California Foster Youth Education
Task Force

# California Foster Youth Education Law Fact Sheets

Seventh Edition, June 2019

Fact Sheet Number One – Educational Rights and School Stability

Fact Sheet Number Two – Educational Decision-Making for Foster Youth

Fact Sheet Number Three – Early Care and Education

Fact Sheet Number Four – Special Education

Fact Sheet Number Five – School Discipline

Fact Sheet Number Six – Foster Youth Graduation Exemption Requirements

Fact Sheet Number Seven – Transition Services to Support College and Career

*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 http://www.cfyetf.org.*

*This fact sheet is current as of June 2019. To report any errors, please e-mail us at cfyetf@gmail.com.*


**The California Foster Youth Education Task Force thanks the individuals listed below for their time and effort in writing and revising this publication:**

***First edition (April 2005):***
Amy Levine, Sarah Vesecky, Sara Woodward

***Second edition (November 2006):***
Amy Levine, Jennifer Troia, Sarah Vesecky

***Third edition (October 2008):***
Patty Armani, Betsy DeGarmoe, Karie Lew, Craig Liu,
Marymichael Miatovich, Ann Quirk, Robert Taniguchi, Leecia Welch

***Fourth edition (December 2010):***
Patty Archer-Ward, Laura Cohen, Deborah Cromer, Betsy DeGarmoe, Jesse Hahnel,
Stephanie Holtz, Karie Lew, Miho Murai, Ann Quirk, Cheryl Theis, Leecia Welch, Jacqueline Wong

***Fifth edition (February 2014):***
Patricia Armani, Lacy Lenon Arthur, Ben Conway, Debra Cromer, Betsy DeGarmoe,
Paige Fern, Jesse Hahnel, Patrick Hirsch, Karie Lew, Martha Matthews, Ann Quirk

***Sixth edition (June 2017)***
Alliance for Children's Rights Education Team, Betsy DeGarmoe, Ruth Diep, Diana Glick,
Michelle Lustig, Martha Matthews, Debbie Raucher, Joanna Robold, Angela Vazquez

***Seventh edition (June 2019)***
Alliance for Children's Rights Education Team, Melanie Bridges, Lea Michelle Cash,
Lily Colby, Betsy DeGarmoe, Elizabeth Engelken, Diana Glick, Michelle Lustig,
Danielle Mole, Anjanette Pelletier, Ann Quirk, Debbie Raucher, Danielle Wondra

# CFYETF Member Organizations List

- Alameda County Office of Education, Foster Youth Services Coordinating Program
- All Saints Church Foster Care Project
- Alliance for Children's Rights
- Amador CASA
- Arroyo Seco School District
- Association of California School Administrators
- Calaveras County Office of Education
- California Alliance of Child and Family Services
- California Association of Supervisors of Child Welfare and Attendance
- California CASA
- California Community Colleges Chancellor's Office
- California Department of Education (CDE)
  - Improvement and Accountability Division
  - Special Education Division
- California Department of Social Services (CDSS), Children and Family Services Division, Child and Youth Permanency Branch
- California Foster Care Ombudsperson
- California Youth Connection
- Casey Family Programs
- Child and Family Policy Institute of California
- Child Care Law Center
- Children Now
- Children's Law Center of California
- Choice Educational Services
- Chula Vista Elementary School District
- Contra Costa County Office of Education
- Corona-Norco Unified School District
- County of San Bernardino, Children & Family Services
- County Welfare Directors Association (CWDA)
- CSU Fullerton, Guardian Scholars Program
- Cypress College, Guardian Scholars Program
- Dominguez High School
- Disability Rights Education & Defense Fund (DREDF)
- East Bay Children's Law Offices
- Elk Grove Unified School District, Foster Youth Services
- Empowerment Congress, Education Subcommittee on Achievement Gap & Foster Youth
- Eureka City Schools
- Fighting Back Santa Maria Valley
- FKCE Saddleback College
- Foster Horizons, Inc.
- Foundation for California Community Colleges
- Fresno County Superintendent of Schools, Foster Youth Services Coordinating Program
- Fresno Unified School District
- Give Something Back
- Glenn County Health and Human Services Agency
- GRACE
- Grossmont Union High School District
- Hathaway-Sycamores
- Healing Pathways Clinic
- Humboldt County Office of Education, Foster Youth Services Coordinating Program
- i.e. communications, LLC
- John Burton Advocates for Youth
- Judicial Council of California
- Jurupa Unified School District
- Just in Time for Foster Youth
- Kings County Office of Education, Foster Youth Services Coordinating Program
- Law Office of Miho Murai
- Legal Advocates for Children & Youth, a program of the Law Foundation of Silicon Valley
- Lincoln Families
- Lodi Unified School District
- Los Angeles Area Chamber of Commerce
- Los Angeles County Department of Children and Family Services
- Los Angeles County Office of Child Protection, Education Coordinating Council
- Los Angeles County Office of Education, Foster Youth Services Coordinating Program
- Los Angeles County Probation Department
- M & I Educational Consulting Network
- Mental Health Advocacy Services, Inc.
- Merced County Office of Education
- Merced County Office of Education, Foster Youth Services Coordinating Program
- Modoc County Office of Education
- Moreno Valley College
- Murrieta Valley Unified School District
- MW Management
- National Center for Youth Law
- New Alternatives - Transitional Youth Housing San Diego
- Orange County Department of Education, Foster Youth Services Coordinating Program
- Orange Unified School District
- Pacific Charters
- Palm Springs Unified School District
- Paramount Unified School District
- Placer County Office of Education, Foster Youth Services Coordinating Program
- Public Counsel
- River Delta Unified School District
- Riverside County Office of Education, Foster Youth Services Coordinating Program
- Roseville City School District
- Roseville Joint Union High School District, Homeless and Foster Youth Services Coordinating Program
- Sacramento County Department of Health and Human Services
- Sacramento County Office of Education, Foster Youth Services Coordinating Program
- Sacramento State University, Guardian Scholars Program
- San Bernardino City Unified School District
- San Bernardino County Board of Education
- San Bernardino County Human Services
- San Bernardino County Superintendent of Schools, Foster Youth Services Coordinating Program
- San Diego County Office of Education
- San Diego County Office of Education, Foster Youth Services Coordinating Program
- San Diego Youth Services
- San Francisco CASA
- San Luis Obispo County Office of Education, Foster Youth Services Coordinating Program
- San Mateo County
- San Mateo County SELPA
- Santa Cruz County Office of Education Foster Youth Services/FosterEd
- Scholarship Prep Public Schools
- Seneca Family of Agencies
- Shasta County Office of Education, Foster Youth Services Coordinating Program
- Solano County Office of Education, Foster and Homeless Youth Services
- Solano County Office of Education, Youth Development Services
- Sonoma County Office of Education, Foster & Homeless Youth Education Services
- Starfish Alliance
- The Academy Project
- The Brightest Star, Inc.
- The Red Shoe Project, Inc.
- Trinity County Office of Education, Foster Youth Services Coordinating Program
- Tulare County Office of Education, Foster Youth Services Coordinating Program
- Twin Rivers Unified School District
- University of La Verne, Kern County Campus
- Vista Unified School District
- West Valley College
- WestEd
- Whittier Union High School District
- Williams Unified School District
- Yolo County CASA
- Yolo County SELPA
- Youth Engagement Project (YEP)

# Citations and Abbreviations Key

**Abbreviations included in citations and referenced throughout the fact sheets:**

| | |
|---|---|
| AB | Assembly Bill (California) |
| CCR | California Code of Regulations |
| CFR | Code of Federal Regulations |
| CRC | California Rules of Court |
| EC | California Education Code |
| GC | California Government Code |
| SB | Senate Bill (California) |
| USC | United States Code |
| WIC | California Welfare & Institutions 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://ccr.oal.ca.gov/

California Department of Social Services All County Letters:

http://www.cdss.ca.gov/inforesources/Letters-Regulations/Letters-and-Notices/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

# Guide to Frequently Used Terms

- **Best Interest Determination (BID)**: A foster youth's Educational Rights Holder (ERH) determines whether it is in the youth's best interest to remain in their school of origin. Foster youth have the right to remain in their school of origin if it is in their best interest; school of origin is the default. *EC 48850(a)(1).*

- **Foster Child or Youth**: A child or youth who has been removed from their home pursuant to WIC 309 (temporary custody), is the subject of a petition filed under WIC 300 (dependent-victim of abuse or neglect) or WIC 602 (juvenile who has violated the law), or has been removed from their home and is the subject of a petition under WIC section 300 or 602. *EC 48853.5(a).*

  For purposes of the Local Control Funding Formula (LCFF), EC 42238.01(b) defines "foster youth" as any of the following:
  - A child or youth who is the subject of a petition filed under Welfare and Institutions Code (WIC) Section 300 (meaning a court has taken jurisdiction over a child and declared the child to be a dependent of the court due to the presence or risk of abuse or neglect). This includes both children who are living at home (i.e., with their biological parents) while a dependent of the court as well as children who the court has ordered to be removed into the care, custody and control of a social worker for placement outside the home.
  - A child or youth who is the subject of a petition filed under WIC Section 602 (meaning a court has taken jurisdiction over a child and declared the child to be a ward of the court due to the child's alleged violation of certain criminal laws) and has been ordered by a court to be removed from home pursuant to WIC Section 727 and placed into foster care as defined by WIC Section 727.4(d) (e.g., placed into a foster home or short-term residential therapeutic program).
  - A youth between ages 18 and 21 who is enrolled in high school, is a non-minor dependent under the placement responsibility of child welfare, probation, or a tribal organization participating in an agreement pursuant to WIC Section 10553.1, and is participating in a transitional independent living case plan.

