



California Foster Youth Education Task Force

California Foster Care Education Law Fact Sheets



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CFYETF Member Organizations List

- Advancement Project
- Alameda County Office of Education, Foster Youth Services
- Alliance for Children's Rights
- The Brightest Star, Inc.
- California Alliance of Child and Family Services
- California Community Colleges Chancellor's Office
- California Department of Education, Foster Youth Services
- California Foster Care Ombudsman
- California School Boards Association
- California State University, Monterey Bay Guardian Scholars Program
- California State University, Sacramento, Center for College & Career Readiness
- California Youth Connection
- California Association of Supervisors of Child Welfare and Attendance (CASCWA)
- The Career Ladders Project
- Casey Family Programs
- Child and Family Policy Institute of California
- Child Care Law Center
- Children Now
- Children's Law Center of California
- Contra Costa County Office of Education
- County Welfare Directors Association (CWDA) Children's Committee
- Court Appointed Special Advocater (CASA) of Tulare County
- Crittenton Services for Children and Families
- East Bay Children's Law Offices
- Elk Grove Unified School District, Foster Youth Services
- Foundation for California Community Colleges
- Fresno County Department of Social Services
- Glenn County Health and Human Services Agency
- Healing Pathways Clinic
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- Institute for Evidence-Based Change
- John Burton Foundation
- Kings County Office of Education
- Legal Advocates for Children & Youth, a program of the Law Foundation of Silicon Valley
- Los Angeles County Department of Children and Family Services
- Los Angeles Unified School District Pupil Services
- M & I Educational Consulting Network
- Madera County Department of Social Services
- Mental Health Advocacy Services, Inc.
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- National Center for Youth Law
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- Promesa Behavioral Health
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- Riverside County Office of Education, Foster Youth Services
- Roseville Joint Union High School District, Homeless and Foster Youth Services
- Sacramento County Office of Education, Foster Youth Services
- Sacramento State Guardian Scholars Program
- San Diego County Office of Education, Foster Youth and Homeless Education Services
- San Luis Coastal Unified School District
- San Luis Obispo County Office of Education, Foster Youth Services
- Santa Clara County Office of Education, Foster Youth Services
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- Solano County Office of Education, Foster and Homeless Youth Services
- Southwestern Law School
- Tracy L. Fried & Assoc., Inc.
- Walter S. Johnson Foundation
- WestEd
- ZERO TO THREE Western Office

Citations and Abbreviation Key

Abbreviations included in citations and referenced throughout the fact sheets:

AB	Assembly Bill (California)	IEP	Individualized education program
CCR	California Code of Regulations	SB	Senate Bill (California)
CFR	Code of Federal Regulations	USC	United States Code
CRC	California Rules of Court	WIC	California Welfare & Institutions Code
EC	California Education Code		
GC	California Government Code		

Where to access the resources cited throughout the fact sheets:

California Codes: <http://leginfo.legislature.ca.gov/faces/codes.xhtml>

California Code of Regulations: <http://www.oal.ca.gov/ccr.htm>

California Department of Social Services All County Letters:

California Rules of Court: <http://www.courts.ca.gov/rules.htm>

Code of Federal Regulations: <http://www.ecfr.gov>

United States Code: <http://www.law.cornell.edu/uscode/text>

CDSS: <http://www.dss.cahwnet.gov/lettersnotices/>



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, AB 1933, and SB 1353 (2010); AB 709 and SB 578 (2011); AB 1573, SB 121, SB 1088, and SB 1568 (2012); AB 643 (2013); the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351); and the federal Uninterrupted Scholars Act (Public Law 112-278). 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. See *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. See *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(h); WIC §§ 361(a)(5), 726(c)(2)*.

Educational matters must be considered at every court hearing. Social workers and probation officers have many education-related reporting requirements. See *CRC 5.651(c) and 5.668(c) for a list of requirements*. Representatives of the state and local child welfare agencies that are responsible for a child's care and protection may access the child's school records—without parental consent or a court order—and may disclose the records and information in them to other authorized individuals and entities that are engaged in addressing the child's educational needs. *20 USC § 1232g(b)(1)(L); EC § 49076(a)(1)(N)*.

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" and attendance area, the number of previous school transfers, and the school matriculation schedule, among other factors. *WIC § 16501.1(c)(4)*. The child's case plan must include specific information about his/her educational stability and assurances that the placing agency has taken steps to ensure such stability. See *WIC §§ 16010(a), 16501.1(f)(8)*.

A foster child's **school of origin** is (1) the school in which s/he was last enrolled, (2) the school s/he attended when permanently housed, or (3) any other school s/he attended within the immediately preceding 15 months to which s/he feels connected. *EC § 48853.5(f)*.

Within one court day of deciding to change a child's placement to a location that could result in a school change, the social worker or probation officer must notify the court, the child's attorney, and the child's educational rights holder or surrogate parent (hereinafter collectively referred to as "educational rights holder"). *CRC 5.651(e)(1)(A)*. If a child who is changing schools has an Individualized Education Program (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 (SELPA) at least 10 days in advance. *CRC 5.651(e)(1)(B)*. ("LEA" has different definitions throughout the Education Code but, for purposes of these fact sheets, generally means a school district, a county office of education, a charter school participating as a member of a SELPA, or a SELPA. See *EC §§ 48859(c), 56026.3*. SELPAs are consortia of educational agencies formed to serve the special education needs of children residing within their boundaries. See <http://www.cde.ca.gov/sp/se/as/caselpas.asp> for a list of SELPAs.)

If the child remains in his/her school of origin and transportation between his/her foster care placement and the school is not otherwise available, the placing agency must provide the child's caregiver with reimbursement for the reasonable costs of transporting the child to and from school. *42 USC § 675(4)(A)*. The California Department of Social Services' All County Letter No. 11-51 explains how to calculate the reimbursement. In general, LEAs and county placing agencies are "encouraged to collaborate to ensure maximum use of available federal funds, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability." *EC § 48853.5(e)(10)*.

• Roles of the Court and Child's Attorney

The child's attorney must discuss any proposed placement change that could result in a 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. Any such hearing request must be made no later than two court days after the attorney or educational rights holder received notice of the proposed change. *CRC 5.651(e)(2)*.



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AB 490 (continued)

If there is a hearing request, the social worker or probation officer must provide a report on the proposed change no later than two court days after the hearing is set, and the hearing must be held within five court days. Pending the hearing, the child has a right to remain in his/her current school. *CRC 5.651(e)(2)-(4)*. The court must consider whether it is in the child's best interest to change schools and may make orders related to this issue. See *CRC 5.651(f)*.

- **Role of the LEA**

If a foster child's residence changes, the LEA must let the child remain in his/her school of origin for as long as the court has jurisdiction over the child's placement. Moreover, when transitioning between grade levels, the child has the right to continue in his/her school district of origin or, if applicable, to enroll in the same middle or high school district as his/her classmates, following established school district feeder patterns. If the court's jurisdiction ends during an academic year and the child is in kindergarten or grades 1 through 8, inclusive, the right to remain in the school of origin lasts through the end of that academic year. If the court's jurisdiction ends while the child is in high school, the right to remain in the school of origin lasts through graduation. *EC § 48853.5(e)(1)-(4)*. A foster child who remains in his/her school of origin satisfies the residency requirements for attendance in that school district. *EC § 48204(a)(2)*.

After consulting with a child and his/her educational rights holder and providing a written explanation, a LEA's foster youth educational liaison may *recommend* that the school-of-origin right be waived, but the educational liaison does not have the authority to waive the right on behalf of the child. If a dispute arises, the child has the right to remain in the school of origin until it is resolved. *EC § 48853.5(e)(6)-(9)*.



