
- 11 *Del. C.* § 802 Arson in the Second Degree affirmative defense; class D felony;
- 11 *Del. C.* § 803 Arson in the first degree; class C felony;

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<sup>4</sup> 14 *Del. C.* § 1604.

<sup>5</sup> 14 *Del. C.* § 1604 (8).

<sup>6</sup> 14 *Del. Admin. C.* § 611.2.0.

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- 11 *Del. C.* § 770 Rape in the fourth degree; class C felony; or
- 11 *Del. C.* § 771 Rape in the third degree; class B felony; or
- 11 *Del. C.* § 772 Rape in the second degree; class B felony; or
- 11 *Del. C.* § 773 Rape in the first degree; class A felony; or
- 16 *Del. C.* § 4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamine, LSD, or designer drugs.

### **Can a student in foster care still receive education services if he/she is suspended?**

- The school district is required to provide a free appropriate public education (FAPE) for students with an IEP suspended for more than 10 days (or totaling more than 10 days for a series of removals) to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.<sup>7</sup> That education can be in the form of homebound tutoring, an alternative placement, or a hybrid of education services. General education students in foster care are not entitled to education services while suspended.

### **What happens if a student is facing expulsion?**

- If a student is expelled from school, the student is not permitted to reenroll or enroll in any other school district or charter school until the expulsion period is completed.
- If a student attempts to enroll in a new public school after being expelled, the new public school district cannot permit the student to enroll in that school until the expulsion period ends, no matter whether the expulsion occurred in Delaware or in another state. However, the expulsion rule does not apply to General Education Development ("GED") or alternative education programs, which means that expelled students may still attend GED or alternative education programs during the period of expulsion. Students age 16 or older may also apply for a waiver to transfer to the James H. Groves Adult High School.
- The school district will make a recommendation to the school board on the consequences, if it determines that expulsion is appropriate.
  - Contact the parent, DFS, and the school district if you wish to attend the expulsion hearing in order to advocate for the student.
  - If the parent disagrees with the school board's determination of expulsion, or the length of time for the expulsion, you may assist the parent with appealing the expulsion decision to the state board.

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<sup>7</sup> 34 C.F.R. § 300.530.

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- The state board shall overturn the decision of a local board only if it decides, after considering the advice of the Secretary, that the local board's decision was contrary to a specific state or federal law or regulation, was not supported by substantial evidence, or was arbitrary or capricious.
- If a student is expelled, the school district must notify the Division of Motor Vehicles and the student's license will be suspended (if that student is of age to have a license).
- If expulsion is likely, you may be able to help the parent/student by:
  - Determining if the student was properly evaluated for special education services—or whether the school failed to determine whether the student received appropriate services before imposing a consequence.
- Students eligible for special education may not be expelled if the behavior is a manifestation of their disability.
  - If the conduct was not a manifestation of the student's disability, the school district still has an obligation to provide the student with a free appropriate public education and services.

### **TRUANCY: What happens if a student in care misses a significant amount of school or has attendance issues?**

- If a student misses too many days of school, the school district must initiate a truancy case. Generally, if a student misses more than three days of school for unexcused absences (or absences without a valid excuse) during a school year, the unexcused absences are grounds for truancy. If a student has one unexcused absence, the principal *may* take action against the student, such as requesting a truancy conference. For students in kindergarten through 12<sup>th</sup> grade, the law requires the following:
  - (1) Following the tenth day of unexcused absence by a student, the school shall immediately notify the parent/parents/guardian and a visiting teacher for the district shall visit the student's home;
  - (2) Following the fifteenth day of unexcused absence by a student, the student's parent/parents/guardian shall be notified by certified mail to appear at the school within 10 days of notification for a conference and counseling;
  - (3) Following the twentieth day of unexcused absence by a student, the school shall refer the case for prosecution.
- If the case goes to prosecution, the caregiver may provide an affirmative defense that he or she has made substantial efforts to comply with the attendance policy or that the caregiver does not have legal custody of the student (such as a foster parent or a Relative

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Caregiver). If the Justice of the Peace Court determines that a student is truant, the Court may order community service, counseling, mental health services, a curfew, exclusion from extra-curricular activities, or other penalties. If the student does not return to school after 5 days following a truancy prosecution, a referral must be made to DSCYF.