- **Free Appropriate Public Education (FAPE)**: All Local Educational Agencies (LEAs) are responsible for ensuring that each child with disabilities is served appropriately, at no expense to the parent. *34 CFR 300.17, 300.101, 300.2.*

- **Educational Rights Holder (ERH)**: The parent or guardian or other person holding the right to make educational decisions for a foster youth; may be appointed by the court. *WIC 361, 726.* See *CRC 5.650(e)-(f)* for a list of rights and responsibilities. If the court is unable to locate a responsible adult for the child and the child either has been referred to a Local Educational Agency (LEA) for special education or has an Individualized Education Program (IEP), the court must refer the child to the LEA for appointment of a "surrogate parent." *WIC 361(a)(4), 726(c)(1); GC 7579.5-7579.6; CRC 5.650(a)(2)(A)(i), (d); see also WIC 319(j)(3), (5)*.

- **Individualized Educational Program (IEP)**: The right of a child with a disability to an educational program designed to meet their individual needs and based on adequate assessment is assured. At or before age 16, this includes the development of an Individual Transition Plan (ITP) to provide for transition into the world of work. *EC 56032, 56043(g)(1)*.

- **Least Restrictive Environment (LRE)**: Each child is assured of their right to be educated with non-disabled peers to the maximum extent appropriate to the needs of the disabled child. *34 CFR 300.114*.

- **Local Educational Agency (LEA)**: A school district, a county office of education, a nonprofit charter school participating as a member of a special education local plan area, or a special education local plan area. *EC 56026.3*.

- **School of Origin**: A foster child's "school of origin" is (1) the school in which the child was last enrolled, (2) the school the child attended when permanently housed (i.e., prior to removal from the home), or (3) any other school the child attended within the immediately preceding 15 months to which the child feels connected. *EC 48853.5(g).* For additional considerations, see the Educational Rights and School Stability fact sheet.

- **Special Education Local Plan Area (SELPA)**: An organization of one or more LEAs into an overarching body to disburse and utilize special education funding to meet the needs of children attending schools that are members of the SELPA—including, but not limited to, staff training and specialized programs. *EC 56195.1.*

fact sheet number one

# Educational Rights and School Stability

## California Foster Youth Education Task Force

Seventh Edition, June 2019

## INTRODUCTION

It is the intent of the Legislature to ensure that students in foster care have a meaningful opportunity to meet the challenging academic achievement standards to which all students in the state are held. Educators, social workers, probation officers, caretakers, advocates, and juvenile courts must work together to serve the educational needs of students in foster care. *EC 48850.*

## GUIDING PRINCIPLES

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 are made by the Educational Rights Holder in consultation with other parties, must be based on the child's best interests and must 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)(6), 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.* Without parental consent or a court order, 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 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 so long as the information is directly related to the assistance provided by that individual or entity. *20 USC 1232g(b)(1)(L); EC 49076(a)(1)(N).*

Foster parents and relative caregivers, regardless of whether they hold educational rights for a foster youth, have the right to access the foster youth's current or most recent records of grades, transcripts, attendance records, online school portals, IEPs, and 504 plans. *EC 49069.3(a).*

## FOSTER YOUTH SERVICES COORDINATING PROGRAMS

Foster Youth Services Coordinating (FYSC) Programs is a program of the California Department of Education (CDE) administered by county offices of education. The program helps to improve children's educational performance and personal achievement. FYSC Programs have the flexibility to design services to meet a wide range of needs of foster youth. Commencing with the 2015-16 fiscal year, under AB 854, the FYSC Programs coordinate and ensure that local educational agencies within its jurisdiction are providing services to foster youth students pursuant to a foster youth services coordinating plan with the purpose of ensuring positive educational outcomes.

FYSC Programs provide support services to foster children who suffer the traumatic effects of displacement from family and schools and multiple placements in foster care. FYSC Programs have the ability and authority to ensure that health and school records are obtained to establish appropriate placements and coordinate instruction, counseling, tutoring, mentoring, vocational training, emancipation services, training for independent living, and other related services. FYSC Programs increase the stability of placements for foster children and youth. These services are designed to improve the children's educational performance and personal achievement, directly benefiting them as well as providing long-range cost savings to the state.

See http://www.cde.ca.gov/ls/pf/fy/ for a list of counties with FYSC Programs.

## SCHOOL STABILITY

Students in foster care may attend programs operated by the local educational agency (LEA) of the licensed children's institution or foster family home in which the foster youth is placed, or the foster child may continue in their school of origin for the duration of the jurisdiction of the court unless one of the following applies: (1) The student has an individualized education program (IEP) requiring placement in a nonpublic, nonsectarian school or agency, or in another LEA; or (2) The parent or guardian or other person holding the right to make educational decisions (Educational Rights Holder or ERH) for the student determines that it is in the best interest of the student to be placed in another educational program, in which case the ERH shall provide a written statement that the ERH has made that determination. *EC 48853(a), 48853.5(f).*

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(c).*

- **School of Origin**

A foster child's "school of origin" is (1) the school in which the child was last enrolled, (2) the school the child attended when permanently housed (i.e., prior to removal from the home), or (3) any other school the child attended within the immediately preceding 15 months to which the child feels connected. *EC 48853.5(g).* If a foster child's residence changes, the LEA must let the child remain in their school of origin for as long as the court has jurisdiction over the child's placement. *EC 48853.5(f).*

# Educational Rights and School Stability (continued)

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(f)(2)-(3)*.

When transitioning between grade levels, the child has the right to continue in their school district of origin in the same attendance area, or if transitioning to a middle or high school, and the school designated for matriculation is another school district, to the school designated for matriculation in that school district. *EC 48853.5(f)(4).*

A foster child who remains in their school of origin satisfies the residency requirements for attendance in that school district. *EC 48204(a)(2)*. LEAs and placing agencies must work together to develop a plan that ensures that foster children attend the school of origin as the default, and that the child should remain in the school of origin following a change of placement unless the ERH, in consultation with the other parties in court and the school districts, determines it is in their best interest to change schools. *20 USC 6311(g).*

- **Transportation**

If the child remains in their school of origin, transportation may be needed between the child's foster care placement and school. A school district is not required to but may, at its own discretion, provide transportation services. *EC 48853.5(f)(5)*.

Under the Every Student Succeeds Act (ESSA) of 2015, LEAs must collaborate with child welfare to develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of their time in foster care. The transportation procedures must (1) ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with section 675(4)(A) of title 42; and (2) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the local educational agency will provide transportation to the school of origin under certain conditions. *20 USC 6312(c).*

The LEAs and placing agencies are encouraged to collaborate to ensure maximum use of available federal moneys, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability. *EC 48853.5(f)(10)*.

In many cases, the caregiver may be able to provide transportation, in which case the placing agency can reimburse them for reasonable costs. *42 USC 675(4)(A)*. The California Department of Social Services' All County Letter No. 11-51 explains how to calculate the reimbursement.

For foster youth with an individualized education program (IEP) and for whom their IEP team has determined that transportation is a necessary related service for the youth to benefit from their IEP, the LEA must provide transportation as part of its responsibility to provide a free appropriate public education (FAPE), with consideration of location, placement, and the needs of the youth. *EC 56040; EC 41850(b)(5).*

- **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(d)*. The child's case plan must include specific information about their educational stability and assurances that the placing agency has taken steps to ensure such stability. *WIC 16010(a), 16501.1(d), (e) and (g).*

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 LEA and the receiving Special Education Local Plan Area (SELPA) at least 10 days in advance. *CRC 5.651(e)(1)(B).*

If the child's attorney or Educational Rights Holder requests a hearing on the proposed change, the social worker or probation officer must provide a report on the proposed change including whether a dispute exists, how the proposed change serves the best interest of the child, and the responses of all interested parties within 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 their current school. *CRC 5.651(e)(2)-(4).*

LEAs and placing agencies must work together to ensure foster children attend the school of origin as the default following a change of placement unless the Educational Rights

Holder, in consultation with the other parties in court and the school districts, determines it is in their best interest to change schools. *20 USC 6312(c)(5)(B)* and *EC 48853.5(f).*

- **Role of the Court**

At any hearing that follows a decision to change a foster child's initial placement or any subsequent change of placement that could lead to a removal from the school of origin, the court must determine whether the placing agency made the appropriate notifications, including:

- The social worker notified the court, the child's attorney and the educational rights holder, no more than one court day after making the placement decision, of the proposed placement decision. *CRC 5.651(e)(1)(A).*

- If the child had a disability and an active individualized education program before removal, the social worker, at least 10 days before the change of placement, notified in writing the local educational agency that provided a special education program for the child before removal and the receiving Special Education Local Plan Area (SELPA). *CRC 5.651(e)(1)(B).*

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. *CRC 5.651(e)(2)(A).* 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).*

If there is a hearing request, the social worker or probation officer must provide a report on the proposed change including whether a dispute exists, how the proposed change serves the best interest of the child, and the responses of all interested parties within 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 their 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, including joining parties such as the LEA to ensure transportation is appropriately and timely provided. *CRC 5.651(f)*.

