California Foster Youth Education Task Force

California Foster Youth Education Law Fact Sheets

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PRE K-12 AND BEYOND CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

The California Foster Youth Education Task Force (CFYETF) is a coalition of organizations dedicated to improving educational outcomes for youth in foster care. For more information, visit the website at http://www.cfyetf.org. For a full list of Member Organizations, see pages 30-31.

These fact sheets are current as of January 2025. To report any errors, please e-mail Mia Stizzo at mia.stizzo@cfpic.org

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Citations and Abbreviations Key

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:

  https://govt.westlaw.com/calregs/Index?transitionType=Default&contextData=%28sc.Default%29
- California Department of Social Services, All County Letters and Notices:

  https://www.cdss.ca.gov/inforesources/letters-and-notices
- 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)**: Foster youth have the right to remain in their school of origin; school of origin is the default. *EC 48853.5(f).* A foster youth's educational rights holder (ERH) determines whether it is in the youth's best interest to transfer out of their school of origin following a home placement change. *CRC 5.650(f).* Per 2024 Federal Non-Regulatory Guidance, the BID process should be completed within 3 business days of the time of placement in foster care or prior to a planned placement change.
- **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)-(g)* for a list of rights and responsibilities. If the court is unable to locate a responsible adult for the child, the child has not reached the age of 18, the rights of the parent, guardian or Indian custodian to make educational or developmental services decisions have not been restored, a successor guardian or conservator has not been appointed, the child has not been placed in a planned permanent living arrangement, **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)*.
- **Foster Child or Youth**: According to *EC 48853.5(a)*, 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* (alleging abuse or neglect of the child) or *WIC 602* (alleging the youth violated the law), whether or not the child has been removed from their home;
  - Is a dependent child of the court of an Indian tribe, consortium of tribes, or tribal organization who is the subject of a petition filed in the tribal court pursuant to the tribal court's jurisdiction in accordance with the tribe's law; or
  - Is the subject of a voluntary placement agreement.

  All of the above children and youth have a right to all of the laws discussed in these Fact Sheets.
  For purposes of the Local Control Funding Formula (LCFF), and for whom an LEA receives LCFF funding, a "foster youth" is defined as any of the following (*EC 42238.01(b)*) (please note that, whether or not an LEA receives LCFF funding for a youth, the youth still has all the rights discussed herein if they meet the foster child or youth definition provided above in *EC 48853.5(a)*):
  - A child or youth who is the subject of a petition filed under *WIC 300* (meaning a petition filed in the Juvenile Court that alleges abuse or neglect of the child by the parent or legal guardian). This includes both children who remain living at home (i.e., with their parents) while under the jurisdiction of the Juvenile Court as well as children whom the court has ordered to be removed from their parents into the care, custody and control of a social worker for placement outside the home. *EC 42238.01(b)(1).*
  - A child or youth who is the subject of a petition filed under *WIC 602* (meaning a petition filed in Juvenile Court that alleges the youth has violated the law) and has been ordered by a court to be removed from home pursuant to *WIC 727* and placed into foster care as defined by *WIC 727.4(d)* (e.g., placed into a foster home or short-term residential therapeutic program). *EC 42238.01(b)(2).*
  - 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 10553.1*, and is participating in a transitional independent living case plan. *EC 42238.01(b)(3).*
  - A dependent child of the court of an Indian tribe, consortium of tribes, or tribal organization who is the subject of a petition filed in the tribal court pursuant to the tribal court's jurisdiction in accordance with the tribe's law. *EC 42238.01(b)(4).*
  - A child who is the subject of a voluntary placement agreement. *EC 42238.01(b)(5).*
- **Free Appropriate Public Education (FAPE)**: All local educational agencies (LEAs) are responsible for ensuring that each child with disabilities receives appropriate special education and related services, at no expense to the parent. *34 CFR 300.17, 300.101, 300.2.*
- **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 through the development of an Individualized Educational Program (IEP). 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), 56345, 56345.1*.
- **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, county office of education, charter school, or special education local plan area. *EC 48859(d), 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).* The foster child's ERH determines which of these options is in the child's best interest. *EC 48853.5(e).* 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.*
- **Tribal Foster Youth**: A dependent child or youth of the court of an Indian tribe, consortium of tribes, or tribal organization who is the subject of a petition filed in accordance with the tribe's law. *EC 48853.5(a)(3).*
- **Voluntary Placement Agreement**: A written agreement between the county child welfare agency, probation department, or Indian tribe and the parents/guardians of a child to place the child in a voluntary out-of-home placement. The voluntary placement agreement must specify, at a minimum, the legal status of the child and the rights and obligations of the parents/guardians, the child, and the agency while the child is in the placement. *WIC 11400(o)-(p).*

fact sheet 1

Educational Rights and School Stability

California Foster Youth Education Task Force

Tenth Edition, January 2025

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, caregivers, 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—including dependent children of the court of an Indian tribe, and youth who are subject to a voluntary placement agreement—must have access to the same academic resources, services, and extracurricular and enrichment activities that are available to all students, including priority access to after-school and intersession programs. All educational and school placement decisions are made by the educational rights holder (ERH), in consultation with other parties, and 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)-(3), (d), 48853(h), 48853.5(f); 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(d) 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).*

THE ROLE OF CAREGIVERS

Caregivers play a critical role in the education of the children and youth in their care and have multiple rights and responsibilities related to educational records access and support. See SB 233 (2017). Foster parents and relative caregivers, regardless of whether they hold educational rights for a foster youth, including tribal foster youth, have the right to access the foster youth's current or most recent records of grades, transcripts, attendance records, online school portals, individualized education programs (IEPs), and 504 plans. *EC 49069.3(a)-(b), 49076(a)(1).* Social workers are required to assist caregivers who need assistance accessing school records, and caregivers are required to receive and update the youth's health and education summary or passport, maintaining educational information about the child. *WIC 16010(e)*. It is best practice for caregivers and educational rights holders to coordinate educational support. In some circumstances, caregivers are obligated to communicate with the youth's educational rights holder to make sure they are informed of important educational updates. *EC 49069.3(c)*. Caregivers should receive training on the kinds of information contained in these fact sheets. See *WIC 16519.7*. Please feel free to share these fact sheets with counties and foster family agencies to use in their resource family trainings.

FOSTER YOUTH SERVICES COORDINATING PROGRAMS

Foster Youth Services Coordinating Programs (FYSCPs) are programs administered by the California Department of Education (CDE) through county offices of education. The programs help to improve children's educational performance and personal achievement. FYSCPs 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, each FYSCP coordinates and ensures 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. *EC 42920.5.*

Effective January 1, 2025, FYSCP programs are also responsible for serving the needs of youth who are the subject of a *WIC 602* petition and have been identified by a probation agency as being at imminent risk of removal and placement into foster care. *EC 42921(c).*

FYSCPs provide support services to foster children who suffer the traumatic effects of displacement from family and schools and multiple placements in foster care. FYSCPs have the ability and authority to (1) ensure that health and school records are obtained to establish appropriate placements; and (2) coordinate and may provide counseling, tutoring, mentoring, vocational training, emancipation services, training for independent living, and other related services. *EC 42921(e)(2).* FYSCPs 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.

For a list of FYSCP county contacts, see https://www.cde.ca.gov/ls/pf/fy/contacts.asp.

FOSTER YOUTH UNDER TRIBAL COURT JURISDICTION

AB 1055 (2021) amended provisions of the Education Code to ensure that tribal foster youth receive the same protections as other foster youth. Now tribal foster youth in California schools have the same rights and protections, including but not limited to, school of origin, grade and credit protections, timely transfer of records, and immediate enrollment in a school despite fees and fines owed at the last school of attendance. When working with tribal foster youth, it is important to coordinate with the Tribe's social worker or educational designee. All references to foster youth and social workers throughout these fact sheets also refer to tribal foster youth and tribal social workers.

SCHOOL STABILITY

Students in foster care may attend programs operated by the local educational agency (LEA) of residence 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 unless one of the following applies: (1) The student has an 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).*

Before placing a child in a juvenile court school, community school, or other alternative school setting, the ERH 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

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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).* The foster child's ERH determines which of these options is in the child's best interest. *EC 48853.5(e).* If a foster child's residence changes, the student, by default, should remain in their school of origin, unless and until the youth's ERH determines that enrolling in their new school of residence is in the youth's best interest. *EC 48853.5(f)*; also see 2024 Federal Non-Regulatory Guidance. School of origin applies to all schools run by a school district, charter school, and nonpublic (NPS) schools. *EC 48853.5(g)(3)(b), 56366.1(a)(8).*

For the purposes of the school of origin right, "foster child" means a child who has been removed from their home pursuant to *WIC 309*; is the subject of a petition filed under *WIC 300* or *602*, whether or not the child has been removed from their home; is a tribal foster youth; or is a youth who is the subject of a voluntary placement agreement. *EC 48853.5(a)*.

