

Board Office Use: Legislative File Info.	
File ID Number	21-2419
Introduction Date	10/27/21
Enactment Number	21-1718
Enactment Date	10/27/2021 os



Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer

Meeting Date October 27, 2021

Subject Agreement with a Public School District for Integrating Educational and Child Welfare Data through the Foster Focus Data System – Alameda County Superintendent of Schools – Community Schools and Student Services Department

Ask of the Board Ratification by the Board of Education of Agreement with a Public School District for Integrating Educational and Child Welfare Data through the Foster Focus Data System between the District and Alameda County Superintendent of Schools, Hayward, CA, to allow the District to share necessary data regarding students in foster care to facilitate compliance with state mandates regarding timely transfer of students between schools and data reporting requirements for the period July 1, 2021 through June 30, 2026, in an amount not to exceed \$7,500.00.

Background Historically, a high percentage of pupils in foster care are working substantially below grade level, are retained at least one year in the same grade level, earn lower grades and scores on standardized achievement tests than their peers, are less likely to be involved in extracurricular activities than their peers and are more likely to drop out of school before graduation. Frequent residence changes and related school moves are one risk factor threatening the educational outcomes of children in foster care. Efficient transfer procedures, including the quick transfer of records and information is critical to the swift placement of foster children in new educational settings.

Discussion The state legislature has enacted legislation requiring Local Education Agencies (LEAs), such as public school districts and county child welfare agencies (CWAs), to swiftly and smoothly transfer foster children as may be necessary from school to school. The Sacramento County Office of Education (SCOE) has created and owns and operates a program known as Foster Focus. The Foster Focus program is intended to be a secure web based data communication system between authorized users - meaning between (i) LEAs, such as county offices of education, public school districts and other local educational agencies; and (ii) county agencies, such as probation departments and child welfare agencies.

Foster Focus is the property of SCOE and the Alameda County Superintendent of Schools has entered into a one year license agreement (V# 1692/C# 704474) with SCOE making the Superintendent the local administrator of Foster Focus data system for Alameda County LEAs. The Superintendent's license with the SCOE includes the option of linking school district pupil informational systems directly with Foster Focus, at a cost to the Superintendent of \$5,000.00 per district. The Alameda County Superintendent of schools has the personnel, experience and authority to perform the services that will result in the initial linkage of the District's data system to Foster Focus and can maintain the District's linkage and system user access.

On May 25, 2021, District staff executed an Agreement with a Public School District for integrating Educational and Child Welfare Data through the Foster Focus Data System with the Alameda County Superintendent of Schools to connect data from the District's student information system to SCOE's Foster Focus system and to maintain that link and user access for District personnel for five years. You are now asked to ratify this agreement.

Fiscal Impact

Resource 3010/Title I, in the amount of \$7,500.00

Attachment(s)

- Agreement with a Public School District for Integrating Educational and Child Welfare Data through the Foster Focus Data System
- Foster Focus Overview

ALAMEDA COUNTY OFFICE OF EDUCATION

L. KAREN MONROE, ALAMEDA COUNTY SUPERINTENDENT OF SCHOOLS

AGREEMENT WITH A PUBLIC SCHOOL DISTRICT
For Integrating Educational and Child Welfare Data
Through the FOSTER FOCUS Data System

This Service Agreement ("Agreement") is between the ALAMEDA COUNTY SUPERINTENDENT OF SCHOOLS ("Superintendent") and the public school district ("District") named in the signature block below. The Superintendent and District may be jointly identified as the "Parties." Both parties are local educational agencies ("LEAs").

In accordance with the terms of this Agreement, the Superintendent will assist the District in complying with the responsibilities imposed by the state legislature regarding the proper and timely transfer between schools of pupils in foster care and the related state mandated data reporting requirements by linking the District's student information systems to the Sacramento County Office of Education's FOSTER FOCUS data system and annually maintaining both linkage and accessibility by authorized users. In turn, District will reimburse Superintendent for related costs.

