



STATUTORY DEFINITIONS RELATED TO
EDUCATION OF CHILDREN IN OUT-OF-HOME CARE

CHILDREN IN FOSTER CARE

- **Age of Majority**, for the purposes of the *Nebraska Juvenile Code*, means nineteen years of age. (Source: *Nebraska Revised Statute (NRS) § 43-245(2)*)
- **Best Interest Determination**, for the purposes of foster children, refers to a child remaining in such child's school of origin, unless a determination is made that it is not in such child's best interest to attend the school of origin. (Source: *20 U.S.C. § 6311(g)(1)(E)(i)*)

Factors to be considered in a **Best Interest Determination** include:

- Preferences of the parents;
- Child's attachment to the school, including relationships with staff and peers;
- Placement of the child's siblings;
- Influence of the school climate on the child, including safety;
- Availability and quality of services;
- Impact that previous school transfers had on the child;
- Length of the commute and how that would affect the child based on the child's developmental stage;
- Whether the child is a child with a disability under IDEA or under Section 504 and the availability of those services in another school; and
- Whether the child is an English Learner (EL) receiving services and the availability of those services.

(Source: *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, U.S. Department of Education and U.S. Department of Health and Human Services, June 23, 2016)

- **Child**, for the purposes of foster children, means an unemancipated minor. (Source: *NRS § 71-1901(2)*)
- **Children** means persons up through the age 21 who are entitled to a free appropriate public education through grade 12, and pre-school children below the age and grade level at which the agency provides free public education. (Source: *34 CFR § 200.103(a)*)
- **Child with a Disability** means a child who has been verified pursuant to *92 NAC 51-006* as a child with autism, a behavior disorder (emotional disorder), deaf-blindness, a developmental delay, a hearing impairment including deafness, an intellectual disability, multiple impairment, an orthopedic impairment, other health impairment, a specific learning disability, a speech-language impairment, a traumatic brain injury, or a visual impairment including blindness, who because of this impairment needs special education and related services. (Source: *92 NAC 51-003.08*)

DATE: December 1, 2016

SOURCE: Nebraska Department of Education's *Initiative on Education of Systems-Involved Students (ESIS)*

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- **English Learner (EL)** means an individual:
 - (A) who is aged 2 through 21;
 - (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
 - (C) (i) who was not born in the United States or whose native language is a language other than English; who is Native American or Alaska Native, or a native resident of the outlying areas; and
 - (ii) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; OR
 - (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
 - (D) whose difficulties in speaking, reading, writing or understanding the English language may be sufficient to deny the individual:
 - (i) the ability to meet the challenging State academic standards;
 - (ii) the ability to successfully achieve in classrooms where the language of instruction is English; OR
 - (iii) the opportunity to participate fully in society. *(Source: 20 U.S.C. § 7801(20))*

- **Homeless Student** means:
 - (1) an individual or family who lacks a fixed, regular, and adequate nighttime residence
 - (2) an individual or family who with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport or campground;
 - (3) an individual or family living in a supervised publicly or privately operated shelter to provide temporary living arrangements (including hotels and motels paid for by Federal, State or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);
 - (4) an individual who resided in a shelter or a place not meant for human habitation and who is exiting an institution where he or she temporarily resided;
 - (5) an individual or family who
 - (A) will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, as evidenced by:
 - (i) a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;
 - (ii) the individual or the family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or
 - (iii) credible evidence indicating the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause;
 - (B) has no subsequent residence identified; and
 - (C) lacks the resources or support networks needed to obtain permanent housing; and
 - (6) unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who:
 - (A) have experienced a long term period without living independently in permanent housing;
 - (B) have experienced persistent instability as measured by frequent moves over such period; and
 - (C) can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment. *(Source: 42 U.S.C. § 11302)*