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 determines it is in the best interest of the child to change schools. *EC 48853.5(f).*

- **Transportation**

If the child remains in their school of origin, transportation may be needed between the child's foster care placement and school. 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. Per 2024 Federal Non-Regulatory Guidance, transportation should be provided within 3 business days of the completion of the best interest determination (BID) process. 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 *42 USC 675(4)(A)*; 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 LEA will provide transportation to the school of origin under certain conditions. *20 USC 6312(c).* A school district is not required to provide transportation services to allow a foster child to attend a school or school district, unless there is an agreement with a local child welfare agency that the school district assumes part or all of the transportation costs in accordance with *20 USC 6312(c)(5)*, or unless otherwise required under federal law. *EC 48853.5(f)(5).*

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)*. Beginning July 1, 2025 (or whenever such contract is renewed thereafter, *EC 39880*), LEAs that contract with and/or fund private entities to provide school-related transportation for students (e.g., HopSkipDrive), excluding short-term transportation contracted through an FYSCP program for less than one month (*EC 39875*), must follow all driver and vehicle training and safety requirements found in *EC 39877, 39878, 39879, and 49406*.

In some cases, the caregiver may be able to provide transportation, in which case the placing agency can reimburse them for reasonable costs. *EC 11460(b); 42 USC 675(4)(A)*. The California Department of Social Services (CDSS) explains how to calculate the reimbursement in All County Letter No. 11-51. In addition, CDSS issued guidance, in All County Information Notice I-86-20, to clarify that other trusted adults in a foster youth's life may provide transportation to the youth's school of origin and are also eligible for reimbursement.

For foster youth with an 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) and related services, with consideration of location, placement, and the needs of the youth. *EC 56040, 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) & (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, tribal social worker, or probation officer must notify the court, the child's attorney, and the child's educational rights holder or surrogate parent (hereinafter referred to as "educational rights holder" or ERH). *CRC 5.651(e)(1)(A).* If a child who is changing schools has an IEP, the social worker, tribal 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).*

Educational Rights and School Stability (continued)

If the child's attorney or ERH 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 school of origin. *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 ERH determines it is in their best interest to change schools. *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 ERH, 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 IEP before removal, the social worker, at least 10 days before the change of placement, notified in writing the LEA 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 ERH, as appropriate, and may request a hearing on the proposed change. *CRC 5.651(e)(2)(A).* The ERH also may request a hearing. Any such hearing request must be made no later than two court days after the attorney or ERH 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 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); EC 48853.5(f)(9).* 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, or a Special Education Local Plan Area (SELPA). *EC 48859(d) 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 LEA 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).* Ultimately, a foster child's ERH always makes the best interest decision. *EC 48853.5(e).*

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 LEA. *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 LEA serving their clients in the county of court jurisdiction. In addition, a foster child's caregiver or ERH may provide the attorney's contact information to the LEA. *WIC 317(e)(4).*

For more information about educational rights holders (ERHs), see the Educational Decision-Making for Foster Youth Fact Sheet.

LOCAL PUBLIC SCHOOL

Foster youth, including tribal foster youth and youth who are the subject of a voluntary placement agreement, 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 ERH can decide that it is in the youth's best interest to attend a continuation school or other alternative education setting and seek placement for the youth 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 ERH, 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

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items or moneys due to the school last attended or is unable to produce clothing or records normally required for enrollment, such 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 current and former 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 LEA, the prior 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 current and former foster youth even if they have willfully damaged or refused to return property. *EC 49014(g)(2)*.

As part of the transfer process, the current LEA shall compile the complete educational record of the student, including a determination of seat time or time of enrollment, 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 IEP. *EC 49069.5(e)*. The current LEA shall ensure that, if the foster child 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 full or partial coursework satisfactorily completed by a foster youth while attending another public school, a juvenile court school, or a nonpublic, nonsectarian school or agency, even if the youth did not complete the entire course; sending LEAs must issue full or partial credit for the coursework satisfactorily completed, based on a determination of days of enrollment or seat time; and receiving LEAs must not require the youth to retake a course already satisfactorily completed in one of these settings. Any credits accepted must be applied to the same or equivalent coursework (e.g., meeting the same graduation requirement). If partial credit has been awarded in a particular course, the youth must be enrolled in the same or equivalent course at their new school, so that they may continue and complete the entire course; the youth must not be required to retake the portion of the course already completed unless the LEA, in consultation with the ERH, finds that the youth 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 youth 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 youth'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(g)-(h).*

SPORTS AND ACTIVITIES

Students in foster care, including tribal foster youth and youth who are the subject of a voluntary placement agreement, 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).*

A student enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity, defined as an activity offered by an LEA that constitutes an integral fundamental part of education, including but not limited to, curricular and extracurricular activities. *EC 49010, 49011.*

AFTER-SCHOOL AND INTERSESSION PROGRAMS

Students in foster care shall be granted priority access to after-school programs. *EC 8483(c).* Additionally, per AB 373 (2023), if an LEA operates an intersession program, youth in foster care have the right to priority enrollment in intersession programs such as any expanded learning opportunities offered on non-school days, including summer school. If a youth moves during an intersession period, the youth's ERH decides which intersession program (at school of residence or school of origin) a youth will attend. *EC 48853.5(f)(11), (g)(2).*

UNIFORM COMPLAINT

If a right under *EC 48853.5* is denied, anyone (including a youth, ERH, 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 4610, 4630.* When a complaint is filed, the district must investigate and provide a written response that includes corrective actions or remedies if the LEA finds merit in the complaint, 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 2

Educational Decision-Making for Foster Youth

California Foster Youth Education Task Force

Tenth Edition, January 2025

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 services 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 (BID) regarding school of origin cannot be made for a child without the educational rights holder (ERH) (although a child must remain in their school of origin as the default placement until the best interest determination is made). Per 2024 Federal Non-Regulatory Guidance, the BID process should be completed within 3 business days of the time of placement in foster care or prior to a planned placement change. A child's ERH may determine it is in the child's best interest to attend an educational program other than one operated by the LEA. *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)-(c).* 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) (mandatory 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), 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 ERH has all of the educational decision-making rights normally held by a parent or guardian. *See CRC 5.650(e)-(g) 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, upon resignation of the current ERH, 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 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(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)*.

When a surrogate parent is appointed, resigns, or an LEA 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 IEP 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)*), *EC 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. *EC 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 funding for the care of the child. *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, or is attending an institution of postsecondary education, at which time the youth holds their own educational rights (e.g., see *EC 49061(a), 56041.5;* for a definition of "eligible student," see *34 CFR 99.3*, https://studentprivacy.ed.gov/ferpa), 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 ERH resigns from the appointment, the ERH must tell the court and the child's attorney and may use the 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 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.

Please note that children receiving early intervention services through regional centers under Individual Family Service Plans are receiving education services and must have ERHs. Developmental Services Decision-Makers cannot make education decisions for these children.

See https://www.dds.ca.gov/rc/ for more information.

fact sheet 3

Early Care and Education

California Foster Youth Education Task Force

Tenth Edition, January 2025

CALIFORNIA EARLY CARE AND EDUCATION PROGRAMS

Early education is recognized as a key to children's later education success and a stabilizing force for families. California's Early Care and Education (ECE) system consists of a patchwork of public, private non-profit, and private for-profit ECE service providers. The California Department of Social Services (CDSS), Child Care and Development Division funds ECE through voucher-based programs and center-based programs. CDSS contracts with public and private non-profit agencies called Alternative Payment Programs (APPs) to administer vouchers that allow families to pay ECE private providers at a cost that is more affordable to them. APPs determine a family's eligibility for vouchers, and whether and at what level of priority the family must be placed on a waiting list to receive a voucher. Families whose children receive child protective services or who are at risk of abuse, neglect, or exploitation have top priority. After that, the waitlist is in order of lowest income first. If two families have the same income, a family whose child has a disability (exceptional needs) has priority. Starting January 1, 2023, if no child has a disability, a family whose primary home language is not English has priority. *SB 1047 (2002), WIC 10271(b)*.

The APP assesses what family fee (share of cost), if any, is owed. Families who make less than 75% of State Median Income (SMI) *do not pay any family fees*. *WIC 10290(e)(2)(B)*. Families with 75% or higher SMI only pay 1% of their income in fees. *WIC 10290(e)(2)(A)*. Qualifying parents, resource families and caregivers may use their child care voucher to help pay for child care in a family child care home, child care center, or with a family, friend, or neighbor (FFN care). The use of vouchers is intended to provide families access to the many types of child care and allow them to choose the type most suited to their needs. *WIC 10225-10234*. If paid with state or federal funding, unless a close relative, the FFN provider must pass a criminal background check (e.g., see *CA Health & Safety Code 1596.792, 1596.66, 1596.67*). If the child is under the jurisdiction of the county, the resource parent must check with the social worker about whether they are allowed to use FFN in that county.