- **LEA Liaison**

Each LEA must designate an educational liaison for foster children, whose duties include the following:

- Ensuring proper educational placement, school enrollment, and checkout from school.
- Assisting with the transfer of grades, credits, and records when there is a school change.

See *EC § 48853.5(b)-(d), (e)(8)(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)-(c)*. If the educational rights holder places the child in an educational program that is not operated by the LEA, s/he must provide a written statement about his/her determination to the LEA. See *EC § 48853(a)(3)* for the required contents of that statement.

- **Immediate Enrollment**

If a foster 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 or money due to a school or if s/he does not have the clothing or records normally required for enrollment, including but not limited to academic records, medical records, proof of immunization history, proof of residency, or school uniforms. *EC § 48853.5(e)(8)(B)*.

A student shall not be denied enrollment or readmission to a public school solely on the basis that s/he has had contact with the juvenile justice system, including but not limited to arrest, adjudication by a juvenile court, supervision by a probation officer, detention in a juvenile facility, or enrollment in a juvenile court school. *EC § 48645.5(b)*.

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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 LEA of the child's last expected day of attendance and request that the child be transferred out. *EC § 49069.5(c)*; see also *WIC § 16501.1(f)(8)(B)*.

- **Old LEA's Duties**

Within two business days of receiving a school transfer request, the current LEA must transfer the child out and deliver his/her records to the new school. The LEA must compile the child's complete educational record, including 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(e)(8)(C)*.

- **New LEA's Duty**

Within two business days of receiving a request for enrollment, the new school's foster youth educational liaison must contact the last school to obtain all of the child's records. *EC § 48853.5(e)(8)(C)*.

GRADE AND CREDIT PROTECTIONS

LEAs must accept coursework satisfactorily completed by a foster child while attending another public school, a juvenile court school, or a nonpublic, nonsectarian school or agency, even if the child did not complete the entire course; must issue full or partial credit for the coursework satisfactorily completed; and must not require the child to retake a course already satisfactorily completed in one of these settings. Any credits accepted must be applied to the same or equivalent coursework, if applicable. If partial credit has been awarded in a particular course, the child must be enrolled in the same or equivalent course, if applicable, so that s/he may continue and complete the entire course; the child must not be required to retake the portion of the course already completed unless the LEA, in consultation with the educational rights holder, finds that the child is reasonably able to complete that portion without causing a delay in meeting the other requirements for his/her graduation from high school. Notwithstanding the above, a foster child may not be prevented from retaking a course s/he needs to meet the admission requirements for California State University or the University of California. *EC §§ 51225.2, 48645.5(a)*.

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)*.



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)*.



The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, visit the website at www.cfyetf.org.

This fact sheet is current as of February 2014. To report any errors, please e-mail us at cfyetf@gmail.com.

Educational Decision-Making 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. See *WIC §§ 319(g), 361, 726(a)-(c), 358.1(e); GC § 7579.5; EC § 56055; 34 CFR § 300.30; CRC 5.649.*

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**
Local educational agencies (LEAs) 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 interests to attend an educational program other than one operated by the local educational agency. *EC § 48853(a)(3)*. The educational rights holder also has a role in deciding whether the child will remain in his/her "school of origin" after a residential placement change. See *EC § 48853.5(e)*.



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. *CRC 5.649, 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. See *CRC 5.651(c)* for a list of the information required to be included in these court reports.

APPOINTING EDUCATIONAL DECISION-MAKERS

- **Court-Appointed Decision-Makers**
A 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 §§ 319(g), 361(a), 726(a)-(b); CRC 5.649*. Court form JV-535 is used for this purpose, as well as to document other findings and orders about educational decision-making. *CRC 5.649-5.650; see also court form JV-535(A) (optional attachment containing additional education-related information, findings, and orders)*.

At the same time a court limits a parent or guardian's educational decision-making rights, it must appoint a "responsible adult" to make educational decisions for the child. *WIC §§ 319(g), 361(a), 366(a)(1)(C), 726(b)-(c); see also CRC 5.650, 5.534(j)*. The California Rules of Court refer to this person as an "educational rights holder." *CRC 5.502(13); see also CRC 5.649-5.651*. The appointment must be made regardless of whether the child has been identified as needing special education or other services. Before appointing someone who is not known to the child, the court must determine whether there is an adult who is known to the child who is available and willing to serve as the child's educational rights holder. *WIC §§ 319(g)(2), 361(a)(3), 726(c)(1); CRC 5.650(c)(1)*.



The educational rights holder has all of the educational decision-making rights normally held by parents or guardian. See *CRC 5.650(e)-(f)* for a list of rights and responsibilities. S/he is entitled to receive notice of and participate in court and related proceedings concerning educational matters and may use court form JV-537 to explain the child's educational needs to the court. *CRC 5.650(j)*.

Educational decision-making rights can be temporarily limited prior to the disposition stage of a court case and as early as the initial detention hearing if the child's parent or guardian is unavailable, unable, or unwilling to make educational decisions (and other conditions are met). A temporary 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 5.649(b), 5.650(g)(1)(A)*.

At any time, anyone with an interest in the child may ask the court to limit or transfer educational decision-making rights by submitting court forms JV-180 and JV-535 to the court. See *WIC § 388*. Moreover, the child's attorney, social worker, or probation officer can request a hearing for appointment of a new educational decision-maker using court form JV-539. *CRC 5.650(d)(4), (g)(2)*.

A legal guardian appointed by a juvenile court has the right to make educational decisions unless the court specifically orders otherwise. *CRC 5.650(e)(2); 34 CFR § 300.30(a)(3), (b)(2); EC § 56028*.

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Educational Decision-Making Rights (continued)

- **LEA-Appointed Decision-Makers**

If the court is unable to locate a responsible adult for the child **and** the child either has been referred to the 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)(3), 726(c)(1); GC §§ 7579.5-7579.6; CRC 5.650(a)(2)(A)(i), (d); see also WIC § 319(g)(3), (5).* 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 court-appointed special advocate (CASA) if one is willing and able to serve. *GC § 7579.5(b).* It must use court form JV-536 to tell the court, the child’s attorney, and the child’s social worker or probation officer about appointments and changes. *CRC 5.650(d).*

- **Court as Educational Decision-Maker**

If educational decision-making rights have been limited and none of the above options apply, the court itself may make educational decisions for a dependent child with the input of any interested person. *WIC §§ 319(g)(3), 361(a)(3); CRC 5.650(a)(2).*

LIMITATIONS ON APPOINTMENTS

- **Court-Appointed Decision-Makers**

A person who has a conflict of interest cannot be appointed to make educational decisions. A conflict can arise from “any interests that might restrict or bias his or her ability to make” educational decisions, including but not limited to the receipt of compensation or attorney’s fees for the provision of services pursuant to these sections of the law. A foster parent is not deemed to have a conflict of interest solely because s/he receives compensation. *WIC §§ 361(a)(2), 726(c); see also CRC 5.650(c)(2).* Moreover, under federal special education law, when the court appoints an educational decision-maker for a foster child with a disability, it may not appoint an employee of the California Department of Education, the LEA, or any other agency that is involved in the education or care of the child. *20 USC § 1415(b)(2)(A); 34 CFR § 300.519(d)(2).*

- **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. *20 USC § 1415(b)(2)(A); 34 CFR § 300.519(d)(2); GC § 7579.5(i)-(j).*

RESPONSIBILITIES OF EDUCATIONAL DECISION-MAKERS

In addition to the responsibilities listed above specific to court- or LEA-appointed educational decision-makers, both types are required to meet with the child for whom they are making educational decisions, investigate the child’s needs and whether they are being met, and, for each court review hearing, provide information and recommendations concerning the child’s educational needs either in person or by submitting them in advance to the court or social worker. *WIC §§ 361(a)(5), 726(c)(2); CRC 5.650(f)(2)-(4).*

LENGTH OF COURT APPOINTMENTS

With the exception of temporary appointments prior to the disposition stage of a court case (see above), an appointment to make educational decisions lasts until *one* of the following occurs:

- The youth reaches 18 years of age, at which time s/he holds his/her own educational rights, *see, e.g., EC §§ 49061(a), 56041.5*, unless the youth chooses not to make his/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.
- A successor guardian or conservator is appointed.
- The child is placed in a planned permanent living arrangement, at which time the foster parent, relative caretaker, or nonrelative extended family member has the right to make educational decisions, so long as the parents’ or guardian’s educational decision-making rights

previously were limited and the current caregiver is not specifically prohibited by court order from making the child’s educational decisions.

