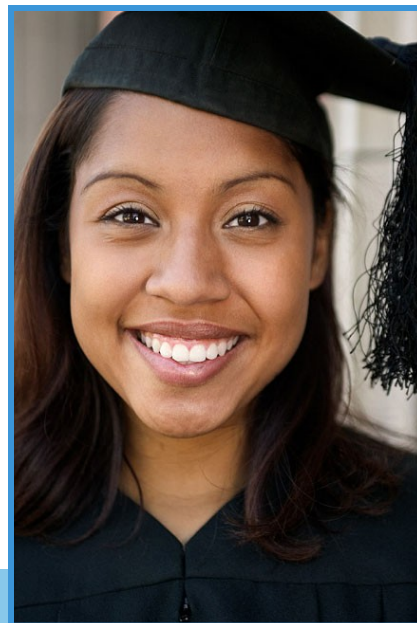




CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

California Foster Care Education Law Factsheets

Fourth Edition, December 2010



Member Organizations

Alameda County Foster Youth Alliance
American Bar Association, Center on Children and the Law
California Administrative Office of the Courts, Center for Families, Children & the Courts
California Alliance of Child and Family Services
California CASA Association
California Child Welfare Co-Investment Partnership
California Community Colleges Chancellor's Office
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Public Counsel Law Center
Sacramento Child Advocates, Inc.
Southwestern Law School
Stuart Foundation
Youth Law Center

Citations and Abbreviation Key

Abbreviations included in citations or referenced throughout the Factsheets

AB	Assembly Bill
CCR	California Code of Regulations
CFR	Code of Federal Regulations
CRC	California Rules of Court
EC	California Education Code
GC	California Government Code
IEP	Individualized Education Plan
WIC	Child Welfare & Institutions Code
USC	United States Code

For electronic copies of this publication and for other resources, please visit www.cfyetf.org, www.clcla.org, or www.casey.org.

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AB 490

INTRODUCTION

Assembly Bill 490 (2003) created new rights and duties related to the education of dependents and wards in foster care. Some of these rights and duties have been expanded by later laws, including AB 81 (2009), AB 12 (2010), SB 1353 (2010), AB 1933 (2010), and the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351). Many of the obligations placed on local educational agencies by these laws also apply to charter schools participating in a special education local plan area. *EC § 48859(c).*

Guiding Principles

Educators, social workers, probation officers, caretakers, advocates, and juvenile courts must work together to serve the educational needs of students in foster care. *EC § 48850(a)(1).*

Students in foster care must have access to the same academic resources, services, and extracurricular and enrichment activities that are available to all students. All educational and school placement decisions must be based on the child's best interests and consider, among other factors, educational stability and the least restrictive educational setting necessary to achieve academic progress.

EC §§ 48850(a)(1), 48853(g); WIC §§ 361(a), 726(b).

Educational matters must be considered at every court hearing. Social workers and probation officers have many education-related reporting requirements.

See *CRC 5.651 and 5.668(c)* for a list of requirements.

SCHOOL STABILITY

Role of the Placing Agency

In making out-of-home placement decisions, the placing agency must promote educational stability by considering a placement's proximity to the child's "school of origin" (usually her/his current school) and attendance area, the number of previous school transfers, and the school matriculation schedule, among other factors. *WIC § 16501.1(c).* The child's case plan must include specific information about her/his educational stability and assurances that the placing agency has taken steps to ensure such stability.

See *WIC §§ 16010(a), 16501.1(f)(8).*

Within 24 hours of determining that a proposed placement or placement change would result in a school change, the social

worker or probation officer must notify the court, the child's attorney, and the educational representative or surrogate parent. *CRC 5.651(e)(1)(A).*

If a child who is changing schools has an IEP, the social worker or probation officer must give written notice of the impending change to the current local educational agency (LEA) and the receiving Special Education Local Plan Area at least 10 days in advance. *CRC 5.651(e)(1)(B).*

Role of the Court

The child's attorney must discuss any proposed school change with the child and the child's educational rights-holder, as appropriate, and may request a hearing on the proposed change. The educational rights-holder also may request a hearing.

CRC 5.651(e)(2).

If there is a hearing request, the social worker or probation officer must provide a report on the proposed change within two court days, and the hearing must be held within seven calendar days. Pending the hearing, the child has a right to remain in her/his current school. *CRC 5.651(e)(2)-(4).*

Role of the School District

If a foster child's residence changes, the school district must let the child remain in her/his "school of origin" (defined at *EC § 48853.5(e)*) for as long as the court has jurisdiction over the child's placement. (If the court's jurisdiction ends during an academic year, the right to remain in the school of origin lasts through the end of that academic year.) Moreover, when transitioning between grade levels, the child has the right to continue in her/his school district of origin or, if applicable, to enroll in the same middle or high school district as her/his classmates, following established feeder patterns. After consulting with a child and her/his educational rights-holder and providing a written explanation, a district's foster youth liaison may recommend that the school-of-origin right be waived. If a dispute arises, the child has the right to remain in the school of origin until it is resolved. *EC § 48853.5(d).*

School District Liaison

Each school district and county office of education must designate an educational liaison for foster youth, whose duties are:

- To ensure proper educational placement, school enrollment, and checkout from school.

- To assist with the transfer of grades, credits, and records when there is a school change. *EC § 48853.5(b), (d)(7)(C).*

Local Public School Preferred

Students in foster care must attend programs operated by the LEA unless the child remains in the school of origin, the child has an IEP requiring a different educational placement, or the educational rights-holder determines it is in the child's best interest to attend a different educational program. Before placing a child in a juvenile court school, community school, or other alternative school setting, the educational rights-holder must consider placement in the regular public school. *EC § 48853(a)-(b).*

Immediate Enrollment

If a child changes schools, s/he has a right to be enrolled in the new school immediately, even if there are outstanding fees, fines, textbooks, or other items due to a school or if s/he does not have the clothing or records normally required for enrollment. *EC § 48853.5(d)(7)(B).*

TIMELY TRANSFER OF RECORDS

Placing Agency's Duties

As soon as the social worker or probation officer becomes aware of the need to transfer a child to a new school, s/he must notify the school district of the child's last expected day of attendance and request that the child be transferred out. *EC § 49069.5(c); see WIC § 16501.1(f)(8)(B).* Social workers and probation officers may access the child's school records—without parental consent or a court order—to help with school transfer and enrollment, compile the child's education summary, and conduct case management.

EC § 49076(a)(11).

New School District's Duty

Within two business days of receiving a request for enrollment, the new school's foster youth liaison must contact the last school to obtain all of the child's records. *EC § 48853.5(d)(7)(C).*

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• Old School District's Duties

Within two business days of receiving a transfer request, the current school district must transfer the child out and deliver her/his records to the new school. The records must include a determination of seat time, full or partial credits earned, classes and grades, immunization records, and, if applicable, special education or Section 504 records. *EC § 49069.5(d)-(e)*. All records must be provided regardless of any fees, fines, textbooks, or other items or money owed to the last school. *EC § 48853.5(d)(7)(C)*.

GRADE AND CREDIT PROTECTIONS

A child's grades may not be lowered due to absences caused by a change in placement, a court appearance, or a court-ordered activity. *EC § 49069.5(g)-(h)*. In addition, LEAs must award all students credit for full or partial coursework satisfactorily completed at a public school, juvenile court school, or non-public, non-sectarian school or agency. *EC § 48645.5*.

SPORTS AND ACTIVITIES

Students in foster care must have access to the same extracurricular activities and interscholastic sports that are available to all students. If a court or child welfare agency changes a child's residence, s/he immediately is deemed to meet all residency requirements for participation in interscholastic sports and other extracurricular activities. *EC § 48850(a)*.

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Education Rights



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

Parents generally have the right to make educational decisions for their children unless their child is in a legal guardianship, their child has been freed for adoption (parental rights have been terminated), or the juvenile court has limited their educational rights. *WIC §§ 361, 726, 358.1(e); GC § 7579.5; EC § 56055; 34 CFR § 300.30.*

WHY DOES THIS MATTER?

When it is unclear who has the right to make educational decisions for a child, these important decisions often are not made in a timely manner, if at all. For example:

Special Education Evaluation

School districts generally cannot start evaluating a student for disabilities that make her/him eligible for special education until the adult who holds educational rights signs a proposed assessment plan.

Individualized Education Program (IEP)

A student's IEP cannot be implemented without the approval and signature of the adult who holds educational rights.

