



## Dispute Resolution Process for Best Interest Determination for Students in Foster Care

### Overview

Occasionally disputes may arise between the Local Education Agency (LEA), Department for Community Based Services (DCBS) and students in foster care and their parents/guardians/educational decision makers. The Kentucky Department of Education (KDE) in collaboration with DCBS has established this formal dispute resolution process. In a case where all informal avenues of dispute resolution have failed, this process regarding the determination of best interest or the provision of other educationally-related services for a child or youth in foster care must be used. Additionally, KDE collaborated with DCBS to develop a dispute resolution form for LEA foster care points of contact and DCBS to document the area of disagreement, evidence, the determinations made, and dates of resolution in each step of the process. This form is made available to the complainant through the LEAs. Use of this form will help ensure that the process is followed by providing a consistent statewide form. It also requires the documentation of evidence, determinations and dates, which will help DCBS make the best, most informed decisions possible if the dispute cannot be resolved at the LEA level. LEA foster care points of contact will receive guidance about implementing the dispute resolution process and form, including the timeline for completing all components of the dispute resolution process, through training and recorded webinars.

If a dispute arises over the Best Interest Determination (BID), the child or youth shall remain in his or her school of origin while the dispute is being resolved, to minimize disruptions and reduce the number of moves between schools.

The LEA must collaborate with DCBS and the aggrieved parties to resolve the complaint or dispute.

Neither DCBS nor the LEA may use this dispute resolution process to resolve disagreements amongst themselves.

## **The Informal Dispute Resolution Process**

Following are the steps in the informal dispute resolution process. The timeline within which all components of the informal dispute process must occur at the LEA level is 30 school days.

1. First, every effort must be made and documented to resolve disputes at the local level.
2. All concerns regarding the education of a foster child should be referred to the LEA point of contact and the local DCBS point of contact. If a complaint arises about services or placement of a foster student, the LEA point of contact shall inform the representative of the foster student of their rights under this process and the ESSA. The child shall remain enrolled throughout.
3. The DCBS local point of contact shall make a determination and will document this and all subsequent communications, determinations and evidences in the dispute resolution form provided by the KDE and DCBS. A copy of the determination will be provided to the complainant. If the complaint is not resolved, the complainant will be advised to present a written request for a formal dispute resolution. The LEA point of contact shall assist the representative in completing this request, including an indication of the specific point at issue.

## **Formal Dispute Resolution Process**

### **1. Initiating the Formal Dispute**

If the student's educational decision-maker or parent disagrees with the decision rendered in all informal processes, he/she may appeal the decision to the DCBS state point of contact. The written, dated appeal letter must include:

- The school in which enrollment is sought and the basis for seeking enrollment in that school, and an explanation of the specific point at issue. The name and contact information (phone, email and mailing address) for the educational decision-maker or parent.
- Informal Best Interest Determination meeting notes/documentation.

The letter must be submitted in writing to the DCBS state point of contact, with the subject "Foster Child Appeal." The letter also must be submitted to the LEA superintendent via email or delivered to any building in the LEAs district, to the attention of the superintendent.

When a written request for assistance is received, the DCBS state point of contact shall collect and review the evidence and make a determination. This process will be completed within 20 school days after receipt of the written request.

The student shall remain in the school of origin until the dispute reaches its final resolution. The student shall be provided with all appropriate educational services for which the student is eligible during the dispute process. Students attending their school of origin during the dispute

will be entitled to receive transportation pursuant to the local transportation procedures developed collaboratively between the LEA(s) and local child welfare agencies.

## 2. The Panel Decision

Parties may request that the DCBS state point of contact's decision be reviewed by a three-member panel convened by the DCBS state point of contact. Requests for consideration by a panel must be filed within 20 school days of the decision by the state DCBS point of contact. The final decision will be made by a three-person panel including the KDE foster care point of contact, a representative from the state DCBS office and the child's DCBS case worker. The three-member panel shall review the DCBS state point of contact's decision and either adopt the decision or reject it. If rejected, the panel will provide an alternative finding with appropriate reasoning. The panel's decision is a final decision and not appealable. The placement and services for the foster student shall be continued pending the resolution of the dispute. The panel shall make a final decision within 20 school days of receipt of the dispute.

\*\*If the complainant is the child's DCBS worker, a DCBS staff person from that region will be a party to the panel.

\*\*Although the standard procedure allows 20 school days for a response, every effort will be made to resolve the complaint in the shortest possible time.

The panel will forward the final written decision to the educational decision-maker or parent and the LEA superintendent. The written decision must include:

1. Restatement of dispute; and
2. Justification of the final decision.

The LEA must implement the panel's decision in full, immediately.

DCBS shall maintain a record of all formal disputes related to children in foster care. **For every type of dispute regarding a child in foster care, the LEA and DCBS must make every effort to resolve the dispute collaboratively at the local level. Documented patterns of excessive disputes from a particular LEA and/or local child welfare agency will be reviewed by DCBS and appropriate measures will be taken to ensure compliance by both agencies.** All parties are encouraged to seek assistance from the State DCBS ESSA Liaison (or similar personnel) prior to any dispute.

## Definitions

**Best Interest Determination (BID):** Using child-centered criteria for determining which educational setting is best for a particular child or youth. Decisions should be made on a case-by-case basis. The cost of transportation should not be considered.

**Cabinet for Health and Family Services (CHFS):** A cabinet within Kentucky government that oversees the commonwealth's human services and health care programs.

**Department for Community Based Services (DCBS):** The department within CHFS that administers child protection, permanency and retains the legal custody of children who are in alternative/foster care.

**Educational Decision-Maker:** Child's placement provider unless noted otherwise.

**Foster Care:** 24-hour substitute care for children placed away from their parents or guardians and for whom DCBS has court-ordered custody 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, childcare 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. (45 C.F.R. § 1355.20(a).

**Family Support Team:** Comprised of the parent(s), legal counsel for the parent(s), placement provider, DCBS (or contracted case management agency assigned to the case), guardian ad litem, volunteer advocate for the child and/or other individuals as appropriate or needed.

**Local Educational Agency (LEA):** Local school district.

**Parent:** Legal, putative and/or biological parent to the child.

**School of Origin:** The school of origin is the school in which a child is enrolled at the time of placement in foster care. A SEA and its LEAs must ensure that a child in foster care remains in his or her school of origin unless a determination is made that it is not in the child's best interest. (ESEA section 1111(g)(1)(E)(i)). If a child's foster care placement changes, the school of origin would then be considered the school in which the child is enrolled at the time of the placement change.

**School of Residency:** Student resides and is domiciled within the district with a parent, military guardian or court-ordered legal guardian.

**State Educational Agency (SEA):** Kentucky Department of Education (KDE).

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