- **Role of the LEA**

"Local Educational Agency" (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 Special Education Local Plan Area (SELPA), or a SELPA. *EC 48859(c) and 56026.3.* SELPAs are consortia of educational agencies formed to serve the special education needs of children attending schools that are members of the SELPA.

Each local educational agency shall designate a staff person as the educational liaison for foster children. *EC 48853.5(c).* The educational liaison is responsible for the following: (1) ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children; and (2) assist foster children when transferring from one school to another school or from one school district to another school district to ensure proper transfer of credits, records, and grades. *EC 48853.5(c).*

If the local child welfare agency appoints a "Point of Contact" (POC), then the LEA must also appoint a POC to facilitate communication. *20 USC 6312(c).* This could potentially be the same person as the educational liaison.

The role of the educational liaison is advisory with respect to placement decisions and determination of the school of origin. *EC 48853.5(e).* The educational liaison, in consultation with, and with the agreement of, the foster child and the foster child's ERH, may recommend, in accordance with the foster child's best interest, that the foster child's right to attend the school of origin be waived and the foster child be enrolled in a public school in the attendance area in which the foster child resides if the educational liaison first provides the foster child and the foster child's ERH with a written explanation stating the basis for the recommendation and how the recommendation serves the foster child's best interests. *EC 48853.5(f)(6)-(7).*

If a dispute arises regarding the request of a foster child to remain in the school of origin, the foster child has the right to remain in the school of origin pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process, such as a uniform complaint, available to a student served by the local educational agency. *EC 48853.5(f)(9).*

To facilitate communication between school districts and foster children's attorneys, the attorneys (or their law firm or organization) should 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)*.

***For more information about Educational Rights Holders (ERH), see the Educational Decision-Making for Foster Youth Fact Sheet.***

## LOCAL PUBLIC SCHOOL

Foster youth have the right to be educated in the least restrictive educational setting, which often means their local comprehensive school. Foster youth cannot be forced to attend a continuation school or other alternative education setting, even if they are credit deficient or have poor grades or behavior problems. A youth's Educational Rights Holder can decide that is in the youth's best interest and choose to place them there. *EC 48850(a)(1), 48853(h); WIC 726(c)(2).* (For exceptions to this rule, see the School Discipline Fact Sheet.)

- **Immediate Enrollment**

If the educational rights holder, foster child, and educational liaison agree that it is in the best interest of the foster child to transfer to a school other than the school of origin, the foster child shall immediately be enrolled in the new school. *EC 48853.5(f)(8)(A).*

A student shall not be denied enrollment or readmission to a public school solely on the basis that the student 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)*.

- **Fees or Items Owed**

The new school shall immediately enroll the foster child even if the foster child has outstanding fees, fines, textbooks, or other items or moneys due to the school last attended or is unable to produce clothing or records normally required for enrollment, such

# Educational Rights and School Stability (continued)

as previous academic records, medical records, including but not limited to records or other proof of immunization history, proof of residency, other documentation, or school uniforms. *EC 48853.5(f)(8)(B).*

A student shall not owe or be billed for a debt owed to a school or district. If a student owes debt to a school or district, the school or district shall not take negative action against a student, such as withholding grades, transcripts, or a diploma. This provision applies to foster youth even if they have willfully damaged or refused to return property. *EC 49014.*

- **Timely Transfer of Records**

Within two business days after the foster child's request for enrollment, the educational liaison for the new school shall contact the school last attended by the foster child to obtain all academic and other records. *EC 48853.5(f)(8)(C).* Within two business days after receiving a transfer request from a county placing agency or notification of enrollment from the new local educational agency, the current LEA shall transfer the student out of school and deliver the educational information and records of the student to the next educational placement. *EC 49069.5(d).* The last school attended by the foster child shall provide all required records to the new school regardless of any outstanding fees, fines, textbooks, or other items or moneys owed to the school last attended. *EC 48853.5(f)(8)(C).* This applies to foster youth even if they have willfully damaged or refused to return property. *EC 49014(g).*

As part of the transfer process, the current LEA shall compile the complete educational record of the student, including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and, if applicable, a copy of the foster child's 504 plan or individualized education program. *EC 49069.5(e).* The current LEA shall ensure that, if the foster chid is absent from school due to a change of placement, the grades and credits of the student will be calculated as of the date the student left school and no lowering of grades will occur as a result of the absence of the student under these circumstances. *EC 49069.5(g).*

### Grade and Credit Protections

LEAs (including charter schools) 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 partial credit has been awarded in a particular course, the child must be enrolled in the same or equivalent course at their new school, so that they 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 their graduation from high school. Notwithstanding the above, a foster child may not be prevented from retaking a course they need to meet the admission requirements for California State University or the University of California. *EC 51225.2.*

A child's grades may not be lowered due to absences caused by a change in placement, verified court appearance, or related court-ordered activity. *EC 49069.5(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, the child immediately is deemed to meet all residency requirements for participation in interscholastic sports and other extracurricular activities. *EC 48850(a).*

## UNIFORM COMPLAINT

If a right under Education Code Section 48853.5 is denied, anyone (including a youth, educational rights holder, social worker/probation officer, caregiver, or legal representative) may file a written complaint with the school district or charter school under the Uniform Complaint Procedures Act. *EC 48853.5(i)(1); 5 CCR 4630.* When a complaint is filed, the district must investigate and provide a written response, including a proposed resolution, within 60 days. *5 CCR 4631.*

If the person who filed the complaint is not satisfied, they may then file a complaint with the California Department of Education (CDE). The CDE will then have 60 days to investigate and provide a written response. *EC 48853.5(i)(2).*

If a school district finds merit in a complaint or the State Superintendent finds merit in an appeal, the school district shall provide a remedy to the affected student. *EC 48853.5(i)(3).*

fact sheet number two

# Educational Decision-Making for Foster Youth

## California Foster Youth Education Task Force

Seventh Edition, June 2019

## INTRODUCTION

Parents generally have the right to make educational and developmental services decisions for their children unless their child is in a legal guardianship, their child has been freed for adoption (parental rights have been terminated), or the juvenile court has limited their educational rights.
*WIC 319(j), 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 them eligible for special education until the adult who holds educational rights signs a proposed assessment plan. *20 USC 1414(a); EC 56506.*

- **Individualized Education Program (IEP)**

A student's IEP cannot be implemented without the approval and signature of the adult who holds educational rights. *20 USC 1414(a); 34 CFR 300.300; EC 56346*.

- **School Placement**

The best interest determination cannot be made for a child without the educational rights holder. A child's educational rights holder may determine it is in the child's best interest to attend an educational program other than one operated by the local educational agency. *EC 48853(a)(3)*.

## 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 for every child, including for children ages 0-5. *CRC 5.649 and 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(j), 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(j), 361(a), 366(a)(1)(C), 726(b)-(c); see also CRC 5.650, 5.534(f).* The California Rules of Court refer to this person as an "Educational Rights Holder" (ERH). *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 ERH. *WIC 319(j)(2), 361(a)(4), 726(c)(1); CRC 5.650(c)(1)*.

The educational rights holder has all of the educational decision-making rights normally held by a parent or guardian. *See CRC 5.650(e)-(f) for a list of rights and responsibilities.* The ERH 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(j); 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, 778*. 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 or probate courts 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(a)(3).*

- **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)(4), 726(c)(1); GC 7579.5-7579.6; CRC 5.650(a)(2)(A)(i), (d); see also WIC 319(j)(3), (5)*. 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)*.

# Educational Decision-Making for Foster Youth (continued)

When a surrogate parent is appointed, resigns, or a local educational agency terminates the appointment, replaces, or appoints another surrogate parent, 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)*.

A surrogate parent may represent an individual with exceptional needs in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in other matters relating to the provision of a free appropriate public education to the individual. *EC 56050(b).* Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services. *EC 56050(b).*

- **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(j)(3), 361(a)(4); CRC 5.650(a)(2).* Please refer to the section below regarding who cannot be appointed as an Educational Decision-Maker.

## FOSTER PARENTS

If the juvenile court has limited the right of the parent or guardian to make educational decisions on behalf of a youth aged 16 or older and the youth has been placed in a planned permanent living arrangement (described in WIC 16501(i)(2)), Education Code section 56055 authorizes a foster parent to exercise parental rights for the duration of the parent/foster child relationship in matters relating to identification, assessment, instructional planning and development, educational placement, IEP development, and all other matters relating to the provision of a free appropriate public education for the foster child. Section 56055 authorizes the foster parent to consent in writing to the IEP, including nonemergency medical services, mental health treatment services, and occupational or physical therapy. It is encouraged that court form JV-535 be used in these cases to ensure coordination of services and case planning.

## WHO CANNOT BE EDUCATIONAL DECISION-MAKER

- **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" the person's 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 they receive 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)*. Therefore, the social worker, probation officer, or group home staff serving the student may not be appointed.