RECITALS

This Agreement is based on the following facts and understandings of the Parties:

WHEREAS, historically, a high percentage of pupils in foster care are working substantially below grade level, are retained at least one year in the same grade level, earn lower grades and scores on standardized achievement tests than their peers, are less likely to be involved in extracurricular activities than their peers and are more likely to drop out of school before graduation (Educ. Code § 42920);

WHEREAS, historically, foster youth have been an especially vulnerable and under-served group within the pupil population (Educ. Code § 42920);

WHEREAS, both Congress and the state legislature have enacted legislation designed to address and help remedy educational shortcomings experienced by foster children. For example, see 42 U.S.C. sections 11432-22435 (McKinney-Vento Homeless Assistance Act); Education Code sections 42920-42926, 48850-48859, 48915.5, 48918.1, 49069.5, 51225.1 and 51225.2;

WHEREAS, frequent residence changes and related school moves are one risk factor threatening the educational outcomes of children in foster care;

WHEREAS, efficient transfer procedures, including the quick transfer of records and information is critical to the swift placement of foster children in new educational settings;

WHEREAS, the state legislature has enacted legislation requiring LEAs, such as public schooldistricts and county child welfare agencies ("CWAs"), to swiftly and smoothly transfer foster children as may be necessary from school to school (Educ. Code § 49069.5.);

WHEREAS, the Sacramento County Office of Education ("SCOE") has created and owns a program known as FOSTER FOCUS;

WHEREAS, SCOE is the statewide administrator of the FOSTER FOCUS Program and is the website host;

WHEREAS, the FOSTER FOCUS program is intended to be a secure web based data communication system between authorized users - meaning between (i) LEAs, such as county offices of education, public school districts and other local educational agencies; and (ii) county agencies, such as probation departments and child welfare agencies;

WHEREAS, authorized users may gain access to FOSTER FOCUS via the internet through the authorized user's User ID and Password;

WHEREAS, the underlying purpose of FOSTER FOCUS is to facilitate the efforts of authorized users, including public school districts in meeting their obligations associated with frequent school moves by foster children by giving authorized users the nonexclusive right to obtain access to and use FOSTER FOCUS at www.sacfvs.org/index.cfm;

WHEREAS, FOSTER FOCUS houses data from LEA and CWA data systems and the California Longitudinal Pupil Achievement Data System ("CALPADS");

WHEREAS, data storage and sharing by authorized FOSTER FOCUS system users is compliant with both the Family Educational Rights and Privacy Act (Title 34 CFR §§ 99.1, et seq.) ("FERPA") and California's pupil records confidentiality requirements (Educ. Code §§ 49060-49079.7);

WHEREAS, FOSTER FOCUS is the property of SCOE and the Superintendent has entered into a one year license agreement (V# 1692/C# 704474) with SCOE making the Superintendent the local administrator of FOSTER FOCUS data system for Alameda County LEAs;

WHEREAS, SCOE has agreed to (i) comply with FERPA and related California law; (ii) use its best efforts to protect the confidentiality of pupil data; (iii) protect data from unauthorized changes, physical loss and destruction, including nightly back up of all input, provide and offsite storage of backup material for a 30-day period; (iii) apply physical, network security measures; (iv) require pertinent SCOE employees to sign confidentiality agreements; (v) designate administrators to regularly consider the system's confidentiality measures and data sharing best practices; and (vi) train its employees on password protection and other confidentiality measures;

WHEREAS, by agreement with the Superintendent, the District may access and use FOSTERFOCUS to the extent permitted and subject to conditions set out by the license agreement between SCOE and the Superintendent;

WHEREAS, by agreement with the Superintendent, the District may access and use FOSTERFOCUS to the extent permitted and subject to conditions set out by the license agreement between SCOE and the Superintendent;

