



# California Foster Youth Education Task Force

## California Foster Care Education Law Fact Sheets



Fact Sheet Number One – AB 490

Fact Sheet Number Two – Educational Decision-Making Rights

Fact Sheet Number Five – Education Services for Transition Age Youth

Fact Sheet Number Nine – School Discipline

Fact Sheet Number Ten – Special Education Discipline

(Ermhs)

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# California Foster Youth Education Task Force

## INTRODUCTION

Assembly Bill 490 (2003) created new rights and duties related to the education of dependents and wards in foster care. Some of these rights and duties have been expanded by later laws, including AB 81 (2009); AB 12, AB 1933, and SB 1353 (2010); AB 709 and SB 578 (2011); AB 1573, SB 121, SB 1088, and SB 1568 (2012); AB 643 (2013); the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351); and the federal Uninterrupted Scholars Act (Public Law 112-278). Many of the obligations placed on local educational agencies by these laws also apply to charter schools participating in a special education local plan area. *See EC § 48859(c).*

## GUIDING PRINCIPLES

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

Students in foster care must have access to the same academic resources, services, and extracurricular and enrichment activities that are available to all students. All educational and school placement decisions must be based on the child's best interests and consider, among other factors, educational stability and the least restrictive educational setting necessary to achieve academic progress. *EC §§ 48850(a)(1), 48853(h); WIC §§ 361(a)(5), 726(c)(2).*

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

## SCHOOL STABILITY

### • Role of the Placing Agency

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

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

Within one court day of deciding to change a child's placement to a location that could result in a school change, the social worker or probation officer must notify the court, the child's attorney, and the child's educational rights holder or surrogate parent (hereinafter collectively referred to as "educational rights holder"). *CRC 5.651(e)(1)(A).* If a child who is changing schools has an Individualized Education Program (IEP), the social worker or probation officer must give written

notice of the impending change to the current local educational agency (LEA) and the receiving Special Education Local Plan Area (SELPA) at least 10 days in advance. *CRC 5.651(e)(1)(B).* ("LEA" has different definitions throughout the Education Code but, for purposes of these fact sheets, generally means a school district, a county office of education, a charter school participating as a member of a SELPA, or a SELPA. *See EC §§ 48859(c), 56026.3.* SELPAs are consortia of educational agencies formed to serve the special education needs of children residing within their boundaries. *See* <http://www.cde.ca.gov/sp/se/as/caselpas.asp> for a list of SELPAs.)

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

### • Roles of the Court and Child's Attorney

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

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# AB 490 (continued)

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

## • Role of the LEA

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

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



## LEA Liaison

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

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

See *EC § 48853.5(b)-(d), (e)(8)(C)*.

## Local Public School Preferred

Students in foster care must attend programs operated by the LEA unless the child remains in the school of origin, the child has an IEP requiring a different educational placement, or the educational rights holder determines it is in the child's best interest to attend a different educational program. Before placing a child in a juvenile court school, community school, or other alternative school setting, the educational rights holder must consider placement in the regular public school. *EC § 48853(a)-(c)*. If the educational rights holder places the child in an educational program that is not operated by the LEA, s/he must provide a written statement about his/her determination to the LEA. See *EC § 48853(a)(3)* for the required contents of that statement.

## Immediate Enrollment

If a foster child changes schools, s/he has a right to be enrolled in the new school immediately, even if there are outstanding fees, fines, textbooks, or other items or money due to a school or if s/he does not have the clothing or records normally required for enrollment, including but not limited to academic records, medical records, proof of immunization history, proof of residency, or school uniforms. *EC § 48853.5(e)(8)(B)*.

