

Legal Language for Students in Foster Care

Important Sections of Arkansas Code Annotated pertaining to Educational Stability of Children in Foster Care

A.C.A. § 9-28-104. Best interest of the child.

(a) The General Assembly recognizes that children are defenseless and that there is no greater moral obligation upon the General Assembly than to provide for the protection of our children and that our child welfare system needs to be strengthened by establishing a clear policy of the state that the best interests of the children must be paramount and shall have precedence at every stage of juvenile court proceedings.

(b) The best interest of the child shall be the standard for recommendations made by employees of the Department of Human Services as to whether a child should be reunited with his or her family or removed from or remain in a home wherein the child has been abused or neglected.

A.C.A. § 9-28-112. Foster children and educational issues.

(a) The Department of Human Services and school districts shall work together for the best interest of any child placed in the custody of the department.

(b) By the next business day after the department exercises a seventy-two-hour hold on a child or a court places custody of a child with the department, the department shall inform the child's current school district, regardless of whether the child remains at his or her current school, that:

(1) The department has exercised a seventy-two-hour hold on the child; or

(2) The court has placed the child in the custody of the department.

(c) By the next business day after a foster child transfers to a new placement, the department shall notify the child's current school that the foster child has transferred to a new placement.

(d) By the next business day after the department reasonably believes that a foster child has experienced a traumatic event, the department may notify the school counselor of the child that the department reasonably believes that the foster child has experienced a traumatic event.

(e) By the next business day after the department knows that a foster child has experienced a traumatic event through an investigation or an ongoing protective services case, the department may notify the school counselor of the child of the traumatic event that the department has knowledge of through an investigation or an ongoing protective services case.

(f) The school counselor of the child may share information reported to the counselor under subsections (d) and (e) of this section with the school principal and the teachers of the child, if appropriate.

(g)

(1) The department or its designee, who may be a foster parent, shall make educational decisions for a child in the custody of the department related to general educational matters, subject to limitation only by the court having jurisdiction of the custody matter.

(2) For educational matters under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., a foster parent may make decisions for a child in the custody of the department.

A.C.A. § 9-28-113. Continuity of educational services to foster children.

(a)

(1)

(A) It is the intent of the General Assembly that each child in foster care is:

(i) Entitled to the same opportunities to meet the academic achievement standards to which all children are held;

(ii) Assisted so that the child can remain in his or her school of origin;

- (iii) Placed in the least restrictive educational placement; and
 - (iv) Given the same access to academic resources, services, and extracurricular enrichment activities as all other children.
 - (B) Decisions regarding the education of a child in foster care shall be based on what is in the best interest of the child.
- (2)
- (A) Individuals directly involved in the care, custody, and education of a foster child shall work together to ensure continuity of educational services to the foster child, including without limitation:
 - (i) Educators;
 - (ii) The Department of Human Services;
 - (iii) The Department of Education;
 - (iv) The circuit court presiding over the foster care case;
 - (v) Providers of services to the foster child;
 - (vi) Attorneys;
 - (vii) Court-appointed special advocates; and
 - (viii) Parents, guardians, or any persons appointed by the court.
 - (B) The individuals in subdivision (a)(2)(A) of this section shall ensure the continuity of educational services so that a foster child:
 - (i) Can remain in his or her school of origin whenever possible;
 - (ii) Is moved to a new school in a timely manner when it is necessary, appropriate, and in the best interest of the child under this section;
 - (iii) Can participate in the appropriate educational programs; and
 - (iv) Has access to the academic resources, services, and extracurricular enrichment activities that are available to all students.
- (b)
- (1) A foster child shall have continuity in his or her educational placements.
 - (2) The Department of Human Services shall consider continuity of educational services and school stability in making foster placement decisions.
 - (3) The school district shall allow the foster child to remain in the child's school of origin and continue the child's education unless the court finds that the placement:
 - (A) Is not in the best interest of the child; and
 - (B) Conflicts with any other provision of current law, excluding the residency requirement under § 6-18-202.
 - (4)
 - (A) The school district will work with the Department of Human Services to develop a transportation plan to ensure continuity of educational services, to the extent reasonable and practical.
 - (B) The school district is encouraged to arrange for transportation for the child to enable him or her to remain in his or her school of origin.
 - (C) The school district shall provide transportation for the child if reasonable and practical and if an additional expense will not be imposed on the district.
 - (5) Except for emergencies, before making a recommendation to move a child from his or her school of origin, the Department of Human Services shall state the basis for the recommended school change and how it serves the best interest of the child in a written statement to the following:
 - (A) The foster child;
 - (B) The child's attorney ad litem;
 - (C) The court-appointed special advocate, if appointed; and
 - (D) Parents, guardians, or any person appointed by the court.
 - (6)

