

# Educational Rights and School Stability



## California Foster Youth Education Task Force

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### INTRODUCTION

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



### GUIDING PRINCIPLES

Students in foster care must have access to the same academic resources, services, and extracurricular and enrichment activities that are available to all students. All educational and school placement decisions are made by the educational rights holder in consultation with other parties, must be based on the child's best interests and must consider, among other factors, educational stability and the least restrictive educational setting necessary to achieve academic progress. *EC 48850(a)(1), 48853(h); WIC 361(a)(6), 726(c)(2)*.

Educational matters must be considered at every court hearing. Social workers and probation officers have many education-related reporting requirements. See *CRC 5.651(c) and 5.668(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)*.

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

### FOSTER YOUTH SERVICES COORDINATING PROGRAMS

Foster Youth Services Coordinating (FYSC) Programs is a program of the California Department of Education (CDE) administered by county offices of education. The program helps to improve children's educational performance and personal achievement. FYSC Programs have the flexibility to design services to meet a wide range of needs of foster youth. Commencing with the 2015-16 fiscal year, under AB 854, the FYSC Programs coordinate and ensure that local educational agencies within its jurisdiction are providing services to foster youth students pursuant to a foster youth services coordinating plan with the purpose of ensuring positive educational outcomes. *EC 42920.5*

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

For a list FYSC Programs county contacts, see <https://www.cde.ca.gov/ls/pf/fy/contacts.asp>.

### SCHOOL STABILITY

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

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

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, or has been removed from their home and is the subject of a petition filed

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under WIC 300 or 602. *EC 48853.5(a)*. This is a broad right that applies whether the child is living at home (i.e., with biological parents) or in a placement outside the home.

If the court's jurisdiction ends during an academic year and the child is in kindergarten or grades 1 through 8, inclusive, the right to remain in the school of origin lasts through the end of that academic year. If the court's jurisdiction ends while the child is in high school, the right to remain in the school of origin lasts through graduation. *EC 48853.5(f)(2)-(3)*.

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

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

## • Transportation

If the child remains in their school of origin, transportation may be needed between the child's foster care placement and school. Under the Every Student Succeeds Act (ESSA) of 2015, LEAs must collaborate with child welfare to develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of their time in foster care. The transportation procedures must (1) ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with section 675(4)(A) of Title 42; and (2) ensure

that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the 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)*.

In some cases, the caregiver may be able to provide transportation, in which case the placing agency can reimburse them for reasonable costs. *20 USC 6312(c)(5)*; *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 recently 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), with consideration of location, placement, and the needs of the youth. *EC 56040*; *EC 41850(b)(5)*.

## • Role of the Placing Agency

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

Within one court day of deciding to change a child's placement to a location that could result in a school change, the social worker or



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probation officer must notify the court, the child's attorney, and the child's educational rights holder or surrogate parent (hereinafter collectively referred to as "educational rights holder" or ERH). *CRC 5.651(e)(1)(A)*. If a child who is changing schools has an IEP, the social worker or probation officer must give written notice of the impending change to the current LEA and the receiving Special Education Local Plan Area (SELPA) at least 10 days in advance. *CRC 5.651(e)(1)(B)*.

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

## • Role of the Court

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

- The social worker notified the court, the child's attorney and the 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 interest of the child, and the responses of all interested parties within two court days after the hearing is set, and the hearing must be held within five court days. Pending the hearing, the child has a right to remain in their current school. *CRC 5.651(e)(2)-(4)*; *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(c)* and *56026.3*. SELPAs are consortia of educational agencies formed to serve the special education needs of children attending schools that are members of the SELPA.

Each 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)*.

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 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 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.)



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## • 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 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 of other proof of immunization history, proof of residency, other documentation, or school uniforms. *EC 48853.5(f)(8)(B).*

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

## • Timely Transfer of Records

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

*EC 48853.5(f)(8)(C).* This applies to foster youth even if they have willfully damaged or refused to return property. *EC 49014(g).*

As part of the transfer process, the current LEA shall compile the complete educational record of the student, including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and, if applicable, a copy of the foster child's 504 plan or 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 coursework satisfactorily completed by a foster child while attending another public school, a juvenile court school, or a nonpublic, nonsectarian school or agency, even if the child did not complete the entire course; must issue full or partial credit for the coursework satisfactorily completed; and must not require the child to retake a course already satisfactorily completed in one of these settings. Any credits accepted must be applied to the same or equivalent coursework. If partial credit has been awarded in a particular course, the child must be enrolled in the same or equivalent course at their new school, so that they may continue and complete the entire course; the child must not be required to retake the portion of the course already completed unless the LEA, in consultation with the ERH, finds that the child is reasonably able to complete that portion without causing a delay in meeting the other requirements for their graduation from high school. Notwithstanding the above, a foster child may not be prevented from retaking a course they

need to meet the admission requirements for California State University or the University of California. *EC 51225.2.*

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

## SPORTS AND ACTIVITIES

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

## UNIFORM COMPLAINT

If a right under Education Code Section 48853.5 is denied, anyone (including a youth, 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 4630.* When a complaint is filed, the district must investigate and provide a written response, including a proposed resolution, within 60 days. *5 CCR 4631.*

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

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