- **Juvenile**, for the purposes of the *Nebraska Juvenile Code*, means any person under the age of eighteen. (Source: NRS § 43-245(11))
- **Mentally Ill and Dangerous (Juvenile)**, for the purposes of the *Nebraska Juvenile Code*, means a person who is mentally ill and dangerous, as defined in section 71-908 (as provided below). (Source: NRS § 43-247(3)(c))

Mentally Ill and Dangerous Person, under section 71-908, means a person who is mentally ill or substance dependent and because of such mental illness or substance dependence presents:

 - (1) A substantial risk of serious harm to another person or persons within the near future as manifested by evidence of violent acts or threats of violence or by placing others in reasonable fear of such harm; or
 - (2) A substantial risk of serious harm to himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety. (Source: NRS § 71-908)
- **Non-Offender**, for the purposes of the *Nebraska Juvenile Code*, means a juvenile who is subject to the jurisdiction of the Juvenile Court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247 (as provided below). (Source: NRS § 43-245(17))

Non-Offender, under subdivision (3)(a) of section 43-247, means (3) any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; who is in a situation or engages in an occupation, including prostitution, dangerous to life or limb or injurious to the health or morals of such juvenile; or who, beginning July 1, 2017, has committed an act or engaged in behavior described in subdivision (1), (2), (3)(b), or (4) of this section and who was under eleven years of age at the time of such act or behavior. (Source: NRS § 43-247(3)(a))
- **Parent**, for the purposes of the *Nebraska Juvenile Code*, means one or both parents or stepparents when the stepparent is married to a parent who has physical custody of the juvenile as of the filing of the petition. (Source: NRS § 43-245(18))
- **Relative**, for the purposes of the *Nebraska Juvenile Code*, and except in proceedings under the *Nebraska Indian Child Welfare Act*, means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece. (Source: NRS § 43-245(21))
- **Sibling, under Federal law**, means an individual that satisfies at least one of the following conditions with respect to the child:
 - (A) The individual is considered by State law to be a sibling of the child.
 - (B) The individual would have been considered a sibling of the child under State law but for a termination or other disruption of parental rights, such as the death of a parent.
 (Source: 42 U.S.C. § 675(12))

Siblings, under State law, means biological siblings and legal siblings, including, but not limited to, half-siblings and stepsiblings. (Source: NRS § 43-1301(10))

- **Status Offender**, for the purposes of the *Nebraska Juvenile Code*, means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and section 53-180.01 and 53-180.02 (as provided below). (Source: NRS § 43-245(25))

Status Offender, under subdivision (3)(b) of section 43-247, means (3) any juvenile:

- (b)(i) who, until July 1, 2017, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who departs himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school; or
- (b)(ii) who, beginning July 1, 2017, is eleven years of age or older and, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who departs himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school.

(Source: NRS § 43-247(3)(b))

Status Offender, under section 53-180.01, means a minor unlawfully obtaining, or attempting to obtain, alcoholic liquor by misrepresentation of age, or by any other method, in any tavern or other place where alcoholic liquor is sold. (Source: NRS § 53-180.01)

Status Offender, under section 53-180.02, means a minor unlawfully selling, dispensing, consuming, or having in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the State of Nebraska or any subdivision thereof, having physical control of alcoholic liquor as part of a bona fide religious act, ritual, or ceremony or in his or her permanent place of residence.

(Source: NRS § 53-180.02)

- **(Title IV-E) Foster Care Maintenance Payments**, for the purposes of the federal *Social Security Act*, means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence. Child welfare agencies may claim Federal reimbursement for these costs on behalf of eligible children. (Source: 42 U.S.C. § 675(4)(A))
- **Young Adult**, for the purposes of the *Nebraska Juvenile Code*, means an individual older than eighteen years of age but under twenty-one years of age. (Source: NRS § 43-245(27))