CDSS also funds center-based programs through contracts with child care centers, groups of licensed family child care providers called family child care home education networks (FCCHENs), and with public agencies that subcontract with centers. Families apply directly to these child care centers, which individually determine eligibility for and placement on any wait lists for the individual program, and any family fee for participation.

Families may find voucher-based, center-based, and private-pay ECE programs through their local child care resource and referral agency (R&R). R&Rs, located in every county, help families find child care that best fits their needs. Families seeking child care should contact their local R&R for assistance finding child care at http://www.rrnetwork.org. Most agencies that act as an R&R also act as an APP to administer voucher-based programs. R&R agencies can help families find licensed child care providers who will accept the vouchers. They also know what stand-alone center-based programs exist in the community.

Families of children receiving protective services through the county child welfare department or who are identified as abused, neglected, or exploited or at risk thereof are eligible for publicly funded child care without income or other need requirements, and these families receive top priority on child care waiting lists. *WIC 10271(a)-(b)(1)*. To qualify for child care under this category, families must receive a written referral from a legal, medical, or social services agency; an LEA liaison for homeless children and youth, designated pursuant to *42 USC 11432(g)(1)(J)(ii)*; a Head Start program; or an emergency or transitional shelter. *WIC 10271(a)(1)(B)(i).* Families also automatically qualify for child care if they are experiencing homelessness. *WIC 10271(a)(1)(A)(iii) & (a)(1)(B)(i).* If the child does not meet these requirements, families also qualify if they earn below 85% of the state median income, receive cash assistance, or have a family member who is certified to receive benefits from a means-tested program (e.g., Medi-Cal, CalFresh, WIC, CalWORKs) and have a need for child care such as working, attending school, or searching for a home or job. *WIC 10271(a)-(b).* Children up to age 13 and children with severe disabilities up to age 21 may receive state and federally funded child care. *WIC 10213.5(l), 10260(b), (d)(2)*. Many programs streamline enrollment for children receiving child welfare services.

Once a family has established initial eligibility for child care, they have 24-month continuous eligibility. *WIC 10271(h)*. This means that they are considered to meet all eligibility and need criteria for at least the next 24 months and will not have to recertify for at least 24 months. Even if the family's circumstances change, such as their work hours or income, they do not need to report those changes within the 24-month period. The only exception to this is if the family's income exceeds 85% of the state median income (SMI) and they qualified for child care based on their income, then they must report this change. If the agency determines they earn over 85% of SMI, they no longer qualify for child care funding. *WIC 10271(h).*

Child care providers are also paid based on a family's maximum certified hours of care, including days that the child does not attend care, until June 30, 2025. CCB 23-26.

California State Preschool Program

The California Department of Education's Early Education Division funds California State Preschool Program (state preschool) centers for 3- and 4-year-olds through local educational agencies (LEAs), colleges, community-action agencies, and private non-profit agencies. State preschools may serve 2-year-olds until July 1, 2027. State preschool offers both part-day and full-day services that provide a core class curriculum. 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. Families must meet the same eligibility requirements as for other CDSS child care programs (like the previous section), but the income eligibility limit is different. For state preschool, families who qualify based on income must make at or below 100% of the state median income. *EC 8213.* Families can also qualify for state preschool if they receive cash assistance, experience homelessness, have a child who receives child protective services or experiences or is at risk of abuse, neglect, or exploitation, or has a disability. These families qualify regardless of income. *EC 8208(a)-(b).* Families in state preschool are not required to

Early Care and Education (continued)

have a "need" for part-day care. *EC 8208(a).* For example, the parents do not need to work or attend school to enroll their child in a state preschool program. But they do need to show a need for child care to have full-day care. *EC 8208(d)(1)(C)*. The 24-month eligibility rules and similar waiting list rules described in the previous section also apply to California State Preschool. *EC 8208(e).*

Other Early Education Options Include the Following:

- **California Work Opportunity and Responsibility for Kids (CalWORKs) Child Care**

CDSS also administers CalWORKs child care, which has three stages. Starting January 1, 2025, families, resource parents, and caregivers who receive CalWORKs cash assistance are entitled to immediate, continuous CalWORKs Stage 1 child care for 24 months or until transfer to the CalWORKs Stage 2 child care program. *WIC 11323.1(e), 11323.2(a)(1)(B), 10271(h).* To qualify, the family, resource parent, or caregiver must be working or engaging in a Welfare-to-Work (WTW) activity such as attending parenting classes; education-related appointments for their child; domestic violence, substance use or mental health counseling; court and medical appointments; or searching for a job or home. *WIC 11323.2(c).* Because Stage 1 is an entitlement, qualifying parents and caregivers should not be placed on a child care waiting list. They have good cause for not participating in their WTW activity if they cannot find suitable child care. The County Welfare Office is the starting point for families seeking CalWORKs assistance, including child care.

Families, resource parents, and caregivers who received CalWORKs cash assistance or a diversion payment within the past two years are eligible to receive assistance paying for child care under the CalWORKs Stage 2 program, which is also considered an entitlement program. Just like with Stage 1 CalWORKs child care, families should not be put on a waitlist for Stage 2 CalWORKs child care either. In order to qualify for Stage 2, families must have received cash assistance or a diversion payment within the past two years *and* fall into one of the following eligibility categories. *WIC 10372.* One eligibility category is for families with a child who receives protective services through the county or who has been identified as abused, neglected, or exploited or is at risk thereof. To qualify for child care under this category, families must receive a written referral from a legal, medical, or social services agency; an LEA liaison for homeless children and youth, designated pursuant to *42 USC 11432(g)(1)(J)(ii)*; a Head Start program; or an emergency or transitional shelter. *WIC 10271(a)(1)(B)(i).* Families also qualify for Stage 2 child care if they are experiencing homelessness. *WIC 10271(a)(1)(A)(iii) & (a)(1)(B)(i).* Families who qualify based on the at-risk category or the homelessness category do not need to show that they need child care in order to work, go to school, or any other reason. If the child does not meet these requirements of the homelessness or at-risk categories, families can still qualify for Stage 2 child care if they meet the following three requirements: (1) they received cash assistance or diversion within the past 2 years; (2) they earn below 85% of the state median income, currently receive cash assistance, or have a family member who is certified to receive benefits from a means-tested program (e.g., Medi-Cal, CalFresh, WIC, CalWORKs); *and* (3) they have a need for child care such as working, attending school, or searching for a home or job. *WIC 10271(a)-(b).* Families should be seamlessly transferred between the CalWORKs child care stages without a break in services. *WIC 10370(b)-(c).* Depending on sufficient funding, families, resource parents, and caregivers are transferred from CalWORKs Stage 1 or Stage 2 in the 24th month to Stage 3 child care.

CalWORKs child care is provided for children through age 12, and up to age 21 for children who have disabilities. *WIC 11323.2(a)(1)(A).* CalWORKs child care payments are in the form of a voucher that CalWORKs participants can use to pay the child care provider or center of their choice. The local Child Welfare Agency or Alternative Payment Program (APP) paying for CalWORKs child care makes the voucher payment directly to the family child care provider, child care center, or family, friend, or neighbor providing child care. *WIC 10370-10376.5, 11323.1-11323.8.*

Starting January 1, 2025, 24-month continuous eligibility applies to all CalWORKs Stages. *WIC 10271(h), 11323.1(e)*. That means that once a family is certified for CalWORKs child care, they are considered to meet all eligibility and need requirements for not less than 24 months. They do not need to report any changes to income or schedule unless they qualified based on being at or under 85% of the state median income and their income exceeds 85% of the state median income. Families who qualified for CalWORKs child care based on other eligibility categories, such as homelessness, at-risk status, or being in receipt of aid, do not need to report changes in income and would not lose their child care if their income exceeded 85% of the state median income. *WIC 10271(h).*

- **Early Head Start and Head Start**

Early Head Start and Head Start are federally funded and administered 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 eligible and have a priority for admission in both programs, regardless of their family's income. To receive funding, all new Head Start programs must have a plan to meet the needs of homeless children, including transportation needs, and the needs of children in foster care. *42 USC 9831, 9836d(2)(O), 9840a; 45 CFR 1302.20-1302.24, 1305.2.*

Children of families who are experiencing homelessness, receiving public assistance such as TANF or SSI, or who have incomes below the federal poverty guidelines also qualify for Early Head Start and Head Start. *45 CFR 1302.12.* The local R&R can help families locate Early Head Start and Head Start programs in their community.