- **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)(6), 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 the youth holds their own educational rights (e.g., see *EC 49061(a), 56041.5*), unless the youth chooses not to make their 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 youth is 16 years of age or older and 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(f)(2), 5.650(a)(1), (b), (e)(1).*

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

# Educational Decision-Making for Foster Youth (continued)

## 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 non-minor dependents with developmental disabilities, as established by SB 368 (2011). *See WIC 319(j), 361(a), 726(b)-(c); CRC 5.502(13), 5.534(f), 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: http://www.dds.ca.gov/RC/Home.cfm for more information.

fact sheet number three

# Early Care and Education

## California Foster Youth Education Task Force

Seventh Edition, June 2019

## EARLY CARE AND EDUCATION PROGRAMS AND SERVICES

Early education is recognized as a key to children's later education success and a stabilizing force for families. In California, Early Care and Education (ECE) is provided by a patchwork of public, private non-profit, and private for-profit ECE service providers. The majority of public subsidized child care and development services are administered by the California Department of Education's Early Learning and Support Division through contracts with public and private agencies and the Department of Developmental Services Early Start Program.

Eligibility for subsidized services is based primarily on a family's income and need for care, with more specific individual criteria for certain programs. Children at risk of abuse and neglect or children receiving protective services through the county welfare department remain a top priority for receiving services. Under *EC 8263(b)*, the first priority for federal and state subsidized child development services are given to neglected or abused children who are recipients of child protective services or children who are at risk of being neglected or abused, upon written referral from a legal, medical, or social services agency. *EC 8263(b); 5 CCR 18106.*

Consequently, many programs streamline enrollment for children receiving child welfare services by waiving income requirements and making them automatically eligible. Families seeking subsidized child care and development services need to contact agencies of their choice directly to request information about the agency's individual program and, if applicable, to be placed on their waiting list. Families may contact a Child Care Resource and Referral Agency for assistance finding child care at http://www.cde.ca.gov/sp/cd/re/rragencylist.asp or http://www.rrnetwork.org.

### Early Education Options May Include the Following:

- **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 3. It also serves pregnant women with low incomes. Head Start provides part-day preschool programs for children ages 3 to 4, 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. To receive funding, all new Head Start programs must have a plan to meet the needs of children in foster care, including transportation. *42 USC 9831, 9840a. 45 CFR 1302.20-1302.24, 1305.2.*

- **State Preschool Programs**

State preschool programs offer both part-day and full-day services that provide a core class curriculum that is developmentally, culturally, and linguistically appropriate for the children served. The program also provides meals and snacks to children, parent education, referrals to health and social services for families, and staff development opportunities to employees. The program is administered through local educational agencies, colleges, community-action agencies, and private nonprofit agencies.

- **Alternative Payment Programs**

Alternative payment programs (APPs), funded with state and federal funds, offer an array of child care arrangements for parents, such as in-home care, family child care, and center-based care. The APP helps families arrange child care services and makes payment for those services directly to the child care provider selected by the family. The APP is intended to increase parental choice and accommodate the individual needs of the family.

- **Emergency Child Care Bridge Program for Foster Children and Parenting Foster Youth (Bridge Program)**

Adopted in 2017, the Bridge Program helps foster families and parenting foster youth access high-quality child care for foster children by providing (1) an emergency, time-limited voucher to help them pay for child care for up to 6 months, with an extension to 12 months, as needed; (2) child care navigation support, with navigators helping them to immediately access child care and then working continuously with them to transition or stabilize the children in long-term, high-quality child care; and (3) training for the child care workforce in trauma-responsive best practices to better meet the unique needs of abused and neglected children. *EC 8212(a)(5); WIC 11461.6.*

## EARLY INTERVENTION SERVICES ACT – PART C OF IDEA

To be eligible for federal funding for early intervention programs under the Individuals with Disabilities Education Act (IDEA, reauthorized under the Individuals with Disabilities Education Improvement Act of 2004), states must ensure that appropriate early intervention services are available to all infants and toddlers with developmental delays or at risk of developing such delays who are in foster care or in the custody of a child welfare agency. *34 CFR 303.1, et. seq.*

In addition, states receiving funding under *CAPTA: Child Abuse and Prevention Treatment Act* must establish procedures to refer every child under the age of 3 who has been involved in a substantiated case of abuse or neglect to early intervention services funded under Part C of the IDEA. *42 USC 5106a.*

# Early Care and Education (continued)

## 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 developmental delays or at risk of developing such delays and their families are provided with early intervention services in a coordinated, family-centered system that is available statewide through the state's 21 regional centers. Regional centers are non-profit organizations that contract with the Department of Developmental Services to provide services under Part C of the IDEA. *GC 95000 et seq.*

## Early Start Eligibility

The Early Start program serves children under the age of 3 years old. To be eligible for services, the regional center must conduct a developmental evaluation to determine eligibility in five developmental domains including cognition, physical/motor, communication, social/emotional, and adaptive behavior, and conduct comprehensive multidisciplinary assessments to determine the need for services (e.g., speech and language assessment, occupational therapy assessment, physical therapy assessment). The evaluation and assessment(s) are also used to establish baselines from which to draft "outcomes" (i.e., goals) in an eligible child's Individualized Family Service Plan (IFSP). Children can be eligible for services under the following categories (*GC 95014, 95020)*:

## Category 1: Developmental Delay

Children qualify for Early Start if they have a developmental delay in one or more of the following 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% in one or more developmental areas. *GC 95014(a)(1).*

## Category 2: Established Risk

Children may be eligible for Early Start services if they have a condition diagnosed by a qualified individual that has a high probability of resulting in developmental delay. *GC 95014(a)(2).*

## Category 3: High Risk

Children are also eligible for Early Start services if they are at high risk of having substantial developmental disabilities due to biomedical risk factors, such as significant prematurity or prenatal substance exposure. *GC 95014(a)(3).*

## Responsibility for Services

Infants and toddlers who have only hearing, vision, or severe orthopedic impairments (or a combination of these) are served by local school districts through coordination with the Special Education Local Plan Area (SELPA). All other children qualifying for Early Start will receive services through one of California's regional centers. All children and families receiving Early Start services will be assigned a service coordinator approved by the Department of Developmental Services to coordinate the services provided. *GC 95014(b) and 17 CCR 52120.*

## Early Start Referrals

After receiving a referral to Early Start, the regional center has 45 days to complete an evaluation and assessments, hold a meeting to determine eligibility, and develop an Individualized Family Service Plan (IFSP). *GC 95020; 17 CCR 52086.*

## The Individualized Family Service Plan

The family, service coordinator, and service providers must meet at least every six months, 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 the child;
3. A statement of the major outcomes expected to be achieved for the infant or toddler and family;
4. The details of the services to be provided—who will provide them, where, how often, etc.;
5. The services to be provided including the duration, location, and frequency of services to be provided (e.g., 1 hour per week of speech and language therapy provided in home), and the agency responsible for providing the identified services;
6. The name of the child and family's service coordinator;
7. The steps that will be taken to ensure the child and family receive appropriate services once the child reaches the age of 3; and
8. The projected dates for the initiation of services provided and the anticipated duration of those services. *GC 95020(d).*

# Early Care and Education (continued)

### Transition Requirements

A plan for a smooth and effective transition between early education services and the services the child will receive after their 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 CFR 303.209.*

### Due Process Procedures

If a child's educational rights holder (ERH) disagrees with the services offered by the IFSP, or if the local educational agency or regional center refuses to evaluate or offer services to a child, the ERH can file for a due process hearing with the Office of Administrative Hearings. OAH Complaints should be filed at: Office of Administrative Hearings, Attention: Early Start Intervention Section, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833; phone (800) 515-2229, fax (916) 376-6318.

If anyone believes that the agency responsible for providing services written in the child's IFSP is not meeting its obligations, they can file a complaint with the Department of Developmental Services. DDS 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.

All complaints and due process hearing requests should include:

1. The name, address, and phone number of the person filing the complaint;
2. A statement that the regional center or 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;
3. A statement of facts upon which the violation is based;
4. The party responsible; and
5. 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.*

An administrative law judge will hear both sides and make a decision within 30 days of the complaint being filed. *17 CCR 52174.*

### Regional Center Transfers

When a foster child changes home placements, their social worker must immediately send a Notice of Relocation to the child's sending regional center (the regional center where the child received services before they changed homes). The Notice of Relocation must include the child's name, date of birth, new address, caregiver and ERH names and contact information, and court of jurisdiction.

Upon receiving a Notice of Relocation, the sending regional center must immediately send to the receiving regional center (the regional center that will serve the child in their new home) a Notice of Transfer and all records needed to provide services for the child in the new placement, including assessments. The Notice of Transfer must include the same information as the Notice of Relocation, plus a copy of the current IFSP and the contact information of the child's social worker.

The sending regional center is responsible for funding services for the child in their new placement until the receiving regional center has effectively assumed responsibility over the case. Throughout the entire transfer process, services must be provided to the child with no breaks or delays. To aid in this, the receiving regional center must provide information about available service providers to the sending regional center within 14 days of receiving the Notice of Transfer.