WHEREAS, the annual license fee the Superintendent pays for FOSTER FOCUS is based on the number of court supervised child welfare cases plus the number of out of home probation cases supervised by Alameda County. For the 2021-22 school year that amount was \$5000.00;

WHEREAS, the Superintendent's license with the SCOE includes the option of linking school district pupil informational systems directly with FOSTER FOCUS, at a cost to the Superintendent of \$5,000.00 per district, in addition to the annual license fee;

WHEREAS, the Superintendent has or is in the process of developing a cooperative relationship and related agreements with the probation department and child welfare agency in Alameda County to facilitate the confidential access to and exchange of pupil information regarding pupils in foster care;

WHEREAS, the District has the personnel, experience and authority to perform the services that will result in the initial linkage of the District's data system to FOSTER FOCUS;

WHEREAS, the Superintendent has the personnel, experience and authority to perform the services necessary to maintain the District's linkage and system user access; and

WHEREAS, this Agreement is intended to be the written agreement between the Parties related to the services and/or products to be provided during the referenced term.

TERMS

1. Recitals. Parties stipulate that the Recitals are accurate and true for all purposes and hereby incorporate the Recitals into this Agreement.

2. Initial Linking - Superintendent Obligations Superintendent agrees to exercise reasonable diligence in order to establish a successful link between the District's data system and FOSTER FOCUS and agrees to do so in exchange for reimbursement from the District in the sum total of Five Thousand Dollars (\$5,000.00). This amount is non-refundable.

Once this Agreement is fully executed, Superintendent will immediately begin coordinating between District and SCOE to establish the link and will endeavor to complete the process in a timely manner.

Conditions precedent to the obligation of Superintendent to successfully establish a link are: (i) District must first deliver the required data in the format prescribed by SCOE, to be communicated to District by Superintendent (ii) validation testing must be completed; and (iii) SCOE must approve, in writing, the installation of District's data.

3. Initial Linking - District Obligations. District agrees to coordinate with Superintendent and SCOE, as may be necessary, to review the delivered data and resolve any incompatibility problems.

After the initial link has been successfully established, should the District change its information system resulting in the District's data becoming incompatible with the FOSTER FOCUS data specifications, thus terminating the link, District may opt to enter into a new linking agreement with Superintendent on mutually agreeable terms.

SCOE and ACOE will provide any necessary technical assistance to ensure Oakland USD can fully utilize Foster Focus and its capacity to support foster students as part of this agreement.

Should the District require and request any change to existing reports or views, such maybe modified or created by Superintendent and/or FOSTER FOCUS for an additional fee and subject to a separate agreement. Use of custom reports or functions may result in an increase of the annual maintenance fee.

District shall notify Superintendent and SCOE it has not included all the categories of information found in Education Code section 49061 in its definition of Directory Information.

4. Annual Hosting, Enhancement and Maintenance. Superintendent agrees to exercise reasonable diligence in order to maintain the linkage with the host, FOSTER FOCUS and authorized users, after the initial link is successfully established, including annually renewing its license with SCOE and assisting in the installation of available enhancements to FOSTER FOCUS. District shall compensate Superintendent \$500.00 annually (fiscal year) for this ongoing maintenance, for a period of five (5) years (i.e., a total of \$2,500.00) in accordance with Section 10 below.

Maintenance and installing enhancements may from time to time result in an interruption of service. District agrees to waive any liability and hold both the Superintendent and SCOE harmless for any losses or claims that may arise out of a service interruption.

5. Reimbursement Superintendent shall invoice District for the initial linking in the amount of \$5,000.00 immediately upon execution of this Agreement. The reimbursement of the initial linking is due immediately upon invoicing and must be paid by the District within 45 days of receipt of the invoice. Time is of the essence.

Superintendent shall invoice the District for the annual maintenance immediately after renewing its license agreement with the SCOE at the beginning of each fiscal year. Payment is due from the District within 45 days of receipt of the invoice. Time is of the essence.