- **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, and over 12 months for a compelling reason; (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. *WIC 10219(a)(5), 11461.6*. Foster families and parenting foster youth can receive the Bridge Program voucher for foster children through age 12, and if the child has a disability, they may qualify to receive child care vouchers until age 21. Families obtain Bridge Program vouchers through the local Child Welfare Agency.

PART C OF IDEA & THE CA EARLY INTERVENTION SERVICES ACT

To be eligible for federal funding for early intervention programs under the Individuals with Disabilities Education Act, reauthorized under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 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 303.101(a)(1).*

In addition, states receiving funding under Child Abuse and Prevention Treatment Act (CAPTA) 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(b)(2)(B)(xxi).*

California's Early Start Program for Children Ages 0 to 3

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 receive early intervention services in a coordinated, family-centered system that is available statewide through the state's 21 regional centers. Regional centers are private, independent non-profit organizations that contract with the California Department of Developmental Services to coordinate and procure services for eligible individuals. *WIC 4620.* These include individuals eligible for early intervention services under Part C of the IDEA. *GC 95014(b)(1) et seq.* To find your local regional center, go to: https://www.dds.ca.gov/rc/lookup-rcs-by-county/

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). *GC 95020*. Children can be eligible for services under the following categories (*GC 95014)*:

- **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 25% 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 <u>only</u> hearing, vision, or severe orthopedic impairments (or a combination of these) are served by LEAs 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. There are exceptional circumstances where LEAs will serve children, but the regional center is your first point of contact. The LEA or regional center will assign all children and families referred for evaluation and assessment or determined eligible for Early Start services a service coordinator approved by the Department of Developmental Services to coordinate the services provided. *GC 95018; 17 CCR 52120(a).*

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 (IFSP)

The family, including the child's educational rights holder, 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 criteria, procedures and timelines used to determine progress towards achieving the outcomes and whether modifications or revisions are necessary;
5. The services to be provided, including the duration, location, and frequency of services to be provided (e.g., one hour per week of speech and language therapy provided in home);
6. The agency responsible for providing the identified services;
7. The name of the child and family's service coordinator;
8. The steps that will be taken to ensure the child and family receive appropriate services once the child reaches age 3 (and potentially transfers to IEP services by an LEA); and
9. The projected dates for the initiation of services provided and the anticipated duration of those services. *GC 95020(d).*

Early Care and Education (continued)

Available Services, Including ECE

Services and supports paid for through the Early Start program may include, where appropriate, ECE in integrated community-based programs, and therapies and support services in those community ECE program settings. Among the many specified supports are family training, health services (includes catheterization, tracheostomy care, tube feeding, changing of dressings and colostomy bags, and physician consultation), nursing services, occupational therapy, physical therapy, psychological services, service coordination services, sign language and cued language services, social work services, special instruction, speech and language services, transportation and related costs, and respite and other family support services. *20 USC 1432(4)(E); 34 CFR 303.13 & 303.16; 17 CCR 52000(b)(23).*

They further include group and individual activities that are developmentally appropriate and specially designed, based on the infant's exceptional needs, to enhance the infant's development; and opportunities for infants to socialize and participate in play and exploration activities. *EC 56426.2(a)(2)-(3).*

The state must provide these services, to the maximum extent appropriate, in natural environments, which means settings that are natural or typical for a same-aged infant or toddler without a disability and may include the home or community settings. *34 CFR 303.13(a)(8), 303.26, & 303.126.* Since July 2009, the regional center must consider the purchase of neighborhood preschool services and needed qualified personnel, in lieu of infant development programs. *GC 95020(d)(5)(B)(ii).*

Transition Requirements

For all children receiving early intervention services, the state must ensure a smooth and effective transition to preschool or other appropriate services (for toddlers with disabilities), or to exiting the program. That includes the responsibility to develop and implement an Individualized Education Program (IEP) by the child's third birthday, if the child is eligible for IDEA Part B preschool services. *34 CFR 303.209(b)(1)(i), 300.101(b), 300.124(a) & (b); EC 56426.9.*

Due Process Procedures

Most SELPAs throughout California utilize a conflict resolution support process referred to as Alternative Dispute Resolution (ADR). Any educational rights holder who believes the LEA is not appropriately assessing or serving a child may request ADR support from the SELPA. This first level of collaborative problem-solving preserves relationships, ensures a focus on the needs of the child, and supports ongoing teamwork focused on the resources available for the child.

If a child's educational rights holder disagrees with the services offered by the IFSP, or if the LEA or regional center refuses to evaluate or offer services to a child, the educational rights holder can request mediation or file for a due process hearing with the Office of Administrative Hearings (OAH). 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). DDS Complaints should be filed at: Department of Developmental Services, Attention: Office of Community Appeals and Resolutions, 1215 O Street, MS 8-20, Sacramento, CA 95814; phone (833) 538-3723, fax (916) 654-3641. An overview of the complaint process and forms can be found at https://www.dds.ca.gov/general/appeals-complaints-comments/early-start-complaint-process/

All complaints, mediation requests, 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). *17 CCR 52170.*

Once the Department receives a complaint, it has 60 days to investigate and issue a written decision. *17 CCR 52170-52171.* A mediation must be held within 30 days of request. *17 CCR 52172*. An administrative law judge will hear both sides and make a decision within 30 days of a due process complaint being filed. *17 CCR 52174.*

Regional Center Transfers

When a foster child changes home placements, and this results in a change in regional center or LEA, 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*; Dept. of Developmental Services, Inter-Regional Center Transfer Guidelines, Dec. 8, 1998. Delays in this area are common. Reach out to DDS if there are delays.

PRESCHOOL SERVICES FOR CHILDREN WITH DISABILITIES AGES 3 TO 5

All LEAs are required to provide special education services for eligible 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 (IEP).

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 and 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).*

Availability of Preschool Services in Integrated, Community-Based ECE Programs

A child who is eligible for IDEA preschool services may receive them at a regular public or private nonsectarian preschool program, state center-based ECE program (child development center), a family day care home, the child's regular environment that may include the home, a special site where preschool programs for both children with disabilities and children who are not disabled are located close to each other and have an opportunity to share resources and programming, a special education preschool program with children who are not disabled attending and participating for all or part of the program, or a Head Start program under contract with the state. *EC 56441.4, 56443(a).* The preschool services site must meet "least restrictive environment" (LRE) requirements. *34 CFR 300.116(a)(2).* If the LEA does not generally offer preschool programs to children with disabilities, the LEA is still responsible for identifying an appropriate program that meets the needs of the child. Meeting LRE requirements might involve the LEA paying for supplemental special education services while the child attends a public center-based preschool program serving typically developing children, such as a CDSS-contracted center or Head Start. Or it might be met through the LEA paying for the child to attend and receive special education services at a private preschool. *EC 56441.4 & 56443(a).* How the LRE requirement should be met is determined through the IEP.

Transition Services

Prior to transitioning a child receiving preschool special education services to grade school (kindergarten or first grade), an appropriate reassessment of the child must be conducted by the LEA 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 4

Special Education

California Foster Youth Education Task Force

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INTRODUCTION

Children in foster care have the same rights as all other students with regard 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:

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

EC 56363. This list is not exhaustive.

The local educational agency (LEA) in which a student resides is generally the LEA responsible for providing special education services, unless a child's educational rights holder (ERH) determines they will remain in their school of origin. When a child remains in their school of origin, the district of origin is responsible for providing special education services, including transportation if that is a related service required in their IEP. *EC 56030*. 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.* (Note: Charter schools are subject to all federal IDEA requirements.)
- 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 LEA's boundaries, responsibility for FAPE is determined by local SELPA plans.
- If a youth in foster care is attending a nonpublic school (NPS) and their home placement changes, they have the right to remain in their NPS school of origin unless their IEP team (with approval of their ERH) determines that a different setting can best meet their educational and other needs. *EC 48853.5(g)(3)(b), 56366.1(a)(8).*

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 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, et seq.* Federal law always overrides California law.

PARENT/EDUCATIONAL RIGHTS HOLDER (ERH)

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

Assessment

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

When a verbal referral is made, staff of the LEA shall provide assistance to ensure the request will be received in writing. *5 CCR 3021*. All referrals made by school staff shall be written and include (1) a 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 (i.e., Prior Written Notice explaining the legal basis for the refusal) 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 regular school sessions, or school breaks of more than five days from the date of receipt of the referral, unless there is agreement in writing to an extension. *EC 56321*.

If a child exhibits any evidence that they have a disability (e.g., mental health diagnosis or failing

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grades), they meet the legal standard of having a "suspected disability." LEAs have a low threshold when they consider providing an assessment for a "suspected disability." A district can only refuse to conduct an assessment if there is no evidence that the child has a suspected disability. A district cannot refuse to assess a child based on the time of school year when the assessment is requested, the amount of time the student has been enrolled in the school, or the need to conduct one or multiple prior interventions or Student Study Team (SST) meetings.