School Placement

A child's educational rights-holder may determine it is in the child's best interest to attend an educational program other than one operated by the local educational agency. *EC § 48853(a)*. The educational rights-holder also has a role in deciding whether the child will remain in his or her "school of origin" after a residential placement change. *EC § 48853.5(d)*.

COURT'S CONSIDERATIONS

Educational matters, including who has the authority to make educational decisions for a foster child and whether someone else should be appointed to hold educational rights, must be considered at every court hearing. *WIC §§ 366.3 (e), 366.3(g), 727.2(e)(3); CRC 5.651(b)*.

The social worker or probation officer must include information in every court report about educational decision-making, including who holds the child's educational rights. *WIC §§ 366.3 (e)(5), 366.3(g) CRC 5.650.*

APPOINTING EDUCATIONAL DECISION-MAKERS

All findings and orders about educational decision-making must be documented in court form JV-535. *CRC 5.650(b)*.

All findings and orders about educational decision-making must be documented in court form JV-535. *CRC 5.650(b)*.

The juvenile court can limit the right of a parent or guardian to make educational decisions for a child if it is necessary to protect the child. Any limitations must be specified in a court order. *WIC §§ 361(a), 726(b); CRC 5.650(a)*.

Educational rights can be temporarily limited prior to disposition and as early as the initial detention hearing. This limitation expires at the end of the disposition hearing or when the petition is dismissed, but the court may later renew the limitation, if appropriate. *WIC § 319(g); CRC 5.650(a)*.

If a child needs a new educational representative to be appointed, his attorney may request a hearing using court form JV-539. *CRC 5.650(d)(4), (g)(2)*. At any time, anyone with an interest in the child may ask the court to limit or transfer educational rights by submitting a JV-180 form and a JV-535 form to the court's clerk. *WIC § 388*.

A legal guardian appointed by a juvenile court has the right to make educational decisions unless the court specifically orders otherwise. *34 CFR § 300.30(a)(2-4), (b)(2); EC § 56028; CRC 5.650(e)(2)*.

Court-Appointed Decision-Makers

At the same time the court limits educational rights, it must appoint a "responsible adult" to make educational decisions for the child. *WIC §§ 361(a), 366(a)(1)(C), 726(b)*. (The California Rules of Court refer to this person as an "educational representative." *CRC 5.502(13), 5.650(b)*.) The appointment must be made regardless of whether the child has been identified as needing special education or other services.

The educational representative has all of the educational rights normally held by parents. See *CRC 5.650(e)-(f)* for a list of rights and responsibilities. He or she is entitled to receive notice of and participate in hearings related to educational matters and may use court form JV-537 to explain the child's educational needs to the court. *CRC 5.650(j)*.

School District-Appointed Decision-Makers

If the court is unable to locate a responsible adult for the child, and the child has either been referred to the local educational agency (LEA) for special education or has an IEP, the court must refer the child to

the LEA for appointment of a "surrogate parent." *WIC §§ 361(a), 726(b); GC §§ 7579.5-.6; CRC 5.650(b)*. A surrogate parent makes decisions related to special education evaluation, eligibility, planning, and services. *GC § 7579.5(c)*.

The LEA must make reasonable efforts to appoint a surrogate parent within 30 days. *GC § 7579.5(a)*. It must select a relative caretaker, foster parent, or CASA if one is willing and able to serve. *GC § 7579.5(b)*. It must use court form JV-536 to tell the court about appointments and changes. *CRC 5.650(d)*.

Court as Educational Decision-Maker

If educational rights have been limited and none of the above options apply, the court itself may make educational decisions for the child with the input of any interested person. *WIC §§ 319(g)(2), 361(a); CRC 5.650(b)*.

LIMITATIONS ON APPOINTMENTS

• Court-Appointed Decision-Makers

A person who has a conflict of interest cannot be appointed to make educational decisions. This includes but is not limited to the child's social worker, probation officer, court-appointed attorney, and group home staff. A foster parent is not deemed to have a conflict of interest solely because he or she receives compensation. *WIC §§ 361(a), 726(b)*.

• Surrogate Parents

As above, a person who has a conflict of interest cannot be appointed to make educational decisions. A surrogate parent may not be employed by the California Department of Education, the LEA, or any other agency involved in the education or care of the child. *GC § 7579.5(i)-(j); 20 USC § 1415(b)(2)(A); 34 CFR § 300.519(d)(2)*.

LENGTH OF COURT APPOINTMENTS

An appointment to make educational decisions lasts until *one* of the following occurs:

- The youth reaches 18 years of age, at which time he or she holds his or her own educational rights. *EC §§ 49061(a), 56041.5*. Exceptions are if the youth chooses not to make his or her own educational decisions or has been deemed by the court to be incompetent to do so.
- Another adult is appointed to make educational decisions.
- The right of the parent or guardian to make educational decisions is fully restored.

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- A successor guardian or conservator is appointed, and the court finds that person able to act in the child's best interest.
- The child is placed in a planned permanent living arrangement, at which time the foster parent, relative caretaker, or non-relative extended family member has the right to make educational decisions, so long as educational rights previously were limited. EC § 56055; WIC §§ 361(a), 726(b); CRC 5.650(e)(2), (g).

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AB 167



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

Assembly Bill 167 (2009) exempts pupils in foster care from local graduation requirements under certain conditions.

GUIDING PRINCIPLES

The key to improving outcomes for youth in foster care is identifying the specific roadblocks to their educational success and working to remove them.

California sets minimum high school graduation requirements but school districts have flexibility to require pupils to complete additional coursework to graduate from high school. If forced to relocate, a foster youth in high school may be faced with additional graduation requirements at a new school with little time to complete them.

Pupils in foster care forced to relocate in their junior or senior year should be able to graduate with their class if they have completed the state graduation requirements and if they would not reasonably be able to complete additional local graduation requirements. 2009 Cal AB 167, Section 1.

FOUR ELIGIBILITY CRITERIA

A student must satisfy each of the following four eligibility requirements to graduate pursuant to AB 167:

1) The youth must have been a pupil in foster care some time after the bill's effective date, January 1, 2010.

The legislative history of the bill suggests that "pupils in foster care" refers to a child who has been removed from his or her home pursuant to WIC § 309, is the subject of a petition filed under WIC § 300 or 602, or has been removed from his or her home and is the subject of a petition filed under WIC § 300 or 602. EC § 48853.5 (a).

2) The youth must have transferred schools in the 11th or 12th grade.

There is no state-mandated method for determining a student's grade level. This decision is left up to the school district and, in some cases, individual schools.

Note: AB 167 applies even if the pupil transfers between two schools or school districts that have identical graduation requirements.

3) The youth must complete all California graduation requirements.

California requires pupils to complete all of the following one-year courses, unless otherwise specified, while in grades 9 to 12, inclusive, in order to receive a diploma of graduation from high school, EC § 51225.3(a):

- Three courses in English.
- Two courses in mathematics. (Including one year of Algebra I unless previously completed, EC § 51224.5.)
- Two courses in science, including biological and physical sciences.
- Three courses in social studies, including United States history and geography; world history, culture, and geography; a one-semester course in American government and civics; and a one-semester course in economics.
- One course in visual or performing arts or foreign language. For the purposes of satisfying the requirement specified in this subparagraph, a course in American Sign Language shall be deemed a course in foreign language.
- Two courses in physical education, unless the pupil has been exempted.

In addition to completing the coursework above, a pupil must receive passing scores on both California High School Exit Exams – English and Math. EC § 60851. Students with individualized education plans or 504 plans may be exempt from this requirement.



4) The district must find that the pupil is not reasonably able to complete the additional graduation requirements in time to graduate while he or she remains eligible for foster care benefits.

If the school district makes a finding that the pupil is reasonably able to complete

the additional requirements in time to graduate from high school while he or she remains eligible for foster care benefits pursuant to state law, then the pupil in foster care must complete these additional requirements in order to graduate. EC § 51225.3(c).

Note: California's graduation requirements make no mention of credits. Thus, any credit requirement is a local requirement.

REASONABLENESS

Determinations as to whether a pupil is reasonably able to complete a district's additional requirements should be made on an individual basis. The following are best practices:

- The school district should consider the pupil's history, capacity, courses completed and credits earned; the nature and extent of additional district requirements; and the amount of time remaining before the pupil is no longer eligible for foster care benefits.
- In making this determination, the district and the district's foster youth liaison should consult with the pupil, the pupil's educational rights holder, the pupil's child welfare worker or probation officer, and anyone else familiar with the pupil and his or her educational history.
- As the school district learns more about the pupil, the district should reevaluate whether the pupil is reasonably able to satisfy the district's additional graduation requirements.

