



September 22, 2020

To: Special Committee on Foster Care Oversight

From: Milesha Segun, Research Analyst

Re: Tracking Educational Outcomes for Foster Care Youth

TRACKING EDUCATIONAL OUTCOMES FOR FOSTER CARE YOUTH

This memorandum reviews federal and state laws protecting the data privacy of students and state programs to promote interagency sharing of student data to track the educational outcomes of foster youth.

Currently, states use numerous tracking systems to collect child welfare information and meet federal reporting requirements (*i.e.*, the number of children entering and exiting the foster care system). Those reporting systems include information from the federally-funded Statewide Automated Child Welfare Information System (SACWIS) and the most current, the Comprehensive Child Welfare Information System (CCWIS). SACWIS was replaced by CCWIS, but information from both systems are compiled into the Adoption and Foster Care Analysis and Reporting System (AFCARS).¹ AFCARS is a child welfare data collection system that gathers information across states on foster care and adopted children.² The National Conference of State Legislatures (NCSL) reported “[t]he line between purely serving data collection purposes and providing integrated service delivery to achieve improved decision making and data analysis is a meaningful one.”³ Many states have explored the idea that data collection systems be used to collect and store information on children and families and the data produced be transferred among states and across state agencies to serve foster care children in the area of education. Access to foster children’s education records helps caseworkers monitor and support foster children’s education, assist in supporting them through transitions, and ensure they receive appropriate services and interventions.⁴

The term “Foster Care Report Card” is the name Kansas has adopted to represent reporting, tracking, and communicating educational outcomes for students in foster care for the purpose of creating insight on the progression of their education. This effort is to produce a foster care “progress report,” or Foster Care Report Card, to promote transparency and

1 <https://www.ncsl.org/research/human-services/child-welfare-information-systems.aspx>

2 *Id.*

3 *Id.*

4 <https://www.childwelfare.gov/topics/systemwide/service-array/education-services/meeting-needs/educational-stability/data-sharing/>

accountability between agencies within the state and among educators, stakeholders, and elected leaders.⁵

Federal Privacy Laws and Education Data

In the early 1970s, there was an unanticipated misuse of personal and academic student records, which often contained medical and mental health information. Students were removed from educational programs and placed into others without the knowledge of their parents or guardians.⁶ In 1974, the Family Educational Rights and Privacy Act (FERPA) (§513 of PL 93-380) was enacted as part of the General Education Provisions Act. The purpose of FERPA is to protect student and parent privacy, and its protections apply to all federally funded institutions under programs administered by the U.S. Department of Education. FERPA gives natural parents and foster parents rights with respect to their child's education records, including the right to inspect and review education records and the right to consent to their release. These rights transfer when the child or student becomes an "eligible student," or reaches age 18 or attends post-secondary school.⁷

While FERPA was created to ensure confidentiality and protect the privacy of student educational records, it limits data sharing between agencies that are deemed responsible for the education and development of children. Therefore, FERPA is subject to a number of exceptions including:

- The use of innocuous and noninvasive directory information;
- Records sent to school officials for which there is a legitimate educational interest;
- Information for or on behalf of educational agencies for testing, student aid programs, or improved instruction;
- Audit or evaluation information; and
- Exceptions added by the Uninterrupted Scholars Act of 2013 (USA) (PL 112-278), which added the most recent exceptions.⁸

The USA amended FERPA in two important ways. First, it created an exception making it easier for educational agencies and institutions to disclose education records, without parental consent, to state or local child welfare agencies who are "legally responsible for the care and protection of the student."⁹ Second, the USA allowed those educational agencies and

5 Kansas EO No. 20-53 "Establishing an annual report card for students in foster care" <https://governor.kansas.gov/wp-content/uploads/2020/07/20200707092836937.pdf>;

6 20 U.S.C. § 1232g; 34 C.F.R. Part 99; U.S. Dept. of Education Legislative History of Major FERPA Provisions: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/leg-history.html>

7 Id.; 34 C.F.R. Part 99.3

8 https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20Exceptions_HANDOUT_portrait_0.pdf

9 <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>

institutions to disclose education records pursuant to a court order without parental consent in certain cases that involve the parent. By giving state educational agencies and institutions access to specific information maintained by legally responsible agencies, these amendments were intended to help with improving educational and developmental outcomes for foster care children and equip them with needed early intervention or educational services .¹⁰

Recent legislation and a policy change furthered the focus on data sharing among educational and child welfare agencies to improve educational outcomes for children in the foster care system. In 2015, the Every Student Succeeds Act (ESSA) (PL 114-95) was enacted to specifically address the needs of and institute new protections for children in foster care. ESSA requires collaboration between education and child welfare agencies to ensure appropriate and confidential data and information sharing between agencies. Per ESSA's updated data requirements, beginning during the 2017-2018 school year, states have been required to provide annual "report cards" with disaggregated data on graduation dates and academic performance for foster youth.¹¹ In 2016, the U.S. Department of Health and Human Services (HHS) released regulations that require child welfare systems annually to report education data as part of AFCARS. This created the requirement that child welfare agencies report on several elements related to education, including special education, enrollment, highest grade completed, and school moves.¹²