Generally, a child cannot be assessed without written consent of a parent/ERH. Exceptions may apply if:

- A child is a ward of the state, not residing with a parent under *34 CFR 300.300(a)(2)* (in limited circumstances) *20 USC 1414(a)(1)(D)*; or
- The LEA prevails at a due process hearing to obtain permission for an assessment that is not an initial assessment, or for reassessment if the LEA demonstrates it has taken reasonable measures to obtain consent and the parent has failed to respond. *EC 56321, 56381(f), 56506; 34 CFR 300.300(c)(2).*

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 five days. *EC 56344(a), 56043(c).*

When a child with a disability transfers from one LEA to another in the same academic year during an assessment process, the LEAs must coordinate expeditiously to ensure prompt completion of the full assessment. *20 USC 1414(b)(3)(D); EC 56320(i).* The assessment cannot be delayed or take longer than the required 60 calendar days unless the ERH agrees in writing to an extension. *EC 56344(a).*

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 LEA. *EC 56329(b).* For more information, see: https://www.disabilityrightsca.org/publications/how-to-obtain-an-independent-educational-evaluation-at-public-expense

Eligibility for Special Education Services

Three conditions must be met:

1. The child has an impairment adversely affecting educational performance that requires special education/specially designed instruction.
2. The impairment fits into one of the qualifying categories of disability:
   - Intellectual Disability;
   - Hearing Impairment;
   - Deafness;
   - Speech or Language Impairment;
   - Visual Impairment (including blindness);
   - Deaf-Blind;
   - Emotional Disability;
   - Orthopedic Impairment;
   - Autism;
   - Traumatic Brain Injury;
   - Other Health Impairment;
   - Specific Learning Disability; or
   - Multiple Disabilities.
3. The need for special education must not be due to a lack of reading or math instruction or limited English proficiency. An appropriate evaluation can help the IEP team determine whether there is only a lack of proficiency in these areas or whether there is a qualifying impairment adversely affecting educational performance.

20 USC 1401(3); 34 CFR 300.8; EC 56026.

A complete reevaluation, followed by an eligibility evaluation 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), except LEAs provide services to children with solely low incidence disabilities including vision, hearing, or orthopedic impairments. LEAs are required to provide special education services for eligible students ages 3 to 22, or until the student receives their high school 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 academic achievement and functional performance, learning goals, school placement, and services. *EC 56032, 56345*; *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 by adding an individual transition plan (ITP). *EC 56341.5(e), 56043(g)(1), 56345, 56345.1.*

As appropriate and necessary, the LEA 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, an individual who can interpret any assessments that may have been conducted, 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.*

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 present levels of performance, measurable goals and objectives, modifications and accommodations, individualized related services, and behavioral plans, where necessary. *20 USC 1414(d); EC 56345.*

The LEA shall schedule the IEP meeting at a mutually agreed-upon time and place for LEA participants and the parent/ERH. *EC 56341.5(c).* If the parent/ERH cannot attend the IEP meeting in person, with their consent the LEA shall accommodate the parent/ERH's participation with other methods, such as a video or telephone conference 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 LEA. *EC 56321.5, 56341.1(g).*

The LEA is responsible to ensure that the parent/ERH understands the proceedings at a meeting, including arranging for an ASL or other language interpreter. *EC 56341.5(i).*

Signing the IEP 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, but the district will not begin providing services to the student until a signature is obtained. *20 USC 1414; 34 CFR 300.300; EC 56346*. If the parent/ERH does not agree with the LEA's offer of services and is considering requesting mediation or a due process hearing about the dispute, they can consent to only a portion of the IEP document so the student can still receive services, even if there is disagreement. For example, they can sign the document and also write on it that they consent to only some of the services and not others. They can also sign the document and then write that they agree with the implementation of the IEP but do not agree that it provides FAPE. If a district proposes to change an IEP, particularly to take away or reduce a service, an ERH can disagree with this change, in writing on the IEP document, and the services must remain in place.

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/ERH requests an IEP meeting outside of the planned review IEP, the LEA has 30 calendar days to hold the IEP meeting. *EC 56343.5.*

When a student who has an IEP is transferred from LEA to LEA within the state, the new LEA shall provide "comparable" services to the existing IEP for the initial 30 days of enrollment. At that time, the LEA shall adopt the previous IEP or must present a new offer of FAPE for the parent/ERH's consent. *EC 56325.* Additional assessment may be suggested to ensure that any new offer of FAPE includes updated information on the student's assessed needs and the goals for the IEP document.

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 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 nonpublic school program, residential placement, a home hospital program, or services provided in a one-on-one structure.

EC 56360, 56361.

Nonpublic Schools

A nonpublic school (NPS) is a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an IEP. The school must be certified by the California Department of Education (CDE) and meet certain standards set by the Superintendent and Board of Education. *EC 56034.* All NPSs 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 NPSs can be found on CDE's website at https://www.cde.ca.gov/schooldirectory/nonpublic-nonsectarian-schools. NPSs are held to the same standards as public schools, including credentialed professionals and access to standards-based curriculum, extracurricular activities, and support services. *EC 56366.1, 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 an 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 must have an IEP that requires an NPS 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, in the plan review IEP meeting, 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).* 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 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 an NPS. *EC 56366.9.*

An LCI or NPS may not require as a condition of placement that educational decision-making authority for a student be designated to that institution, school, or agency, allowing it to represent the interests of the child for educational and related services. *EC 48854.* An LCI cannot hold educational rights for a youth because it would represent a conflict of interest. *20 USC 1415(b)(2)(A); 34 CFR 300.519(d)(2); GC 7579.5(i)-(j).*

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 their ability to access their education. 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, NPS, or STRTP 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 that service. *34 CFR 300.34(c)(2)*.

Schools may call these services other names like "educationally related mental health services." Regardless of what an LEA calls SBMH, they should understand what is being asked for when receiving a request for 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 environments and behavioral 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 using positive intervention strategies. Prior to an FBA, the LEA must obtain consent from the ERH. *20 USC 1414(a); EC 56506*.

Basic Concepts

Who Conducts the FBA? 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 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, and respect the student's human dignity and personal privacy. Such interventions shall ensure the student's physical freedom, social interaction, and placement in the least restrictive educational environment. *EC 56520.*

FBA and BIP Procedures

When Must the LEA Conduct an FBA and Develop a BIP? The LEA must consider conducting an FBA and develop a BIP when one of the following occurs:

- The child evidences a suspected disability in the area of behavior.
- The IEP team determines a behavior that violates a code of student conduct (i.e., school rule) is a manifestation of the student's disability pursuant to *20 USC 1415(k)(1)(E) & (F).*
- 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 student's disability, so that the behavior does not recur. *20 USC 1415(k)(1)(D)(ii); 34 CFR 300.530*.
- 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).*

What Happens if There Is a Behavioral Emergency? Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses a 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; (3) prone restraint; or (4) force that exceeds that which is necessary under the circumstances. *EC 56521.1.*

Whenever an emergency intervention is used, the LEA must (1) notify the parent (and residential care provider or foster parent, 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 BIP to determine the necessity for an FBA and an interim BIP; 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

Alternative Dispute Resolution (ADR) is an informal method of settling disagreements that may arise during an IEP meeting or as a result of the special education process. ADR provides specific options to support engagement and 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.

Compliance Complaint

A parent/ERH may file a compliance complaint with the CDE when the parent/ERH feels that the LEA 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. *EC 56500.2.*

Due Process

A parent/ERH may file for a due process hearing if they are in disagreement with the LEA regarding:

- The student's eligibility for special education services;
- Services and supports offered or not offered in the child's IEP;
- Implementation of the child's IEP;
- Assessment results for 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 request for Due Process with the Office of Administrative Hearings (OAH), Special Education Unit. A copy

of the request is served on the LEA. After a request is filed, the LEA has 10 days to provide a written response. *EC 56502*. Also see CDE Special Education Division.

Another place to get help is your Parent Training and Information Center: https://www.parentcenterhub.org/find-your-center/ and https://dredf.org/wp-content/uploads/2024/09/2022-CA-PTI-CPRC-Map-Accessible.pdf

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 LEA must offer a resolution session between the parent/ERH and an LEA representative who has authority to bind the LEA to a resolution unless both parties agree to waive the resolution session. The LEA 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 may be mediation. *EC 56501.5*.