ELIGIBILITY FOR FOSTER CARE BENEFITS

All youth in foster care are eligible for foster care benefits through their 18th birthday. Depending on their circumstances, some youth in care remain eligible for foster care benefits through their 19th birthday. With the passage of AB 12 (2010) some youth in foster care may remain eligible for foster care benefits through their 21st birthday. WIC §§ 11401, 11405. AB 12 is being phased in between January 2012 and January 2014. It is best practice for a school district to check with the youth's child welfare worker or probation officer to determine when the youth's eligibility for benefits will terminate.

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NOTICE REQUIREMENTS

When must notice be provided?

School districts must provide notice to a pupil granted an exception pursuant to AB 167 if any of the local requirements that are waived will affect the pupil's ability to gain admission to a postsecondary educational institution. *EC § 51225.3(c).*

To whom must notice be provided?

School districts must notify the pupil in foster care and, as appropriate, the person holding educational rights for the pupil. *EC § 51225.3(c).*

What content must be provided?

School districts must provide notice that the pupil is graduating pursuant to AB 167 and provide information about transfer opportunities available through the California Community Colleges. *EC § 51225.3(c).*

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Early Care & Education



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

The value of early education for children in the foster care system is recognized as a key to later education success and a stabilizing force for families. The Early Care and Education (ECE) system is not really a system, but a patchwork of public, private non-profit and private for-profit ECE programs.

ECE PROGRAMS AND SERVICES CEL

Every county has a Centralized Eligibility List (CEL) which all state funded programs – including infant and preschool full-day and part-day programs – are required to use to enroll families. Children in the foster care system or “at-risk” of child abuse are deemed to be on the top of the CEL list, but that does not guarantee immediate services. *EC § 8227.*

Early Head Start and Head Start

Early Head Start and Head Start programs are comprehensive, federally-funded programs that promote school readiness by enhancing social and cognitive development. Early Head Start provides children birth to 3 with early learning experiences. It also serves at-risk pregnant women. Head Start provides a part-day preschool program for 3 and 4 year old children and includes an array of educational, health, social, and other services, with a particular focus on early reading and math skills. Both are open to economically disadvantaged families, but children in foster care are eligible regardless of family income and have a priority for admission. *45 CFR § 1304.1; 45 CFR § 1305.4.*

All applicants for new Head Start programs must have a plan to meet the needs of children in foster care, including transportation. In addition, programs must allow for the application and enrollment in a Head Start program of a child “awaiting foster care placement.” *42 USC § 11431.*

Child Care Resource and Referral Agency (CCR&R)

The Child Care Resource and Referral Agency (CCR&R) is a list of child care resource and referral agencies by county that is available online at <http://www.rnetwork.org>.

EARLY INTERVENTION SERVICES ACT – PART C OF IDEA

To be eligible for federal Part C funds, a State must ensure that appropriate early intervention services are available to all

infants and toddlers with disabilities who are wards of the State, i.e., a foster child or a child in the custody of a child welfare agency. *34 CFR § 300.45.*

In addition, states receiving Child Abuse and Prevention Act funds must develop and implement “provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of abuse and neglect to early intervention services funded under Part C of IDEA. *32 CFR § 80.5; GC § 75026.*

Early Start Program

The Early Start Program is California’s response to federal legislation ensuring that early intervention services to infants and toddlers with disabilities and their families are provided in a coordinated, family-centered system of services that are available statewide. *GC §§ 95000 et seq.*



Eligibility: Infants and toddlers from birth to 36 months may be eligible for these services if through documented evaluation and assessment they meet one of the following criteria: 1) they have a developmental delay in either cognitive, communication, social or emotional, adaptive, or physical or motor development including vision and hearing and are under 24 months of age or older at the time of referral, with a 50% delay in one area of development or a

33% delay in two or more areas of development, or 2) they have an established risk condition of known etiology, with a high probability of resulting in delayed development, such as Down Syndrome. *GC § 95014(a)(1).*

Who Is Responsible: School districts and county offices of education are responsible for providing or paying for services to infants and toddlers who have hearing, vision, or severe orthopedic impairments. Regional Centers – of which there are 21 in California – are responsible for providing or paying for services for all other eligible infants and toddlers. See <http://www.dds.ca.gov/earlystart>; *GC § 95014(b).*

Referrals: A referral for early start services must be made to the regional center or school district in writing or orally. The responsible regional center or school district then has 45 days to complete the evaluation and assessment, hold a meeting to determine eligibility, and develop an Individualized Family Service Plan (IFSP). An annual review and other periodic reviews of the IFSP shall be conducted to determine the degree of progress that is being made in achieving the outcomes specified in the plan and whether modification or revision of the outcomes or services is necessary. *GC §§ 95020(b), 95020(f).*

Transition Requirements: A smooth and effective transition must be developed for children eligible for special education services, including developing and implementing an Individualized Education Program (IEP) by the child’s 3rd birthday. Strict timelines apply for both school districts and regional centers to coordinate this transition. *34 C.F.R. § 303.148.*

For children who are not eligible for special education services, a transition plan must be developed that will assure a smooth transition from Part C to other appropriate services for which the child is eligible. *GC § 95020(d).*

Due Process Procedures: If the person who holds educational rights believes that the Regional Center is not providing the services written in the child’s IFSP, he/she may file a complaint with the Department of Developmental Services, which then has 60 days to investigate and issue a written decision. If the person who holds educational rights disagrees with the services provided under the IFSP, then he/she may

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file for a fair hearing. The entire process is supposed to take no more than 30 days.
17 CCR §§ 521.70 et seq.

Prevention Program for At-Risk Infants or Toddlers (Birth – 3)

A child who is not eligible for Early Start services may be eligible under the Prevention Program for At-Risk Children. A child is “at risk” if their genetic, medical, developmental, or environmental history predicts a substantially greater risk for developmental disability than the general population. Such factors could include low birth weight, prematurity, and prenatal exposure to drugs or alcohol. The Regional Centers administer the Prevention Program and provide intake, assessment, case management, developmental monitoring, and information and referral to public and community agencies.
WIC § 4435.

PRESCHOOL SERVICES FOR CHILDREN WITH DISABILITIES

All school districts are required to provide special education services for children with disabilities between the ages of 3 and 5 years. *EC §§ 56001(b), 56440(c).*

Eligibility: To be eligible for preschool special education services, a child must have one of the 13 special education eligibility criteria or an established medical disability. *EC § 56441.11(b).* See also the *Special Education Factsheet*.

In addition to qualifying under one of the disability categories, a child must also need specially designed instruction and services and have needs that cannot be met with modification of a regular environment in the home or school, or both, without ongoing monitoring or support. A child need not be intellectually disabled to qualify; education includes age appropriate developmental milestones. *EC §§ 56441.11 (2) and (3).*

Referrals: See the *Special Education Factsheet*

Transition Services: Prior to transitioning a child receiving preschool special education services to kindergarten or first grade, an appropriate reassessment of the child must be conducted by the school district to determine if the child is still in need of special education and services. *EC § 56445.* Children who meet Regional Center eligibility will continue to receive case management

services and home support.

Due Process: See the *Special Education Factsheet*.

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Education Services for Transition Age Youth



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

Many youth in foster care turn eighteen before graduating from high school. Several safeguards exist to help them complete their education and transition successfully into adulthood.

TRANSITIONAL SERVICES AND SUPPORTS

State law specifies that before terminating dependency jurisdiction, the state must assist youth in foster care with applying for admission to college, a vocational training program, or other educational institution and obtaining financial aid, where appropriate. If the youth has not received this assistance along with other important documents, and is not prepared to exit the system, the court may retain jurisdiction so long as it takes the department to comply with assisting the youth. *WIC § 391.*

A student in foster care, who is receiving aid and is expected to graduate from a high school, vocational program, or GED program by age 19, may retain their AFDC-FC payments until they graduate or reach their 19th birthday. Kin-GAP payments and CalWORKS, in addition to AFDC-FC, can be extended based on the same criteria. *WIC § 11403.*

Fostering Connections to Success and Increasing Adoptions Act

In 2008, the federal government enacted the Fostering Connections to Success and Increasing Adoptions Act (Public Law 110-351). This new law allows states to receive federal funds for their relative guardianship programs for the first time. The law also makes federal funds available for foster care, guardianship, and adoption assistance benefits to youth who meet certain conditions (e.g., employment and education related requirements) until age 22.

Governor Schwarzenegger signed AB 12, the California Fostering Connections to Success Act, on September 30, 2010. With the passage of AB 12, some youth in foster care may remain eligible for foster care benefits through their 21st birthday. *WIC §§ 11401, 11405.* AB 12 is being phased in between January 2012 and January 2014. See <http://www.cafosteringconnections.org> for more information.