6. SCOE's Data-Structure Specifications. The data to be submitted to FOSTER FOCUS for loading must meet the FOSTER FOCUS data structure specifications. Any data submitted for loading which does not meet the data structure specifications required by FOSTER FOCUS must be corrected by the District

7. Warranty Regarding SCOE's Data-Structure Specifications. District warrants that its data will meet the FOSTER FOCUS data structure specifications. Assistance converting data to the required structure specifications may be provided by Superintendent upon the request of District at the rate of \$150.00/hour. This amount is non-refundable.

8. SCOE's Proprietary Rights in FOSTER FOCUS. Parties agree that FOSTER FOCUS is the property of SCOE and that its value is in part determined by SCOE's ability to limit access to, and use of, FOSTER FOCUS.

District shall not disclose or make available to any third party any of SCOE's proprietary information, trade secrets and intellectual property to which District and its personnel are granted access pursuant to this Agreement including, without limitation, manuals and instructions for the operation of FOSTER FOCUS, knowledge of operating methods, passwords, use ID, and the name and designations of any equipment comprising the system. District agrees to keep all such information strictly confidential and to refrain from discussing this information with anyone else without proper authority.

To further protect SCOE's Propriety Rights in FOSTER FOCUS, District agrees to restrict access to FOSTER FOCUS to only the District's individual authorized users. In addition, District will advise each of its individual authorized users, before he or she receives access to FOSTER FOCUS, of the District's obligations under this Agreement and shall require each individual authorize user to maintain those obligations.

For purposes of this provision of the Agreement, the Parties intend that SCOE to be a third party beneficiary.

9. Term and Early Termination for Convenience. The term of the initial linking portion of this Agreement is one (1) calendar year ending June 30, 2022. The initial linking portion of the Agreement may not be terminated early, except that Superintendent may terminate this Agreement if Superintendent is unable to successfully link the District. If Superintendent is unable to establish a link, any amounts paid for the service may be refunded only upon the agreement of both Superintendent and SCOE/FOSTER FOCUS. Parties agree that no amounts paid may be refunded if the link was unsuccessful in full or in part due to incompatible data.

The term of the annual maintenance portion of this Agreement is five (5) calendar years. Either party may terminate the annual maintenance portion of this Agreement, for any reason, upon 60 days advance notice given in writing. The first year of the maintenance period shall run contemporaneously with the initial linking period, meaning that the total term is July 1, 2021 through June 30, 2026. Neither party is liable for delays or failures to perform that arise in full or in part from events beyond their reasonable control, such as a flood or other acts of God, war (declared or undeclared), government regulation, terrorism, disaster, strikes, civil disorder, or other similar occurrences that make it impossible, illegal or impracticable for one or both parties to perform its obligations, either in whole or in part. Either party may terminate this Agreement, in such a case, upon written notice to the other party within ten (10) business days of receipt of notice of such an occurrence.

District understands and agrees that termination of the annual maintenance portion of this Agreement will necessarily result in termination of the District's connection to the FOSTER FOCUS program.

10. Early Termination Following Breach. This Agreement may be terminated by the non-defaulting party if:

(a) A party materially fails to perform or comply with any provision of this Agreement. If a party materially fails to comply with this Agreement, the non-defaulting party can terminate this Agreement after first giving written notice that includes an opportunity to cure within fifteen (15) days. If the failure is not cured, the non-defaulting party may then terminate this Agreement effective upon receipt of the written notice.

(b) A party becomes insolvent or admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, and/or a bankruptcy petition is filed that is not resolved favorably within 90 days.

Termination rights shall be in addition to any other legal remedy a party may have including liquidated damages, specific performance and injunctive relief as may be appropriate.

11. Obligations upon Termination. Within ten (10) days after termination of this Agreement, District shall cease and desist use of FOSTER FOCUS. Either SCOE or Superintendent may enforce this covenant by injunction and/or specific performance cause of action. Either SCOE or Superintendent may disable any or all passwords and/or user IDs issued to the District.