Mediation

After filing for due process, the parent/ERH has the option to mediate the dispute with the LEA. During 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 LEA, OAH will provide a neutral mediator. All discussions are confidential. If no agreement is reached, the parties proceed to hearing. *20 USC 1415(e); 34 CFR 300.506; EC 56501(b)(1)-(2), 56503.*

Due Process Hearing

At least five days prior to the hearing, the parent/ERH and the LEA 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 56501(b)(4), 56505(c).*

At the hearing, both parties have the right to make oral arguments; 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(e).*

Examples of Due Process Remedies

- *Compensatory education*: an equitable remedy to make up for education lost due to the LEA'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.
- 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 LEA 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 LEA 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 limits a major life activity, including learning. *34 CFR 104.3(j).* Examples of disabilities that may require accommodations and supports in the general education program are asthma, diabetes, ADD, ADHD, and mental health disorders such as anxiety, depression, or PTSD. If the student qualifies, the LEA 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 many 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 LEAs 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 LEA will have its own Section 504 policy.

It is common for LEAs to use practices similar to those for IEPs when considering and developing 504 plans, including obtaining consent from the parent/ERH prior to assessment, provision of supports, or adjustments to placement. 504 plans are developed for the environment in which they are implemented, and as such should be reviewed and updated annually with each new team providing support to the student.

Students with 504 plans are entitled to many protections related to discipline, similar to students with IEPs.

ADDITIONAL SPECIAL EDUCATION RESOURCES

For more information on special education, available in multiple languages, see: https://serr.disabilityrightsca.org/

fact sheet 5

School Discipline

California Foster Youth Education Task Force

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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 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. See 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 shall *not* be suspended or expelled for being truant, tardy, or absent from school activities. *EC 48900(w).* In addition, effective January 1, 2025, students in K-12 who voluntarily disclose their use of tobacco, a controlled substance, alcohol, or an intoxicant of any kind in order to seek help through services or supports cannot be suspended solely for that disclosure. *EC 48900(c)(2), (h)(2).*

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).*

Recess

Effective July 1, 2024, a student in grades 1-6 cannot be denied recess for disciplinary purposes unless their participation poses an immediate threat to the physical safety of the student or other students. *EC 49056(a)(4).*

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. 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 (ERH) by phone, email, or in person. For foster children, the school must also try to contact the student's attorney and county social worker, and the tribal social worker for an Indian child. *EC 48911(d)*.

In addition, the ERH, attorney, county social worker and tribal social worker 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 ERH, attorney, county social worker and tribal social worker attend a conference to discuss the student's behavior, the school is prohibited from penalizing the student (including by delaying reinstatement in school) for an adult's failure to attend the conference. *EC 48911(f).*

Limits on Suspensions

Schools generally are required to try other means of correcting a student's behavior before imposing a suspension. Effective July 1, 2024, students in grades K-12 may not be issued an out-of-school suspension for disrupting school activities or defiance of school personnel. *SB 274 (2023); EC 48900(k)*.

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).* However, a student can be suspended for a first offense if a school administrator determines that the student's presence at

school "causes danger to persons." *EC 48900.5(a).*

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), 48903.*

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 ERH 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 youth is a foster student, the school district also must invite the child's attorney and county social worker to this meeting, as well as the tribal social worker for an Indian child. 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.

Effective January 1, 2020, upon the request of the student, parent/guardian or ERH, a teacher must provide any student in grades 1-12, who has been suspended from school for two or more school days, the homework that they would otherwise have been assigned.

If a homework assignment that is requested and turned in to the teacher by the due date or when the student returns from suspension, whichever is later, is not graded before the end of the academic term, that assignment cannot be included in the student's overall grade in the class. *AB 982 (2019); EC 47606.2, 48913.5.*

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 schoolwork and tests the student misses during the suspension and make appropriate counseling services available. The school must notify the student's ERH, attorney, and county social worker, and if applicable, tribal social worker, 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 Recommended Expulsions

The law requires recommendation for 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).*

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, to be sent by the school district 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 ERH's rights. *EC 48918(b).* If the student is a foster student, the school district also must provide the hearing notice to the student's attorney and county social worker, and if applicable, tribal social worker, at least 10 calendar days before the date of the hearing. *EC 48918.1(a), (c).*
- 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 suspension for the incident in question. *EC 48918(a).*
- 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), 48916.1.*

In addition, for mandatory recommended expulsions involving foster students, the school district must provide written notice of the hearing to the student's ERH, attorney, and county social worker and, if applicable, tribal

social worker at least 10 calendar days before the date of the hearing. The notice may be provided by email or by phone. *EC 48918.1.*

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 recommended 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 parent/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).*

STUDENT INTERROGATIONS BY LAW ENFORCEMENT

All youth under the age of 18 must consult with an attorney in person, by telephone, or by video conference prior to a custodial interrogation or waiver of Miranda Rights. The consultation may not be waived. *WIC 625.6(a).* This applies to custodial interrogations on campus by law enforcement officers (including school resource officers) as well as interrogations off campus. Law enforcement agencies are required to ensure that youth consult with an attorney in private. During this confidential consultation, the attorney will explain the youth's rights to them. The attorney consultation requirement does not apply to probation officers in the normal performance of their duties. *WIC 625.6(d).*

INVOLUNTARY TRANSFERS

In some situations, a student may be transferred against the wishes of their ERH 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*.

School Discipline (continued)

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 ERH, attorney, and county social worker, or if the student is an Indian child, their tribal social worker, 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 48400, 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 ERH and that voluntary transfers not be used as an alternative to expulsion unless alternative means of correction have been attempted pursuant to *EC 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 by 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

A foster child's ERH, attorney, and county social worker, and an Indian child's tribal social worker, have the same rights as a parent has to receive school discipline notices, documents and related information. *EC 48853.5(d).* This includes notice of:

- All suspensions, including in-school suspensions. *EC 48911(d), 48911.1(d).*
- Any meeting to determine whether a suspension will be extended until a decision is made on an expulsion recommendation. *EC 48911(g).*
- Any expulsion hearing. Notice should be provided at least 10 calendar days before the date of the hearing. *EC 48918.1.*
- Any meeting of an Individualized Education Program (IEP) team to make a manifestation determination decision. *EC 48915.5(d).*
- Any involuntary transfers. Notice should provide opportunity to request a meeting with the designee of the district superintendent before the transfer. *EC 48432.5(b).*
- Any plans to involuntarily remove a foster child from a charter school. Written notice must be provided no less than 5 school days before the effective action. *EC 47605(c)(5)(J)(iii), 47605.6(b)(5)(J)(iii).*

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 ERH may provide the attorney's contact information to the LEA. *WIC 317(e)(4)*.

DISCIPLINE RECORDS

A student's ERH 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*.

Amending a Student's Record After Improper School Suspension

If a student is improperly suspended from school (e.g., based on failure to provide notice or failure to hold a conference), the student's ERH can request to amend their school records. *EC 49070*.

STUDENTS WITH DISABILITIES

Protections in the Individuals with Disabilities Education Act (IDEA) apply to students who have been found eligible for special education services 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 Individualized Education Program (IEP) meeting held, and a manifestation determination IEP meeting 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 ERH 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).*

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

School Discipline (continued)

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; 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 youth is a foster student (as defined in *EC 48853.5*), the LEA must invite the student's ERH, attorney and county social worker to participate in the meeting. *EC 48915.5(d).* The LEA also must invite the tribal social worker if the foster student is an Indian child. *EC 48915.5(f).*

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 CFR 300.530(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 (including the ERH) 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)-(G); 34 CFR 300.530(f)-(g).*

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 Free Appropriate Public Education (FAPE), enabling the student to participate in the general education curriculum and progress toward their IEP goals.
- The student must receive, as appropriate, a Functional Behavioral Assessment (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 hearing, 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).*

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 6

Foster Youth Graduation Exemption Requirements

California Foster Youth Education Task Force

Tenth Edition, January 2025

INTRODUCTION

The key to improving outcomes for youth in foster care and current 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* and amended by Senate Bill 532 (2022) effective January 1, 2023, exempt students in foster care from local graduation requirements under certain conditions.