## CHANGE OF PLACEMENT ISSUES

### When a student in foster care moves to a new placement, what should occur?

- As soon as the student moves into foster placement or a new foster placement, the DFS case worker must notify the school district. The worker must report if the student has moved outside of the school feeder pattern so that the school district Homeless Liaison may arrange for a Best Interest Meeting. The student is to remain in the school of origin unless a decision is made in a Best Interest Meeting that it is the student's best interest to attend the school of the feeder pattern where the student is now living.

### **Best Interest Meetings:**

- In Delaware, all students in the foster care system are considered "homeless" for the purpose of school.<sup>8</sup>
  - This qualification is important because it allows students in foster care to remain in their school of origin/home school or to immediately enroll in a new school without full documentation.
  - When a child moves to a new placement, the DFS case worker must notify the AGAL/CASA immediately of the change of placement and request a Best Interest Meeting with the School. Additional relevant individuals in a student's life should also be contacted, including the parent (if the parent is involved), the therapist, the ESP (if applicable) YRS, PBH, and the former school placement to ensure that all parties are aware of the change.

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- If the student is in DSCYF custody, the parent should be invited to the Best Interest Meeting, unless parental rights have been terminated. The best interest determination is based on input from all interested parties with the school of origin making the decision.
  - If the student receives special education services and anything involving the IEP will be discussed/determined (placement, nature of the services, etc.), the parent or ESP must be invited and given 10 day notice of the meeting or waive their right to 10 day notice.
  - Best interest factors include school proximity to the new foster home, relationships/supports for the student in the school, special education services, extracurricular activities, etc. The best interest is determined by the team attending the meeting.
  - If the team agrees that the student may remain in the home school, then the school district and DFS must set up appropriate transportation for the student to get to and from school. The DFS case worker must arrange for transportation to the student's home school when feasible until the school district sets up appropriate transportation. The school district has five days from notification to arrange transportation.

### **Who is the parent/guardian in a Best Interest Meeting when a student moves to a new foster placement?**

- If the child is in DSCYF custody, parents should be invited to the Best Interest Meeting unless their rights have been terminated. If parental rights have been terminated, then DFS acts as the guardian for the child. The best interest determination is made by the school based on input from a team comprised of all interested parties. If DFS and/or the parent (whoever holds parental rights) disagree, then the guardian/custodian may appeal the Best Interest Meeting determination. If the student receives special education services, the Education Surrogate Parent may serve the role of the parent.

### **Is there a dispute resolution process if a school refuses to enroll a student in foster care?**

- Yes. If the decision reached in a Best Interest Meeting by the School of Origin Homeless Liaison differs from the request by a parent or guardian, then the school must immediately enroll the student and provide the reasons for the decision and the process for dispute resolution. The decision is then reviewed by the school administration, which can uphold or change the decision of the team. If the parent or guardian disagrees with the decision of the administration, an appeal can be made to DOE.



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### **What happens to students who transfer schools with special education?**

- The student's new school will obtain the parent's signature giving them permission to use the IEP from the previous school.
- The IEP team must meet within 60 days to review the IEP from the former school and either adopt, revise, or draft a new IEP.
- The new school must also provide comparable services to the previous placement until a new IEP is adopted or revised to fit the new school's services.<sup>9</sup>

## INFORMATION SHARING FOR CHILDREN IN FOSTER CARE

## INFORMATION SHARING FOR CHILDREN IN FOSTER CARE

### **What information can a case worker share with the school regarding a student in foster care?**

- Case workers may share basic information with the school regarding students in foster care. Case workers may share that the student is in foster care. The case worker may share any behavioral concerns. The case worker must also notify the school of any medications that the student may need to take during the school day, and any other information that might be relevant to help the student adjust to a new school.
- The case worker may NOT disclose the reasons why the student came into care or any personal information about the student's parents.

### **What information can the school share with a parent when a student is in DSCYF custody?**

- If the parent still holds parental rights, the school may share any information relevant to the student's education. If, however, the parents' rights have been terminated, or there is a court order specifically prohibiting the parent from accessing education information, the school may not share any information with a parent. If DFS is involved, it is recommended that the school contact DFS before sharing information with the parent to determine whether access is appropriate.