Information Sharing and Inter-agency Collaboration in Kansas

Kansas Student Data Privacy Act

In 2014, Senate Bill 367, known as the Student Data Privacy Act (Act), was enacted.¹³ The Act restricts what education data can be shared and with whom it can be shared. It provides that data can be disclosed at any time to the following:

- The student and their parent or legal guardian, but only if the data pertain solely to that student;
- Authorized personnel of an educational agency or the Kansas Board of Regents who require such disclosures to perform their assigned duties; and
- Any authorized personnel of any state agency, service provider of a state agency, educational agency, or school who performs a specified educational service, with a data sharing agreement between the state agency or service provider and the educational institution.

10 Id.

11 https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/nov-dec-2017/every-student-succeeds-means-children-in-foster-care-too--state/

12 2016 "Final Rule" amending 45 CFR Part 1355; Updated 5/12/2020 <https://www.federalregister.gov/documents/2020/05/12/2020-09817/adoption-and-foster-care-analysis-and-reporting-system>

13 KSA 72-6312 through 72-6320

Student data can be disclosed to any governmental entity not otherwise specified, or to any public or private audit and evaluation or research organization, provided the data disclosed are aggregate and contain no personally identifiable student information, unless an adult student or minor student's parent or legal guardian provides written consent. "Personally identifiable information" is defined as data that alone, or with other data, can be used to identify a student with reasonable certainty.¹⁴ Additionally, an educational agency is allowed to disclose the following:

- Directory information of a student, upon written consent by a student's parent or legal guardian, when the agency deems disclosure is necessary;
- Student data to a post-secondary institution that is required by that institution for application or admission;
- Any student data required to comply with a court order or subpoena; and
- Any information required to be disclosed to public health officials for urgent health or safety reasons in which confidentiality requirements also apply.

Under the Act, the Kansas State Department of Education (KSDE) can share requested educational information for foster care with the Department for Children and Families (DCF) to better track the educational outcomes of foster youth.

The Kansas Foster Care Report Card

Kansas is one of the many states adopting systems and innovations that have come about as a result of a rapid change in technology (e.g., the Results Oriented Management Supports System [ROM] and the National Electronic Interstate Compact Enterprise [NEICE] program). The ROM system was developed by the University of Kansas School of Social Welfare, in partnership with Casey Family Programs and NEICE. ROM Reporting is a web-based management reporting system that uses CCWIS data to show performance trends over time. According to NCSL, 12 states, including Kansas, use ROM as an aid to providing foster care, child protective services, and in-home services, and informing state and community stakeholders, such as legislators and judges, on outcome measures. DCF, along with its case management providers, tracks information on foster children in its custody using systems such as CCWIS and NEICE program. The NEICE program allows Kansas agencies to communicate vital data about foster care children and keep track of them in compliance with Kansas law.

In Kansas, foster care grantees compile information into "child placement information books," which include education information such as individual education plans (IEPs), educational notices, and grade cards that are meant to be updated in real time. DCF currently sends foster care data to KDSE because children in foster care qualify for free school lunches.

On July 7, 2020, the Governor signed Executive Order (EO) 20-53, which directed DCF, in collaboration with the KSDE, to provide an "Annual Academic Report Card" (Report Card) specifically for compiling and transmitting education data on foster care youth.¹⁵ The Foster Care Report Card is a report that includes a compilation of education information that tracks

¹⁴ KSA 72-6313

¹⁵ Executive Order No. 20-53

educational outcomes of foster children. It is meant to assist in enhancing the educational support, success, and well-being of foster children and encourage transparency and accountability between state and local agencies.

The Report Card is limited to those students in the custody of DCF who attended an accredited school at any time during the school year for which the Report Card is being created. The executive order requires the Report Card to be published and presented by DCF to the House and Senate Education committees by January 15 each year, and the Report Card must contain the following information for the preceding school year¹⁶:

- The graduation rate of students in foster care at the end of each academic year;
- The number and percentage of students in foster care who were promoted to the next grade level;
- The number and percentage of students in foster care who were promoted to the next grade level;
- The number and percentage of students in foster care who were suspended during the school year, and the average number of days each student spent in suspension;
- The number and percentage of students in foster care who were expelled during the school year;
- State standardized assessment scores for students in foster care, including the number and percentage of students meeting academic standards as determined by the State Board of Education;
- The number and percentage of students in foster care enrolled in any preschool-aged at-risk program, Kansas preschool pilot program or early childhood special education program under §619 of Part B of the Individuals with Disabilities Education Act (IDEA);
- The number and percentage of students in foster care who participated in the mental health intervention team pilot program or a similar mental health program;
- The total number of students in foster care enrolled in a school district or accredited nonpublic school and the disaggregated number and percentage of students in foster care enrolled in school districts and accredited nonpublic schools; and
- De-identified disaggregated race and ethnicity data for each data set required above¹⁷