EDUCATION

Enrollment in High School

Until age eighteen, youth are entitled to compulsory full time education unless they are exempt. *EC § 48200.* There is no obligation for local education agencies (LEAs) to serve youth over age 18 unless they are receiving special education services. However, youth over age 18 may enroll for additional years in a public high school or alternative education programs until a diploma is awarded. See CDE website at <http://www.cde.ca.gov/ta/tg/hs/studentoptions.asp>.

Enrollment in Adult Education Programs

A student may be able to enroll in an adult education program, subject to the district's availability. *EC § 52501.*

Students with Special Needs

(See *Special Education Factsheet.*)

Youth are entitled to special education services under California law until age 22. *EC § 56041.*

Students must be allowed to take the California High School Exit Examination (CAHSEE) with any accommodations and modifications that are specified in their Individualized Education Program (IEP) or Section 504 plan. The approved testing variations, accommodations, and modifications are found on the CDE website at <http://www.cde.ca.gov/ta/tg/hs/accmod.asp>.

HIGHER EDUCATION

CA College Pathways Programs

There is a wide range of academic support programs for former foster youth attending college in California. The range of services provided by these programs varies considerably, and the most accurate information about each program can be gained by directly contacting the program coordinator at each program.

<http://www.cacollegepathways.org/programs.php>.

Foster Youth Services (FYS)

FYS is a program of the California Department of Education. The program helps to improve children's educational performance and personal achievement. FYS programs have the flexibility to design services to meet a wide range of needs of foster youth. Transitional services provided include: referrals for counseling, tutoring,

mentoring, emancipation services, vocational training, and independent living services. See <http://www.cde.ca.gov/ls/pf/fy/> for a list of counties with FYS programs.

Campus Support Programs

Campus Support Programs, such as Guardian Scholars, are comprehensive programs that support former foster youth in their efforts to gain a university, community college or trade school education. Campus Support Programs vary and students may receive: financial aid, housing, academic and personal advisement, and employment services. <http://www.cacollegepathways.org>.



Board of Governors Fee Waiver

The Board of Governors Fee Waiver (BOG) is funded by the State of California for California residents to waive in full the amount of enrollment fees to eligible students at community colleges. Students in foster care should apply for the waiver to determine their eligibility.

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Education Services for Transition Age Youth (continued)

factsheet number five

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Chafee Grant (Education and Training Voucher ETV)

Current or former foster youth who have not have reached their 22nd birthday and have financial need, may qualify for up to \$5,000 a year for career and technical training or college. The funds may also help to pay for childcare, transportation, and rent while in school. The court must have established dependency between ages 16 and 19. The California Department of Social Services will verify eligibility status.

When filling out the Free Application for Federal Student Aid (FAFSA), former and current students in foster care should indicate they were a dependent/ward of the court, were in foster care, or were in a legal guardianship in order to qualify for the maximum amount of aid. <https://www.chafee.csac.ca.gov/default.asp>

INDEPENDENT LIVING SERVICES

Youth may be eligible for Independent Living Program (ILP) services through various county agencies depending on their status. These ILP services may include: Life Skills, Transitional Housing, and Scholarship assistance. If they are ILP eligible, they should have a Transitional Independent Living Plan by age 16.

If the youth qualifies for special education services, they should have an Individual Transition Plan. In addition, if they are transition age youth (16-25 years) they may be eligible for services through the Department of Mental Health under the full service partnership, funded by the Mental Health Services Act. Public Counsel has prepared a comprehensive manual, ABC's of Transition and the Independent Living Program, available at <http://www.publiccounsel.org/publications?id=0042>

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, please visit our website at www.cfyef.org or contact Mia Stizzo at mia.stizzo@cfpic.org.

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Special Education



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

A child in foster care who has a disability or is suspected of having a disability may be eligible for special education services from birth to age 22. Children under age 5 may qualify for early intervention services. For children under age 3, assessment and services are provided through the Regional Centers located throughout California. Between ages 3 and 5 years, early intervention services are provided by the school district where the child resides. EC § 56001. See *Early Care and Education Fact Sheet* for more information.

WHAT IS SPECIAL EDUCATION?

Special education is a system of services and supports designed to meet the specific learning needs of a child with a disability. EC § 56031

The special education local plan (SELPA) that serves the geographic area where the student resides (including children placed in licensed children's institutions and foster family homes) is responsible for providing special education services. If the place of residence is not served by a SELPA, the county office of education is responsible. EC § 56156.4.

Charter schools may be exempt from most laws governing school districts. However, if a charter school is a participating member of a SELPA, it must provide special education services. See *Wells v. One2One Learning Found.*, 141 P.3d. 225, 249 (Cal. 2006).

FEDERAL AND CALIFORNIA LAW

IDEA: The Individuals with Disabilities Education Act, found at 20 USC §§ 1400 and the following sections, ensures that all children with disabilities have access to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet each student's unique needs. IDEA's corresponding federal regulations are found at 34 CFR Part 300.

FAPE: *Free, Appropriate, Public, Education.* Refers to the provision of highly individualized special education and related services provided at public expense. 20 USC § 1401(9); 34 CFR § 300.17; EC § 56000; 5 CCR § 3001(o).

CHILD FIND: School districts/SELPA's have a duty to actively and systematically identify, locate and assess individuals with exceptional needs who may be entitled to special education services. § 1412(a)(3); EC §

56301(a)(b)(1)-(3), 34 CFR § 300.111.

THE IEP PROCESS

Assessment

Referral for an assessment to determine eligibility for special education services starts the process. A referral may be made a parent/educational rights-holder, teacher, or other provider and must be in writing to ensure that assessment and meeting timelines will begin. EC § 56029; 5 CCR § 3021. See also *Educational Rights Fact Sheet*.

A "proposed assessment plan" must be submitted to the parent/educational rights-holder within 15 calendar days of receipt of a written referral. EC § 56321(a). This plan explains the types of assessments that will be conducted. Generally, a child cannot be assessed without written consent of his/her educational rights holder. Exceptions may apply if:

- a child is a ward of the court (in limited circumstances), or
- the district prevails at a due process hearing. EC §§ 56321, 56381(f)

The parent/educational rights-holder has 15 calendar days to provide written consent to the proposed assessment. EC §§ 56321(c), 56043(b)

The initial IEP team meeting to determine eligibility must be held within 60 calendar days (not school days) of receipt of written consent to assessment, not including summer vacation or school breaks of 5 days or more. EC §§ 56344(a), 56043(c).

When a child with a disability transfers from one district to another in the same academic year, each school district shall ensure the assessments are completed as expeditiously as possible. 20 USC § 1414(b)(3)(D); EC § 56320(f).

A parent/educational rights holder has the right to obtain, at public expense, an independent educational assessment of the child from qualified specialists if the parent disagrees with the assessment obtained by the school district. EC § 56329(b).

Eligibility for Special Education Services

Two triggering conditions must be met:

- The child has an impairment adversely affecting her/his educational performance that requires special education.
- The impairment fits into one of the following qualifying categories of disabilities:
 - mental retardation;

- hearing impairment;
- speech or language impairment;
- visual impairment;
- emotional disturbance;
- hearing and visual impairment;
- severe orthopedic impairment;
- autism;
- traumatic brain injury;
- other health impairment (this generally includes ADHD);
- specific learning disability.

20 USC § 1401(3); EC § 56026.

Age: Students may be eligible for special education from birth to age 22. EC § 56026. School districts are required to provide special education services for eligible students age 3-22.

Placement

FAPE must be provided in the Least Restrictive Environment (LRE). Children with disabilities are to receive an education to the maximum extent appropriate with non-disabled peers and are not to be removed from regular classes unless even with supplemental aids and services, education in regular classes cannot be achieved satisfactorily. 20 USC § 1412(a)(5)(A); EC § 56031.

In California, there are four factors to determine whether placement represents the LRE:

- Academic benefits of placement in the mainstream setting;
- Non-academic benefits of placement in the mainstream setting;
- Negative effects that the student's presence may have; and
- Cost of educating the student in a mainstream environment.

Sacramento City Unified Sch. Dist. v. Rachel Holland, 14 F.3d 1398 (9th Cir. 1994).

The spectrum of placement options moves from least restrictive to most restrictive:

- Least restrictive placements include full inclusion and mainstreaming with Resource Specialist Program (RSP) Support;
- More restrictive placements include a special day class (SDC) or a non-public school (NPS);
- Most restrictive placements include residential placement or a home hospital program.