(A) If the court transfers custody of a child to the Department of Human Services, the court shall issue an order containing the following determinations regarding the educational issues of the child and whether the parent or guardian of the child may:

- (i) Have access to the child's school records;
- (ii) Obtain information on the current placement of the child, including the name and address of the child's foster parent or provider, if the parent or guardian has access to the child's school records; and
- (iii) Participate in school conferences or similar activities at the child's school.

(B) If the court transfers custody of a child to the Department of Human Services, the court may appoint an individual to consent to an initial evaluation of the child and serve as the child's surrogate parent under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as in effect on February 1, 2007.

(c)

(1) Each school district shall identify a foster care liaison.

(2) Each school district shall forward the name of each foster care liaison and the contact information to the Special Education Section of the Department of Education at the beginning of each school year.

(3) The foster care liaison shall:

- (A) Ensure and facilitate the timely school enrollment of each foster child;
- (B) Assist a foster child who transfers between schools by ensuring the transfer of credits, records, grades, and any other relevant school records; and
- (C)
 - (i) Expedite the transfer of records.
 - (ii) When a foster child changes school placement, the foster care liaison in the new school district shall request the child's educational record, as defined by rule of the Department of Education, from the foster care liaison in the child's previous school district within three (3) school days.
 - (iii) The foster care liaison from the previous school district shall provide all relevant school records to the foster care liaison at the new school district within ten (10) school days of receipt of the request under subdivision (c)(3)(C)(ii) of this section.

(d)

(1) If a foster child is subject to a school enrollment change, the foster child's caseworker shall contact the school district foster care liaison within two (2) business days, and the new school must immediately enroll the foster child even if the foster child is unable to provide the required clothing or required records, including without limitation:

- (A) Academic records;
- (B) Medical records; or
- (C) Proof of residency.

(2) The Department of Human Services shall provide all known information to the school district that impacts the health and safety of the child being enrolled or other children in the school.

(e)

(1) A school district shall recognize the rights of a foster parent to make educational decisions for a foster child under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., if the foster parent is qualified.

(2) A foster parent may have educational rights with respect to consenting to the individualized educational program and related services if the court has specifically limited the educational rights of the parent and the child is in foster care.

(f) The grades of a child in foster care shall not be lowered due to absence from school due to:

- (1) A change in the child's school enrollment;

- (2) The child's attendance at a dependency-neglect court proceeding; or
- (3) The child's attendance at court-ordered counseling or treatment.
- (g) Each school district shall accept credit course work when the child demonstrates that the child has satisfactorily completed the appropriate educational placement assessment.
- (h) If a child completes the graduation requirements of the child's school district while being detained in a juvenile detention facility or while being committed to the Division of Youth Services of the Department of Human Services, the school district that the child last attended before the child's detention or commitment shall issue the child a diploma.
- (i) This section shall not be interpreted to be in conflict with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and regulations promulgated.
- (j)
 - (1) Notwithstanding any of the provisions of this section, if it is in the best interest of the child, a foster child may be placed in a nonpublic school, including a private, parochial, or home school.
 - (2)
 - (A) Except as provided in subdivision (j)(2)(B) of this section, state or federal funding shall not be used for the placement of a foster child in a nonpublic school, including a private, parochial, or home school.
 - (B) The prohibition under subdivision (j)(2)(A) of this section shall not apply to a foster child who receives a Succeed Scholarship under § 6-41-901 et seq.

Important Sections of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act of 2015

State Plan Provisions, 20 U.S.C. § 6311(g)(1)(E)

(g) OTHER PLAN PROVISIONS.—

(1) DESCRIPTIONS.—Each State plan shall describe—

(E) the steps a State educational agency will take to ensure collaboration with the State agency responsible for administering the State plans under parts B and E of title IV of the Social Security Act (42 U.S.C. 621 et seq. and 670 et seq.) to ensure the educational stability of children in foster care, including assurances that—

(i) any such child enrolls or remains in such child's school of origin, unless a determination is made that it is not in such child's best interest to attend the school of origin, which decision shall be based on all factors relating to the child's best interest, including

consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;

(ii)

