

Supporting Students in Out-of-Home Care with Special Education Services

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What is Out-of-Home Care (OHC)?

- OHC care encompasses many different types of placement settings.
- Providers include: unlicensed individuals who are not relatives, unlicensed relatives, relative and non-relative licensed foster homes, group homes, residential care centers, supervised independent living, and shelter care facilities.

But how will I know if a student is placed in OHC?

When a child is placed in a foster home or group home, the child welfare agency must send notification of the placement to the school and district.





What is Out-of-Home Care (OHC)?

Things to Remember about the Child Welfare System's Impact on the life of a child:

- Perspective doesn't always translate
- It's A LOT of change
- It can feel very abrupt
- Just because a child is safe, doesn't mean they are comfortable or feel stable.

How does a child get placed in Out-of-Home Care?

<https://dcf.wisconsin.gov/files/cps/pdf/cps-processoverview.pdf>



Who are Students in OHC?

Students living in Out-of-Home Care are:

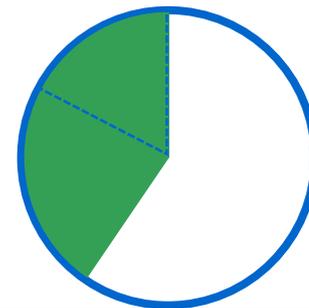
- Resilient
- Future leaders: Youth Advisory Council
- Have a strong desire and motivation to achieve academically
- Like all students, bring a unique set of experiences and strengths that can have a positive impact on the school and community!

From a youth who spent time in a group home and kinship care: “Education is important to me because I want to graduate high school. We need to graduate so we can get good jobs.”



Data on OHC – the Why

- What is the percentage of Wisconsin youth in OHC that have an IEP?



15% - General Population

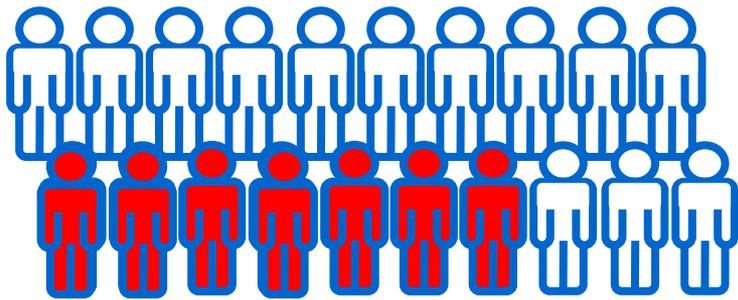
43% - OHC Population

- What % of out-of-home care students will change schools during the school year?

32%



Data on OHC – the Why



In Wisconsin, schools suspend

- 6% of total students
- 37% of OHC students



Special Education Considerations



- **Identifying the parent**
IDEA Regs.
WI Stats.
- **IDEA Considerations**



Identifying Parents (IDEA)

34 CFR § 300.30 (a) IDEA definition of parent:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, **unless State law**, regulations, 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 or section 639(a)(5)** of the Act.



Identifying Parents (IDEA)

34 CFR § 300.30 (b) IDEA definition of parent continued:

- (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 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.





Identifying Parents (IDEA)

§ 300.519 Surrogate parents.

(a) General. Each public agency must ensure that the rights of a child are protected when -

- (1) No parent (as defined in § 300.30) can be identified;
- (2) The public agency, after reasonable efforts, cannot locate a parent;
- (3) The child is a ward of the State under the laws of that State; **or**
- (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).





Identifying Parents (IDEA)

Unaccompanied Homeless Youth § 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(6) The term unaccompanied youth' includes a youth not in the physical custody of a parent or guardian



Identifying Parents (IDEA)

§ 300.519 Surrogate parents continued.

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. **This must include a method -**

- (1) For **determining whether a child needs a surrogate parent**; and
- (2) **For assigning a surrogate parent to the child.**





Identifying Parents (IDEA)

§ 300.519 Surrogate parents continued.

(c) **Wards of the State.** In the case of a child who is a ward of the State, the **surrogate parent alternatively may be appointed by the judge** overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.



Identifying Parents (IDEA)

§ 300.519 Surrogate parents continued.

(d) Criteria for selection of surrogate parents.

(1) The public agency may select a surrogate parent **in any way permitted under State law.**

(2) Public agencies must ensure that a person selected as a surrogate parent -

(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.