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Non-Public Schools

There is a presumption that a child in foster care be placed in a mainstream public school unless the child has an IEP requiring placement outside the public school or the parent/educational rights-holder determines it is in the child's best interest to be placed in another educational program. *EC § 48853.*

A student shall not be placed in a special class or NPS unless the severity of the disability is such that education in a regular class with accommodations and modifications cannot be achieved satisfactorily. *EC § 56040.1.*

The child in foster care must have an IEP or must be assessed for special education services prior to placement in an NPS. *EC §§ 56342.1, 56320.*

Related Services

"Related services" means any services necessary to help a student benefit from a special education program. These services might include transportation from home or a drop-off point to school, psychological services, adapted physical education, occupational therapy, physical therapy, speech and language supports, assistive technology, and attendance at extended school year sessions. *20 USC § 1401(26); 34 CFR § 300.34; EC § 56363.*

When a child with disabilities is suspected of needing mental health services, s/he may be referred to a community mental health service. *GC § 7576; EC § 56331.*

THE IEP MEETING

Individualized Education Program (IEP):

An IEP is both the meeting and document that sets forth what services a child found to be eligible for special education is to receive. *EC §§ 56032, 56341.*

The IEP team meeting shall be scheduled at a mutually agreed-upon time and place for district participants and the parent/educational rights-holder. *EC § 56341.5(c).* If the parent/educational rights-holder cannot attend the IEP meeting, with his/her consent the school district shall accommodate his/her participation with other methods, such as individual or conference telephone calls. *EC § 56341.5(g).*

A parent/educational rights holder has the right to audio or electronically record an IEP

meeting with 24-hour notice to the district. *EC §§ 56321.5, 56341.1(g).* A deaf or non-English speaking parent/educational rights holder has a right to request an interpreter to ensure that s/he understands the IEP team discussion. *EC § 56341.5(i).*

What is an IEP Meeting? At the IEP meeting, a student's eligibility for special education services under IDEA is determined. If a student is found eligible, then an IEP document and plan is developed. The written IEP includes measurable goals and objectives, modifications and accommodations, individualized range of related services, and behavioral plans, where necessary. (See *FBA/FAA Fact Sheet*). *20 USC § 1414(d); EC § 56341.5; 5 CCR § 3042(b); EC § 56043(g)(1).*

When the child reaches age 16, the IEP shall address postsecondary goals and transition services. *EC §§ 56341.5(e), 56345.1.*

As appropriate and necessary, the school district must provide opportunities to involve students with disabilities in nonacademic and extracurricular activities, including athletics, recreational, special interest groups/clubs, employment, etc. *EC § 56345.2.*

Who Attends? The IEP Team consists of: a parent/educational rights-holder or surrogate parent, one regular education teacher, one special education teacher, an educational agency representative other than the teacher, and an individual who can interpret the assessment. Other individuals with expertise or knowledge about the child's needs may be invited at the discretion of the local education agency or parents/educational rights-holder. The child should be included when appropriate. *20 USC § 1414(d)(1)(b); 34 CFR § 300.344; EC § 56341.*

To Agree or Disagree? If the parent/educational rights-holder needs time to think over or disagree with part of an IEP plan, s/he does not have to sign it at the IEP meeting. It is his/her right to withhold consent to the IEP document in part or in its entirety. Any part of the IEP document to which the parent/educational rights-holder does not consent cannot be implemented and may become the basis for a due process fair hearing. *20 USC § 1415; EC § 56346.*

Note: If a biological parent's educational rights have been limited, an educational representative appointed by the court or

surrogate parent appointed by the school district may sign the IEP in lieu of the parent. (See *Educational Rights Fact Sheet*). *WIC §§ 361, 726; GC §§ 7589.5, 7579.6; 20 USC § 1415(b)(2)(A)(i); EC § 56055.*

Timelines

A student's IEP must be reviewed at least once annually, or more frequently upon request. *20 USC § 1414(d)(4); EC §§ 56343, 56043.*

If a parent/educational rights holder requests an IEP meeting outside of the annual review, the school district has 30 days to hold the IEP meeting.

When a child who has an IEP is transferred from district to district within the state, the new school district shall provide FAPE without delay, including services comparable to the existing IEP, for the initial 30 days of enrollment. At that time, the district shall adopt the previous IEP or must present a new offer of FAPE for the parent/educational rights-holder's consent. *EC § 56325.* A complete reevaluation, followed by a triennial IEP meeting, must be done every three years, or more frequently upon request. *20 USC § 1414(a)(2)(B); 34 CFR § 300.536; EC §§ 56381, 56043(k).*

PROCEDURAL RIGHTS / DISAGREEMENTS WITH SCHOOLS

Compliance Complaint

A parents/educational rights-holder should file a compliance complaint with the State Department of Education when s/he feels that the school district has violated its duty under a student's IEP or the special education laws. Anyone may file a Compliance Complaint (i.e. the individual does not have to hold educational rights for the child). *20 USC § 1415(b)(6); 34 CFR § 300.660-662; 5 CCR § 4650; 5 CCR § 4600; EC § 56500.2.*

Due Process

A parent/educational rights holder may file for a due process hearing if s/he is in disagreement with the school district regarding:

- implementation of the child's IEP;
- the child's eligibility for special education;
- assessments of the child;
- educational placement of the child; or
- changes made to the child's IEP without the parent/educational rights-holder's approval.

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EC § 56502. The parent/educational rights holder may file a written complaint with the Office of Administrative Hearings (OAH), Special Education Unit.

After a complaint is filed, the school district has 10 days to provide a written response.

Stay Put Provision

If the parent/educational rights-holder files for a due process hearing, the student must generally “stay put” (i.e. remain) in his/her current placement with services listed in the last-agreed-upon IEP until the disagreement is resolved. 20 USC § 1415 (j); 34 CFR § 300.518; EC § 56505(d).

Resolution Session

Within 15 days of the request for due process, the school district must hold a resolution session between the parent/educational rights-holder and a district representative who has authority to bind the school district to a resolution unless both parties agree to waive the resolution session. The school district cannot bring an attorney to the resolution session unless the parent/educational rights-holder brings an attorney. If the session leads to resolution, the parties sign a binding agreement that can be voided within 3 days of signing. If the parties do not reach a resolution, the next step is mediation.

Mediation

After filing for due process, the parent/educational rights-holder has the option to mediate the dispute with the school district. During the time of this mediation process, the student is generally entitled to remain in his/her current school placement. An attorney may represent any of the parties to the mediation. Mediation can only be waived if both parties agree in writing. If the parent/educational rights-holder proceeds to mediation with the district, OAH will provide a neutral mediator. All discussions are confidential. If no agreement is reached, the parties proceed to hearing. 20 USC § 1415e; 34 CFR §§ 300.506, 507 (a)(2); EC § 56501(b)(1)(2); EC § 56503.

Due Process Hearing

At least 5 days prior to the hearing, the parent/educational rights-holder and the school district must provide OAH and each other with copies of the following:

- All documents expected to be introduced at the hearing; and
- A list of all witnesses and their general

area of testimony that the parties intend to present at hearing.

The due process hearing should be conducted at a time and place reasonably convenient to the parent/educational rights-holder and the student. 34 CFR § 300.511(d); EC § 56505 (b).

An impartial hearing officer from OAH should conduct the hearing. 20 USC § 1415(f)(3); 34 CFR § 300.508; EC § 56505(c).

At the hearing, both parties have the right to make opening and closing statements; present evidence and confront, cross-examine and compel the attendance of witnesses; have a written or electronic verbatim record of the hearing; and receive a written or electronic decision from the hearing officer.

Examples of Due Process Remedies

- *Compensatory education*: an equitable remedy to make up for education lost due to the school district’s violation of FAPE.
 - *Tuition reimbursement*: parents/educational rights-holders who remove their children to private school may be entitled to reimbursement if they prevail at a due process hearing.
 - Further evaluations or independent educational evaluations (IEEs).
- Additional services/an increase in existing services.
- Changes in placement.
 - Attorneys fees. 20 USC § 1415(i)(3).

OTHER RELEVANT LAWS AND POLICIES

Student Study Team (SST): An SST is a function of regular education, not special education, and is governed by school district policy rather than federal or state law. It is not mandatory to have an SST prior to an IEP or referral for special education assessment. Students struggling in school may be referred to an SST. An SST can be the “first step” towards determining whether a student needs special education services.