WIC §§ 361(a)(1), 726(b); CRC 5.650(g); see also EC § 56055, CRC 5.534(j)(2), 5.650(a)(1), (b), (e)(1).

If an appointed educational rights holder resigns from the appointment, s/he must tell the court and the child’s attorney and may use court form JV-537 to do so. *CRC 5.650(g)(2).*

DEVELOPMENTAL SERVICES DECISION-MAKERS

Much—but not all—of the information in this fact sheet about court-appointed educational decision-makers for foster children also applies to the process for appointing an adult to make decisions about services for children and for nonminor dependents with developmental disabilities, as established by SB 368 (2011). *See WIC §§ 319(g), 361(a), 726(b)-(c); CRC 5.502(13), 5.534(j), 5.649-5.651.* Developmental disabilities include intellectual disability, cerebral palsy, epilepsy, autism, and other disabling conditions found to be closely related to intellectual disability. *WIC § 4512(a).* *See WIC § 4512(b)* for a definition and list of common services for people with developmental disabilities. Such services often are provided by or through the California Department of Developmental Services and its regional center system. *See <www.dds.ca.gov/RC/Home.cfm>* for more information.

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, visit the website at www.cfyetf.org.

This fact sheet is current as of February 2014. To report any errors, please e-mail us at cfyetf@gmail.com.

AB 167/216



California Foster Youth Education Task Force

INTRODUCTION

Assembly Bills 167 (2009) and 216 (2013) exempt pupils in foster care from local graduation requirements under certain conditions. *EC § 51225.1.*

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. However, school districts may require pupils to complete additional coursework to graduate from high school. Foster youth who are forced to transfer high schools may be required to complete different and/or additional local graduation requirements in their new school district. Often, they cannot complete these requirements within four years of high school.

Pupils in foster care forced to transfer after their second year of high school should be able to graduate with their class if they have completed the state graduation requirements, if they would not reasonably be able to complete additional local graduation requirements within four years of high school.



FIVE ELIGIBILITY CRITERIA

A student must satisfy each of the following five eligibility requirements to graduate pursuant to AB 167/216:

- 1) The youth must be a pupil in foster care.

To be eligible for graduation under AB 167/216, the youth must be removed from his or her home pursuant to WIC Section 309 or subject to a petition filed under *WIC Sections 300 or 602. EC § 51225.2.*

- 2) The youth must have transferred schools after their second year of high school.

To determine whether a youth completed their second year of high school, the school district may use either the number of credits earned or the total length of enrollment in high school, whichever will make the youth eligible for AB 167/216 graduation.

Note: Schools, youth, education rights holders, social workers, and probation officers cannot request or require a school transfer for the sole purpose of making a youth eligible for AB 167/216 graduation.



- 3) The youth must complete all California graduation requirements.

California requires pupils to complete all of the following one-year courses, unless otherwise specified, 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.
- Two courses in Science, including Biological and Physical Sciences.
- Three courses in Social Studies, including United States History; World History; a one-semester course in American Government and Civics; and a one-semester course in economics.
- One course in Visual/Performing Arts or Foreign Language. American Sign Language qualifies as a foreign language.
- Two courses in Physical Education, unless exempted.

In addition to completing the coursework above, youth must pass both portions of the California High School Exit Exam (CAHSEE)—English and Math. Students with individualized education plans or 504 plans may be exempt from this requirement.

- 4) The district must find that the youth is not reasonably able to complete the additional local graduation requirements within four years of high school.

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

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AB 167/216 (continued)



the additional requirements in time to graduate from high school, then the youth must complete these additional requirements in order to graduate. *EC § 51225.3(c)*.

- 5) The youth's education rights holder must determine that it is in the youth's best interest to graduate under AB 167/216.

Only the youth's education rights holder, or the youth, if they are over 18 years old, may make the decision of whether graduating under AB 167/216 is in the youth's best interest.

Youth have a right to remain in high school for a fifth year if they can reasonably complete all local graduation requirements by the end of the additional year.



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 key factors to consider: (1) the youth's academic abilities (e.g., STAR testing results, grades); (2) courses completed and credits earned; (3) nature and extent of additional district requirements; and (4) number of semesters remaining before the youth completes four years of high school.

In making this determination, the district and the district's foster youth liaison should consult with the youth caregiver, the youth's educational rights holder, the youth's child welfare worker or probation officer, and anyone else familiar with the youth and his or her educational history.

Note: If a youth is not initially eligible for AB 167/216 graduation when they first transfer, they have a right to ask for re-consideration of their eligibility at any later time. If the youth satisfies the eligibility criteria, the school district must find her/him eligible.

NOTICE REQUIREMENTS

When must notice be provided?

Within 30 days of the youth's transfer, a school district must determine whether a youth is reasonably able to complete the additional local graduation requirements within four years of high school or is eligible for graduation under AB 167/216.

To whom must notice be provided?

School districts must provide written notification of the youth's eligibility for AB 167/216 graduation to the youth, education rights holder, and social worker.

What content must be provided?

The notification must include the school district's decision regarding eligibility, outline the impact of AB 167/216 on admissions to four year universities, and inform the youth and the education rights holder of the youth's right to remain in high school for a fifth year.

DURATION OF ELIGIBILITY

Once a youth is found eligible for AB 167/216 graduation, their right to graduate by completing minimum state course requirements may not be revoked, regardless of whether the youth's foster case closes or they later change schools again.



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This fact sheet is current as of February 2014. To report any errors, please email us at cfyetf@gmail.com.

Early Care and Education



California Foster Youth Education Task Force

INTRODUCTION

Early education is recognized as a key to children's later education success and a stabilizing force for families. Early Care and Education (ECE) is not provided in a systematic manner, however, but rather by a patchwork of public, private non-profit, and private for-profit ECE service providers.