16 Id.

17 Id.

Information Sharing and Inter-agency Collaboration in Other States

Other states have encouraged inter-agency collaboration, often requiring education information of children in foster care be provided to child welfare agencies. Even prior to FERPA and USA, several states addressed information sharing through legislation, or policy. Several states, including Kansas and Oklahoma, created agreements between state agencies to share specific data for the benefit of children in foster care, or to create a single database with a variety of information that follows the child. Examples of legislation recently enacted by other states regarding inter-agency information sharing are provided below:

STATE	BILL	BILL SUMMARY
California	2015 CAA 854 Educational Services: Pupils in Foster Care Status: Enacted 10/11/2015	Relates to the education of students in foster care to include the establishment of the Foster Youth Services Coordinating Program and its operation by each county office of education and identifies a program coordinator; requires foster youth services coordinating plan; [and] relates to plan reporting requirements.
Colorado	2008 CO H 1019 Students in Out-of-Home Placement; Child-welfare Education Liaison; Enrollment; Transfer of Records Status: Enacted 4/17/2008	Creates an Office of Dropout Prevention and Student Re-Engagement within the Department of Education that is intended to promote collaboration between education providers and the child welfare system; includes collecting and reviewing student data and developing and recommending methods for reducing student drop-out rates and increasing student engagement.
	2018 CO H 1306 Improving Educational Stability for Foster Youth Status: Enacted 6/1/2018	Implements policy that ensures flexibility and cooperation between the education system, child welfare system, and families and students; involves sending information of out-of-home placement students from one education provider to another.
Florida	2009 FL S 1128 Education/Children in Shelter Care or Foster Care Status: Enacted 5/4/2009	Requires the Department of Education to access the Florida Safe Families network to obtain information about children known to the Department of Children and Family Services.
Georgia	2013 GA S 115 Free Public Instruction Status: Enacted 4/24/2013	Relates to free public instruction; provides that a child in custody of the Department of Justice, the Department of Human Services, or the Department of Behavioral Health and Developmental Disabilities is eligible for enrollment in local educational programs, including special education; provides that no child in a youth development center, regardless of custody status, is eligible for enrollment in local educational programs.
Illinois	2014 IL S 2782 Juvenile Court Act Status: Enacted 8/8/2014	Amends the Juvenile Court Act and provides that upon issuing a temporary custody order concerning an abused, neglected, or dependent minor, a special education or early intervention services “educational surrogate” is appointed under IDEA under certain conditions.

STATE	BILL	BILL SUMMARY
Nevada	2013 NV S 31 Sharing of Information Regarding Certain Children Status: Enacted 05/25/2013	Authorizes directors of juvenile services, chief juvenile probation officers and the Chief of the Youth Parole Bureau to release certain information concerning a child who is within the purview of the juvenile court to certain persons, including a <i>guardian ad litem</i> , an attorney, or the child to whom the information pertains; relates to the application of the federal McKinney-Vento Homeless Assistance Act of 1987 to children in protective custody and the release of information concerning abuse or neglect.
	2011 NV A 154 Enacts Provisions that Guarantee Certain Rights to Children Placed in Foster Homes Status: Enacted 10/1/2011	Prohibits employees of school districts from disclosing to anyone who is not employed by the school district any information related to a pupil who is placed in foster care.
Oklahoma	2009 OK H 1734 Modifying Department Procedures Related to Assessments, Investigations, etc. Status: Enacted 5/22/2009	Creates a passport program in the Department of Human Services to compile education, medical, and behavioral health records for children in protective custody, kinship care, and foster care; online database follows child wherever the child resides so long as the child is in the custody of the department.
Tennessee	2010 TN P 111-296 Education Passport Status: Enacted and Adopted in Tenn. DCS Policy: 21.19	Tennessee Department of Children Services (DCS) requires Family Service Workers to provide foster parents and the local public schools with an "Education Passport" for every student in DCS legal custody, which includes educational history for a student.
Texas	2015 TX H 3748 Coordination of Educational Support Services Status: Enacted 6/17/2015	Relates to the coordination of educational support services for and information regarding students placed in foster care; provides for the designation of a liaison officer at institutions of higher education; provides for a memorandum of understanding regarding exchanges of certain information.
	SB 2248 Addresses the Transition Challenges of Students in Foster Care Status: Enacted 9/1/2009	Requires the Texas Education Agency and the Department of Family and Protective Services to enter into a memorandum of understanding concerning tracking educational information about foster children; exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another.
Washington	2008 WA H 2679 Creating Programs to Improve Education Outcomes for Students in Foster Care Status: Enacted on 6/12/2008	Requires the education records of all students in out-of-home care to be transmitted to the Children's Administration within two days of the request.