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

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# AB 490 (continued)

## TIMELY TRANSFER OF RECORDS

- **Placing Agency's Duties**

As soon as the social worker or probation officer becomes aware of the need to transfer a child to a new school, s/he must notify the LEA of the child's last expected day of attendance and request that the child be transferred out. *EC § 49069.5(c); see also WIC § 16501.1(f)(8)(B).*

- **Old LEA's Duties**

Within two business days of receiving a school transfer request, the current LEA must transfer the child out and deliver his/her records to the new school. The LEA must compile the child's complete educational record, including a determination of seat time, full or partial credits earned, classes and grades, immunization records, and, if applicable, special education or Section 504 records. *EC § 49069.5(d)-(e).* All records must be provided regardless of any fees, fines, textbooks, or other items or money owed to the last school. *EC § 48853.5(e)(8)(C).*

- **New LEA's Duty**

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

## GRADE AND CREDIT PROTECTIONS

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

A child's grades may not be lowered due to absences caused by a change in placement, a court appearance, or a court-ordered activity. *EC § 49069.5(g)-(h).*



## SPORTS AND ACTIVITIES

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



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

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





# Educational Decision-Making Rights



## California Foster Youth Education Task Force

### INTRODUCTION

Parents generally have the right to make educational decisions for their children unless their child is in a legal guardianship, their child has been freed for adoption (parental rights have been terminated), or the juvenile court has limited their educational rights. See *WIC* §§ 319(g), 361, 726(a)-(c), 358.1(e); *GC* § 7579.5; *EC* § 56055; 34 *CFR* § 300.30; *CRC* 5.649.

### WHY DOES THIS MATTER?

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

- **Special Education Evaluation**  
Local educational agencies (LEAs) generally cannot start evaluating a student for disabilities that make her/him eligible for special education until the adult who holds educational rights signs a proposed assessment plan.
- **Individualized Education Program (IEP)**  
A student's IEP cannot be implemented without the approval and signature of the adult who holds educational rights.
- **School Placement**  
A child's educational rights holder may determine it is in the child's best interests to attend an educational program other than one operated by the local educational agency. *EC* § 48853(a)(3). The educational rights holder also has a role in deciding whether the child will remain in his/her "school of origin" after a residential placement change. See *EC* § 48853.5(e).



### COURT'S CONSIDERATIONS

Educational matters, including who has the authority to make educational decisions for a foster child and whether someone else should be appointed to hold educational rights, must be considered at every court hearing. *CRC* 5.649, 5.651(b). The social worker or probation officer must include information in every court report about educational decision-making, including who holds the child's educational rights. See *CRC* 5.651(c) for a list of the information required to be included in these court reports.

### APPOINTING EDUCATIONAL DECISION-MAKERS

- **Court-Appointed Decision-Makers**  
A juvenile court can limit the right of a parent or guardian to make educational decisions for a child if it is necessary to protect the child. Any limitations must be specified in a court order. *WIC* §§ 319(g), 361(a), 726(a)-(b); *CRC* 5.649. Court form JV-535 is used for this purpose, as well as to document other findings and orders about educational decision-making. *CRC* 5.649-5.650; see also court form JV-535(A) (optional attachment containing additional education-related information, findings, and orders).

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



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

Educational decision-making rights can be temporarily limited prior to the disposition stage of a court case and as early as the initial detention hearing if the child's parent or guardian is unavailable, unable, or unwilling to make educational decisions (and other conditions are met). A temporary limitation expires at the end of the disposition hearing or when the petition is dismissed, but the court may later renew the limitation, if appropriate. *WIC* § 319(g); *CRC* 5.649(b), 5.650(g)(1)(A).