ECE PROGRAMS AND SERVICES -- CEL

Until 2011, each county was required to maintain a Centralized Eligibility List (CEL), which all state-funded programs—including full-day and part-day infant and preschool programs—were required to use to enroll families. State funding for CELs ended in 2011, but some counties still maintain a CEL voluntarily. Children at-risk of abuse (which may include foster youth, although the law is not clear) are given priority on the CEL, but that does not guarantee immediate services. Service providers not electing to participate in the CEL must maintain their own eligibility list giving priority to the same groups as the CEL. *EC §§ 8227, 8263; 5 CCR 18106.*



Early Head Start and Head Start

Early Head Start and Head Start are federally-funded programs promoting school readiness by enhancing social and cognitive development. Early Head Start provides family-centered services that facilitate child development, support parental roles, and promote self-sufficiency for children from birth to age three. It also serves pregnant women with low incomes. Head Start provides part-day preschool programs for children ages three to four, as well as educational, social, health, and other services, with a particular focus on early reading and math skills. Children in foster care are automatically eligible and have a priority for admission in both programs. *45 CFR 1304.20-1304.24, 1304.3, 1305.2, 1305.4.*

To receive funding, all 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 of a child "awaiting foster care placement." *42 USC 11431, 11432, 11433, 11434a.*

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 funding for early intervention programs under the Individuals with Disabilities Act (IDEA), states must ensure that appropriate early intervention services are available to all infants and toddlers with disabilities who are in foster care or in the custody of a child welfare agency. *34 CFR 300.45, 300.101.*

In addition, states receiving funding under the Child Abuse and Prevention Act must establish procedures to refer every child under the age of three who has been involved in a substantiated case of abuse or neglect to early intervention services funded under Part C of the IDEA. *42 U.S.C. 5106a.*

California's Early Start Program

The California Early Intervention Services Act was California's response to federal legislation requiring early intervention services. It created the Early Start Program, designed to ensure that infants and toddlers with disabilities and their families are provided with early intervention services in a coordinated, family-centered system that is available statewide. *GC 95000 et seq.*

Early Start Eligibility

The Early Start program serves children under the age of three years old. To be eligible for services, the regional center must conduct an evaluation and assessment of the child, including a family interview, to determine and document his/her strengths and needs, and what services will meet those needs. The results of this assessment should be shared with the local education agency or school district. Children must also fall into one of two categories to receive Early Start services. *GC §§ 95014, 95016.*

(Continued on next page)

Early Care and Education (continued)



Category 1: Developmental Delay

Children qualify for Early Start if they have a developmental delay in any of five areas: cognitive development; physical and motor development, including vision and hearing; communication development; social/emotional development; or adaptive development. A developmental delay is defined as “a significant difference between the expected level of development for their age and their current level of functioning,” and must be determined by a qualified evaluator. A difference between expected and actual levels of development is significant if the child is delayed by 33% or more before the age of 24 months. After a child turns 24 months old, a difference is significant if the child is delayed by 50% or more in one area, or by 33% or more in two areas. *GC §§ 95014(a)(1).*

Category 2: Established Risk

Children are also eligible for Early Start services if they have a condition diagnosed by a qualified individual that has a high probability of resulting in delayed development, such as Down’s Syndrome. *GC §§ 9501(a)(2).*

Responsibility for Services

For infants and toddlers who have only hearing, vision, or severe orthopedic impairments, the local school district is responsible for providing services. All other children qualifying for Early Start will receive services through one of California’s regional centers. The regional centers are non-profit organizations that contract with the Department of Developmental Services to provide services under Part C of the IDEA. All children and families receiving Early Start services will be assigned a service coordinator who is approved by the Department of Developmental Services to coordinate the services provided. *GC § 95014(b).*

Early Start Referrals

After receiving a referral to Early Start, the regional center has 45 days to complete an evaluation and assessment, hold a meeting to determine eligibility, and develop an Individualized Family Service Plan (IFSP). *GC § 95020; 17 CCR 52060.*



The Individualized Family Service Plan

The family and service providers must meet at least once each year, or more often if necessary, to determine whether the child is making progress, and whether any changes need to be made to the IFSP. An IFSP should include:

1. A statement of the infant’s or toddler’s present levels of physical development including vision, hearing, and health status, cognitive development, communication development, social and emotional development, and adaptive developments;
2. A statement of the family’s concerns, priorities, and resources related to meeting the special developmental needs of child;
3. A statement of the major outcomes expected to be achieved for the infant or toddler and family;
4. The criteria, procedures, and timelines used to determine if progress is being made, and whether any changes are necessary;
5. The details of the services to be provided—who will provide them, where, how often, etc;
6. The agency responsible for providing the identified services;
7. The name of the child and family’s service coordinator;
8. The steps that will be taken to ensure the child and family receive appropriate services once the child reaches the age of three; and
9. The projected dates for the initiation of services provided and the anticipated duration of those services. *GC § 95020(d)-(e).*

Transition Requirements

A plan for a smooth and effective transition between early education services and the services the child will receive after his or her third birthday must be developed for all children receiving early intervention services, including developing and implementing an Individualized Education Program (IEP) if the child is eligible for special education. *34 C.F.R. § 303.209.*

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Early Care and Education (continued)

Due Process Procedures

If anyone believes that the agency responsible for providing services written in the child's IFSP is not meeting its obligations, he or she can file a complaint with the Department of Developmental Services. Complaints should be filed at:

Department of Developmental Services
Office of Human Rights
Attention: Early Start Complaint Unit
1600 Ninth Street, Room 240, M.S. 2-15
Sacramento, CA 95814

Complaints should include:

1. The name, address, and phone number of the person filing the complaint;
1. A statement that a service provider receiving funds under Part C of the Individuals with Disabilities Education Act has violated a state or federal law or regulation regarding early intervention services;
2. A statement of facts upon which the violation is based;
3. The party responsible; and
4. A description of the voluntary steps taken to resolve the complaint (if any).

Once the Department receives a complaint, it has 60 days to investigate and issue a written decision. *17 CCR §§ 52170-52171.*

If a child's education rights holder disagrees with the services offered by the IFSP, or if the local education agency or regional center refuses to evaluate or offer services to a child, then he or she can file for a due process hearing. An administrative law judge will hear both sides and make a decision within 30 days of the complaint being filed. *17 CCR § 52172.*



Prevention Resource & Referral Services

A child who is not eligible for Early Start services may still qualify for Prevention Resource and Referral Services (PRRS). Children qualify if their genetic, medical, developmental, or environmental history predicts a substantially elevated risk for developmental delays. Risk factors could include low birth weight, prematurity, or prenatal exposure to drugs or alcohol. The Regional Centers administer the PRRS through Family Resource Centers and provide information, referrals, intake, assessments, case management, and developmental monitoring services. *WIC § 4435.1.*

PRESCHOOL SERVICES FOR CHILDREN WITH DISABILITIES

All school districts are required to provide special education services for children with disabilities between the ages of three and five years old. *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. Additionally, the child must also need specially designed instruction and services, and must have needs that cannot be met by modifying a regular environment in the home or school (or both) without ongoing monitoring or support. A child does not need to be intellectually disabled to qualify, as the education includes age appropriate developmental milestones. *EC § 56441.11(b).*

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 services. Children who meet Regional Center eligibility will continue to receive case management services and home support. *EC § 56445.*

For more information on referrals, see the Special Education Fact Sheet.

For more information on Due Process/Fair Hearings, see the Special Education Fact Sheet.

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Education Services for Transition Age Youth



California Foster Youth Education Task Force

INTRODUCTION

Many youth in foster care turn 18 years of age before graduating from high school. Several safeguards exist to help them complete their education and transition successfully into adulthood.

Under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, implemented in California by AB12 and other legislation, foster youth can remain eligible for AFDC-FC payments and other benefits until age 21, if they meet one of five eligibility criteria. These criteria include school attendance. *WIC §11403.*

Youth who do not qualify for extended foster care benefits under AB 12 but are attending high school, vocational program or a GED program full-time, and are reasonably expected to complete the program or receive a high school equivalency certificate, before their 19th birthday, may retain their AFDC-FC, Kin-GAP, or Cal-WORKS payments until they graduate or reach their 19th birthday. *WIC §11253,11403.01,11405.*

See <http://www.cafosteringconnections.org> for more information.