(iii) the enrolling school shall immediately contact the school last attended by any such child to obtain relevant academic and other records; and

(iv) the State educational agency will designate an employee to serve as a point of contact for child welfare agencies and to oversee implementation of the State agency responsibilities required under this subparagraph, and such point of contact shall not be the State's Coordinator for Education of Homeless Children and Youths under section 722(d)(3) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11432(d)(3));

Local Educational Agency Plans, 20 U.S.C § 6312(c)(5)(B)

(c) ASSURANCES.—Each local educational agency plan shall provide assurances that the local educational agency will—

(5) collaborate with the State or local child welfare agency to—

(A) designate a point of contact if the corresponding child welfare agency notifies the local educational agency, in writing, that the agency has designated an employee to serve as a point of contact for the local educational agency; and

(B) by not later than 1 year after the date of enactment of the Every Student Succeeds Act, develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the time in foster care, which procedures shall—

(i) ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act (42 U.S.C. 675(4)(A)); and

(ii) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the local educational agency will provide transportation to the school of origin if—

(I) the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation;

(II) the local educational agency agrees to pay for the cost of such transportation; or

(III) the local educational agency and the local child welfare agency agree to share the cost of such transportation;

State Report Cards, 20 U.S.C. §§ 6311(h)(1)(C)(ii)-(iii)

(C) MINIMUM REQUIREMENTS.—Each State report card required under this subsection shall include the following information:

(ii) For all students and disaggregated by each subgroup of students described in subsection (b)(2)(B)(xi), homeless status, status as a child in foster care, and status as a student with a parent who is a member of the Armed Forces (as defined in section 101(a)(4) of title 10, United States Code) on active duty (as defined in section 101(d)(5) of such title), information on student achievement on the academic assessments described in subsection (b)(2) at each level of achievement, as determined by the State under subsection (b)(1).

(iii) For all students and disaggregated by each of the subgroups of students, as defined in subsection

(c)(2), and for purposes of subclause (II) of this clause, homeless status and status as a child in foster care—

(I) information on the performance on the other academic indicator under subsection (c)(4)(B)(ii) for public elementary schools and secondary schools that are not high schools, used by the State in the State accountability system; and

(II) high school graduation rates, including four-year adjusted cohort graduation rates and, at the State's discretion, extended-year adjusted cohort graduation rates.

Important Sections of the Family Educational Rights and Privacy Act and Related Regulations, as amended by the Uninterrupted Scholars Act of 2014

Release of Information to Child Welfare Agencies, 20 U.S.C. §§ 1232q(1)(L) & (2)(B)

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following-

(L) an agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in section 5304 of title 25), who has the right to access a student's case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless-

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency, except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required.

Inappropriate Release of Information by a Third Party, 34 C.F.R. § 99.67(d)

If the Office finds that a State or local educational authority, a Federal agency headed by an official listed in § 99.31(a)(3), or an authorized representative of a State or local educational authority or a Federal agency headed by an official listed in § 99.31(a)(3), improperly rediscloses personally identifiable information from education records, then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the improper redisclosure access to personally identifiable information from education records for at least five years.

Important Sections of the Social Security Act, as amended by the Fostering Connections to Success and Increasing Adoptions Act of 2008

Placement in Foster Care: Notification of Adult Relatives of the Option to Be a Caregiver, 42 U.S.C. §§ 671(a)(29) & (31)

(a) In order for a state to be eligible for payments under this part, it shall have a plan approved by the Secretary which...

(29) provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to the following relatives: all adult grandparents, all parents of a sibling of the child, where such parent has legal custody of such sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that—

- (A) specifies that the child has been or is being removed from the custody of the parent or parents of the child;
 - (B) explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
 - (C) describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and
 - (D) if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 673(d) of this title to receive the payments;
- (31) provides that a reasonable effort shall be made-
- (A) to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the state documents that such a joint placement would be contrary to the safety or well-being of any of the siblings

Requirement to Enroll Children in School, 42 U.S.C. § 671(a)(30)

- (a) In order for a state to be eligible for payments under this part, it shall have a plan approved by the Secretary which-
- (30) provides assurances that each child who has attained the minimum age for compulsory school attendance under State law and with respect to whom there is eligibility for a payment under the State plan is a full-time elementary or secondary school student or has completed secondary school, and for purposes of this paragraph, the term “elementary or secondary school student” means, with respect to a child, that the child is—
- (A) enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located;
 - (B) instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located;
 - (C) in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or
 - (D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child

Case Plan Requirements for Educational Stability, 42 U.S.C. §§ 675(1)(G)

- (G) A plan for ensuring the educational stability of the child while in foster care, including—
- (i) assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and
 - (ii)
 - (I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 7801 of title 20) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or

(II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school. (See definition of Case Plan below for more information.)