Within thirty (30) day of the effective date of termination of this Agreement, upon the District's written request, District data will be returned to the District in ASCII delimited file format or such other format the Parties and SCOE may agree to.

Upon termination, District shall provide Superintendent and SCOE a list of District pupil records maintained in FOSTER FOCUS that the District desires to delete from the active data base.

12. Confidentiality & Security Obligations. The data which relates to children in foster care is confidential. Parties will preserve the confidentiality of any information relating to pupil records maintained in the FOSTER FOCUS program by complying with FERPA and corresponding California state law in implementing this Agreement and handling student records.

All requests regarding access to pupil records shall be directed to District. All requests from a parent, legal guardian or eligible pupil to review information and correct erroneous information shall be directed to District. District will comply with the procedures contained in Education Code section 49060 for granting requests for pupil records and Section 49070 for challenging erroneous information in student records.

District shall inform each authorized user of the need to protect the confidentiality of pupil information.

Parties will use their best efforts to protect confidential data from unauthorized changes, physical loss or destruction through the operation of its computer system by its personnel.

District shall restrict access to FOSTER FOCUS solely to authorized users. District will require authorized users to sign a confidentiality agreement, acceptable to Superintendent and SCOE/FOSTER FOCUS.

District shall ensure that user IDs and passwords are provided only to individual authorized users.

District shall be solely responsible for the security of the user IDs and passwords issued to District. In the case of lost, stolen or inactive user IDs and passwords, District shall notify Superintendent and cooperate with Superintendent's. Efforts to disable same.

In the event of an unauthorized disclosure of a pupil record, FOSTER FOCUS has agreed with Superintendent to send notice to the last known address of the parent, legal guardian, eligible student. However, if the breach is caused by District or District related persons (such as through unauthorized use of FOSTER FOCUS), District shall be responsible for notifying the parent, legal guardian, eligible student.

Superintendent's license agreement with SCOE expressly allows for the use of de-identified data for the purpose of research and evaluation, but not for targeted advertising. District agrees to this use of de-identified data.

13. No Warranties. Neither Superintendent nor SCOE make any representations or warranties of any kind with respect to the services provided by Superintendent or the services of and data made available by FOSTER FOCUS including, but not limited to, the warranties for fitness for a particular purpose or merchantability. Neither Superintendent nor SCOE assume any responsibility in connection with the use of any of the services made available by Superintendent or the services of and data made available by SCOE. This provision shall survive expiration or early termination of this Agreement.

14. No Consequential or Special Damages. Parties agree and stipulate for all purposes that if either Superintendent or SCOE does not fully perform as required by this Agreement, District will not incur any indirect, incidental, punitive, consequential or special damages. Parties further agree and stipulate for all purposes that there are no peculiar circumstances or facts made known to either party or which should otherwise been known to either party which might result in a special or peculiar harm to either party (even if a party has actually been advised of a possibility of such a potential loss or damages). This provision shall survive expiration or termination of this Agreement.

15. Sole Financial Remedy -Liquidated Damages. Parties agree and stipulate for all purposes that if either Superintendent or SCOE does not fully perform this Agreement, it will be impractical or extremely difficult to ascertain the actual damages suffered by District. It is, therefore, agreed that in the event of a breach by Superintendent, the Superintendent shall re-pay to the District an amount equal to that actually paid by District for annual maintenance during the latest fiscal year pursuant to this Agreement or \$100.00, whichever is greater.

District's sole remedy for a breach by Superintendent that results in the failure to link the District's data system to FOSTER FOCUS or failure to maintain the link is liquidated damages as described above. This provision shall survive expiration or early termination of this Agreement.