EDUCATION

Enrollment in High School

(Until age 18)

Youth are entitled to compulsory full time education until age eighteen 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 or if they qualify to finish their graduation under AB 167/SB 216. See the *AB 167/216 fact sheet.* Youth over age 18 may enroll for additional years in 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

Youth are entitled to special education services under California law until age 22. *EC § 56041.* See *Special Education Fact sheet.*

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. In addition all college campuses have disabled student support programs that can offer a range of accommodations. The approved testing variations, accommodations, and modifications are found on the CDE website at <http://www.cde.ca.gov/ta/tg/hs/accmod.asp>.

Foster Youth Services (FYS)

FYS is a program of the California Department of Education administered by some county offices 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.

Under the 2013 Local Control Funding Formula legislation, all school districts and LEAs are required to develop Local Control and Accountability Plans that specify what services and supports they will provide for foster youth.

HIGHER EDUCATION

Campus Support Programs

There are a wide range of academic support programs for former foster youth attending college in California. Programs such as Guardian Scholars, are comprehensive programs that support former foster youth in their efforts to gain a university, community college or vocational education. Campus support programs vary and students may receive: financial aid, housing, academic and personal advisement, and employment services. All community colleges have a designated Foster Youth Success Initiative Liason. The best way to find out about a specific campus support program is to contact the program coordinator.

See: <http://www.cacollegepathways.org/campus-supports-foster-youth>

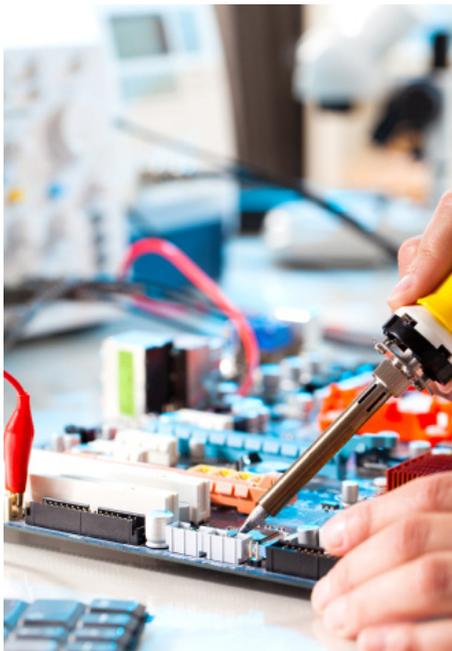
Board of Governors Fee Waiver

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, including foster youth. In order to qualify, students must complete an orientation, assessment, and educational plan for the waiver to determine their eligibility.

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Education Services for Transition Age Youth (continued)



Chafee Grant *(Education and Training Voucher-ETV)*

Current or former foster youth who have not reached their 22nd birthday and have financial needs, may qualify for up to \$5,000 a year for career and technical training or college. Funds may be used to pay for childcare, transportation, and housing while in school. The court must have established dependency between ages 16 and 19, and the California Department of Social Services will verify eligibility status. Information is available at www.chafee.csac.ca.gov.

Financial Aid

When filling out the Free Application for Federal Student Aid (FAFSA), students currently or formerly in foster care should indicate they are/were a dependent/ward of the court, were in foster care, or were in a legal guardianship after age 13 in order to qualify for the maximum amount of aid. In order to qualify for maximum financial aid, students must submit the FAFSA by March 1. Those who miss this deadline should submit the FAFSA as soon as possible. <http://www.cacollegepathways.org/financial-aid-options-foster-youth>

Priority Registration

Foster youth attending a public college or university are entitled to priority registration for classes. In order to access priority registration at community colleges, students must first complete an orientation, assessment, and educational plan. Students should contact the admissions and records office or foster youth contact to ensure access. *EC § 66025.9*

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.*



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 training, transitional housing, assistance with transportation, and scholarships. Youth who are in foster care age 16 and older are required to have a Transitional Independent Living Plan that is updated every six months.

If the youth qualifies for special education services, they should have an Individualized Transition Plan starting at age 16. If they are transition age youth (16-25 years) they may also 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>.

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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. Generally a student must be found eligible for special education prior to his/her 19th birthday. *EC § 56026.*

Children under age five may qualify for early intervention services. For children under age three, assessment and services are provided through the Regional Centers located throughout California. Between ages three and five 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 Local Educational Agency (LEA) is usually responsible for special education. The school district in which a student resides is usually that student's LEA. *EC §§ 48200; 56026.3.*

The Special Education Local Plan (SELPA) that serves the geographic area where the foster youth has been placed in a licensed children's institution or foster family home is responsible for providing special education. If the area is not served by a SELPA, the county office of education is responsible. *EC §§ 48204; 56156.4.*

Students attending charter schools have the same rights as all other students. *EC §§ 56145 & 56146.* Responsibility for special education will fall on the charter school, the LEA with which the school is chartered, or the SELPA in which the school is located, depending on the terms of the charter.

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 individualized special education and related services provided at public expense. *20 USC § 1401(9); 34 CFR § 300.17; EC § 56000; 5 CCR § 3001(o).*



IDENTIFICATION AND ASSESSMENT

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.*

Assessment

Referral for an assessment for special education starts the process. A referral may be made by a parent/educational rights holder, teacher, or other provider. Referrals made by school staff must be in writing; parents/education rights holders may make oral referrals but the best practice is to make a written referral to ensure that assessment and meeting timelines 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 the 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 Individualized Education Plan (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 five days or more. *EC §§ 56344(a), 56043(c).*

(Continued on next page)

Special Education (continued)

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(i).*

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/educational rights holder disagrees with the assessment obtained by the school district. *EC § 56329(b).*

Eligibility for Special Education Services

Two triggering conditions must be met:

- 1) The child has an impairment adversely affecting his/her educational performance that requires special education.
- 2) 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); or
 - specific learning disability.

20 USC § 1401(3); EC § 56026.

A complete reevaluation, followed by a triennial IEP meeting, must be concluded every three years, or more frequently upon request. *20 USC § 1414(a)(2)(B); 34 CFR § 300.536, EC §§ 56381, 56043(k).*

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

PLACEMENT AND SERVICES

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 a placement represents the LRE for a particular student:

- 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.

Non-Public Schools

A student in foster care must 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 student'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 student 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.*

See Nonpublic Schools Fact Sheet for more information.

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. See fact sheet on Educationally Related Mental Health Services (ERMHS) for more information.*

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Special Education (continued)

THE IEP MEETING

Individualized Education Program (IEP):

An IEP is both the meeting and document that sets forth what special education services a child will 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 he/she understands the IEP team discussion. *EC § 56341.5(i).*

What's 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 and 56043(g)(1); 5 CCR § 3042(b).*

When the student 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 student's needs may be invited at the discretion of the LEA or parents/educational rights holder. The student 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, he/she does not have to sign the document 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.*

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 student 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.*

PROCEDURAL RIGHTS / DISAGREEMENTS WITH SCHOOLS

Compliance Complaint

A parent/educational rights holder may file a compliance complaint with the State Department of Education when he/she feels that the school district has violated its duty under a student's IEP or 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 he/she is in disagreement with the school district regarding:

- Implementation of the child's IEP;
- The student's eligibility for special education;
- Assessments of the student;
- Educational placement of the student; or
- Changes made to the child's IEP without the parent/educational rights holder's approval.

