



AB 167: FREQUENTLY ASKED QUESTIONS

I. Introduction

Q1: What is AB 167?

Assembly Bill 167 (AB 167) refers to California legislation that amended section 51225.3 of the California Education Code (E.C.) to exempt pupils in foster care from school district graduation requirements that exceed state graduation requirements if the pupil transfers to the district, or transfers from one high school to another within a district in the 11th or 12th grade if the pupil would not be reasonably able to complete the additional district requirements. Approved by the Governor on October 11, 2009 and effective January 1, 2010, AB 167 requires school districts to provide notice to foster youth exempted from additional district requirements if failure to satisfy such local requirements will affect the pupil's ability to gain admission to a postsecondary educational institution.

Q2: What is the definition of a "pupil in foster care"?

AB 167 refers to a "pupil in foster care" but does not itself define this phrase. Legislative history suggests that AB 167 was meant to cover the same class of children as those covered by AB 490, which defines a foster child as one who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code. (*E.C. 48853.5 (a)*).

Q3: What problem does AB 167 seek to address?

California's foster children are often bounced from placement to placement and from school to school. These transitions often result in education-related problems, including a loss of school credits, academic problems, and a delay in earning a high school diploma. Studies show high school pupils who change schools even once are less than 50 percent as likely to graduate from high school as compared to high school pupils who do not change schools.

California sets minimum high school graduation standards for the state's school districts. However, school districts have flexibility with regard to additional coursework pupils are required to complete to graduate from high school. A foster child in high school forced to relocate to another school district in his or her junior or senior year may be faced with additional graduation requirements at his or her new school with little time to complete those courses in order to graduate with the rest of his or her class.

Q4: What are the minimum high school graduation standards required by California?

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

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

Students may be exempted from physical education for a number of reasons. For example, if a student is ill or injured and a proper modified program cannot be provided for them or if a student is on a modified, half day schedule, they can apply for a temporary exemption. Additionally, students may be exempted from physical education for two years if they have met five of the six standards of California's physical performance test given in ninth grade. (*E.C. 51241(b)(1)*.) Permanent exemptions are granted if the student is 16 or older and has been in the tenth grade for at least one academic year, is a postgraduate pupil, or is enrolled in a juvenile home, ranch, camp, or forestry camp school where physical recreation and exercise is provided pursuant to California requirements. (*E.C. 51241 (c)(1)(2)(3)*).

In addition to completing the coursework above, a pupil must receive passing scores on both California High School Exit Exams – English and Math. (*E.C. 60851*)

Foster youth exempted from local graduation requirements by AB 167 must satisfy the above to receive a diploma of graduation. (*E.C. 51225.3(c)*).

Additional information regarding the state minimum graduation requirements can be found on the California Department of Education Website at <http://www.cde.ca.gov/ci/gs/hs/hsgmin.asp>.

II. To Whom Does AB 167 Apply?

Q5: Does AB 167 apply to all foster youth?

No. AB 167 applies only to pupils in foster care who transfer into a district or between high schools within the district while they are in 11th or 12th grade, unless the school district makes a finding that the pupil is reasonably able to complete the additional requirements in time to graduate from high school while he or she remains eligible for foster care benefits. (E.C. 51225.3(c)).

Q6: Does AB 167 apply if the school district to which the youth transferred has the same graduation requirements as the school district from where they came? Likewise, does AB 167 apply if the school to which the youth transferred has the same graduation requirements as his or her previous school?

Education Code section 51225.3 makes no reference to the requirements of the school or school district from the school the foster youth came from. The requirements of the prior school or school district do not affect whether AB 167 applies to a pupil in foster care. AB 167 applies to every pupil in foster care who transfers schools or school districts during his or her 11th or 12th grade year, unless the school district makes a finding that the pupil is reasonably able to complete the additional requirements in time to graduate from high school while he or she remains eligible for foster care benefits.

Q7: Does AB 167 apply to foster youth who transferred prior to the passage of AB 167?

Legislative language makes clear that AB 167 applies to all currently enrolled foster youth who transferred in the 11th or 12th grade, regardless of when the transfer occurred.

Q8: Who determines whether a foster youth transferring into a new school or school district is in 11th or 12th grade?

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

Many school districts have established guidelines to determine a student's grade level. Oftentimes a student's grade level in high school is determined by the number of credits he or she has received. Other times, the student's age determines his or her grade level. Thus, the number of credits a student possesses *might* determine whether AB 167 applies to him or her in that it *might* determine whether he or she is in 11th or 12th grade.