Records, [42 U.S.C. § 675\(5\)\(D\)](#)

(5) A child's health and education record...is reviewed and updated, and a copy of the record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care, and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under state law.

Transition to Postsecondary Education

· **Chafee Foster Care Independence Program Purpose, [42 U.S.C. §§ 677\(a\)\(1\), \(4\)-\(5\)](#)**

(a) The purpose of this section is to provide states with flexible funding that will enable programs to be designed and conducted-

(1) to support all youth who have experienced foster care at age 14 or older in their transition to adulthood through transitional services such as assistance in obtaining a high school diploma and postsecondary education, career exploration, vocational training, job placement and retention, training and opportunities to practice daily living skills, substance abuse prevention, and preventative health activities

(4) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age...to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood;

(5) to make available vouchers for education and training, including postsecondary training and education, to youth who have aged out of foster care

· **Educational and Training Vouchers, [42 U.S.C. § 675\(i\)](#)**

(1) Vouchers under the program may be available to youths otherwise eligible for services under the state program under this section who have attained 14 years of age.

(2) For purposes of the voucher program, youths who, after attaining 16 years of age are adopted from or enter kinship guardianship from, foster care may be considered to be youths otherwise eligible for services under the state program under this section.

(3) The state may allow youths participating in the voucher program to remain eligible under they attain 26 years of age, as long as they are enrolled in a postsecondary education or training program and are making satisfactory progress toward completion of that program, but in no even may a youth participate in a program for more than 5 years (whether or not consecutive).

(4) The voucher or vouchers provided for an individual under this section-

(A) May be available for the cost of attendance at an institution of higher education...and

(B) Shall not exceed the lesser of \$5,000 per year of the total cost of attendance...

(5) The amount of a voucher under this section may be disregarded for purposes of determining the recipient's eligibility for, or the amount of, any other federal or federally supported assistance, except that the total amount of educational assistance to a youth under this section and under other federal and federally supported programs shall not exceed the total cost of attendance...and except that the state agency shall

take appropriate steps to prevent duplication of benefits under this and other federal or federally supported programs.

(6) The program is coordinated with other appropriate education and training programs

- **Transition Plans, [42 U.S.C. § 675\(5\)\(H\)](#)**

“During the 90-day period immediately prior to the date on which the child will attain 18 years of age, or such greater age as the state may elect...whether during that period foster care maintenance payments are being made on the child’s behalf or the child is receiving benefits or services under Section 677 of this title, a caseworker on the staff of the state agency, and, as appropriate, other representatives of the child provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services....”

Important Definitions

- **Foster Care, [45 C.F.R. § 1355.20](#)**

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

- **Case Plan, [42 U.S.C. §§ 675\(1\)\(C\), \(D\), & \(G\)](#)**

(1) The term “case plan” means a written document which meets the requirements of section 675a of this title and includes at least the following...

(C) The health and education records of the child, including the most recent information available regarding—

- (i) the names and addresses of the child’s health and educational providers;
- (ii) the child’s grade level performance;
- (iii) the child’s school record;
- (iv) a record of the child’s immunizations;
- (v) the child’s known medical problems;
- (vi) the child’s medications; and
- (vii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) For a child who has attained 14 years of age or over, a written description of the programs and services which will help such child prepare for the transition from foster care to a successful adulthood.....

(G) A plan for ensuring the educational stability of the child while in foster care, including—

- (i) assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and
- (ii)

- (I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 7801 of title 20) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or
- (II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

- **Parent Under FERPA, [34 C.F.R. § 99.3](#)**

Under FERPA, parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

- **Parent Under the Individuals with Disabilities Act, [34 C.F.R. § 300.30](#)**

- (a) parent means

- (1) A biological or adoptive parent of a child;
 - (2) A foster parent, unless state law, regulation, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
 - (3) A guardian generally authorized to act as the 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);
 - (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - (5) A surrogate parent who has been appointed in accordance with §300.519 of §639(a)(5) of the Act.

- (b)

- (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
 - (2) If a judicial decree or other order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section 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 section.