

21.16 Rights of Foster Children with Disabilities under Title II, Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA)	
Application: To All Department of Children's Services Employees, Foster Parents, Contract Provider Agencies, and All Children/Youth in DCS Custody	
Authority: TCA 37-5-105, 37-5-106; Title II, Section 504 of the Rehabilitation Act of 1973, and Individuals with Disabilities Education Act (IDEA)	Standards: DCS Practice Standards: 6-400, 6-404, 6-405, 6-406, 6-407
Commissioner:	Date:
Original Effective Date: 01/01/05 Current Effective Date: 11/15/09	Supersedes: DCS 21.16 03/01/08 Last Review Date: 11/15/09
Glossary: None	

Policy Statement:

All foster children who are identified as being eligible under the *Individuals with Disabilities Education Act (IDEA)*, or are *Section 504/Title II* eligible, or who have been referred for such services are guaranteed procedural safeguards with respect to a free and appropriate education and appropriate child welfare services as needed. In addition, school systems are responsible for *Child Find* procedures in order to identify students who are suspected of needing special education services or services under *Section 504/Title II*. Similarly, in accordance with DCS Policy [21.20 Non-Traditional Educational Settings](#), DCS Family Service Workers/Juvenile Service Workers should contact schools to make referrals for special education and/or 504 services when they suspect that a student may be appropriate for such services.

Purpose:

To ensure that the legal rights of children who are in foster care are eligible for or referred for services under *IDEA* or *504/Title II* in the DCS foster care program are enforced and recognized.

Procedures:

The overarching procedures that govern that practice/part of work (the why), and reference to other documents (protocols and guides).

A. General provisions

1. An ADA Compliance Officer/Section 504 Coordinator shall be designated in each DCS region. This individual shall be familiar with **Title II, Section 504**, and relevant parts of the **Individuals with Disabilities Education Act (IDEA)**.
2. The regional Educational Specialist shall be the designated contact person at the DCS office when a school system proposes to suspend or expel a student for ten (10) or more days, or when a school system files a juvenile court petition against a student.
3. In compliance with DCS Policy [21.20 Non-Traditional Educational Settings](#) and [Child and Family Team Meeting Guide](#), the Child and Family Team Meeting shall be the primary vehicle for including families and children in case planning and decision-making.
4. Determinations made by the Child and Family Team regarding permanency goals, placement recommendations, and service identification must be the primary consideration in planning for children in DCS custody.
5. School system decisions that are inconsistent with IDEA, Section 504 and Title II protections will not be the primary reason for removal of a student with a disability from a foster care placement.
6. The Permanency Plan process as outlined in DCS Policy [16.31, Permanency Planning](#), shall be followed to ensure effective implementation of the education requirements of the permanency plan and other education plans.

B. Notification of expulsion

1. DCS shall request in writing that the Local Education Agency (LEA) notify the regional Educational Specialist any time it proposes to suspend or expel a student for ten (10) or more days, or any time it files a juvenile court petition against a student. DCS Family Service Worker (FSW)/Juvenile Service Worker (JSW) shall also inform the regional Educational Specialist if they become aware of such situations.
2. After being notified of the pending discipline or alleged delinquent act, the Educational Specialist shall communicate with a designated contact person at the charging school to ascertain whether the student has been referred for, or has been determined to be eligible for special education services or **Section 504/Title II** services.

C. Student referral for services- or already receiving services under IDEA or Section 504/Title II

1. If the student is receiving services under **IDEA** or **Section 504/Title II**, or has been referred for such services, the Educational Specialist or attorney shall ascertain whether a manifestation determination review has been or is to be conducted to determine the relationship between the child's disability and the behavior subject to the disciplinary action.
2. If a manifestation determination review has not been conducted, the Educational Specialist or the attorney shall:
 - a) Request that the charging school notify the parent and arrange for such a review as soon as possible;
 - b) Request that the charging school postpone taking disciplinary action until the review is conducted by the student's IEP team or Individualized Accommodation Plan (IAP) team and other qualified personnel;
 - c) Rigorously monitor or participate in the manifestation review process. (Note: Where an extreme circumstance exists and the only way to prevent serious physical injury to persons is to immediately remove the student from the school, DCS will, under such circumstances, yield to the school system's expertise in such matters while at the same time insisting that the student's legal protections are observed.)
 - d) Complete form **CS-0655, Suspension/Expulsion Documentation**. This form will document the name of the charging school, the date of the manifestation hearing or disciplinary hearing, any subsequent action taken as a result of the hearing(s), and any other change or action relating to the student's educational services or placement.
3. If the school system has filed a juvenile court petition against a student in custody, the Educational Specialist shall:
 - a) Notify the appropriate DCS attorney; and
 - b) Determine whether procedural safeguards have been followed for students who are receiving services or have been referred for services under **IDEA** or **Section 504/Title II**.
4. If the rights of students receiving services under **IDEA** or **Section 504/Title II** are violated, and the issue cannot be resolved locally with the LEA, DCS may:
 - a) File an administrative complaint with the State Department of Education (DOE);
or
 - b) Encourage parents to file a complaint or seek mediation or due process with DOE;
5. DCS Education, in conjunction with DOE and the Educational Specialists, shall provide annual in-service training regarding this procedure to staff that have responsibility for providing child welfare services to foster children.

D. Reporting and documentation

1. The educational specialists shall submit the ***Suspension/Expulsion Documentation*** form (***CS-0655***) to the DCS Education Division within three (3) days of the manifestation review or disciplinary hearing.
2. The educational specialist shall forward a completed copy of the ***Suspension/Expulsion Documentation*** form (***CS-0655***) to the FSW/JSW. This form shall be maintained in the student's DCS Education Passport file.
3. All complaints made against DCS alleging discrimination because of a DCS removal action taken in response to an alleged inappropriate school system decision, determination, and/or action taken against a disabled foster care student shall be reported immediately to the Director of Diversity Initiatives, Division of Human Resources Development.

Forms:

[***CS-0655, Suspension/Expulsion Documentation***](#)

Collateral Documents:

[***Child and Family Team Meeting Guide***](#)

[***16.31, Permanency Planning***](#)

[***21.20 Non-Traditional Educational Settings***](#)