A receiving regional center has effectively assumed responsibility when all the following occurs: (1) a new service coordinator has been assigned to the child's case; (2) the IFSP from the sending regional center is adopted or, if changes to the sending regional center's IFSP are necessary to meet the child's needs or services are not available in the new location, a new or revised IFSP has been developed within 30 days of the Notice of Transfer; and (3) the child is receiving the services and supports in the adopted, new, or revised IFSP.

If the child has been found eligible for Early Intervention by the sending regional center but does not yet have an IFSP, the receiving regional center must also consider the child eligible and must develop an initial IFSP within 30 days of the Notice of Transfer.

If all services in the child's IFSP have not started in their new location within 30 days of the Notice of Transfer, the sending regional center must report in writing to the court, social worker, and the child's ERH, regardless of which regional center is at fault. The report must state what services are being provided to the child and the steps being undertaken to secure any services identified in the child's IFSP but not yet provided. The sending regional center must continue reporting at 30-day intervals until all services in the child's IFSP have started. *17 CCR 52111; WIC 4643.5*; Department of Developmental Services, Inter-Regional Center Transfer Guidelines, Dec. 8, 1998.

## PRESCHOOL SERVICES FOR CHILDREN WITH DISABILITIES

All school districts are required to provide special education services for children with disabilities between the ages of 3 and 5 years old. *EC 56001(b) and 56440(c).* These services are documented in an Individualized Education Program.

### Eligibility

To be eligible for preschool special education services under IDEA Part B, a child must meet one of the 13 special education eligibility criteria. 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 is not eligible for special education and services if the child does not otherwise meet the eligibility criteria and their educational needs are primarily due to:

1. Unfamiliarity with the English language;
2. Temporary physical disabilities;
3. Social maladjustment; or
4. Environmental, cultural, or economic factors.

*EC 56441.11(b)-(c).*

### Transition Services

Prior to transitioning a child receiving preschool special education services to grade

# Early Care and Education (continued)

school (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. *EC 56445(a).*

***For more special education information, please refer to the Special Education Fact Sheet.***

fact sheet number four

# Special Education

## California Foster Youth Education Task Force

Seventh Edition, June 2019

## INTRODUCTION

Children in foster care have the same rights as all other students in regards to special education. Individuals with exceptional needs have a right to a free appropriate public education (FAPE) in the least restrictive environment (LRE).

## WHAT IS SPECIAL EDUCATION?

Special education is specially designed instruction and related services to meet the unique educational needs of children with disabilities. *EC 56031.* Special education includes instruction conducted in the classroom, in the home, in hospitals and institutions, and other settings, and instruction in physical education. *EC 56031(a)*. Special education also includes related services, such as the following:

- Speech-language pathology services
- Audiological services
- Orientation and mobility services
- Adapted physical education
- Physical and occupational therapy
- Vision services
- Specialized driver training instruction
- Counseling and guidance services, including rehabilitation
- Psychological services
- Parent counseling and training
- Health and nursing services
- Social worker services
- Specifically designed vocational education and career development
- Recreation services
- Specialized services for low-incidence disabilities
- Interpreting services

*EC 56363.*

The school district in which a student resides is generally the local educational agency (LEA) responsible for providing special education services, unless a child's Educational Rights Holder (ERH) determines they will remain in their school of origin, in which case the district of origin is responsible for providing special education services. *EC 48200; 56026.3*. Other LEAs responsible for providing special education may include:

- The Special Education Local Plan Area (SELPA) that serves the geographic area where the foster youth has been placed in a licensed children's institution or foster family home. *EC 56156.4.*
- The county office of education if the area is not served by a SELPA. *EC 56156.4.*
- Charter school. *EC 47641*.
- When a foster youth continues to attend their school of origin but is placed in a licensed children's institution or foster family home located in another school district, the school of origin is responsible for the daily provision of services, but the school district in which the foster youth currently resides has responsibility for the provision of FAPE.
- When a foster youth remains *enrolled* in their school of origin but is *attending* a nonpublic school (NPS) pursuant to their IEP, and their placement is located outside of the district of the school of origin, the NPS is responsible for the daily provision of services, and the school district of residence has responsibility for the provision of FAPE. The student will return to the school of origin, however, when a less restrictive environment becomes appropriate.

## FEDERAL AND CALIFORNIA LAW

**Individuals with Disabilities Education Act (IDEA):** The Individuals with Disabilities Education Act (IDEA, reauthorized under the Individuals with Disabilities Education Improvement Act of 2004) is the primary federal program that authorizes state and local aid for special education and related services for children with disabilities. *20 USC 1400 et seq.* The IDEA 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*.

**California Law:** California special education statutes, including the Education Code, Government Code, and Welfare and Institutions Code are aligned with the IDEA. *EC 56000*.

## PARENT/EDUCATIONAL RIGHTS HOLDER

**Parent:** For purposes of special education, a "parent" means any of the following:

- A biological or adoptive parent of a child
- A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by a court order, and the youth is 16 years of age or older and is placed in a planned permanent living arrangement
- A guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with *WIC 361* and *726*
- A surrogate parent who has been appointed pursuant to *GC 7579.5* or *7579.6*
- A specific person(s) identified by a judicial decree or order identified to make educational decisions on behalf of the child (also called an Educational Rights Holder or ERH). *EC 56028.*

***See Fact Sheet on Educational Decision-Making for Foster Youth for more information.***

## IDENTIFICATION AND ASSESSMENT

**Child Find:** LEAs have a duty to actively and systematically identify, locate, and assess individuals with exceptional needs who may be entitled to special education services. *20 USC 1412(a)(3); EC 56301(a)-(c), 34 CFR 300.111.*

### Assessment

Referral for an assessment for special education starts the process. A referral may be made by anyone, including an individual's parent or guardian, teacher or other service provider, social worker/probation officer, or foster parent, consistent with the limitations contained in federal law. *EC 56029*.

# Special Education (continued)

When a verbal referral is made, staff of the LEA shall offer assistance to the individual making a verbal request to ensure the request will be received in writing. *5 CCR 3021.* All referrals to school staff shall be written and include (1) a brief reason for the referral and (2) documentation of the resources of the regular education program that have been considered, modified, and when appropriate, the results of intervention. This documentation shall not delay the timelines for completing the assessment plan or assessment. *5 CCR 3021.*

In response to the request for an assessment, the LEA may provide: (1) a written refusal to assess or (2) an assessment plan. *EC 56321 and 56500.4.* If an assessment is to be conducted, the parent/ERH shall be given an assessment plan within 15 calendar days of the referral for assessment, not counting days between the student's regular school sessions or terms or days of school vacation in excess of 5 schooldays from the date of receipt of the referral, unless the parent agrees in writing to an extension. *EC 56321*. If the child demonstrates any evidence that they have a disability (e.g., mental health diagnosis or failing grades), an LEA likely cannot refuse to conduct the assessment because they will meet the legal standard of a "suspected disability," which is the low threshold required to qualify for an assessment.
Generally, a child cannot be assessed without written consent of a parent/ERH. Exceptions may apply if:

- A child is a ward of the court (in limited circumstances) *20 USC 1414(a)(1)(D)*; or
- The district prevails at a due process hearing. *EC 56321, 56381(f), 56506.*

The parent/ERH has 15 calendar days to provide written consent to the proposed assessment. *EC 56321(c), 56043(b).*

The initial Individualized Education Program (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 more than 5 days. *EC 56344(a), 56043(c).*

When a child with a disability transfers from one district to another in the same academic year, the districts must work together to complete the assessments within the 60-day timeline, unless the ERH agrees in writing to give them more time. *20 USC 1414(b)(3)(D); EC 56320(i).*

A parent/ERH has the right to obtain, at public expense, an independent educational evaluation (IEE) of the child from qualified specialists if the parent disagrees with the assessment conducted by the school district. *EC 56329(b).*

### Eligibility for Special Education Services

Two conditions must be met:

1. The child has an impairment adversely affecting educational performance that requires special education.
2. The impairment fits into one of the qualifying categories of disabilities:
    - Intellectual Disabilities;
    - Hearing Impairment;
    - Deafness;
    - Speech or Language Impairment;
    - Visual Impairment (including blindness);
    - Deaf-Blind;
    - Emotional Disturbance;
    - Orthopedic Impairment;
    - Autism;
    - Traumatic Brain Injury;
    - Other Health Impairment;
    - Specific Learning Disability; or
    - Multiple Disabilities.

*20 USC 1401(3); EC 56026.*

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

*Age*: Students may be eligible for special education from birth to age 22. Regional centers are required to provide special education/early intervention services from birth to age 3 (see Early Care and Education Fact Sheet). School districts are required to provide special education services for eligible students ages 3 to 22, or when the student receives their diploma, whichever comes first. Generally a student must be found eligible for special education prior to their 19th birthday. *EC 56026*.

## THE IEP MEETING

### Individualized Education Program (IEP)

An IEP is a written document for each individual with exceptional needs that describes the student's present levels of performance, learning goals, school placement, and services. *EC 56032, 56345, and CFR 300.320*. The IEP is developed, reviewed, and revised by the "IEP team" during "IEP meetings." The IEP document is a contract that guarantees what services a student is required to receive.