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

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

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# Educational Decision-Making Rights (continued)

- **LEA-Appointed Decision-Makers**

If the court is unable to locate a responsible adult for the child **and** the child either has been referred to the LEA for special education or has an IEP, the court must refer the child to the LEA for appointment of a “**surrogate parent**.” *WIC §§ 361(a)(3), 726(c)(1); GC §§ 7579.5-7579.6; CRC 5.650(a)(2)(A)(i), (d); see also WIC § 319(g)(3), (5).* A surrogate parent makes decisions related to special education evaluation, eligibility, planning, and services. *GC § 7579.5(c).*

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

- **Court as Educational Decision-Maker**

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

## LIMITATIONS ON APPOINTMENTS

- **Court-Appointed Decision-Makers**

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

- **Surrogate Parents**

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

## RESPONSIBILITIES OF EDUCATIONAL DECISION-MAKERS

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

## LENGTH OF COURT APPOINTMENTS

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

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

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

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

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

## DEVELOPMENTAL SERVICES DECISION-MAKERS

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

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*This fact sheet is current as of February 2014. To report any errors, please e-mail us at [cfyetf@gmail.com](mailto:cfyetf@gmail.com).*



# Education Services for Transition Age Youth



## California Foster Youth Education Task Force

### INTRODUCTION

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

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

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

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

### EDUCATION

#### Enrollment in High School

(Until age 18)

Youth are entitled to compulsory full time education until age eighteen unless they are exempt. *EC § 48200.* There is no obligation for local education agencies (LEAs) to serve youth over age 18 unless they are receiving special education services or if they qualify to finish their graduation under AB 167/SB 216. See the *AB 167/216 fact sheet*. Youth over age 18 may enroll for additional years in alternative education programs until a diploma is awarded. See CDE website at <http://www.cde.ca.gov/ta/tg/hs/studentoptions.asp>.

#### Enrollment in Adult Education Programs

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

#### Students with Special Needs

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

Students must be allowed to take the California High School Exit Examination (CAHSEE) with any accommodations and modifications that are specified in their Individualized Education Program (IEP) or Section 504 plan. In addition all college campuses have disabled student support programs that can offer a range of accommodations. The approved testing variations, accommodations, and modifications are found on the CDE website at <http://www.cde.ca.gov/ta/tg/hs/accmod.asp>.

#### Foster Youth Services (FYS)

FYS is a program of the California Department of Education administered by some county offices of education. The program helps to improve children's educational performance

and personal achievement. FYS programs have the flexibility to design services to meet a wide range of needs of foster youth. Transitional services provided include: referrals for counseling, tutoring, mentoring, emancipation services, vocational training, and independent living services. See <http://www.cde.ca.gov/ls/pf/fy/> for a list of counties with FYS programs.

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

### HIGHER EDUCATION

#### Campus Support Programs

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

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

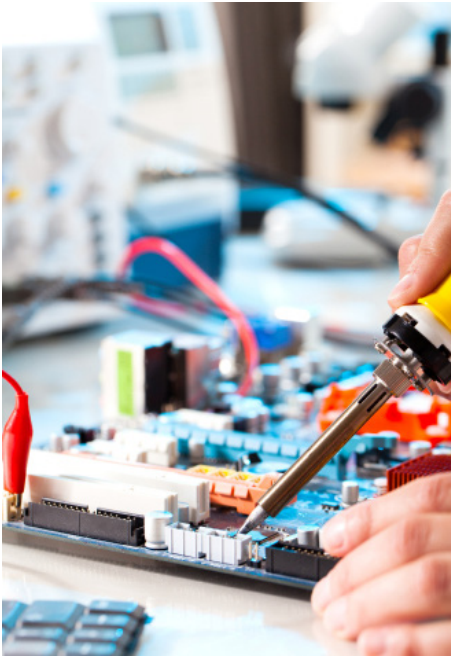
#### Board of Governors Fee Waiver

The Board of Governors Fee Waiver (BOG) is funded by the State of California for California residents to waive in full the amount of enrollment fees to eligible students at community colleges, including foster youth. In order to qualify, students must complete an orientation, assessment, and educational plan for the waiver to determine their eligibility.