Q9: Does AB 167 apply to a foster youth transferring to a new school district or school during his or her 10th grade summer?

A student's grade level is determined by his or her school or school district. Many school districts base this determination upon the number of credits the student has received. Thus, in most cases, a student is an 11th grader from the moment he/she has sufficient credits to qualify as such. This means that a typical student will be an "11th grader" the summer after their 10th grade year, unless credit deficient.

Q10: If a foster youth is an 11th grader and meets all of the minimum state requirements can the district award a high school diploma under the AB 167 exemption?

Yes, as long as the minimum state requirements were met and the school district makes a finding that the pupil is not reasonably able to complete the additional requirements in time to graduate from high school while he or she remains eligible for foster care benefits.

It is important, however, to consider whether graduating in the 11th grade is in the foster youth's best interest. Such a decision might negatively impact their ability to secure housing and other benefits. In such a case best practice is to enroll the student in elective courses, ROP or vocational training.

Q11: If a foster youth changes schools prior to the end of the semester and has met the minimum state requirements, do they need to complete the semester or is the district obligated to grant the diploma at that time under AB 167?

AB 167 does not obligate school districts to grant diplomas mid-semester or at any other time. Diplomas are awarded at times determined by school district policies and procedures. Thus, a district *may* grant a transferring foster youth a diploma prior to the end of the school year if the student has completed the minimum state requirements and the district makes a finding that the pupil is not reasonably able to complete the additional requirements in time to graduate from high school while he or she remains eligible for foster care benefits.

III. "Reasonably Able to Complete the Additional Requirements"

Q12: Is every foster youth who transfers during 11th or 12th grade exempt from the additional requirements imposed by their new school district?

No. AB 167 applies to pupils in foster care who transfer during 11th or 12th grade, but, if a school district "makes a finding that the pupil is reasonably able to complete the additional requirements in time to graduate from high school while he or she remains eligible for foster care benefits pursuant to state law," then the foster youth must complete these additional requirements in order to graduate. (E.C. 51225.3(c))

Q13: When should a school district evaluate whether it is reasonable for the pupil to complete any additional graduation requirements?

It is best practice for a school district to assess whether a pupil in foster care transferring into the district or between high schools in the 11th or 12th grade is able to meet the district's additional requirements as soon after the transfer as possible. The AB 490 District Liaison can assist the pupil in requesting a "graduation check" at the school site.

Q14: May a school district reconsider its "reasonableness" finding?

Given a district's limited familiarity with a recent transferee, it is best practice to reevaluate their reasonableness finding in light of the student's performance post-transfer. While a district might have initially thought it reasonable for the youth to complete their additional requirements, post-transfer evidence might suggest otherwise.

Note – the inquiry should always be: could the student have reasonably completed the additional graduation requirements at the time he or she transferred. Post-transfer events might shed additional light on this question, but the inquiry never becomes: can the student reasonably complete the additional graduation requirements given post-transfer events.

However, once a school district has determined that a pupil in foster care is not reasonably able to complete the district's additional graduation requirements and notifies the pupil of such finding, it could be problematic to subsequently require the pupil to complete the additional requirements if there is not sufficient time to do so prior to graduation. If a district subsequently determines that the pupil can reasonably complete the additional requirements in time to graduate with his/her class and sufficient notice is provided to the pupil, then the district may reconsider/revoke the exemption.

Q15: What efforts are reasonable to expect of a pupil in foster care trying to complete a school district's additional graduation requirements?

Neither AB 167 nor any other provision of California's Education Code answers this question with any specificity. However, Education Code section 51225.3(c) requires that the pupil be "reasonably able to complete the additional requirements in time to graduate from high school while he or she remains eligible for foster care benefits". The determination as to whether the pupil is reasonably able to complete the additional requirements should be made on an individual case-by-case basis. The school district should consider the courses completed/credits earned, the additional district requirements, and the amount of time remaining before graduation while the pupil continues to be eligible for foster care benefits.

Some school districts have suggested the following “best practice”:

1. In determining whether a newly transferred pupil in foster care will be able to reasonably satisfy the district’s additional graduation requirements, the district and the district’s foster youth liaison, should consult with the youth, the youth’s educational rights holder, child welfare worker, and anyone else familiar with the foster youth and his/her educational history.
2. As the school district learns more about the pupil, the district should reevaluate whether the student is reasonably able to satisfy the district’s additional graduation requirements.

Q16: What timeframe should the school district use in deciding whether the pupil will be able to reasonably meet the district’s additional requirements?