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

After a complaint is filed, the school district has 10 days to provide a written response. *EC § 56502.*

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

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Special Education (continued)

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 three 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 at the mediation. Mediation is voluntary. If the parent/educational rights holder proceeds to a 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 five 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. Schools cannot require parents 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 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 student 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)*. Students that qualify under IDEA generally 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/educational rights holder consent.

CALIFORNIA HIGH SCHOOL EXIT EXAM (CAHSEE)

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. As of this writing, the State Board of Education has not identified any alternatives. *EC §§ 60852.3(b), 60852.1.*

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Nonpublic Schools



California Foster Youth Education Task Force

INTRODUCTION

A nonpublic school (NPS) is a private nonsectarian school that enrolls individuals with exceptional needs pursuant to an Individualized Education Program (IEP). The school must be certified by the Department of Education and meet certain standards set by the Superintendent and Board of Education. *EC § 56034.*

All nonpublic schools must prepare a School Accountability Report Card (SARC) in the same manner as public schools and include all the same data. *EC § 56366(a)(9).*

A list of nonpublic schools can be found on the California Department of Education's website at <http://www.cde.ca.gov/sp/se/dsf/>.

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 determines it is in the best interest of the student. *EC§ 48853. See Educational Decision-Making fact sheet.*

To be placed in a nonpublic school by the local education agency (LEA), a student must have an IEP and be assessed for special education services prior to placement in the school. *EC §§ 56342.1, 56320.*

- The assessments conducted must conform with state and federal laws.
- 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. See Special Education fact sheet.*
- Consent for an initial assessment is not consent for placement in an NPS or provision of any other special education services. *EC § 56321(d).*

An individual with exceptional needs shall not be referred to, or placed in, a nonpublic school unless his/her IEP specifies that the placement is appropriate. *EC § 56342.1*

LEAST RESTRICTIVE ENVIRONMENT (LRE)

Students *must* be placed in the LRE to meet their needs. A child shall not be placed in a 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.*

When a student is placed in a licensed children's institution (LCI) or group home with an on-grounds NPS, the student may attend the on-grounds school, only if the 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 student's IEP. *2 CCR § 60510(b)(2).*

At least annually, the LEA must consider whether or not the needs of the student continue to be best met at the NPS and whether changes to the IEP are necessary, including whether the student may be transitioned to a public school setting. *EC § 56366(a)(2)(B)(ii).*



CHILDREN IN FOSTER CARE:

A child who is placed in an LCI, group home or foster family home must attend programs operated by the LEA, unless one of the following applies:

- (1) The student remains in his/her school of origin;
- (2) The student has an IEP requiring placement in a nonpublic school or agency, or in another LEA; or
- (3) The person holding the right to make educational decisions for the student determines that it is in the best interests of the child to be placed in another educational program, in which case the person shall provide a written statement that he/she has made that determination to the LEA. This statement shall include a declaration that the person holding the right to make educational decisions for the student is aware of all of the following:
 - (A) The student has a right to attend a regular public school in the least restrictive environment;
 - (B) The alternate education program is a special education program, if applicable;
 - (C) The decision to unilaterally remove the child from the regular public school and to place the child in an alternate education program may not be financed by the local educational agency; and
 - (D) Any attempt to seek reimbursement for the alternate program may be at the expense of the person holding the right to make educational decisions for the child. *EC§ 48853*

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Nonpublic Schools (continued)



A licensed children's institution (LCI) or group home cannot require that a student be identified as an individual with exceptional needs, or have an IEP, as a condition of residential placement or admission. *EC § 56155.7*

If the student does have an IEP, the LCI cannot require attendance at an NPS owned or operated by an agency associated with the institution. Those services may only be provided if the special education local plan area determines that appropriate public alternative educational programs are not available. A LCI or group home cannot refer a student to, or place a student in a NPS. *EC § 56366.9*

A licensed children's institution, or nonpublic school or agency, may not require as a condition of placement that educational authority for a student be designated to that institution, school, or agency, allowing it to represent the interests of the child for educational and related services. *EC § 48854.*

ASSEMBLY BILL 1858

Assembly Bill 1858 was passed in 2004 to address the quality of education provided by nonpublic schools. It raised educational standards and improved the Department of Education's oversight of the schools.

AB 1858 holds non-public schools to the same standards as public schools by requiring that an NPS provide:

- Staff with teaching credentials equivalent to that of public schools in the district. *EC § 56366.1(n)(1).*
- For kindergarten and grades 1 to 8: state-adopted, standards-based, core curriculum and instructional materials, including technology-based materials. *EC § 56366.10(b)(1)(A).*
- For grades 9 to 12: standards-based, core curriculum and instructional materials, including technology-based materials, used by any local educational agency that contracts with the nonpublic school. *EC § 56366.10(b)(1)(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).*

Additionally, nonpublic schools must have:

- 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)*
- A written policy for student discipline which is consistent with state and federal law and regulations. *EC § 56366.10(d).*



AB 1858 also implements increased oversight and accountability of non-public schools by requiring:

- A non-public school to report the child's progress on meeting IEP goals and objectives to the LEA on a quarterly or trimester basis. *EC § 56157(d).*
- A local educational agency to address at the annual IEP whether the NPS is the least restrictive environment for the student. *EC § 56157(c).*
- A non-public school to meet certification standards each year rather than the previous requirement of every four years. *EC § 56366.1(h).*
- A non-public school to prepare a school accountability report card and report Standardized Testing and Reporting Program (STAR) results to the State Department of Education. *EC § 56366 (a) (8-9).*
- An expansion of unannounced visits to non-public schools by the Superintendent of Public Instruction. *EC § 56366.1(i)(1-2).*

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Functional Behavioral Assessments



California Foster Youth Education Task Force

INTRODUCTION

A functional behavioral assessment (FBA) is an assessment of a student's maladaptive behavior. The assessment may 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, what enables the behavior, and to learn how to best redirect, adapt, or change the behavior through the use of positive intervention strategies. Prior to conducting a functional behavioral assessment, the school district must obtain consent from the person who holds educational rights (Education Code (56321) 34 CFR 300.324) (See Educational Rights fact sheet).

BASIC CONCEPTS

Who Conducts the Functional Behavioral Assessment?

Functional behavioral assessments should be conducted by trained and knowledgeable staff. (Education Code 56320(b))

What Is a Behavioral Intervention Plan (BIP)?

A behavioral intervention plan (BIP) is a plan that may be developed when the behavior of a student with a disability impedes his/her learning, or the learning of others, and the student's Individualized Education Program (IEP) team then considers the use of positive behavioral supports and other strategies consistent with 20 USC 1414(d) to address the student's behavior.

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. (Education Code 56520)

FBA AND BIP PROCEDURES

When must the school district conduct a FBA and develop a Behavioral Intervention Plan? The school district must conduct a FBA and Develop a BIP when one of the following occurs:

- When the IEP team determines a 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; or (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) (34 CFR 300.350).
- When the student is removed from his/her placement for more than 10 consecutive 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 a 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 happens if there is a Behavioral Emergency?

Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the individual with exceptional needs, or others that cannot be immediately prevented by a less restrictive response. (Education Code 56521.1)

Emergency interventions may not include (1) locked seclusion (unless it is in a facility otherwise licensed or permitted by state law to use a locked room); (2) employment of a device, material or object that simultaneously



immobilizes 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. (Education Code 56521.1)

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; and (3) schedule an IEP meeting within two days for any student without a current behavioral intervention plan to determine the necessity for a functional behavioral assessment and to determine the necessity for an interim behavioral intervention plan. (Education Code 56521.1)

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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 *EC § 48900-48927*. 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 *EC § 48900, 48900.2-48900.4, and 48900.7*. Students can be suspended or expelled for many acts, but they 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 but is not limited to acts committed on school grounds, while going to or coming from school, during the lunch period (on or off campus), and during or while going to or coming from a school-sponsored activity. *EC § 48900(s)*.