When the student reaches age 16, the IEP shall address postsecondary goals and transition services. *EC 56341.5(e), 56043(g)(1), 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, and employment. *EC 56345.2.*

***Who Attends?*** The IEP Team consists of one or both parents/ERH, at least one regular education teacher of the student, at least one special education teacher of the student, a school district representative who is designated to grant or refuse any request made by the ERH, an individual who can interpret the assessment, other individuals with expertise or knowledge about the student's needs invited at the discretion of the LEA or ERH (e.g., social worker), and when appropriate, the student. *20 USC 1414(d)(1)(b); 34 CFR 300.321; EC 56341.*

# Special Education (continued)

***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 related services, and behavioral plans, where necessary. *20 USC 1414(d); EC 56345; 5 CCR 3040(b).*

The LEA shall schedule the IEP meeting at a mutually agreed-upon time and place for district participants and the parent/ERH. *EC 56341.5(c).* If the parent/ERH cannot attend the IEP meeting, with their consent the school district shall accommodate the parent/ERH's participation with other methods, such as a conference telephone call. *EC 56341.5(g).*

A parent/ERH 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/ERH has a right to request an interpreter to ensure that they understand the IEP team discussion. *EC 56341.5(i).*

***To Agree or Disagree?*** If the parent/ERH needs time to think over or disagrees with part of an IEP plan, they do not have to sign the document at the IEP meeting. Parents have the right to withhold consent to the IEP document in part or in its entirety. Any part of the IEP document to which the parent/ERH does not consent cannot be implemented, and may become the basis for a due process fair hearing or other dispute resolution option (e.g., LAUSD offers an Informal Dispute Resolution process). Any part of the IEP that is agreed to should be clearly written on the document. The child's ERH must sign the IEP document before any services can begin. *20 USC 1415; EC 56346.*

### Timelines

A student's IEP must be reviewed at least once annually, or more frequently upon request by the ERH or school. *20 USC 1414(d)(4); EC 56341.1, 56343, 56043.* If a parent requests an IEP meeting outside of the annual review, the school district has 30 days to hold the IEP meeting. *EC 56343.5.*

When a student who has an IEP is transferred from district to district within the state, the new school district shall provide "comparable" services to the old 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/ERH's consent. *EC 56325.*

## PLACEMENT AND SERVICES

### Least Restrictive Environment

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, 56040.1.*

In California, to determine whether a placement represents the LRE for a particular student, the Ninth Circuit Court of Appeals stated a four-factor balancing test, in which the court considers: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student has on the teacher and children in the regular class; and (4) the costs of mainstreaming the student. *Sacramento City Unified Sch. Dist., Bd. of Educ. v. Rachel H. by & Through Holland, 14 F.3d 1398, 1404 (9th Cir. Cal. Jan. 24, 1994).*

### Continuum of Options

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

- Least restrictive placements include full inclusion and mainstreaming with specifically designed instruction and/or related support.
- More restrictive placements may include a specialized setting and related supports.
- Most restrictive placements may include a non-public day program, residential placement, a home hospital program, or services provided in a one-on-one structure.

### Nonpublic Schools

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 https://www.cde.ca.gov/sp/se/ds/.

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. Non-public schools are held to the same standards as public schools, including teacher credentials and access to standards-based curriculum, extracurricular activities, and support services. *EC 56366.10.* They are also held to a high accountability standard through regular reports and visits. *EC 56366, 56366.1.*

A student shall not be placed in a 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 which requires such placement as the LRE and the student's ERH must agree to this placement prior to placement in an NPS. *EC 56342.1, 56320.*

When a student is placed in a licensed children's institution (LCI) or Short-Term Residential Therapeutic Program (STRTP) 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, the on-grounds program is appropriate and can implement the student's IEP, and the ERH has consented to the placement through the IEP process. *2 CCR 60510(c)(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).*

# Special Education (continued)

An LCI or STRTP 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 LEA determines that appropriate public alternative educational programs are not available and the student's ERH agrees to NPS placement in the IEP process. An LCI or STRTP cannot refer a student to or place a student in a NPS. *EC 56366.9.*

An LCI or NPS 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. An LCI cannot hold educational rights for a youth because it would represent a conflict of interest. *EC 48854*.

## School-Based Mental Health Services (SBMH)

IDEA requires that schools provide the services necessary for a child to access and benefit from their education. School-based mental health services are provided to those students whose social and emotional functioning interferes with progress towards individual goals. In such cases, the IEP team may address the social and emotionally based needs by providing:

- Assessment of mental health needs, including interpretation of assessments and integration of information in service planning;
- Consultation with IEP team providers, student, family, and other staff to develop an appropriate program to serve the youth;
- Positive behavior intervention, including appropriate behavioral support;
- Assessment for and administration and management of medications; and
- Specialized placements such as Day Treatment, Nonpublic or Residential placement.

This list is not exhaustive. *34 CFR 300.34(a), (c)(2), (c)(8), (c)(10), (c)(14), 300.104; EC 56363(a), (b)(9), (b)(10), (b)(11), (b)(13).*

Counseling services are provided by qualified social workers, psychologists, school counselors, or other qualified personnel and may include therapeutic counseling when a student requires it. *34 CFR 300.34(c)(2)*.

Some schools call these services other names like "educationally related mental health services." Regardless of what a district calls SBMH, they should understand what is being asked for if requesting SBMH services for youth.

## Functional Behavioral Assessment (FBA)

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. *EC 56327; 34 CFR 300.324*.

## Basic Concepts

***Who Conducts the Functional Behavioral Assessment?*** Functional behavioral assessments should be conducted by trained and knowledgeable staff. *EC 56320(b), 56525.*

***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 their 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. *EC 56520 et seq.*

***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 ensure the individual's physical freedom, social interaction, and individual choice. *EC 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 their 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, so that the behavior does not recur. *20 USC 1415(k)(1)(D)(ii), 34 CFR 300.530*.
- When the student is removed from their placement for more than 10 consecutive school days (i.e., suspension or expulsion), whether or not the behavior is determined to be related to their 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).*

# Special Education (continued)

***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. The intervention shall not be used as a substitute for the systemic BIP that is designed to address the target behavior. *EC 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); or (3) force that exceeds that which is necessary under the circumstances. *EC 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; (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 an interim behavioral intervention plan; and (4) schedule an IEP meeting to consider BIP modification, if the student already has a BIP and the incident involves a previously unseen behavior or the previously designed plan is ineffective. *EC 56521.1.*

## PROCEDURAL RIGHTS / DISAGREEMENTS WITH SCHOOLS

### Compliance Complaint

A parent/ERH may file a compliance complaint with the California Department of Education when the parent/ERH feels that the school district has violated its duty under a student's IEP or special education laws. Anyone may file a compliance complaint (the individual does not have to hold educational rights for the child). *20 USC 1415(b)(6); 300.507(a); 5 CCR 4650; 5 CCR 4600; EC 56500.2.*

Alternative Dispute Resolution (ADR) is an informal method of settling disagreements that may arise in an IEP meeting or with the special education process in many districts. ADR provides specific options to support open communication, promote understanding, and reach agreements that support the student and strengthen relationships. ADR is designed to meet the interests of the parties involved that results in a mutually agreeable outcome, rather than a decision made solely by a third party, hearing officer, or judge.

### Due Process

A parent/ERH may file for a due process hearing if they are 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/ERH's approval.

The parent/ERH may file a written complaint with the Office of Administrative Hearings (OAH), Special Education Unit. After a complaint is filed, the school district has 10 days to provide a written response. *EC 56502*.

### Stay Put Provision

If the parent/ERH files for a due process hearing, the student must generally remain in their current placement with services listed in the last agreed upon IEP until the disagreement is resolved. This is known as "stay put." *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/ERH and a district representative who has authority to bind the school district to a resolution unless both parties agree to waive the resolution session. The school district cannot bring an attorney to the resolution session unless the parent/ERH 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. *EC 56501.5*.

### Mediation

After filing for due process, the parent/ERH 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 their current school placement. An attorney may represent any of the parties at the mediation. Mediation is voluntary. If the parent/ERH 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, EC 56501(b)(1)-(2); EC 56503.*

### Due Process Hearing

At least five days prior to the hearing, the parent/ERH 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. *EC 56505(e).*

The due process hearing should be conducted at a time and place reasonably convenient to the parent/ERH and the student. *EC 56505(b).*

An impartial hearing officer from OAH should conduct the hearing. *20 USC 1415(f)(3); 34 CFR 300.511(c); 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. *EC 56505.*

### 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/ERHs 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 or an increase in existing services.

# Special Education (continued)

- 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 general 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 but cannot be required. Once an assessment request is made, the school district must respond in writing within 15 calendar days*. EC 56321.*

***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, including learning. *34 CFR 104.3(j).* Examples of qualifying disabilities are asthma, allergies, diabetes, ADD, and 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. Students who 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.

fact sheet number five

# School Discipline

## California Foster Youth Education Task Force

Seventh Edition, June 2019

## 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).*

### School Attendance Review Boards

EC 48320 enhances the enforcement of compulsory education laws and diverts students with school attendance or behavior problems from the juvenile justice system until all available resources have been exhausted. EC Section 48321 provides several organizational structures for School Attendance Review Boards (SARBs) at the local and county level to create a safety net for students with persistent attendance or behavior problems. Although the goal of SARBs is to keep students in school and provide them with a meaningful educational experience, SARBs do have the power, when necessary, to refer students and their parents or guardians to court. http://www.cde.ca.gov/ls/ai/sb/.