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# Education Services for Transition Age Youth (continued)



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

Current or former foster youth who have not reached their 22nd birthday and have financial needs, may qualify for up to \$5,000 a year for career and technical training or college. Funds may be used to pay for childcare, transportation, and housing while in school. The court must have established dependency between ages 16 and 19, and the California Department of Social Services will verify eligibility status. Information is available at [www.chafee.csac.ca.gov](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, were in foster care, or were in a legal guardianship after age 13 in order to qualify for the maximum amount of aid. In order to qualify for maximum financial aid, students must submit the FAFSA by March 1. Those who miss this deadline should submit the FAFSA as soon as possible.

<http://www.cacollegepathways.org/financial-aid-options-foster-youth>

## **Priority Registration**

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

## **TRANSITIONAL SERVICES AND SUPPORTS**

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



## **INDEPENDENT LIVING SERVICES**

Youth may be eligible for Independent Living Program (ILP) services through various county agencies depending on their status. These ILP services may include: life skills training, transitional housing, assistance with transportation, and scholarships. Youth who are in foster care age 16 and older are required to have a Transitional Independent Living Plan that is updated every six months.

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

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# School Discipline



## California Foster Youth Education Task Force

### INTRODUCTION

Suspensions and expulsions are two types of school discipline. Both are governed by *EC § 48900-48927*. A suspension is a short-term removal from school. *EC § 48925(d)*. An expulsion is a longer-term removal from an entire school district. *EC § 48925(b)*.

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

#### Prohibited Acts

The descriptions of prohibited acts appear in *EC § 48900, 48900.2-48900.4, and 48900.7*. Students can be suspended or expelled for many acts, but they should *not* be suspended or expelled for being truant, tardy, or absent from school activities. *EC § 48900(w)*.

#### Connection to School

The act must be related to school activities or school attendance in any school district. "Related" includes but is not limited to acts committed on school grounds, while going to or coming from school, during the lunch period (on or off campus), and during or while going to or coming from a school-sponsored activity. *EC § 48900(s)*.

#### Students with Disabilities

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

### ALTERNATIVES TO DISCIPLINE

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

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

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



### SUSPENSIONS

#### Suspension Procedures

A suspension must be preceded by an informal conference unless an "emergency situation" exists. At the conference, the student must be informed of the reason for the disciplinary action and the evidence against her/him, and be given a chance to present his/her version and evidence in his/her defense. *EC § 48911(b)-(c)*.

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

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

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

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# School Discipline (continued)

## Limits on Suspensions

Schools generally are required to try other means of correcting a student's behavior before imposing a suspension. However, a student can be suspended for a first offense for certain prohibited acts or if a school administrator determines that the student's presence at school "causes a danger to persons." *EC § 48900.5(a)*. Since January 2013, it no longer has been lawful for a student to be suspended for a first offense on the grounds that the student's presence at school "causes a danger to property or threatens to disrupt the instructional process." *AB 1729 (2012)*.

If a suspension is imposed, it should not, with few exceptions, exceed five consecutive school days or 20 days per school year. Exceptions:

- A student may be suspended up to 30 total days in a school year if he/she is enrolled in or transfers to another school for disciplinary reasons. *EC § 48903*.
- A student who has been recommended for expulsion may be suspended through the time the school board makes its decision on the expulsion. Prior to extending the suspension, the school must hold a meeting to which the student and his/her educational rights holder have been invited and must determine that the student's presence at school or in an alternative school placement "would cause a danger to persons or property or a threat of disrupting the instructional process." If the student is a foster child, the school district also must invite the child's attorney and an appropriate representative of the county child welfare agency to this meeting. Any decision to extend a suspension in this way must be in writing. *EC § 48911(a), (g)*.



## School Work Missed During Suspension

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

## Supervised Suspension Classroom

Some suspensions may be served in a supervised suspension classroom rather than off school grounds. The classroom or school must promote completion of school work and tests the student misses during the suspension, and make appropriate counseling services available. The school must notify the student's educational rights holder at the time it assigns the student to the suspension classroom. The notice must be in writing if the student will be in the suspension classroom for longer than one class period. *EC § 48911.1*. In most cases, supervised suspension, like out-of-school suspension, should be used only when other means of correction fail to bring about proper conduct. *EC § 48900.5(a)*.