## EDUCATION ISSUES REGARDING STUDENTS IN DSCYF CUSTODY

### What are the confidentiality laws that circumscribe information sharing?

#### FERPA, HIPAA, CAPTA, Fostering Connections

- **FERPA:** Permits the disclosure of “Education records” or personally identifiable information based on parental consent or to comply with a Court order. For a student in foster care, the school may disclose educational records without parental consent to an agency caseworker when the agency is legally responsible for care and protection of the student.
  - The School can disclose educational records pursuant to a court order when parents are a party in a D/N case without prior notice to parents.
  - Child welfare agency may then **re-disclose** these records to an “individual or entity engaged in addressing the student’s education needs.”
  - This individual or entity must be authorized to receive the records, and
  - Disclosure must be consistent with Del. confidentiality laws.
    - If child is subject to abuse, DFS can release info on grounds that the foster parents need such information based on the health & safety of child subject to abuse.
      - 34 C.F.R. Part 99, Amended effective January 14, 2013. 20 U.S.C. §1232g(b)(1)(L);20 U.S.C. §1232g(b)(2)(B).
- **HIPAA:** Personally identifiable health information may only be disclosed to the Individual [patient] or her personal rep, another healthcare organization, for treatment or payment purposes, or for “public interest & benefit activities” – i.e. to report DV, abuse, neglect, serious threat to public health or safety.
  - A covered entity or its business associate may disclose a child’s protected health information without consent in these situations:

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- When requested by the child's parent or guardian
  - When provided to another healthcare provider or plan for the purpose of treating the child or payment of the provision of services
  - As related to treatment of or medical intervention into a matter of abuse, neglect, or public health or safety
  - If a piece of health information is contained within a student's education record (e.g. records maintained by school nurse), it is NOT subject to HIPAA and MAY be disclosed under FERPA USA.
  - 45 C.F.R. §164.512(b)(1)(ii).
- **CAPTA**: Information in child abuse reports may only be disclosed to federal, state, or local agencies w/ need for such information or to persons w/ legitimate public safety need or need based on health & safety of child subject to abuse. As such, disclosure is permissible for a legitimate state purpose to any state, local government entity or agent that needs information to carry out responsibilities under law to protect a child from abuse/neglect. 16 Del. C. § 906(e)(20).
- **Fostering Connections**: The child welfare agency must ensure the educational stability for a child while in foster care.
- To that end, education stability requirements include appropriateness of current educational setting, proximity of placement to school, and assure collaboration with LEA to remain in same school or immediate enrollment in new school.
  - Promote electronic exchanges and referrals with other data collections systems to the extent practical and appropriate.
  - Education and Health information must be reviewed and updated and provided to foster parents/provider at time of each placement change or when youth ages out.
  - 45 C.F.R. §1355.53(b)(2).

## EDUCATION ISSUES REGARDING STUDENTS IN DSCYF CUSTODY

### CHILD ABUSE/NEGLECT INVESTIGATIONS

A Memorandum of Understanding (MOU) sets out mandatory reporting requirements for educators. More information and the MOU can be found at the following website:

<http://www.doe.k12.de.us/infosuites/ddoe/aboutdoe/workgroups/files/Dec192013MOUcombined.pdf>

#### What information can be shared with DFS about a student whose parents/caretakers are being investigated?

- In an effort to increase communication, schools and DFS are able to share information that is not protected with each other in order to ensure the successful support of children and families. Schools and DFS must comply with the relevant laws and regulations that govern confidentiality, including the Child Abuse Prevention and Treatment ACT (CAPTA) which describes the circumstances under which confidential information may be disclosed to Federal, State or local government entities to protect children from abuse or neglect; Title 14 DE Code §4111 which discusses disclosure of students' educational records and personally identifiable information upon written consent; and the Family Educational Rights and Privacy Act (FERPA). FERPA allows schools to disclose, without parental consent, directory information such as the student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. The Health Insurance Portability and Accountability Act of 1996 does not preclude reporting suspected child abuse.
- In addition to the basic information about the alleged child abuse or neglect, DFS will request:
  - a) demographic information;
  - b) known information about parents or siblings;
  - c) known information about the alleged child victim's physical health, mental health, and educational status;
  - d) information regarding medical attention that may be needed for injuries;
  - e) any information you have about the way the caregiver's behavior is impacting the care of the child; and
  - f) known information that could put the child's or DFS worker's safety in peril such as the presence of alcohol, drugs, weapons, dangerous animals or criminal behavior.
- School counselors, mental health professionals, and medical professionals are bound by their professional licensure and code of ethics and as such they are required to maintain confidentiality. HIPAA (the Health Insurance Portability and Accountability Act of 1996) provides for confidentiality. However, certain information can be released in particular circumstances such as: law enforcement