The school district must determine whether the pupil is reasonably able to complete the additional requirements in time to graduate from high school while he or she remains eligible for foster care benefits pursuant to state law. (*E.C. 51225.3(c)*). All foster youth are eligible for foster care benefits through their 18th birthday. Depending on their circumstance, some foster youth remain eligible for foster care benefits through their 19th birthday. These youth may opt to cease receiving foster care benefits once they turn 18.

If the district determines that the pupil is reasonably able to complete its additional requirements in time for the pupil to graduate from high school and before turning age 18, it need not exempt the pupil from its additional requirements. If the district determines that the pupil is reasonably able to meet its additional requirements before turning age 19, it need not exempt the youth *if* the youth’s child welfare worker confirms that the youth will remain eligible for foster care benefits through his or her 19th birthday.

Q17: Can a school district refuse to award a transferee foster youth a diploma because he or she lacks the number of credits required by the district?

No. The statewide graduation requirements make no mention of credits; credit requirements are local requirements. Thus, if a foster youth transfers schools or school districts in the 11th or 12th grade and cannot reasonably complete the additional local graduation requirements, including any requirements related to credits, then they should be awarded a diploma as long as they’ve satisfied California’s graduation requirements, regardless of the number of credits possessed by the foster youth.

IV. School and School District Duties

Q18: What must a school district do if it determines that a pupil in foster care will be exempt from its additional requirements?

The school district must notify the pupil and, as appropriate, the person holding the right to make educational decisions for the pupil, if any of the requirements that are waived “will affect the pupil’s ability to gain admission to a postsecondary educational institution and shall provide information about transfer opportunities available through the California Community Colleges.” (*E.C. 51225.3(c)*).

Q19: Are there times when a school district might exempt a pupil in foster care from its additional requirements but not provide notice to the pupil?

AB 167 requires the district to provide notice “if any of the requirements that are waived will affect the pupil’s ability to gain admission to a postsecondary educational institution.” (*E.C. 51225.3(c)*). Although not all of the additional requirements imposed by school districts are *necessary* to gain admission to post-secondary educational institutions, all are likely to *affect* a pupil’s ability to gain admission. Thus, in practice, school districts always should provide notice to the pupil.

Q20: To whom must the school district provide notice?

A school district must provide notice to the pupil in foster care and, as appropriate, the person holding the right to make educational decisions for the pupil. (*E.C. 51225.3(c)*). Although it is likely that it will be appropriate to notify the person holding the right to make educational decisions for the pupil, the school district should determine on an individual case-by-case basis, if it is appropriate to provide notice to this person. In many cases it might also be best practice to notify the youth’s caregiver.

Q21: Is the diploma awarded to a pupil in foster care who graduates without having satisfied the school district’s additional requirements different from that awarded students who do satisfy such additional requirements?

AB 167 recognizes that some foster youth transferring in the 11th or 12th grade, through no fault of their own, are not able to complete the additional requirements of their new school district. AB 167 provides an exemption for these students, allowing those who cannot reasonably fulfill the district’s additional requirements to obtain a diploma of graduation. While AB 167 says nothing about a district’s ability to award special certificates to students who fulfill additional requirements, foster youth falling under AB 167’s exemption must receive the same diploma of graduation as all other students in that district.

Q22: How does this impact a child who has an IEP?

Under the Individuals with Disabilities in Education Act (IDEA) and California law, a student eligible for special education services is required to have a transition plan upon turning 16 years old that addresses post secondary goals, including whether the student will graduate with a regular high school diploma. Thus, whenever a

student is receiving special education services the applicability of AB 167 should be addressed in the student's Individualized Education Program (IEP) team meeting.

Q23: Are there sample School Board policies available regarding AB 167?

California School Boards Association (CSBA) provides the following sample policies for subscribers of their Policy Services. Please visit CSBA's Web site (<http://www.csba.org>) or go directly to their online sample policy service, GAMUT Online (<http://www.gamutonline.net>). A complimentary copy of the sample board policy and administrative regulations 6173.1 "Education for Foster Youth" is available at www.csba.org under the Education Section, under Foster Youth.

AR 6146.1 - Administrative Regulation, High School Graduation Requirements
BP 6146.1 – Board Policy, High School Graduation Requirements
AR 6146.3 - Administrative Regulation, Reciprocity Of Academic Credit
BP 6146.3 – Board Policy, Reciprocity Of Academic Credit
AR 6173.1 - Administrative Regulation, Education for Foster Youth
BP 6173.1 – Board Policy, Education for Foster Youth