EXEMPTION FROM LOCAL GRADUATION REQUIREMENTS

Notwithstanding any other law, a school district or charter school shall exempt a student in foster care—including a dependent child of the court of an Indian tribe, consortium of tribes, or tribal organization who is the subject of a petition filed in the tribal court pursuant to the tribal court's jurisdiction in accordance with the tribe's law, or a child who is the subject of a voluntary placement agreement—or a current or 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, 48853.5(a), 48645.5, 48645.7.*

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 current or former juvenile court school pupil, as defined in *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; the total length of enrollment in high school; or, for youth with significant gaps in school attendance, the youth's age as compared to the average age of students in the third or fourth year of high school, whichever will make the youth eligible for the exemption. *EC 51225.1(c).*

   Note: Schools, youth, educational rights holders (ERHs), 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*:*
   - Three courses in English.
   - Two courses in Mathematics, including one year of Algebra I or Mathematics 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.
     EC 51225.3(a).
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 consult with the student and the ERH regarding how any of the requirements that are waived will affect the student's ability to gain admission to a postsecondary educational institution; shall provide discussion and information about other options available to the student, including but not limited to, a fifth year of high school, possible credit recovery, and transfer opportunities through the California Community Colleges; and shall provide consideration of the student's academic data and other information relevant to assist the youth's ERH in making an informed decision. *EC 51225.1.(f).*

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, regardless of whether those courses are required for statewide graduation requirements. *EC 51225.2(g).* A youth's ERH 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 (*EC 51225.1(b)*) or the statewide coursework requirements (*EC 51225.1(n)*) within the student's fifth year of high school, the school district shall do all of the following:

- Consult with the student and their ERH regarding their option to remain in school for a fifth year to complete the school district's graduation requirements or the statewide coursework requirements.
- Consult with the student and their ERH regarding how remaining in school for a fifth year to complete the school district's graduation requirements or the statewide coursework requirements will affect the student's ability to gain admission to a postsecondary educational institution.

Foster Youth Graduation Exemption Requirements (continued)

- Consult with and 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 or the statewide coursework requirements upon agreement with the ERH or the student, if the student is 18 years of age or older.

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, or multiple courses at the same time that are normally required to be taken serially (e.g., Spanish 1 and Spanish 2).

In making this determination, the district and the district's foster youth liaison should consult with the youth's caregiver, the youth's ERH, 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, or if they initially decline the exemption, 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 within 30 days of the exemption request, if an exemption is requested by the student or their ERH 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 current or 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 ERH, and the student's social worker and/or probation officer of the availability of the exemption and whether the student qualifies for an exemption. For current juvenile court school students, notification is only required if the student is in attendance at the juvenile court school for 30 days or more. *EC 48645.5.*

Assembly Bill 1166 (2015) added that 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).*

If a student is not eligible for an exemption in the year in which they transfer schools, the school district shall reevaluate eligibility and provide written notice to the student, the ERH, and the student's social worker and/or probation officer whether the student qualifies for an exemption within the first 30 calendar days of the following academic year(s). *EC 51225.1(o)*.

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, ERH, social worker/probation officer, caregiver, legal representative) may file a written complaint with the school district or charter school under the Uniform Complaint Procedures. *EC 51225.1(m)(1).* 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 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 ERH, 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 ERH'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 released, at a school operated by a local educational agency. *EC 48645.7.*

The county office of education must advise the student and their ERH, 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*.

ALTERNATIVE DIPLOMA PATHWAY FOR STUDENTS WITH EXCEPTIONAL NEEDS

Students with exceptional needs, who entered ninth grade in the 2022-23 school year or later, attending a school district, county office of education, charter school, or state special school, can graduate from high school through a newly defined diploma by meeting the following criteria as referenced in the student's individualized education program:

- The student is eligible to take the California Alternate Assessment, and
- The student is required to complete state standards-aligned coursework to meet statewide course requirements.

EC 51225.31.

Foster youth with significant cognitive disabilities may be able to earn a full high school diploma through an alternative pathway, and the IEP team, including the ERH, should discuss this option at an IEP meeting.

Participation in graduation activities subject to this section shall not be construed as termination of the provision of FAPE for pupils described in *EC 56026*, consistent with *34 CFR 300.102(a)(3)(ii)*, unless the IEP team, which includes the parent and pupil, has determined the pupil has completed their high school experience. *EC 51225.31(c), 51225.32(c).*

fact sheet 7

Transition Services to Support College and Career

California Foster Youth Education Task Force

Tenth Edition, January 2025

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 general education diploma (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 https://www.cdss.ca.gov/inforesources/foster-care/extended-foster-care-ab-12

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 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 https://www.cccco.edu/About-Us/Chancellors-Office/Divisions/Educational-Services-and-Support/Student-Service/What-we-do/Disabled-Student-Programs-and-Services

HIGHER EDUCATION

Campus Support Programs

There are a wide range of academic support programs for current and former foster youth attending college in California. Programs such as Guardian Scholars and NextUp are comprehensive programs that support current and 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 support, academic and personal counseling, and employment services. All community colleges, Cal State Universities and University of California campuses have a foster youth support program. The best way to find out about a specific campus support program is to contact the program coordinator. See https://cacollegepathways.org/search-foster-youth-programs/

California College Promise Grant

The California College Promise Grant 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.*

Financial Aid

Foster Youth Services Coordinating Programs are required to coordinate efforts to ensure, to the extent possible, that foster youth are supported to complete a Free Application for Federal Student Aid (FAFSA) or California Dream Act Application (CADAA). *EC 42921(e)(3)(B).*

When filling out the FAFSA/CADAA, 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/CADAA. Payments received as part of extended foster care do not need to be reported as income on the FAFSA. With the implementation of the FAFSA Simplification Act, foster care payments are no longer specifically excluded from income. Rather, income is defined as income that is reportable on tax returns unless specified as reportable untaxed income and benefits. As all foster care payments are not taxable, these payments are excluded from income. *20 USCA 1087vv(a)-(b)*.

While the FAFSA can be completed at any time, early application is encouraged and some aid, such as the Cal Grant, has specific deadlines (see Cal Grant section).

College financial aid offices have the ability to verify foster youth status automatically. In some circumstances, however, students may be asked to provide evidence of foster care status.

To maintain most forms of financial aid, students must make "Satisfactory Academic Progress" (SAP) as defined by their institution. This includes maintaining a minimum cumulative Grade Point Average (GPA) standard, completing a certain percentage of courses attempted and not exceeding minimum timeframe requirements. Students who fail to meet the GPA or course completion standard for two consecutive terms will be disqualified from receiving financial aid. SAP standards are governed by federal law; however, California law specifies, among other things, that students are entitled to appeal the loss of financial aid based on a wide range of circumstances. *EC 69432.7(l).*

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 https://chafee.csac.ca.gov/

The requirements related to academic progress are more flexible for the Chafee ETV grant than other forms of financial aid. If a student fails to demonstrate SAP, as defined by the institution where the student is enrolled, for two consecutive semesters (or equivalent enrollment), the student may continue to receive a Chafee ETV grant but must meet with an appropriate college staff member to develop a plan for improving academic progress. If a student subsequently fails to meet SAP standards for a third consecutive semester (or equivalent), the student must meet with an appropriate college staff member to update their plan. A student who fails to update their plan or who fails to meet SAP for a fourth semester (or equivalent) loses eligibility for subsequent awards but may appeal to retain

Transition Services to Support College and Career (continued)

eligibility. *EC 69519.* As of the 2024-25 academic year, Chafee grants are not counted towards the maximum amount of financial aid a student may receive. See https://www.csac.ca.gov/sites/main/files/file-attachments/gsa_2024-12.pdf?1707768651

Cal Grant Eligibility

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

1. Instead of having to apply within one year after high school graduation, foster youth attending a 4-year university 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. As of 2021, there are no age restrictions or time out of high school requirements for all community college students.
2. Foster youth can receive a Cal Grant for up to 8 years, rather than the 4-year cap in place for other students. *EC 69433.6, 69435.3.*

To qualify for a Cal Grant, students attending a 4-year university must submit a FAFSA by March 2, and community college students must submit a FAFSA by September 2. *EC 69435.5.*

If students miss these deadlines, however, they should still apply for aid, as other sources such as the Pell grant and Chafee grant can be applied for later.

Foster youth who were in foster care at any point after age 13 can receive a Cal Grant access award for non-tuition costs (such as rent, food, books, transportation, etc.) of up to $6,000. *EC 69470(b).*

For resources to support foster youth to apply for financial aid, visit https://jbay.org/resources/financial-aid-guide/

Student Success Completion Grant (SSCG)

Foster youth whose dependency was established or continued on or after the age of 13 who are enrolled in 12 or more units can receive an additional $5,250 per semester at California Community Colleges. Non-foster youth receive $1,298 per semester if enrolled in 12-14 units and $4,000 per semester if enrolled in 15 units. *EC 88931(c)(2).*

Middle Class Scholarship (MCS)

Foster youth enrolled at a CSU, UC or bachelor's degree program at a community college can receive a grant equal to 100% of remaining unmet need after accounting for other financial aid and a "self help" contribution of $7,898. Non-foster youth can also receive MCS for a lesser amount. *EC 70022(a)(5)(D).*

CalKIDS program

All low-income students in grades 1-12 received a $500 payment into a CalKIDS college savings account in 2021, and all low-income first graders are eligible to receive this payment in subsequent years. Foster youth received an additional $500 in this account. Beginning in 2025-26, all foster youth in grades 1-12 will be eligible to receive the $500 augmentation rather than just those who are in foster care in the first grade. To claim these funds, students can visit https://calkids.org *EC 69996.9(a)(3).*