### Prohibited Acts

The descriptions of prohibited acts appear in *EC 48900, 48900.2-48900.4, and 48900.7*. For example, prohibited acts include but are not limited to possession of a weapon, possession of drugs or alcohol, and fighting. 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).*

## 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 student'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. See *EC 48900.5(b)* for a full 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 them, and be given a chance to present their version and evidence in their 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 students 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 for Foster Youth 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 educational rights holder's failure to attend. *EC 48911(f).*

### Limits on Suspensions

Schools generally are required to try other means of correcting a student's behavior before imposing a suspension. However, a student can be suspended for a first offense 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 is no longer 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).*

# School Discipline (continued)

A student can also be suspended for a first offense for certain prohibited acts, such as:

- Caused or threatened physical injury to another person, or willfully used force or violence upon another person except in self-defense;
- Possessed, sold, or otherwise furnished a firearm, knife, explosive or other dangerous object;
- Unlawfully possessed, used, sold, or otherwise furnished or been under the influence of a controlled substance;
- Unlawfully offered, arranged, or negotiated to sell a controlled substance; or
- Committed or attempted to commit robbery or extortion.

*EC 48900.5(a), 48900(a)-(e).*

If a suspension is imposed, it should not, with few exceptions, exceed 5 consecutive school days or 20 days per school year. *EC 48911(a).*

### Exceptions

A student may be suspended up to 30 total days in a school year if they are enrolled in or transfer 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 their 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 or probation child, the school district also must invite the child's attorney and an appropriate representative of the county placing agency to this meeting. Any decision to extend a suspension in this way must be in writing. *EC 48911(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

### 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. 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 or probation 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 placing agency at least 10 calendar days before the date of the hearing. *EC 48918.1(a)(1).*
- For mandatory expulsion recommendations involving foster and probation students, the school district may—but is not required to—provide this notice to the student's attorney and county placing agency representative at least 10 calendar days before the date of the hearing. *EC 48918.1(a)(2).*
- 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 their 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

# School Discipline (continued)

suspension for the incident in question. *EC 48918(a), (j).*

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

## Necessary Findings

Generally, in order to expel a student, a 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(a)-(e), 48918.*

## 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/ERH 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 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. An expelled student 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 new 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 them to enroll in an educational program deemed appropriate by the school board to rehabilitate the student. *EC 48917(a), (c).* If the student violates any behavioral rules during the probationary period, the school board can revoke the suspension and expel the student under the terms of the original expulsion order. *EC 48917(d).*

If the student satisfactorily completes the rehabilitation program, they 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, they must do so within 30 days of the expulsion decision regardless of whether the expulsion order is suspended; otherwise, they lose the right to appeal. *EC 48917(f).*

# School Discipline (continued)

## INVOLUNTARY TRANSFERS

In some situations, a student may be transferred against the wishes of their educational rights holder 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. *EC 48432.5, 48662*.

### Involuntary Transfer to Continuation Schools

A school district may transfer a student who is at least 16 years old to its continuation school for certain prohibited acts or for habitual truancy or attendance problems. Prior to the transfer, the student and their educational rights holder are entitled to written notice and a hearing to discuss the reason(s) for the proposed transfer and to present and question relevant evidence and witnesses. None of the people involved in the final involuntary transfer decision shall be staff of the school where the student is enrolled. 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 their "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.*

### Voluntary Transfers to Continuation Schools

Different laws, policies, and procedures apply to voluntary, as opposed to involuntary, transfers to continuation schools, including the requirement that the decision to voluntarily transfer a student must be in their best educational interest as determined by their educational rights holder and that voluntary transfers not be used as an alternative to expulsion unless alternative means of correction have been attempted pursuant to *EC 48900.5* and *48432.3*.

### Transfer to Community Day Schools

A school district may transfer a student to its community day school if the student 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 or probation child's attorney and an appropriate representative of the county placing agency (see the Special Education 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(d)*. If so designated, the educational liaison shall provide notifications of the following:

- Pending expulsion proceedings if the decision to recommend expulsion is a discretionary act;
- Pending proceedings to extend a suspension until an expulsion decision is rendered if the decision to recommend expulsion is a discretionary act; and
- If the foster child is an individual with exceptional needs, pending manifestation determinations if the school district has proposed a change of placement due to an act for which the decision to recommend expulsion is at the discretion of the principal or the district superintendent. *EC 48853.5(d)*.

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*.

## STUDENTS WITH DISABILITIES

Protections in the IDEA apply to students who have been found eligible for special education and to students for whom the school is deemed to have knowledge that the child might have a disability (i.e., students who have not yet been found eligible but the school had knowledge of a disability, including students who have been referred for initial evaluation). *34 CFR 300.534*. If a request for a special education evaluation is made before the disciplinary period, the assessment must be completed, an IEP held, and a manifestation determination IEP held before further discipline can be instituted. 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).* 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).*

## 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 their procedural rights on the same day the decision is made. *20 USC 1415(k)(1)(H); 34 CFR 300.530(h).*

# School Discipline (continued)

## 10-DAY THRESHOLD

A student with a disability who violates a code of student conduct may be removed from their current educational placement to an appropriate "interim alternative educational setting," other setting, or may 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 or probation child (as defined in 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 placing agency to participate in the meeting. *EC 48915.5(d).*

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

## INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

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 the student's 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. Serious bodily injury has been interpreted in case law to require a very serious injury including maiming. Injuries that do not require hospitalization are often found to not meet this standard. *20 USC 1415(k)(1)(G); 34 CFR300.530(g); see 20 USC 1415(k)(7) (defining these violations); 34 CFR 300.530(i).*

## 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 their disability:

- A functional behavioral assessment (FBA) must be conducted, if one has not already been done. (See the Special Education 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 they were removed, unless the IEP team agrees to a change of placement as part of the BIP or the student 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 their 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 the student to participate in the general education curriculum and progress toward their IEP goals.
- The student must receive, as appropriate, an FBA and Behavior Intervention Services (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, which must be held within 20 school days of a request. The hearing officer can return the student to the placement from which they were 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.* 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).*

# School Discipline (continued)

## 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).*

fact sheet number six

# Foster Youth Graduation Exemption Requirements

## California Foster Youth Education Task Force

Seventh Edition, June 2019

## INTRODUCTION

The key to improving outcomes for youth in foster care and former juvenile court school pupils 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 students to complete additional coursework above minimum state requirements to graduate from high school. Foster youth who 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. Assembly Bills 167 (2009) and 216 (2013), codified in *EC 51225.1*, exempt students in foster care from local graduation requirements under certain conditions.

## EXEMPTION FROM LOCAL GRADUATION REQUIREMENTS

Notwithstanding any other law, a school district (and now charter schools) shall exempt a student in foster care or a former juvenile court school pupil who transfers between schools at any time after the completion of the student's second year of high school from all coursework and other requirements adopted by the governing board of the school district that are in addition to the statewide course requirements specified in *EC 51225.3*, unless the school district makes a finding that the student is reasonably able to complete the school district's graduation requirements in time to graduate from high school by the end of the student's fourth year of high school. *EC 51225.1*.

A student must satisfy each of the following eligibility requirements to graduate under the exemption:

1. The youth must be a student in foster care or a former juvenile court school pupil. It does not matter where they live.

   The youth must be removed from their 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 is in the third or fourth year of high school, the school district may use either the number of credits earned to the date of transfer or the total length of enrollment in high school, whichever will make the youth eligible for the exemption. *EC 51225.1(c).*

   Note: Schools, youth, educational 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 exemption from graduation requirements. *EC 51225.1(k)-(l).*

3. The youth must complete all California graduation requirements.

   California requires students 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. *EC 51224.5*.
   - 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, Foreign Language or Career Technical Education. American Sign Language qualifies as a foreign language.
   - Two courses in Physical Education, unless exempted.

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 student is reasonably able to complete the additional requirements in time to graduate from high school, then the youth must complete these additional requirements in order to graduate. *EC 51225.1.*

If the foster youth is exempted from local graduation requirements and completes the statewide coursework requirements before the end of their fourth year of high school and that student would otherwise be entitled to remain in attendance at the school, a school or school district shall not require or request that the student graduate before the end of their fourth year of high school. *EC 51225.1(e).*

If the foster youth is exempted from local graduation requirements, the school district shall notify the student and the ERH how any of the requirements that are waived will affect the student's ability to gain admission to a postsecondary educational institution and shall provide information about transfer opportunities through the California Community Colleges. *EC 51225.1.(f).*

# Foster Youth Graduation Exemption Requirements (continued)

A foster youth who is eligible for the exemption and would otherwise be entitled to remain in attendance at the school shall not be required to accept the exemption or be denied enrollment in, or the ability to complete, courses for which they are otherwise eligible, including courses necessary to attend an institution of higher education (*EC 51225.2(e)*), regardless of whether those courses are required for statewide graduation requirements. A youth's educational rights holder determines whether utilizing the graduation exemption is in the youth's best interest.