## EXPULSIONS

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

## Discretion Not to Expel

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

## Mandatory Expulsions

The law requires expulsion for a small category of acts (often called zero-tolerance offenses). Those acts are firearm offenses (but not possession of an imitation firearm), brandishing a knife at another person, selling controlled substances, committing or attempting to commit sexual assault or battery, and possessing an explosive. *EC § 48915(c)-(d)*.

## Expulsion Procedures

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

- The right to a **hearing** held within 30 school days of the date a school official determined the student committed the act, unless the student makes a written request to postpone the hearing. The student has a right to at least one 30-day postponement and can ask for more. *EC § 48918(a)*.
- The right to receive **written notice** of the hearing at least 10 calendar days before the hearing. The notice must include the date and place of the hearing, a statement of the specific facts and charges that are the basis for the expulsion recommendation, a copy of the district's disciplinary rules, and a list of the student's and educational rights holder's rights. *EC § 48918(b)*. If the student is a foster student and the decision to recommend expulsion is a *discretionary* act, the school district also must provide the hearing notice to the student's attorney and an appropriate representative of the county child welfare agency at least 10 calendar days before the date of the hearing. *EC § 48918.1(a)*. For *mandatory* expulsion recommendations involving foster students, the school district may—but is not required to—provide this notice to the student's attorney and county child welfare agency representative at least 10 calendar days before the date of the hearing. *EC § 48918.1(b)*.
- The right to bring a **lawyer or other advocate** to the hearing. *EC § 48918(b)(5)*.
- The right to receive copies of the documents that will be used at the hearing, to question all **witnesses and evidence** at the hearing, and to bring his/her own witnesses and evidence to the hearing. *EC § 48918(b)(5)*.
- The right to ask the governing board to **subpoena witnesses**. *EC § 48918(i)*.
- The right to receive the governing board's **written decision** on the expulsion recommendation within 10 school days of the hearing or, in some situations, within 40 school days of the beginning of the suspension for the incident in question. *EC § 48918(a), (j)*.
- If expelled, the right to receive **notice** of (1) the right to appeal, and (2) the right to be educated while expelled. *EC § 48918(j)*.

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# School Discipline (continued)



## Necessary Findings

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

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

*EC § 48915(b)-(e).*

## Appeals

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

## Education During Expulsion

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

## Rehabilitation Plan

At the time of expulsion, the governing board also must recommend a rehabilitation plan, which will be considered when the student applies for readmission to the district. The plan may include recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, and other rehabilitative programs. *EC § 48916(b)*. For expulsions related to controlled substances or alcohol, the school board may require, with parental consent, enrollment in a drug rehabilitation program. *EC § 48916.5*.

## Readmission After Expulsion

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

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

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

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

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

## Enrollment in Another District

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

## Suspended Expulsions

A governing board can decide to expel a student, but suspend enforcement of the expulsion order. A "suspended expulsion" is an actual expulsion that puts a student on probationary status and allows her/him to enroll in an educational program deemed appropriate by the school board to rehabilitate her/him. *EC § 48917(a), (c)*. If the student violates any behavioral rules during the probationary period, the school board can revoke the suspension and expel her/him under the terms of the original expulsion order. *EC § 48917(d)*.