Identifying Parents (IDEA)

§ 300.519 Surrogate parents continued.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is **paid by the agency to serve as a surrogate parent.**



Identifying Parents (IDEA)

§ 300.519 Surrogate parents continued.

(f) Unaccompanied homeless youth. In the case of a child who is an **unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents** without regard to paragraph (d)(2)(i) of this section, **until a surrogate parent can be appointed** that meets all of the requirements of paragraph (d) of this section.





Identifying Parents (IDEA)

§ 300.519 Surrogate parents continued.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to -

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child.





Identifying Parents (IDEA)

§ 300.519 Surrogate parents continued.

(h) SEA responsibility. The SEA must make reasonable efforts to **ensure the assignment of a surrogate parent** not more than 30 days after a public agency determines that the child needs a surrogate parent.





Identifying Parents (WI SPED)

115.76(12)(a) WI definition of parent:

- 1. A biological parent.**
- 2. A husband who has consented to the artificial insemination of his wife under s. 891.40.**
- 3. A male who is presumed to be the child's father under s. 891.41.**
- 4. A male who has been adjudicated the child's father under subch. VIII of ch. 48, under subch. IX of ch. 767, by final order or judgment of an Indian tribal court of competent jurisdiction or by final order or judgment of a court of competent jurisdiction in another state.**
- 5. An adoptive parent.**



Identifying Parents (WI SPED)

115.76(12)(a) WI definition of parent continued:

6. A legal guardian.

7. A person acting as a parent of a child.

9. A person assigned as a surrogate parent under s. 115.792 (1) (a) 2.

10. A foster parent, **if the right and the responsibility of all of the persons specified in subds. 1. to 5. to make educational decisions concerning a child have been extinguished by termination of parental rights, by transfer of guardianship or legal custody or by other court order**, and if the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions that are required of a parent under this subchapter and has no interests that would conflict with the interests of the child.





Identifying Parents (WI SPED)

115.76(12)(b) WI definition of parent Continued:

“Parent” does not include any of the following:

- 1. A person whose parental rights have been terminated.**
- 2. The state, a county, or a child welfare agency, if a child was made a ward of the state, county, or child welfare agency under ch. 54 or ch. 880, 2003 stats., or if a child has been placed in the legal custody or guardianship of the state, county, or child welfare agency under ch. 48 or ch. 767**



Identifying Parents (WI SPED)

115.76(13) WI definition of parent Continued:

“Person acting as a parent of a child” means a relative of the child or a private individual **allowed to act as a parent of a child by the child's biological or adoptive parents or guardian**, and includes the child's grandparent, neighbor, friend or private individual caring for the child with the explicit or tacit approval of the child's biological or adoptive parents or guardian. **“Person acting as a parent of a child” does not include any person that receives public funds to care for the child if such funds exceed the cost of such care.**





IEP Team Members

- **Parents**
- General Ed Teacher
- Special Ed Teacher
- LEA Representative
- Student (must attend by age 14)
- Occupational, Physical, Speech-Language Therapists
- **Additional attendees as invited**
- Attendance requirements





Pupil Records

Generally, all records relating to individual pupils maintained by a school, including any information recorded on any material in any way.

Disclosure means to permit access to or the release, transfer, or other communications of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means

34 CFR 99.3 Family Educational Rights and Privacy Act (FERPA)

Generally, a district may not disclose without written consent from parent.

34 CFR 99.30 (FERPA)

Wis. Stat. § 118.125(1)(d)1., 2., (be), (bL), (bs)



Parental Notification/Participation

- All notices must be given to the parent
- Be flexible in obtaining parental participation (flexible scheduling, phone, zoom, etc.)
- Failure to provide for meaningful participation by parents in the IEP process may result in a denial of FAPE





Parental Consent

- Parental consent/agreement is required for initial evaluations, reevaluations (with some flexibility), and initial placement, IEP team member excusal, mediation, change of placement during “stay put”
- Parents can also revoke consent
- How do you comply with parent consent requirements when parents who share legal custody do not agree? [Information Update Bulletin 10.01](#)



Activity: Key Considerations

- Each student has individual strengths and needs based off of their unique perspectives and set of experiences
- Meaningful collaboration promotes educational stability
- Educational stability creates opportunities for academic success





Considering Further Supports

(Activity Questions 3 and 4)

- **Have you attended to the student's cultural needs?**
- **Who is the adult mentor/advocate who represents the student's interests?**
- **What has the student requested themselves?**
- **Have you had conversations on the student's interests?**



Why Focus on Educational Stability?