Section 504: Sec. 504 of the Rehabilitation Act of 1973 provides services to students who have a physical or mental impairment that substantially impairs a major life activity. Examples of qualifying disabilities are asthma, allergies, diabetes, ADD or ADHD. If the child qualifies, the school district must prepare a plan that outlines special services, accommodations, and modifications that will be implemented to assist the student. 34 CFR § 104.3(j). All students

that qualify under IDEA also qualify for protections under 504, but there are some students who *only* qualify for 504.

Similarities and Differences Between 504 and IDEA:

Generally, Section 504 covers a broader group of students than IDEA. Both a 504 Plan and an IEP under IDEA require school districts to provide students with disabilities with FAPE, however there are fewer procedural safeguards under Section 504 plans. While an IEP under IDEA is governed by an extensive body of state and federal laws and regulations, each school district will have its own Section 504 policy. State law parallels IDEA, and can be found at EC §§ 56000 *et. seq* and 5 CCR §§3000 *et seq*.

Although a district is required to secure the consent of the parent/educational rights-holder to assess and provide services under IDEA, under Section 504, a district may develop and implement a 504 plan with or without a parent’s consent.

CALIFORNIA HIGH SCHOOL EXIT EXAM

Beginning in the 2009–10 school year, any student with a disability (any type of disability, for any duration) who has an IEP or 504 plan is exempt from passing the California High School Exit Exam (CAHSEE) as long as the student has satisfied or will satisfy all state and local requirements for receipt of a high school diploma. This exemption will last until the State Board of Education decides whether to require an alternative to the CAHSEE for students with disabilities. If an alternative is determined feasible, the alternative may be implemented on January 1, 2011. EC §§ 60852.3(b), 60852.1.

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, please visit our website at www.cfyetf.org or contact Mia Stizzo at mia.stizzo@cfpic.org.

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Nonpublic Schools



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

A Nonpublic School (NPS) is a private, non-public, nonsectarian school that enrolls individuals with exceptional needs pursuant to an Individualized Education Program (IEP).

An NPS must be certified by the Department of Education and meet certain standards set by the Superintendent and Board of Education. *EC § 56034.*

PLACEMENT IN AN NPS

Students may not be placed in an NPS unless they have a valid IEP requiring placement at the NPS, or the person holding educational rights consents. *EC§ 48853 (See Education Rights Factsheet).*

A student must have an IEP and be assessed for special education services prior to placement in an NPS. *EC §§ 56342.1, 56320.*

- The assessments conducted must conform with state and federal law.
- The student may not be assessed for special education services unless the person who holds educational rights has provided consent, *with certain exceptions.* *EC § 56321.*

Exceptions:

The school district has prevailed at a due process hearing. *EC §§ 56321(c), 56506.*

The Individuals with Disabilities Education Act (IDEA) does not require parental consent for the initial evaluation of a child who is a ward of the state and not living with his/her parents if the local education agency (LEA) cannot find the parent, the parent's rights have been terminated, or a judge has removed the parent's educational decision-making rights and appointed another person to represent the child. *20 USC § 1414(a)(1)(d)(iii); EC § 56321.1.*

Consent for an initial assessment is not consent for placement in an NPS or provision of any other special education services. *EC § 56321(d).*

LEAST RESTRICTIVE ENVIRONMENT (LRE)

Students *must* be placed in the *least restrictive environment (LRE)* to meet their needs. A child shall not be placed in a special class or NPS unless the severity of the disability is such that education in a regular class with the use of supplementary aids

and services cannot be achieved satisfactorily. *EC § 56040.1.*

Children in Foster Care:

School Districts/SELPA/County Offices of Education shall first consider placement and services through programs operated by public education – regardless of whether the child is placed with a relative, foster parent, or group home/licensed children's institution (LCI). Foster youth with special needs may only be placed in an NPS if the district/SELPA does not have a public program that can meet the child's needs. *EC § 56157(a).*

Children Placed in Group Homes / Licensed Children's Institutions (LCI):

An LCI may *not* condition placement at the LCI on attendance at an NPS owned or operated by an agency associated with the LCI. *EC § 56366.9.*

An LCI, NPS, or agency may not require as a condition of placement that educational authority for a child, as defined in Section 48859, be designated to that institution, school, or agency. *EC § 48854.*

When a child is placed in an LCI with an on-grounds NPS, the child may attend the on-grounds school *only* if the SELPA's IEP team has determined that there is no appropriate public program in the community (i.e. resource specialist program, special day class, etc) and the on-grounds program is appropriate and can implement the child's IEP. *2 CCR § 60510(b)(2).*

ASSEMBLY BILL 1858

Assembly Bill 1858 was passed in 2004. AB 1858 requires that an NPS provide access to:

- The same instructional materials used by the district in which the NPS is located. *EC § 56366.10(b).*
- College preparation courses. *EC § 56366.10(b)(2).*
- Extracurricular activities such as art, sports, music, and academic clubs. *EC § 56366.10(b)(3).*
- Career preparation and vocational training. *EC § 56366.10(b)(4).*

Supplemental assistance, including academic tutoring, psychological counseling, and career and college counseling. *EC § 56366.10(b)(5).*

Teachers and staff who provide academic instruction and support services with the

goal of integrating the students into the least restrictive environment.

EC § 56366.10(c).

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INTRODUCTION

A functional behavioral assessment (FBA)/ functional analysis assessment (FAA)* is an analysis of a student's maladaptive behavior. The assessment must include extensive observation of the student and an in-depth analysis of the student's environment and past history. The goal is to determine what triggers the maladaptive behavior and to learn how to best control the behavior through the use of positive intervention strategies. Prior to conducting a functional analysis assessment, the school district must obtain consent from the person who holds educational rights (See Educational Rights Factsheet).

BASIC CONCEPTS

Who Conducts the Functional Analysis Assessment?

State law requires that a functional analysis assessment be "conducted by or under the supervision of a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions." 5 CCR § 3052(b); 5 CCR § 3001(f).

What Is a Behavioral Intervention Plan (BIP)?

A BIP is a written document that is developed when the individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the individual's Individualized Education Program (IEP). The BIP becomes part of the IEP and must be written with sufficient detail so as to direct the implementation of the plan. 5 CCR § 3001(g).

What Interventions Are Appropriate?

Interventions are to be positive in nature. Behavioral interventions do not include procedures that cause pain or trauma. Behavioral interventions respect the individual's human dignity and personal privacy. Such interventions shall assure the individual's physical freedom, social interaction, and individual choice. 5 CCR § 3001(e); 5 CCR § 3052(d)

FBA AND BIP PROCEDURES

When Must the School District Conduct an FBA and Develop a Behavioral Intervention Plan?

The school district must conduct an FBA and develop a BIP when one of the following occurs:

- When the IEP team finds that instructional/ behavioral approaches specified in the student's IEP have been ineffective. 5 CCR § 3052(b).
- When the student exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the student's IEP. 5 CCR § 3001(g).
- When the IEP team determines that behavior that violates a "code of student conduct" (i.e. school rule) is a manifestation of the child's disability pursuant to 20 USC § 1415(k)(1)(E) & (F).
- When a student is removed from his/her current placement as a result of (a) weapon possession; (b) illegal drug possession/use; (c) infliction of serious bodily injury, regardless of whether the behavior was a manifestation of the child's disability, as appropriate so that the behavior does not recur. 20 USC § 1415(k)(1)(G).
- When the child is removed from his/her placement for more than 10 school days (i.e. suspension or expulsion) and the behavior is determined *not* to be related to his/her disability. 20 USC § 1415(k)(1)(D)(ii).

If the IEP team determines that behavior that violates a code of student conduct is a manifestation of the child's disability, and that the child already has a BIP, the IEP team must review the BIP and modify it, as necessary, to address the behavior. 20 USC § 1415(k)(1)(F).

What Shall A Functional Assessment Include?

State law requires that those conducting an FBA must gather information from three sources:

- Direct observation
- Interviews with significant others
- Review of available data such as other assessments and individual records. 5 CCR § 3052(b).

These sources/observations *must* include:

- Systematic observation of the targeted behavior in order to determine frequency, duration, and intensity
 - Observation of events that trigger the behavior and analysis of the consequences of the behavior
- Ecological analysis of the settings in which the behavior occurs; Review of records for medical and health factors which may influence behavior; and
- Review of the history of the behavior, including the effectiveness of previously used behavioral interventions. 5 CCR § 3052(b)(1).

What Happens If There Is A "Behavioral Emergency?"

A behavioral emergency is "the demonstration of a serious behavior problem (1) which has not previously been observed and for which a behavioral plan has not been developed; or (2) for which a previously designed behavior intervention is not effective." 5 CCR § 3001(d).