Students with Disabilities

Students with disabilities have additional rights regarding school discipline. If a student is or might be eligible for special education, please see the Special Education Discipline fact sheet, as additional protections may apply.

ALTERNATIVES TO DISCIPLINE

While school districts have long had discretion to use alternatives to suspension and expulsion, the California legislature, through AB 1729 (2012), recognized the considerable damage done by the overuse of suspension and expulsion, including lower academic achievement, lower graduation rates, worse overall school climates, and disproportionate impact on certain vulnerable student populations; emphasized the need for effective interventions for problematic student behavior; and clarified the wide scope of discretion school officials have to use school discipline practices other than suspension and expulsion.

Alternatives to suspension and expulsion should be age appropriate and "designed to address and correct the pupil's specific misbehavior." *EC § 48900(v)*. Other means of correcting inappropriate student behavior can include meetings, case management, counseling, assessments, positive behavior supports, community service, and a variety of programs, such as those that address pro-social behavior, anger management, or restorative justice. *EC § 48900.5(b)* for a fuller list of recognized alternatives to traditional school discipline.

For most offenses, alternatives are required to have been tried *and* found not to have corrected a student's misbehavior *before* the student can be suspended. *EC § 48900.5(a)*.



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, and be given a chance to present his/her version and evidence in his/her 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 two school days. If the student is unable to attend a conference within two 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 the Educational Decision-Making Rights fact sheet) by phone or in person. *EC § 48911(d)*. 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)*.

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School Discipline (continued)

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." *EC § 48900.5(a)*. Since January 2013, it no longer has been lawful for a student to be suspended for a first offense on the grounds that the student's presence at school "causes a danger to property or threatens to disrupt the instructional process." *AB 1729 (2012)*.

If a suspension is imposed, it should not, with few exceptions, exceed five 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 he/she is enrolled 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 his/her 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." If the student is a foster child, the school district also must invite the child's attorney and an appropriate representative of the county child welfare agency to this meeting. Any decision to extend a suspension in this way must be in writing. *EC § 48911(a), (g)*.



School Work Missed During Suspension

A student may be required to complete assignments and tests missed during the suspension. *EC § 48913*. School 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 or school must promote completion of school work and tests the student misses during the suspension, and make appropriate counseling services 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*. In most cases, supervised suspension, like out-of-school suspension, should be used only when other means of correction fail to bring about proper conduct. *EC § 48900.5(a)*.

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 to not recommend expulsion, and the governing board has discretion to not expel. They can decide that expulsion would be inappropriate under the circumstances. *EC § 48915(a), (b), (e)*. School officials should determine whether they are recommending expulsion "as quickly as possible" so that a student does not lose instructional time. *EC § 48915(a)(2)*.

Mandatory Expulsions

The law requires expulsion for a small category of acts (often called zero-tolerance offenses). Those acts are firearm offenses (but not possession of an imitation firearm), brandishing a knife at another person, selling controlled substances, committing or attempting to commit 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)*. If the student is a foster student and the decision to recommend expulsion is a *discretionary* act, the school district also must provide the hearing notice to the student's attorney and an appropriate representative of the county child welfare agency at least 10 calendar days before the date of the hearing. *EC § 48918.1(a)*. For *mandatory* expulsion recommendations involving foster students, the school district may—but is not required to—provide this notice to the student's attorney and county child welfare agency representative at least 10 calendar days before the date of the hearing. *EC § 48918.1(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 his/her own witnesses and evidence to the hearing. *EC § 48918(b)(5)*.
- The right to ask the governing board to **subpoena witnesses**. *EC § 48918(i)*.
- The right to receive the governing 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 suspension 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)*.

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School Discipline (continued)



Necessary Findings

Generally, in order to expel a student, a governing 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 governing 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*. Any further appeal must be pursued in court.

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 governing 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, special education assessments, 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 governing board at the time of the expulsion decision. The date must be *no be later than*:

- For mandatory expulsions, one 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 governing 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 governing 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 governing 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*.

Suspended Expulsions

A governing 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 governing board may order the expulsion records to be expunged. *EC § 48917(e)*.

A governing 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)*.

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School Discipline (continued)

INVOLUNTARY TRANSFERS

In some situations, a student may be transferred against his/her 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 his/her 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 his/her "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.*

(Different laws, policies, and procedures apply to voluntary, as opposed to involuntary, transfers to continuation schools, including the requirement that voluntary transfers not be used as an alternative to expulsion unless alternative means of correction have been attempted pursuant to *EC § 48900.5*. *EC § 48432.3.*)

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.*



SCHOOL DISCIPLINE NOTICES FOR FOSTER CHILDREN

The school discipline-related notices and invitations that a school district provides to a foster child's attorney and an appropriate representative of the county child welfare agency (see the Special Education Discipline fact sheet) may be provided by the district's educational liaison for foster children, if so designated by the district's superintendent. *EC § 48853.5(c).*

To facilitate communication between school districts and foster children's attorneys, the attorneys (or their law firm or organization) must provide their contact information at least once a year to the educational liaisons of each local educational agency (LEA) serving their clients in the county of court jurisdiction. In addition, a foster child's caregiver or educational rights holder may provide the attorney's contact information to the LEA. *WIC § 317(e)(4).*

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.*

RESTITUTION

In addition to the school discipline procedures described above, a school may hold a student and his/her parent or guardian liable for property that the student willfully damaged or refused to return. After following certain procedures, a school may withhold the student's grades, transcripts, or diploma until it receives payment. If the student and his/her parent or guardian are unable to pay for the damage or return the property, the school must provide a voluntary work program for the student in lieu of requiring the payment of money. *EC § 48904.*



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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 USC § 1415(k)*, and regulations, *34 CFR §§ 300.530-300.536*. *EC § 48915.5*.

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

Students with Disabilities

For purposes of this fact sheet, 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 local educational agency (LEA) “had knowledge” of their disabilities before the conduct that led to the disciplinary action. Some ways an LEA can be found to “have knowledge” are if the student’s educational rights holder has expressed **written** concern about the need for special education to appropriate school or LEA staff or has requested a special education evaluation. However, if the educational rights holder later refused the evaluation or services or the student was evaluated and determined to be ineligible for special education, then s/he usually would not be entitled to these protections. *20 USC § 1415(k)(5)*; *34 CFR § 300.534*.

Students who do not fall into these categories may be disciplined as students without disabilities. *20 USC § 1415(k)(5)(D)*; *34 CFR § 300.534(d)*.

If a request for a special education evaluation is made during the disciplinary period, it must be conducted in an expedited manner. *20 USC § 1415(k)(5)(D)(ii)*; *34 CFR § 300.534(d)(2)*.

NOTICE OF DISCIPLINARY ACTION

A student’s educational rights holder is entitled to be notified of an LEA’s decision to take disciplinary action and of his/her procedural rights on the same day the decision is made. *20 USC § 1415(k)(1)(H)*; *34 CFR § 300.530(h)*.

10-DAY THRESHOLD

A student with a disability who violates a code of student conduct may be removed from his/her current educational placement to an appropriate “interim alternative educational setting,” other setting, or must be suspended for up to 10 school days, so long as similar disciplinary measures are taken against students without disabilities. *20 USC § 1415(k)(1)(B)*; *34 CFR § 300.530(b)*. School personnel can consider any unique circumstances on a case-by-case basis when determining whether to change the placement of a student with a disability who violates a code of student conduct. *20 USC § 1415(k)(1)(A)*; *34 CFR § 300.530(a)*.