## FIFTH YEAR OF HIGH SCHOOL

If the school district determines that the student in foster care is reasonably able to complete the school district's graduation requirements within the student's fifth year of high school, the school district shall do all of the following:

- Inform the student of their option to remain in school for a fifth year to complete the school district's graduation requirements.
- Inform the student, and the person holding the educational rights, about how remaining in school for a fifth year to complete the school district's graduation requirements will affect the student's ability to gain admission to a postsecondary educational institution.
- Provide information about transfer opportunities available through the California Community Colleges.
- Permit the student to stay in school for a fifth year to complete the school district's graduation requirements upon agreement with the educational rights holder or the student, if the student is 18 years of age or older. *EC 51225.1(b).*

## REASONABLENESS

Determinations as to whether a student is reasonably able to complete a district's additional requirements should be made on an individual basis. The following are key factors that should be considered: (1) the youth's academic abilities (e.g., state testing results, grades); (2) courses completed and credits earned; (3) nature and extent of additional district requirements; (4) number of semesters remaining before the youth completes four years of high school; and (5) whether the youth can complete additional district requirements without taking courses before/after the regular school day.

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

Note: If a youth is not initially eligible for the graduation exemption 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 the youth eligible if an exemption is requested by the student and the student qualifies for the exemption. *EC 51225.1(h).*

## NOTICE REQUIREMENTS

Within 30 calendar days of the date the student in foster care or a former juvenile court school pupil who may qualify for the exemption from local graduation requirements transfers into a school, the school district shall notify the student, the educational rights holder, and the student's social worker and/or probation officer of the availability of the exemption and whether the student qualifies for an exemption.

If the school district fails to provide timely notice, the student shall be eligible for the exemption from local graduation requirements once notified, even if that notification occurs after the termination of the court's jurisdiction over the student, if the student otherwise qualifies for the exemption. *EC 51225.1(d).*

## DURATION OF ELIGIBILITY

Once a youth is found eligible for an exemption from local graduation requirements, their right to graduate by completing minimum state course requirements may not be revoked, regardless of whether the youth's foster care or probation case closes or they later change schools again. *EC 51225.1(i)-(j).*

## UNIFORM COMPLAINT

If a right under this law is denied, anyone (including a youth, educational rights holder, social worker/probation officer, caregiver, legal representative) may file a written complaint with the school district or charter school under the Uniform Complaint Procedures. When a complaint is filed, the district must investigate and provide a written response, including a proposed resolution, within 60 days. *EC 51225.1(m)(1).*

If the person who filed the complaint is not satisfied, they may file a complaint with the California Department of Education (CDE). The CDE will then have 60 days to investigate and provide a written response. *EC 51225.1(m)(2).*

If a school district finds merit in a complaint or the State Superintendent finds merit in an appeal, the school district shall provide a remedy to the affected student. *EC 51225.1(m)(3).*

## JUVENILE COURT SCHOOLS AND THE GRADUATION EXEMPTION

If a student completes the graduation requirements of their school district of residence while attending a juvenile court school, the student shall be issued a diploma from the school they last attended before detention or the county superintendent may issue the diploma. *EC 48645.5(a).*

When a student attending a juvenile court school becomes entitled to a diploma pursuant to EC 48645.5(d), the county office of education shall notify the student, their educational rights holder, and their social worker or probation officer of all of the following:

- The student's right to a diploma;
- How taking coursework and other graduation requirements adopted by the county office of education or continuing education upon release will affect the student's ability to gain admission to a postsecondary education institution;
- Information about transfer opportunities available through the California Community Colleges; and
- The student's or their educational rights holder's option to defer or decline the issuance of a diploma for meeting state graduation requirements so that a student may take additional coursework at the juvenile court school or, once

# Foster Youth Graduation Exemption Requirements (continued)

released, at a school operated by a local educational agency.

The county office of education must advise the student and their educational rights holder, when deciding whether to elect to decline the issuance of a diploma for meeting state graduation requirements, to consider whether the student is highly likely to enroll in a school operated by a local educational agency or charter school, to benefit from continued instruction, and to graduate from high school. *EC 48645.7.*

Upon release from the juvenile institution, the district in which the student enrolls will assess if they meet the requirements for an exemption from local graduation requirements per *EC 51225.1*.

fact sheet number seven

# Transition Services to Support College and Career

## California Foster Youth Education Task Force

Seventh Edition, June 2019

## INTRODUCTION

As youth in foster care transition into adulthood, there are a variety of supports in place to ensure that they can complete their high school education and successfully transition to college and career.

Under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 and California's Assembly Bill 12, foster youth may remain eligible for Aid to Families with Dependent Children-Foster Care (AFDC-FC) payments and other benefits until age 21 under certain conditions. *WIC 11403.*

Youth who do not qualify for extended foster care benefits under AB 12 but are attending high school, a 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 CalWORKs foster care payments until they graduate or reach their 19th birthday. *WIC 11253, 11403.01, 11405.*

For more information, see: www.jbaforyouth.org/ca-fostering-connections.

### Enrollment in High School (Until Age 18)

Youth are subject to compulsory full-time education until age 18 unless they are exempt. *EC 48200*. Youth over age 18 may enroll for additional years in alternative education programs until a diploma is awarded.

### Enrollment in Adult Education Programs

A student may be able to enroll in an adult education program, subject to the district's availability. Adult education programs offer free to low-cost classes for adults 18 and older. Students can get a high school diploma or general education diploma (GED), take career technical education classes, learn English and learn about U.S. citizenship. *EC 52500.1.*

### Students with Special Needs

Youth are entitled to special education services under California law until age 22. *EC 56041*. *See Special Education Fact Sheet.* Additionally, college campuses have disabled student support programs that can offer a range of accommodations. Information about programs for disabled students at California Community Colleges can be found at http://extranet.cccco.edu/Divisions/StudentServices/DSPS.aspx

## 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 and Next Up-Cooperating Agencies Foster Youth Educational Support (CAFYES) 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 Liaison. The best way to find out about a specific campus support program is to contact the program coordinator.

See: http://www.cacollegepathways.org/find-campus-support-programs/find-campus-support-programs-for-foster-youth

### California Promise Grant

The California Promise Grant (formerly known as the Board of Governors Fee Waiver (BOG)) is funded by the State of California for California residents to waive the full amount of enrollment fees for eligible students at community colleges, including foster youth. While most students are subject to loss of the fee waiver if they do not make Satisfactory Academic Progress, foster youth are exempt from this provision. *5 CCR 58621.*

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

Current or former foster youth who have not reached their 26th 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 costs associated with being in school, including tuition and fees and non-tuition expenses such as books, housing, food, childcare, and transportation. The student must have had an open dependency/foster care case between ages 16 and 18, and the California Department of Social Services will verify eligibility status. Information is available at http://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 or were in foster care after age 13, or were in a legal guardianship in order to qualify as an independent student. Independent students are not required to report parental income on the FAFSA. Payments received as part of extended foster care do not need to be reported as income on the FAFSA. *US Department of Education, Dear Colleague Letter GEN-13-18,* available at https://ifap.ed.gov/dpcletters/GEN1318.html.

In order to qualify for maximum financial aid, students must submit the FAFSA by March 2. Those who miss this deadline should submit the FAFSA as soon as possible.

Students who indicate foster youth status on the FAFSA will have their status as a foster youth automatically verified by their college. *EC 69516.*

http://www.cacollegepathways.org/financial-aid/

# Transition Services to Support College and Career (continued)

### CalGrant Eligibility

Foster youth who were in foster care at any point after age 13 qualify for extended eligibility for the CalGrant program.

1. Instead of having to apply within one year after high school graduation, foster youth are able to apply for an entitlement Cal Grant if they meet other eligibility criteria and have not reached their 26th birthday as of July 1 of the award year.

2. Foster youth can receive a CalGrant for up to 8 years.

3. Foster youth attending community college can submit a FAFSA late (through September 2) and maintain eligibility for an entitlement CalGrant. *EC 69433.6, 69435.3.*

### Priority Registration

Foster youth attending a public college or university who were in foster care after the age of 16 and are under age 26 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.*

### Priority Housing

Foster youth can receive priority access to on-campus housing at most public colleges and universities in California. In addition, universities that have student housing open during school breaks are required to give first priority to current and former foster youth and are required to allow foster youth to remain in housing that is available during academic breaks at no extra charge. *EC 76010; 90001.5; 92660*.

## FOSTER YOUTH VERIFICATION

Current and former foster youth may be required to provide written verification of foster care status in order to qualify for certain benefits. Youth who are unable to obtain verification from their county can request verification from the Foster Care Ombudsperson's office by calling 1-877-846-1602.

## 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*.

Effective 2018, foster care social workers are required to document in the case plan of any youth aged 16 or older who will support the youth with applications for financial aid and college. *WIC 16501.1.*

## 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. *WIC 16501.1.*

If the youth qualifies for special education services, they should have an Individualized Transition Plan starting at age 16. *20 USC 1414; EC 56341.5.* 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, ABCs of Transition and the Independent Living Program, available at http://www.publiccounsel.org/publications?id=0042.

In addition, California Department of Social Services (CDSS) has a website at http://www.cdss.ca.gov/inforesources/Foster-Care/Independent-Living-Program.