Emergency interventions may only be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious harm to others which cannot be prevented by a less restrictive response. 5 CCR § 3052(h)(i).

Emergency interventions may *not* include (1) locked seclusion (unless it is in a facility otherwise licensed or permitted by state law to use locked room); (2) employment of a device or material or objects that simultaneously immobilize all four extremities (except that prone containment may be used as an emergency intervention by staff trained in such procedures), and (3) force that exceeds that which is necessary under the circumstances. 5 CCR § 3052(h)(i)(4).

Whenever an emergency intervention is used, the school district *must* (1) notify the parent (and residential care provider if appropriate) within one day; (2) immediately forward a Behavioral Emergency Report to the student's file and designated administrator; (3) schedule an IEP meeting within two days for any student without a current behavioral intervention plan to determine the necessity for a functional analysis assessment and to determine the necessity for an interim behavioral intervention plan. 5 CCR § 3052(h)(i).

*Federal law refers to "Functional Behavioral Assessment;" State law refers to "Functional Analysis Assessment." See also EC § 48915.5.

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School Discipline



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

Suspensions and expulsions are two types of school discipline. Both are governed by sections 48900-27 of the Education Code (“EC”). The law is available online at www.leginfo.ca.gov/calaw.html.

A suspension is a short-term removal from school. *EC § 48925(d)*. An expulsion is a longer-term removal from an entire school district. *EC § 48925(b)*.

In order to lawfully suspend or expel a student, the student’s school district must prove that the student committed an act that is both prohibited by the Education Code and related to school activities or school attendance. *EC § 48900(s)*.

Prohibited Acts

The descriptions of prohibited acts appear in sections 48900, 48900.2-.4, and 48900.7 of the California Education Code. Students can be suspended or expelled for many acts, but should *not* be suspended or expelled for being truant, tardy, or absent from school activities. *EC § 48900(w)*.

Connection to School

The act must be related to school activities or school attendance in any school district. “Related” includes acts committed on school grounds, while the student is going to or coming from school, during the student’s lunch period (on or off campus), and during or while the student is going to or coming from a school-sponsored activity. *EC § 48900(s)*.

Alternatives to Discipline

A school district has discretion to use alternatives to suspension and expulsion, such as counseling, anger-management programs, and community service during non-school hours. *EC §§ 48900(v), 48900.6*.

Students with Disabilities

Students with disabilities have different rights regarding school discipline.

If a student is or might be eligible for special education, please see the Special Ed. Discipline Factsheet, as additional protections may apply.

SUSPENSIONS

Suspension Procedures

A suspension must be preceded by an informal conference unless an “emergency situation” exists. At the conference, the

student must be informed of the reason for the disciplinary action and the evidence against her/him, as well as given a chance to present her/his version and evidence in her/his defense. *EC § 48911(b)-(c)*.

An “emergency situation” means a school administrator has determined that there is “a clear and present danger to the life, safety, or health of pupils or school personnel.” In this situation, the student may be suspended without a pre-suspension conference but must be notified of the right to return to school for a conference to be held within 2 school days. If the student is unable to attend a conference within 2 school days, the conference must be held as soon as the student is able to return. *EC § 48911(c)*.

At the time of a suspension, the school must make a reasonable effort to contact the student’s educational rights-holder (see *Educational Rights Factsheet*) by phone or in person. In addition, the educational rights-holder must be given written notice of the suspension, *EC § 48911(d)*, and may request a meeting with school officials to discuss the cause and duration of the suspension, the applicable school policies, and other pertinent matters. *EC § 48914*.

Although a school can request that an educational rights-holder attend a conference to discuss the student’s behavior, the school is prohibited from penalizing the student (including by delaying reinstatement in school) for the rights-holder’s failure to attend. *EC § 48911(f)*.

Limits on Suspensions

Schools generally are required to try other means of correcting a student’s behavior before imposing a suspension. However, a student can be suspended for a first offense for certain prohibited acts or if a school administrator determines that the student’s presence at school “causes a danger to persons or property or threatens to disrupt the instructional process.” *EC § 48900.5*.

If suspension is used, it should not, with few exceptions, exceed 5 consecutive school days or 20 days per school year.

Exceptions:

- A student may be suspended up to 30 total days in a school year if s/he is en-

rolled in or transfers to another school for disciplinary reasons. *EC § 48903*.

- A student who has been recommended for expulsion may be suspended through the time the school board makes its decision on the expulsion. Prior to extending the suspension, the school must hold a meeting to which the student and her/his educational rights-holder have been invited and must determine that the student’s presence at school or in an alternative school placement “would cause a danger to persons or property or a threat of disrupting the instructional process.” Any decision to extend a suspension in this way must be in writing. *EC § 48911(a), (g)*.

Work Missed During Suspension

A student may be required to complete assignments and tests missed during the suspension. *EC § 48913*. Work should be requested from the school for the student to complete while out of school on suspension.



Supervised Suspension Classroom

Some suspensions may be served in a supervised suspension classroom rather than off school grounds. The classroom must promote completion of school work and tests the student misses during the suspension, and appropriate counseling services must be made available. The school must notify the student’s educational rights-holder at the time it assigns the student to the suspension classroom. The notice must be in writing if the student will be in the suspension classroom for longer than one class period. *EC § 48911.1*.

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EXPULSIONS

School and district officials can *recommend* a student for expulsion, but only the governing board of a school district can *actually expel* a student. EC § 48918(a).

Discretion Not to Expel

For most acts that violate the Education Code, school officials have discretion not to recommend expulsion, and the school board has discretion not to expel. They can decide that expulsion would be inappropriate under the circumstances.

EC § 48915(a), (b), (e).

Mandatory Expulsions

However, the law requires expulsion for a small category of acts (often called zero-tolerance offenses). Those acts are firearm offenses, brandishing a knife at another person, selling controlled substances, committing or attempting sexual assault or battery, and possessing an explosive.

EC § 48915(c)-(d).

Expulsion Procedures

A student who is recommended for expulsion has due process rights. They include:

- The right to a **hearing** held within 30 school days of the date a school official determined the student committed the act, unless the student makes a written request to postpone the hearing. The student has a right to at least one 30-day postponement and can ask for more. EC § 48918(a).
- The right to receive **written notice** of the hearing at least 10 calendar days before the hearing. The notice must include the date and place of the hearing, a statement of the specific facts and charges that are the basis for the expulsion recommendation, a copy of the district's disciplinary rules, and a list of the student's and educational rights-holder's rights. EC § 48918(b).
- The right to bring a **lawyer or other advocate** to the hearing. EC § 48918(b)(5).
- The right to receive copies of the documents that will be used at the hearing, to question all **witnesses and evidence** at the hearing, and to bring her/his own witnesses and evidence to the hearing. EC § 48918(b)(5).
- The right to ask the school board to **subpoena witnesses**. EC § 48918(i).
- The right to receive the school board's **written decision** on the expulsion recommendation within 10 school days of the hearing or, in some situations, within 40 school days of the beginning of the suspen-

sion for the incident in question. EC § 48918(a), (j).

- If expelled, the right to receive **notice** of (1) the right to appeal and (2) the right to be educated while expelled. EC § 48918(j).

Necessary Findings

Generally, in order to expel a student, a school board must do the following things:

- Ensure that the student's due process rights, including timelines and procedures, were not violated.
- Find that the student committed a prohibited act that was related to school activities or school attendance.
- Except in the case of mandatory expulsions, find one or both of the following:
 - Other means of correction are not feasible or repeatedly have failed to bring about proper conduct.
 - Due to the nature of the act, the student's presence causes a continuing danger to the physical safety of the student or others. EC § 48915(b)-(e).

Appeals

If a school board orders expulsion, the student has up to 30 days from the date of the expulsion decision to appeal to the county board of education. EC § 48919. There are limited grounds for appeal (e.g., whether the hearing was fair, whether relevant evidence could not be produced or was excluded improperly) and many rules that must be followed in the appeals process. EC §§ 48919-23. There are no other administrative appeals above the county board of education level. EC § 48924.

Education During Expulsion

The school district must ensure that an educational program is provided to an expelled student for the entire period of the expulsion. EC §§ 48916.1, 48915(f). The written expulsion decision must specify the alternative educational placement. EC § 48918(j)(2).

Rehabilitation Plan

At the time of expulsion, the school board also must recommend a rehabilitation plan, which will be considered when the student applies for readmission to the district. The plan may include recommendations for improved academic performance, tutoring, job training, counseling, employment, community service, and other rehabilitative programs. EC § 48916(b). For expulsions related to controlled substances or alcohol, the school board may require, with

parental consent, enrollment in a drug rehabilitation program. EC § 48916.5.