OUT-OF-HOME CARE

- **Alternative to Detention** means a program or directive that increases supervision of a youth in the community in an effort to ensure the youth attends court and refrains from committing a new law violation. Alternative to detention includes, but is not limited to, electronic monitoring, day and evening reporting centers, house arrest, tracking, family crisis response, and temporary shelter placement. Except for the use of manually controlled delayed egress of not more than thirty seconds, placements that utilize physical construction or hardware to restrain a youth's freedom of movement and ingress and egress from placement are not considered alternatives to detention. (Source: NRS § 43-245(3))

- **Child Caring Agency** means any person other than the parent or legal guardian of a child that receives the child for placement and places or arranges for the placement of a child in a foster family home, adoptive home, residential child-caring agency, or independent living. (Source: NRS § 71-1926(3))
- **County Detention Home** means a detention home in connection with the juvenile courts of this state established and maintained by the county boards of the counties of Nebraska pursuant to section 43-2,110 R.R.S. that provides regular or special education services with a special education rate approved by the Department (of Education). See also, **Juvenile Detention Facility**. (Source: 92 NAC 18-002.05)
- **Foster Care, under Federal law**, means twenty-four hour substitute care for children placed away from their parents or guardians and for whom the Title IV-E (child welfare) agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives (kinship care), group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive 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. (Source: 45 C.F.R. § 1355(a))

Foster Care, under State law, means engaged in the service of exercising twenty-four hour daily care, supervision, custody or control over children, for compensation or hire, in lieu of the care or supervision normally exercised by parents in their own home. Foster care does not include casual care at irregular intervals or programs as defined in section 71-1901. (Source: NRS § 71-1901(5))
- **Foster Care Facility** means any foster family home as defined in section 71-1901, residential child caring agency as defined in section 71-1926, public agency, private agency, or any other person or entity receiving and caring for foster children. (Source: NRS § 43-1301(3))
- **Foster Care Placements** means:
 - (a) all types of placements of juveniles described in sections 43-245 and 43-247;
 - (b) all types of placements of neglected, dependent, or delinquent children, including those made by the Department of Health and Human Services, by the court, by parents, or by third parties;
 - (c) all types of placements of children who have been voluntarily relinquished pursuant to section 43-106.01 to the department or any child-placing agency as defined in section 71-1926 licensed by the Department (of Health and Human Services); and
 - (d) all types of placements that are considered to be a trial home visit, including those made directly by the Department (of Health and Human Services) or Office (of Juvenile Services).
 (Source: NRS § 43-1301(4))
- **Foster Family Home** means a home which provides foster care to a child or children pursuant to a foster care placement as defined in section 43-1301. Foster family homes include licensed homes where the primary caretaker has no significant prior relationship with the child or children in his or her care and both licensed and unlicensed relative and kinship homes. (Source: NRS § 71-1901(6))
- **Institution** means any public or private facility, not owned or operated by a public school district, that provides a residential program and regular or special education services with a special education rate approved by the Department (of Education). (Source: 92 NAC 18-002.13)