A “change of placement” of more than 10 school days could result from an extended suspension of more than 10 consecutive school days, pending an expulsion hearing; a pattern of suspensions or removals of more than 10 school days in a school year, based on similar behavior; or placement in an “interim alternative educational setting” (see below); or an expulsion. *See 34 CFR § 300.536*.



If an LEA wants to change the placement of a student with a disability for more than 10 school days because of a violation of a code of student conduct, it must convene an IEP meeting to make a “manifestation determination.” The meeting must be held within 10 school days of the LEA’s decision to seek the change in placement. *20 USC § 1415(k)(1)(E)*; *34 CFR § 300.530(e)*. If the student is a **foster child** (as defined at *EC § 48853.5*) and the change of placement would result from a discretionary (as opposed to mandatory) expulsion recommendation, the LEA must invite the student’s attorney and an appropriate representative of the county child welfare agency to participate in the meeting. *EC § 48915.5(d)*.

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

(Continued on next page)

Special Education Discipline (continued)



MANIFESTATION DETERMINATION

At the manifestation determination meeting, the IEP team must consider all relevant information to determine whether the conduct in question (1) was caused by, or had a direct and substantial relationship to, the student's disability or (2) was the direct result of the LEA'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 USC § 1415(k)(1)(E); 34 CFR § 300.530(e).*

Finding of Manifestation

If the IEP team finds that the student's behavior was a manifestation of his/her disability:

- A functional behavioral assessment (FBA) must be conducted, if one has not already been done. (See the Functional Behavioral Assessments fact sheet.)
- 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 USC § 1415(k)(1)(F); 34 CFR § 300.530(f).*

If the IEP team finds that the student's conduct was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate steps to remedy the deficiencies. *34 CFR § 300.530(e)(3).*

Finding of No Manifestation

If the IEP team finds that the student's behavior was not a manifestation of his/her disability:

- The school may discipline the student in the same manner and for the same duration as it would a student without disabilities.
- The student must continue to receive FAPE, enabling him/her to participate in the general education curriculum and progress toward his/her IEP goals.
- The student must receive, as appropriate, an FBA and BIS and modifications that are designed to address the behavior violation so that it does not recur. *20 USC § 1415(k)(1)(C)-(D); 34 CFR § 300.530(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 (no more than 45 school days) or the IEP team agrees otherwise. *20 USC § 1415(k)(3)-(4); 34 CFR §§ 300.532-300.533.*

INTERIM ALTERNATIVE EDUCATIONAL SETTING

A school may move a student with a disability to an IAES for no more than 45 school days, regardless of whether the conduct was a manifestation of his/her disability, if the student, in connection with a school activity, has a weapon; knowingly has, uses, sells, or solicits the sale of a controlled substance; or inflicts serious bodily injury upon another person. *20 USC § 1415(k)(1)(G); 34 CFR § 300.530(g); see 20 USC § 1415(k)(7) (defining these violations); 34 CFR § 300.530(i) (same).*

The setting must be determined by the IEP team. *20 USC § 1415(k)(2); 34 CFR § 300.531.* Students in these settings have the same rights to FAPE, an FBA, and BIS as students for whom no manifestation was found. *20 USC § 1415(k)(1)(D); 34 CFR § 300.530(d).*

REFERRAL TO LAW ENFORCEMENT

An LEA that reports a crime committed by a student with a disability must ensure that copies of the student's special education records are transmitted to the law enforcement authorities to whom the crime is reported. *20 USC § 1415(k)(6)(B); 34 CFR § 300.535(b).*

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, visit the website at www.cfyetf.org.

This fact sheet is current as of February 2014. To report any errors, please e-mail us at cfyetf@gmail.com.

Educationally Related Mental Health Services (ERMHS)



California Foster Youth Education Task Force

MENTAL HEALTH SERVICES:

For 25 years, California provided mental health services that students with disabilities required in order to access their education through AB 3632 (also referred to as 26.5 or AB 2726), a joint program between schools and county offices of education.

In 2011, the California Legislature placed responsibility for educationally related mental health services (“ERMHS”) with the school districts, thereby ending the AB 3632 model of service provision. The Legislature used the term “ERMHS” when it ended AB 3632, and the California Department of Education used “ERMHS” in ongoing discussions and in policy guidance memoranda about the transition from AB 3632 to purely school-based ERMHS.

Because eligibility for services is based upon educational need (not court involvement), ERMHS can continue to support a foster youth after he/she successfully leaves court supervision.

What are Educationally Related Mental Health Services (ERMHS)?

ERMHS describes the wide range of services that were previously provided under AB 3632.

IDEA requires that schools provide the services necessary for a child to access his/her education, for example:

- Assessment of mental health needs, including interpretation of such assessments and integration of information in service planning;
- Consultation with the student, family, and staff to develop an appropriate program to serve the youth;
- Individual, group, family, and parent counseling;
- Teaching education rights holders the skills to enable them to support implementation of their youth’s IEP;
- Day treatment;
- Positive behavior intervention, including 1:1 behavioral aides;
- Assessment for, and administration and management of medications; and
- Residential placement.

34 C.F.R. §§ 300.34(a), .34(c)(2), .34(c)(8), .34(c)(10), .34(c)(14), .104; Cal. Educ. §§ 56363(a), (b)(9), (b)(10), (b)(11), (b)(13); 2 C.C.R. §60020(i). Of course, this list is illustrative, not exhaustive. EC § 56363(b); See also 34 C.F.R. § 300.34.

Counseling means services are provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel, and should include therapeutic counseling when a student requires it. 34 C.F.R. § 300.34(c)(2).

Some schools call these services other names like “educationally required mental health services” or “educationally related behavioral services.” Regardless of what your district calls ERMHS, they should understand what is being asked for if requesting ERMHS for youth.

Are ERMHS Like Other Related Services Under IDEA?

Yes. With the repeal of AB 3632, ERMHS are just like other related services under IDEA. For more information on the rules governing special education, see Fact sheet three.

What Is Different Now That AB 3632 has Ended?

County departments of mental health are no longer required to participate in providing ERMHS through special education. Schools are responsible.

Schools can still contract with county departments of mental health. If a county department of mental health is volunteering ERMHS, the recommendation of the county assessor may not be binding on the IEP team.

Medication monitoring will be reviewed carefully on a case-by-case basis and funding for medication through the IEP may be limited to children for whom medication is an integrated part of their educational program, such as a residential placement.

Who Assesses for and Provides ERMHS?

Local educational agencies have three basic options for how to provide ERMHS: (1) they can use their own school-based staff; (2) they can contract with their local department of mental health; or (3) they can contract with nonpublic agencies.

Regardless of which option is used, assessors must be “trained and knowledgeable personnel,” 34 C.F.R. § 300.304(c)(iv), and must be capable of “obtaining, integrating, and interpreting information about student behavior and conditions relating to learning.” 34 C.F.R. § 300.34(c)(10).

Assessments must identify all needs “whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. § 300.304(c)(6).

Where Can I Find More Information?

The California Department of Education’s website has several guidance memoranda on ERMHS:

<http://www.cde.ca.gov/sp/se/ac/ab114twg.asp>

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Fact Sheets have incorporated the Individuals with Disabilities Education Improvement Act of 2004 (effective July 1, 2005) and the California Budget Act of 2011 (effective July 1, 2011).

This fact sheet is current as of February 2014. To report any errors, please e-mail us at cfyetf@gmail.com.

