STATE OF TENNESSEE

DEPARTMENT OF CHILDREN'S SERVICES

Phil Bredesen
Governor

Viola P. Miller
Commissioner

MEMORANDUM

TO: Directors and Principals of Tennessee Public Schools
Superintendents, Directors, and Principals of DCS Schools

FROM: Dr. Tim Webb, Commissioner of Education
Dr. Viola Miller, Commissioner of Children's Services
Joseph Fisher, Assistant Commissioner of Special Education
Mary Meador, Children's Services Director of Education

DATE: August 1, 2009

SUBJECT: Enrollment of Students in or Returning from State Custody

This memorandum is intended as an update from the 2002 memo concerning the enrollment of students in and/or returning from state custody.

- As you are aware, Local Education Agencies (LEAs) must enroll students of school age in state custody who have been placed in the school district by the Department of Children's Services (DCS). This includes students who have been suspended or expelled (see TCA 49-6-3401(f)). The only exception to this enrollment requirement is for a student in state custody who has been expelled for one of the offenses listed in TCA. §49-6-3401(g) requiring a mandatory calendar year expulsion ("zero tolerance" offenses). Please keep in mind that <u>all</u> students receiving special education services, including those in state custody, must be enrolled and provided services based on federal law.

- The actual educational placement of students in or returning from state custody is still within the purview of the school district. However, we encourage the sparing use of alternative schools as a placement only after careful review of each student's individual circumstance and not as an automatic placement for students in or returning from state custody. The use of written alternative school transition plans is encouraged. Of course, IEP teams should make placement decisions for students who are eligible for services under IDEIA.

- DCS is required by the *Fostering Success and Increasing Adoptions Act of 2008* to make attempts to keep students entering foster care in their schools of origin if it is in the best interest of the student. Therefore, if DCS requests that a current student be allowed to remain in your school despite a DCS placement address that is out of zone, please grant the request.

- DCS Family Service Workers or resource parents are authorized to enroll students who are in state custody.

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- Students who have been released from state custody should be enrolled by a legal guardian who is a resident of the school district.

- Students in state custody should not be denied admission to public schools due to incomplete school records or due to the time of the semester that students enroll.

- DCS is recognized a special school district (see TCA 37-5-119); therefore, please follow your system's normal policies and procedures for transferring confidential educational records between school systems.

- According to the Interagency Agreement, an LEA shall provide DCS with a child's education records as soon as possible, but no later than fourteen (14) calendar days after receipt of the request unless there is a critical need to expedite forwarding of the records.

- DCS will provide the LEA with the education records of a child as required within IDEA and FERPA regulations. The DCS school or DCS contract school will provide the LEA with a child's education records as soon as possible, but no later than fourteen (14) calendar days after receipt of the request unless there is a critical need to expedite forwarding of the records. However, failure to receive education records does not suspend the responsibility of the LEA to provide FAPE. Nothing in this provision is meant to supersede the requirements of the FERPA, state and federal law, and the regulations promulgated thereunder.

- Based upon Federal rule, it is the position of the Division of Special Education that an individual with a disability should not be denied a copy of his educational record, including but not limited to grade cards, diplomas, certificates of progress, transcripts, Individual Educational Plans, progress reports and other records in the student's file, even though he might owe fees to the school.

- DCS employs regional DCS Education Specialists who are available to assist you in obtaining necessary school records and in handling concerns that may arise with students in or returning from state custody. We are enclosing a list of the Education Specialists for your convenience.

- DCS has entered into a resolution agreement (resulting in DCS Policy 21.16) with the Office of Civil Rights relating to the rights of foster children with disabilities under Title II, Section 504, and the Individuals with Disabilities Education Act (IDEA). As part of this agreement, DCS is requesting that LEAs contact the DCS Educational Specialist (see attached list) when students with or without an identified disability 1) have allegedly committed an offense that may result in a suspension of 10 or more days, and/or 2) have had a petition filed against them by the school or school system. We urge you to comply with this request and include the Education Specialist in the disciplinary process.

The DOE and DCS are working jointly to ensure that students in state custody are successful in the transition from school to school. In addition to the DCS Education Specialists, you may also seek assistance from Mary Meador in the Education Division of DCS at (615) 741-9211, or Calvin Burden in the Department of Education, Division of Special Education, at (615) 741-3538. Both Ms. Meador and Mr. Burden, as well as their staffs, will be willing to help you with educational issues related to students in state custody.