Priority Registration

Foster youth attending a public college or university who were in foster care after the age of 13 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 https://www.publiccounsel.org/wp-content/uploads/2021/12/ABCs-Manual-Ninth-Edition-2021-4817-8632-3711.pdf

In addition, California Department of Social Services (CDSS) has a website at https://cdss.ca.gov/inforesources/foster-care/independent-living-program

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CFYETF Member Organization List

- Adelanto Elementary School District
- Alameda County Office of Education, Foster Youth Services Coordinating Program
- Alhambra Unified School District
- All Saints Church Foster Care Project
- Alliance for Children's Rights
- Allied Health
- Amador County ILP – Nexus Youth & Family Services
- Antelope Valley Union High School District
- Arvin Union School District
- Association of California School Administrators (ACSA)
- Atascadero High School
- BEST Community Collaboration (Bolstering Education & Successful Transition)
- Bonita Unified School District
- Butte County Office of Education
- Calaveras County Office of Education, Foster Youth Services Coordinating Program
- California Alliance of Caregivers
- California Alliance of Child and Family Services and Catalyst Center
- California Association of Supervisors of Child Welfare and Attendance (CASCWA)
- California Department of Developmental Services
- California Department of Education (CDE)
  - Student Achievement and Support Division
  - Analysis, Measurement, and Accountability Reporting Division
  - Special Education Division
- California Department of Rehabilitation
- California Department of Social Services (CDSS)
  - Children and Family Services Division
  - Research, Automation and Data Division
- California Foster Care Ombudsperson
- California Youth Connection (CYC)
- CASA of Los Angeles
- Casey Family Programs
- Central Union High School District
- Chico Unified School District
- Child and Family Policy Institute of California (CFPIC)
  - Youth Engagement Project (YEP)
- Child Care Law Center
- Children Now
- Children Youth and Family Collaborative (CYFC)
- Children's Law Center of California
- Children's Legal Services of San Diego
- Choice Educational Services
- City and County of San Francisco
- CLC Partnership
- Contra Costa County Office of Education
- Corona-Norco Unified School District
- County of San Bernardino, Children & Family Services
- County of San Luis Obispo Department of Social Services
- County Welfare Directors Association of California (CWDA)
- CSU Fullerton, Guardian Scholars Program
- Del Norte County Office of Education
- Del Norte Unified School District
- Disability Rights Education & Defense Fund (DREDF)
- Divinity Prophet and Associates
- Dominguez High School
- Downey-Montebello SELPA
- East Bay Children's Law Offices
- Educational Results Partnership
- Elk Grove Unified School District, Foster Youth Services
- Empowerment Congress, Education Subcommittee on Achievement Gap & Foster Youth
- End Child Poverty California powered by GRACE
- EPIC Advocacy and Consulting
- Fighting Back Santa Maria Valley
- First Star
- First Star Bruin Guardian Scholars Academy
- First Star Cal State San Bernardino Academy
- Sacramento State First Star Academy
- FKCE Saddleback College
- Foster America
- Foster Care Counts
- Foster Care Legal Network
- Foster Horizons, Inc.
- Fostering a Forever Future
- Foundation for California Community Colleges
- Fresno City College, NextUp Program
- Fresno County Superintendent of Schools – Foster Youth Services Coordinating Program
- Fresno Unified School District
- Give Something Back
- Healing Pathways Clinic
- Healthy Minds Consulting
- Conrad N. Hilton Foundation
- HopSkipDrive
- Humboldt County Office of Education, Foster Youth Services Coordinating Program
- i.e. communications, LLC
- Inland Congregations United for Change (ICUC)
- International Christian Adoptions dba Institute for Children's Aid
- Irvine Valley College NextUp & Guardian Scholars
- John Burton Advocates for Youth
- Johns Hopkins University School of Education
- Judicial Council of California
- Just in Time for Foster Youth
- Juvenile Justice Commission, San Diego County
- Kern County Superintendent of Schools, Foster Youth Services Coordinating Program
- Kings County Office of Education, Foster Youth Services Coordinating Program
- Knight High School
- Lake Elsinore Unified School District
- Las Virgenes Unified School District
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- Legal Services for Children
- Lodi Unified School District
- 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 Office of Education, Foster Youth Technical Assistance Program
- Los Angeles County Probation Department
- Los Angeles Unified School District
- Lynwood Unified School District
- M & I Educational Consulting Network
- Madera Unified School District
- Making Futures Brighter

- Marin County Office of Education, Education Services
- Mariposa County Health and Human Services Agency
- Mariposa County Office of Education, Foster Youth Services Coordinating Program
- Mary Graham Children's Foundation
- McKinley Children's Center
- Mendocino County SELPA
- Mental Health Advocacy Services, Inc.
- Merced City School District
- Merced County Office of Education, Foster Youth Services Coordinating Program
- Merced Union High School District
- Merwin Jay Act
- Modesto City Schools
- Modesto Junior College
- Monterey County Office of Education, Foster Youth Services Coordinating Program
- Monterey Peninsula Unified School District
- Moreno Valley College
- Morningside High School
- Mt. San Antonio College, NextUp/REACH Program
- MW Management
- Napa County Office of Education
- National Center for Youth Law
- Nevada County Superintendent of Schools, Foster Youth Services
- Oaks Middle School – STAR Scholars
- Orange County Department of Education, Foster Youth Services Coordinating Program
- Orange Unified School District
- Oro Grande School District
- Pacific Charters
- Palm Springs Unified School District
- Pivotal
- Placer County Office of Education, Foster Youth Services Coordinating Program
- Porterville Unified School District
- PreventionWORKS
- Pritzker Foster Care Initiative
- Promises2Kids
- Public Counsel
- Quartz Hill High School
- Redlands Unified School District
- River Delta Unified School District
- Riverside Community College District
- Riverside County Office of Education, Foster Youth Services Coordinating Program
- Riverside Unified School District
- Romoland School District
- Roseville City School District
- Roseville Joint Union High School District, Homeless and Foster Youth Services Coordinating Program
- Sacramento City College EOPS/NextUp
- Sacramento City Unified School District
- Sacramento City Unified School District, Foster Youth Services
- Sacramento County Department of Health and Human Services
- Sacramento County Office of Education, Foster Youth and Homeless Services Department
- Sacramento State Guardian Scholars Program
- San Benito County Office of Education, Foster Youth Services Coordinating Program
- San Bernardino City Unified School District, Specialized Programs Department
- San Bernardino County Children and Family Services
- San Bernardino County Human Services
- San Bernardino County Superintendent of Schools, Foster Youth Services Coordinating Program
- San Diego County Office of Education, Foster Youth Services Coordinating Program
- San Francisco State University School of Social Work
- San Joaquin County Office of Education
- San Jose State University College of Education
- San Jose State University School of Social Work
- San Juan Unified School District, Foster Youth Services
- San Luis Obispo County Office of Education, Foster Youth Services Coordinating Program
- San Luis Obispo County SELPA
- San Marcos Unified School District
- San Mateo County
- San Mateo County SELPA
- Santa Clara County Office of Education
- Santa Cruz County Office of Education, Foster Youth Services Coordinating Program/FosterEd
- Scholarship Prep Public Schools
- School Services of California
- SELPA Administrators of California
- Seneca Family of Agencies
- Shasta County Office of Education, Foster Youth Services Coordinating Program
- Simply Friends
- Solano Community College, NextUp/EOPS/CARE
- Solano County Office of Education, Foster and Homeless Youth Services
- Solano County Office of Education, Youth Development Services
- Sonoma County SELPA and Sonoma County Charter SELPA
- South Monterey County Joint Union High School District
- Southwestern College
- Stanford University FLI Office, Guardian Scholars Program
- Stanislaus SELPA
- Stevens Educational Consulting for Foster Youth Families
- Stockton Unified School District, Foster Youth Services
- Stuart Foundation
- Student Senate for California Community Colleges
- Sutter County Superintendent of Schools
- Sycamores
- Temecula Valley High School
- The Academy Project
- The Brightest Star, Inc.
- Tulare County Office of Education, Foster Youth Services Coordinating Program
- Twin Rivers Unified School District
- Unity Care Group
- University of La Verne, Kern County Campus
- Ventura County Office of Education, Foster Youth Services Coordinating Program
- Victor Valley Union High School District
- Vinson Professional Services
- Washington Unified School District
- WestEd
- Whittier Union High School District
- Willows Unified School District
- With Lived Experience
- Woodland Community College – Foster & Kinship Care Education Program
- Woodland Joint Unified School District
- Yolo County Office of Education – Foster Youth Services Coordinating Program
- Youth Justice Education Clinic at Loyola Law School
- Youth Law Center
- Yreka Union High School District