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

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

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# School Discipline (continued)

## INVOLUNTARY TRANSFERS

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

### Transfer to Continuation Schools

A school district may transfer a student to its continuation school for certain prohibited acts or for habitual truancy or attendance problems. Prior to the transfer, the student and his/her educational rights holder are entitled to written notice and a meeting to discuss the reason(s) for the proposed transfer and to present and question relevant evidence and witnesses. A student should not be transferred involuntarily unless other means have been tried and have failed to improve the student's conduct or unless the student committed a prohibited act and his/her "presence causes a danger to persons or property or threatens to disrupt the instructional process." A final transfer decision must be in writing and may be subject to periodic review. A transfer generally should not extend past the semester following the semester in which the act(s) leading directly to the transfer occurred. *EC § 48432.5.*

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

### Transfer to Community Day Schools

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



## SCHOOL DISCIPLINE NOTICES FOR FOSTER CHILDREN

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

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

## DISCIPLINE RECORDS

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

## RESTITUTION

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



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

*This fact sheet is current as of February 2014. To report any errors, please e-mail us at [cfyetf@gmail.com](mailto:cfyetf@gmail.com).*



# Special Education Discipline



## California Foster Youth Education Task Force

### INTRODUCTION

The law governing school discipline of students with disabilities in California appears primarily in federal statute, *20 USC § 1415(k)*, and regulations, *34 CFR §§ 300.530-300.536*. *EC § 48915.5*.

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

#### Students with Disabilities

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

- Students who have Individualized Education Programs (IEPs) under special education law.
- Students with disabilities, as defined by special education law, who do not yet have IEPs but whose local educational agency (LEA) “had knowledge” of their disabilities before the conduct that led to the disciplinary action. Some ways an LEA can be found to “have knowledge” are if the student’s educational rights holder has expressed **written** concern about the need for special education to appropriate school or LEA staff or has requested a special education evaluation. However, if the educational rights holder later refused the evaluation or services or the student was evaluated and determined to be ineligible for special education, then s/he usually would not be entitled to these protections. *20 USC § 1415(k)(5)*; *34 CFR § 300.534*.

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

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

### NOTICE OF DISCIPLINARY ACTION

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

### 10-DAY THRESHOLD

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

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



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

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

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# Special Education Discipline (continued)



## MANIFESTATION DETERMINATION

At the manifestation determination meeting, the IEP team must consider all relevant information to determine whether the conduct in question (1) was caused by, or had a direct and substantial relationship to, the student's disability or (2) was the direct result of the LEA's failure to implement the student's IEP. If the answer to either item is "yes," the conduct is considered to be a manifestation of the student's disability. *20 USC § 1415(k)(1)(E); 34 CFR § 300.530(e).*

### Finding of Manifestation

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

- A functional behavioral assessment (FBA) must be conducted, if one has not already been done. (See the Functional Behavioral Assessments fact sheet.)
- A behavioral intervention plan (BIP) must be developed and implemented or, if one already exists, reviewed and modified to address the behavior.
- The student must be returned to the placement from which s/he was removed, unless the IEP team agrees to a change of placement as part of the BIP or s/he was moved to an "interim alternative educational setting." *20 USC § 1415(k)(1)(F); 34 CFR § 300.530(f).*

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

### Finding of No Manifestation

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

- The school may discipline the student in the same manner and for the same duration as it would a student without disabilities.
- The student must continue to receive FAPE, enabling him/her to participate in the general education curriculum and progress toward his/her IEP goals.
- The student must receive, as appropriate, an FBA and BIS and modifications that are designed to address the behavior violation so that it does not recur. *20 USC § 1415(k)(1)(C)-(D); 34 CFR § 300.530(c)-(d).*

### IEP Team Disagreements

Any disagreement related to the manifestation determination or placement may be resolved through an expedited due process hearing, which must be held within 20 school days of a request. The hearing officer can return the student to the placement from which s/he was removed or temporarily place the student in an appropriate "interim alternative educational setting" (IAES). Pending the hearing decision, a student who was placed in an IAES must remain in that setting unless the placement expires (no more than 45 school days) or the IEP team agrees otherwise. *20 USC § 1415(k)(3)-(4); 34 CFR §§ 300.532-300.533.*

## INTERIM ALTERNATIVE EDUCATIONAL SETTING

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

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

## REFERRAL TO LAW ENFORCEMENT

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

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