16. Third Party Beneficiaries. As provided herein, SCOE is a third party beneficiary. It is agreed that no others may be third party beneficiaries. Except as provided herein in favor of SCOE/FOSTER FOCUS, it is agreed that the enforcement of these terms and conditions and all rights of action relating to such enforcement shall be strictly reserved to Superintendent and District. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Superintendent and District that any other person or entity receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

17. Miscellaneous Provisions.

A. Entire Agreement. This Agreement constitutes the final, complete and exclusive statement of the terms of agreement between the Parties pertaining to the subject matter of this Agreement. It supersedes all prior and contemporaneous understandings or agreements of the Parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement.

B. Amendment. The provisions of this Agreement may be modified only by mutual agreement of the Parties. No modification shall be binding unless it is in writing and signed by the party against whom enforcement of the modification is sought.

C. Waiver. Any of the terms or conditions of this Agreement may be waived at any time by the party entitled to the benefit of the term or condition, but no such waiver shall affect or impair the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or any other term or condition of this Agreement.

D. Assignment. Neither party may assign any rights or benefits or delegate any duties under this Agreement without the written consent of the other party. Any purported assignment without written consent shall be void.

E. Governing Law, Jurisdiction and Venue. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California. Any legal proceeding arising out of or relating to this Agreement shall be brought in Sacramento County, California.

F. Severability. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.

G. Notices. Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given on the date of personal service on a party, or on the third business day after mailing if the document is mailed by registered or certified mail, addressed to a party at the address set forth herein, or at the most recent address specified by the party through written notice under this provision.

H. Authority to Enter Into Agreement. Each party to this Agreement represents and warrants that it has the full power and authority to enter into this Agreement and to carry out the transactions contemplated by it, and has taken all action necessary to authorize the execution, delivery and performance of this Agreement.

I. Compliance with Law. In the course of performing this Agreement, both parties shall observe and comply with all applicable federal, state and local laws, regulations and ordinances now in effect or subsequently enacted.

J. Nondiscrimination. Neither party, nor any officer, agent, employee, or subcontractor of a party shall discriminate in the treatment or employment of any individual or group of individuals on any ground prohibited by law, nor shall any of them harass any person in the course of performing this Agreement based on gender or any other basis prohibited by applicable law.

K. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the Parties had all signed the same document. All counter parts shall be construed together and shall constitute one agreement.

L. Confidentiality. Each party shall, at all times, protect the confidentiality of student information as required by California law.

OAKLAND UNIFIED SCHOOL DISTRICT

ALAMEDA COUNTY OFFICE OF EDUCATION

Signed: Andrea Bustamante

Signed: Monica R. Vaughan

Name: Andrea Bustamante
Executive Director, Community Schools

Name: Monica Vaughan
Chief of Schools

Approved as to form by OUSD Staff Attorney
Joanna Powell on 9/2/2021.

Joanna J. Powell

Shanthy Gonzales

Shanthy Gonzales, President, BOE

Kyla Johnson-Trammell

Kyla Johnson-Trammell, Superintendent
and Secretary, BOE

FOSTER FOCUS



The Sacramento County Office of Education (SCOE) is the administrator of the Foster Focus data system, currently used in 46 counties. Foster Focus integrates data from CWS/CMS, school district student information systems (SIS), and the CALPADS 5.7 report. The system offers secure data sharing, education case management tools, and reports for multiple agencies serving foster youth.

Data Snapshot

- Demographics and foster status
- Agency of jurisdiction and placement worker contacts
- Out-of-home placement address
- Electronic documents
- Enrollments, attendance, behavior, test scores, term grades, and special education. *(SIS imports vary by county. This data can be populated by SIS, CALPADS 5.7 or manual entry)*

System Features

- CALPADS data management tools
- Dashboards and alerts for education users
- Graduation/Transition tools
- Education Plans
- Countywide and district level reports
- Education progress summaries for placement workers
- AB 167/216 tracking
- Case notes and service tracking
- Secure document sharing

System Users

Access to child records is role based and limited to:

- County offices of education
- School districts
- Child welfare
- Probation

Questions

Bridget Stumpf

Coordinator,
Technology Projects

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Office of Education,

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