- Maintaining relationships (friends, counselors, other meaningful relationships)
- Maintaining stability for a child who might already be experiencing grief, loss, or trauma
- Educational continuity can result in a loss of 4-6 months of academic progress.





Why Educational Stability? A Student's Perspective

“My whole life school was my safe haven. It was my home away from home; a place I knew was safe. It was something I also loved to do. Education has changed my life. It has set me on the right path. Whether that means success or not I know my decision to continue on (in school) was the best one ever. There was a moment in my life that I thought there was no chance for college because my family nor I was rich. Why does money have to be an issue? We have struggles already trying to live a normal life. Just because you came from nothing never means you are nothing. I want to see more youth go to school. I want more youth to achieve greatness and I want them to know they are not alone in any battle.”

21-year-old who spent 8 years in out-of-home care

Wisconsin Youth Advisory Council Facebook Page, May 7, 2019



Requirements Under ESSA: Review



- **Collaboration**
- **School of Origin**
- **Transportation**
- **Best Interest Determination**
- **Immediate Enrollment**
- **Transfer of Records**

https://dpi.wi.gov/sites/default/files/imce/foster-care/OHC_ESSA_handout.pdf



School Scenario

A student is enrolled in a public preschool program and placed in an out-of-home setting in a neighboring district.

1. Does ESSA apply?
2. If a best interest determination is triggered, who should be involved?
3. Can the student receive transportation to the School of Origin even if the district does not provide transportation to preschool students?





School Scenario

A student placed in out-of-home care recently changed placements. The student has an IEP and is continuing their education in their School of Origin.

1. What funding resources can pay for transportation?
2. When should the transportation be established for the student?
3. How long must transportation be provided for the student?



Collaborating to Ensure School Success

ESSA and state law require *at a minimum* that schools work collaboratively with the child welfare agency to:

- Develop clear written procedures for [transportation](#);
- Consider all factors when conducting a [best interest determination](#); and
- Request and transfer records immediately if a student is enrolling in a new school.





Collaborating to Ensure School Success



Collaborating Effectively in Practice Means:

- Knowing who the points of contact are at each agency;
- Keeping the lines of communication open to share information; and
- Fully engaging in agreed upon processes to make well-informed decisions that support educational success for students.

[State and Local Points of Contact: LEA, County and Tribal CWAs](#)





Permanency Hearings

Schools must receive notice whenever there is a review of or hearing on a child's permanency plan, and schools have the opportunity to provide input at the hearing or review (2017 Act 251)

- When might it be beneficial for schools to provide input at a review or hearing?



Permanency Hearings

- **Court or agency is required to notify the school of:**
 - time, place, and purpose of the hearing;
 - the issues to be determined at the hearing;
 - the fact that they may have an opportunity to be heard at the hearing
- School will be invited to provide written comments (if submitting comments, court must receive the written comments not less than 10 working days before the review).
- Information must be shared with the court in accordance with pupil records law. One option is to share the information via the child welfare agency.



Permanency Hearings

- Information shared should be factual, backed by evidence, and include professional opinion only.
- Personal opinion is neither warranted nor appropriate.



Resources

- **DPI Website**
<https://dpi.wi.gov/foster-care>
- **DCF Website**
<https://dcf.wisconsin.gov/cwportal/essa>
- **Educational Services for Students Placed in Out-of-Home Care FAQ**
[https://dpi.wi.gov/sites/default/files/imce/foster-care/EducationalServicesFAQ .pdf](https://dpi.wi.gov/sites/default/files/imce/foster-care/EducationalServicesFAQ.pdf)
- **Student Records and Confidentiality Publication**
https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/srconfid_11-16-18.pdf
- **Sharing Information Across Systems**
https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/SharingInfo_11-16-18.pdf
- **Parent, Person Acting as a Parent, & Surrogate Parent**
<https://dpi.wi.gov/sites/default/files/imce/foster-care/Parent-PersonActing-Surrogate.pdf>



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