Readmission After Expulsion

An expulsion order remains in effect until the school district orders readmission. The date when a student must be considered for readmission to the district must be set by the school board at the time of the expulsion decision. The date must be *no be later than*:

- For mandatory expulsions, 1 year from the date of the expulsion.
- For non-mandatory expulsions, the last day of the semester following the semester in which the expulsion occurred.
- For non-mandatory expulsions during summer sessions or intersessions of year-round programs, the last day of the semester following the summer session or intersession in which the expulsion occurred.

The school board may set a date earlier than these maximum time periods. EC § 48916(a).

A student should follow the district's rules and procedures for requesting readmission, which should be provided at the time of the expulsion decision. After the process is completed, the school board must readmit the student unless it finds that the student either failed to complete the rehabilitation plan or "continues to pose a danger to campus safety or to other pupils or employees of the school district." EC § 48916(c).

If readmission is denied, the school board must provide written notice of the reason (s) for the denial and offer the student an educational program. EC § 48916(d)-(e).

Enrollment In Another District

A student may apply for enrollment in another school district during the period of expulsion. S/he must disclose the ongoing expulsion at the time of enrollment. Certain procedures must be followed, including a hearing to determine whether the student poses a danger to students or staff of the district. Enrollment is not guaranteed, and any enrollment that is permitted may be limited to certain types of educational programs or dependent on specified conditions. EC §§ 48915.1-2.

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Suspended Expulsions

A school board can decide to expel a student but suspend enforcement of the expulsion order. A “suspended expulsion” is an actual expulsion that puts a student on probationary status and allows her/him to enroll in an educational program deemed appropriate by the school board to rehabilitate her/him. *EC § 48917(a), (c).*

If the student violates any behavioral rules during the probationary period, the school board can revoke the suspension and expel her/him under the terms of the original expulsion order. *EC § 48917(d).*

If the student satisfactorily completes the rehabilitation program, s/he must be reinstated in a district school, and the school board may order the expulsion records to be expunged. *EC § 48917(e).*

A school board’s decision to suspend enforcement of an expulsion order does not affect the timeline for appealing the expulsion to the county board of education. If a student wishes to appeal the expulsion, s/he must do so within 30 days of the expulsion decision regardless of whether the expulsion order is suspended; otherwise, s/he loses the right to appeal. *EC § 48917(f).*

INVOLUNTARY TRANSFERS

In some situations, a student may be transferred against her/his wishes to the school district’s continuation school or community day school for reasons that may or may not be related to school discipline. Specific procedures for and rights related to involuntary transfers must appear in the school district’s written policies.

Transfer to Continuation Schools

A school district may transfer a student to its continuation school for certain prohibited acts or for habitual truancy or attendance problems. Prior to the transfer, the student and her/his educational rights-holder are entitled to written notice and a meeting to discuss the reason(s) for the proposed transfer and to present and question relevant evidence and witnesses. A student should not be transferred involuntarily unless other means have been tried and have failed to improve the student’s conduct or unless the student committed a prohibited act and her/his “presence causes a danger to persons or property or

threatens to disrupt the instructional process.” A final transfer decision must be in writing and may be subject to periodic review. A transfer generally should not extend past the semester following the semester in which the act(s) leading directly to the transfer occurred. *EC § 48432.5.*

Transfer To Community Day Schools

A school district may transfer a student to its community day school if s/he has been expelled, has been referred for probation under the California Welfare & Institutions Code, or has been referred to the community day school by a school attendance review board or other district-level referral process. *EC § 48662.*

DISCIPLINE RECORDS

A student’s educational rights-holder has a right to add to the student’s school record a written statement or response to any disciplinary action that appears in the student’s file. *EC § 49072.*

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, please visit our website at www.cfyetf.org or contact Mia Stizzo at mia.stizzo@cfpic.org.

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Special Education Discipline



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

The law governing school discipline of students with disabilities in California appears primarily in federal statute, 20 U.S.C. § 1415(k), and regulations, 34 C.F.R. §§ 300.530-536. EC § 48915.5.

For general school discipline law, including some discipline terms used in this Factsheet, see the School Discipline Factsheet. For other special education laws, see the Special Education Factsheet.

Students With Disabilities

For purposes of this Factsheet, the protections for “students with disabilities” apply to the following two groups:

- Students who have Individualized Education Programs (IEPs) under special education law.
- Students with disabilities, as defined by special education law, who do not yet have IEPs but whose school district “had knowledge” of their disabilities before the conduct that led to the disciplinary action. Some bases for knowledge are the student’s educational rights-holder’s having expressed written concern about the need for special education to school or district staff or having requested a special education evaluation, so long as the evaluation or services were not later refused.

Students who do not fall into these categories may be disciplined as students without disabilities are disciplined.

If a request for a special education evaluation is made during the disciplinary period, it must be conducted in an expedited manner. 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534.

NOTICE OF DISCIPLINARY ACTION

A student’s educational rights-holder is entitled to be notified of a school district’s decision to take disciplinary action and of her/his procedural rights on the same day the decision is made. 20 U.S.C. § 1415(k)(1)(H).

10-DAY THRESHOLD

A student with a disability who violates a student code of conduct may be removed from her/his current placement to an appropriate “interim alternative educational setting,” other setting, or suspension for up to 10 school days, so long as similar disciplinary measures are taken against students without disabilities. 20 U.S.C. § 1415(k)(1)(B).

If a school wants to change the placement of a student with a disability for more than

10 school days, it must convene an IEP meeting to make a “manifestation determination.” The meeting must be held within 10 school days of the school’s decision to seek the change in placement. 20 U.S.C. § 1415(k)(1)(E).

A change of placement of more than 10 school days could result from the following:

- An extended suspension of more than 10 consecutive school days.
- A pattern of suspensions or removals of more than 10 school days in a school year based on similar behavior.
- An expulsion. 34 C.F.R. § 300.536.

After a student with a disability has been removed from her/his placement for more than 10 school days in the same school year, s/he is entitled to a free appropriate public education (FAPE) during any subsequent days of removal. 34 C.F.R. § 300.530(b)(2).

MANIFESTATION DETERMINATION

At the manifestation determination meeting, the IEP team must consider all relevant information to determine whether the conduct in question:

- was caused by, or had a direct and substantial relationship to, the student’s disability; or
- was the direct result of the school district’s failure to implement the student’s IEP.

If the answer to either item is “yes,” the conduct is considered to be a manifestation of the student’s disability. 20 U.S.C. § 1415(k)(1)(E).

Finding of Manifestation

If the IEP team finds a manifestation:

- A functional behavioral assessment (FBA) must be conducted, if one has not already been done. (See *FBA/FAA Factsheet*.)
- A behavioral intervention plan (BIP) must be developed and implemented or, if one already exists, reviewed and modified to address the behavior.
- The student must be returned to the placement from which s/he was removed, unless the IEP team agrees to a change of placement as part of the BIP or s/he was moved to an “interim alternative educational setting.” 20 U.S.C. § 1415(k)(1)(F).

Finding of No Manifestation

If the IEP team finds no manifestation:

- The school may discipline the student in the same manner and for the same dura-

tion as it would a student without disabilities.

- The student must continue to receive FAPE, enabling her/him to participate in the general education curriculum and progress toward her/his IEP goals.
- The student must receive, as appropriate, an FBA and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur. 20 U.S.C. § 1415(k)(1)(C)-(D).

IEP Team Disagreements

Any disagreement related to the manifestation determination or placement may be resolved through an expedited due process hearing, which must be held within 20 school days of a request. The hearing officer can return the student to the placement from which s/he was removed or temporarily place the student in an appropriate “interim alternative educational setting” (IAES). Pending the hearing decision, a student who was placed in an IAES must remain in that setting unless the placement expires or the IEP team agrees otherwise. 20 U.S.C. § 1415(k)(3)-(4); 34 C.F.R. § 300.532.

INTERIM ALTERNATIVE SETTING

A school may move a student with a disability to an “interim alternative educational setting,” for no more than 45 days, regardless of whether the conduct was a manifestation of her/his disability, if the student, in connection with a school activity, possesses a weapon; knowingly possesses, uses, sells, or solicits the sale of a controlled substance; or inflicts serious bodily injury on another person. 20 U.S.C. § 1415(k)(1)(G).

The setting must be determined by the IEP team. 20 U.S.C. § 1415(k)(2). Students in these settings have the same rights to FAPE, an FBA, and behavioral intervention services as students for whom no manifestation was found (see above). 20 U.S.C. § 1415(k)(1)(D).

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