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investigations, mandatory reporting (such as child abuse) and in the course of certain judicial or administrative proceedings. Additionally, students may give informed consent to release their information. Mental health and medical professionals are required to maintain confidentiality of all information acquired from clients in a professional capacity **except in the following situations: a student communicates an explicit and imminent threat to kill or seriously injure a clearly identified victim or victims (including themselves), or any suspicion of child abuse**, or in a case when the student presents with serious burns or respiratory tract burns, non-accidental poisoning, stab wounds, bullet wounds, gunshot wounds, powder burns, or other injury caused by the discharge of a gun, pistol, or other firearm.

### What information can DFS share with schools about their investigation?

- When the school is the reporter, DFS investigation caseworker should follow up and inform the school reporter on the following things:
  - That a response was made, and whether the child is safe or placed out of the home.
  - Who is allowed to have contact with the child.
  - Instructions if there is something the school needs to do, such as referring the child to the guidance counselor.
  - Who should be called if something else happens to the child.
  - When the child's placement changes if the child was placed out of the home.

### Who should be contacted to clarify the content of the Local Education Agency (LEA)/Charter School Memorandum of Understanding (MOU) with the Children's Department?

- The MOU provides guidance for dispute resolution if representatives from the LEA and DSCYF cannot agree. The School LEA (local education agency) Liaisons and DSCYF Liaisons are posted on the DSCYF and DOE websites. Disputes that arise should be handled at the LEA/Charter school level first.
- If a dispute cannot be resolved at this level, it should be referred in writing to the Secretary of Education for further consideration.
- DSCYF Liaison:** DSCYF employee that interacts with the LEA Liaison when a local or systemic issue or concern arises (as it relates to this MOU) that cannot be resolved at the school level.

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- LEA Liaison** – LEA administrator that interacts with DSCYF when a local or systemic issue or concern arises (as it relates to this MOU) that cannot be resolved at the school level.

### **Does DFS need parental consent to interview a student?**

- DFS does not need consent from the parent or legal guardian to investigate allegations of abuse, neglect or dependency, or to interview the student at school in connection with an allegation.
- Verbal or written consent of a parent/Guardian/Relative Caregiver is not required for DFS to investigate allegations of abuse, neglect or dependency or to interview a student in connection with the foregoing. 16 DE Code § 906 (b)(3) states DFS “...shall conduct an investigation involving all reports, which if true, would constitute violations against a child by a person responsible for the care, custody, and control of the child...” In determining how best to respond, 16 DE Code § 906 (b) (2) mandates that DFS “...shall give priority to ensuring the well-being and safety of the child.”

### **Who should be contacted if a student is legally in DSCYF custody but physically placed with a Relative Caregiver?**

- Out of an abundance of caution, it is best to contact both DFS and the relative caregiver. If the student is sick or needs to be picked up for disciplinary reasons, the Relative Caregiver should be contacted first. For bigger academic issues, contact both the DFS case worker and the Relative Caregiver.

## EDUCATION ISSUES REGARDING STUDENTS IN DSCYF CUSTODY

### GLOSSARY OF TERMS

ADHD: Attention Deficit Hyperactivity Disorder

AGAL: Attorney Guardian *ad litem*

BIP: Behavior Intervention Plan

CASA: Court Appointed Special Advocate

DFS: Division of Family Services

DOE: Department of Education

DSCYF: Department of Services for Children,  
Youth and Their Families

FBA: Functional Behavior Plan

ESP: Education Surrogate Parent

FAPE: Free Appropriate Public Education

FCT: Family Crisis Therapist

GED: General Education Development

IDEA: Individuals with Disabilities Education  
Act

IEP: Individualized Education Program

LEA: Local Education Agency

LRE: Least Restrictive Environment

MDR: Manifestation Determination Review

MOU: Memorandum of Understanding

NCC: New Castle County

OCA: Office of the Child Advocate

PBH: Prevention and Behavioral Health

RTI: Response to Intervention

YRS: Youth Rehabilitative Services