- **Juvenile Detention Facility** means an institution operated by a political subdivision or political subdivisions for the secure detention and treatment of persons younger than eighteen years of age, including persons under the jurisdiction of juvenile court, who are serving a sentence pursuant to a conviction to a conviction in a county or district court or who are detained while waiting disposition of charges against them. Juvenile detention facility does not include any institution operated by the Department of Correctional Services. See also, **County Detention Home**.
(Sources: NRS § 83-4,125(2); and NRS § 43-245(13))
- **Juvenile Emergency Shelter** means a facility which provides temporary twenty-four hour physical care and supervision in crisis situations and at times when an appropriate foster care resource is not available to persons eighteen years of age and younger for which a municipal corporation has contracted pursuant to section 13-317 and which shelter also provides regular or special education services with a special education rate approved by the Department (of Education).
(Source: 92 NAC 18-002.16)
- **Juvenile Facility** means a residential child-caring agency as defined in section 71-1926, a juvenile detention facility or staff secure juvenile facility as defined in this section, a facility operated by the Department of Correctional Services that houses youth under the age of majority, or a youth rehabilitation and treatment center. (Source: NRS § 83-4,125(3))
- **Kinship Home** means a home where a child or children receive foster care and at least one of the primary caretakers has previously lived with or is a trusted adult that has a pre-existing significant relationship with the child or children, or a sibling of such child or children pursuant to section 43-1311.02. (Source: NRS § 71-1901(7))
- **Mental Health Facility**, for the purposes of the *Nebraska Mental Health Commitment Act*, means a treatment facility as defined in section 71-914 or a government, private, or State hospital which treats mental illness. See also, **Treatment Facility**. (Sources: NRS § 71-914; and NRS § 43-245(16))
- **Out-of-Home Care** means the provision of room and board and the exercise of concern and responsibility for the safety and welfare of children on a twenty-four-hour-per-day basis in settings that serve as the out-of-home placement for children. (Source: NRS § 71-1926(1))
- **Relative Home** means a home where a child or children receive foster care and at least one of the primary caretakers is related to the child or children, or a sibling of such child or children pursuant to section 43-1311.02, in his or her care by blood, marriage, or adoption or, in the case of an Indian child, at least one of the primary caretakers is an extended family member as defined in section 43-1503. (Source: NRS § 71-1901(9))
- **Residential Child-Caring Agency** means a person that provides care for four or more children and this is not a foster family home as defined in section 71-1901.
(Sources: NRS § 43-1301(8); and NRS § 71-1926(7))
- **Secure Detention** means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement. (Source: NRS § 43-245(23))
- **Staff Secure Juvenile Facility** means a juvenile residential facility operated by a political subdivision
 - (a) which does not include construction designed to physically restrict the movements and activities of juveniles who are in custody in the facility;
 - (b) in which physical restriction of movement or activity of juveniles is provided solely through staff;
 - (c) which may establish reasonable rules restricting ingress to and egress from the facility; and
 - (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.
 Staff secure juvenile facility does not include any institution operated by the Department of Correctional Services. (Sources: NRS § 83-4125(5); and NRS § 43-245(24))

- **Treatment Facility**, for the purposes of the *Nebraska Mental Health Commitment Act*, means a facility which is licensed to provide services for persons who are mentally ill or substance dependent or both. See also, **Mental Health Facility**. (Source: NRS § 71-914)

SCHOOLS

- **Educational Service Unit (ESU)** refers to an educational service provider in the state's system of elementary and secondary education, as described in *Nebraska's Educational Service Units Act*. (Sources: NRS § 79-1202; NRS § 79-1204; and 92 NAC 84-002.07)
- **Interim-Program School** means those schools located in or operated by county detention homes, institutions, or juvenile emergency shelters. (Source: 92 NAC 18-002.15)
- **Local Education Agency (LEA), under Federal law**, means a public board of education or other public authority legally constituted within a State for either administrative control and direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary or secondary schools. (Source: 34 C.F.R. § 303.23)
- **Local Education Agency (LEA), under State law**, means a public school district or *Educational Service Unit*. (Source: NRS § 79-1201)
- **School of Origin** means the school in which a child is enrolled at the time of placement in foster care. 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. (Sources: 20 U.S.C. § 6311(g)(1)(E)(i); and *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, U.S. Department of Education and U.S. Department of Health and Human Services, June 23, 2016)
- **(School) Transportation**, for the purposes of **Additional Costs** incurred in providing transportation to maintain children in foster care in their school of origin, refers to the difference between what a *Local Education Agency (LEA)* otherwise would spend to transport a student to his or her assigned school and the cost of transporting a child in foster care to his or her school of origin. (Source: *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, U.S. Department of Education and U.S. Department of Health and Human Services, June 23, 2016)
- **State Education Agency (SEA)** means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or State law. The term includes the agency that receives funds under sections 611 and 619 of the (*Individuals with Disabilities Education Act (IDEA)*) to administer the State's responsibilities under *Part B* of the Act. (Source: 34 CFR § 77.1)