

Educational Rights and School Stability



California Foster Youth Education Task Force

INTRODUCTION

It is the intent of the Legislature to ensure that students in foster care have a meaningful opportunity to meet the challenging state pupil academic achievement standards to which all students 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 and 48850 (a)(1)*.

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 and must be based on the child's best interests and consider, among other factors, educational stability and the least restrictive educational setting necessary to achieve academic progress. *EC 48850(a)(1), 48853(h); WIC 361(a)(5), 726(c)(2)*.

Educational matters must be considered at every court hearing. Social workers and probation officers have many education-related reporting requirements. *See CRC 5.651(c) and 5.668(c) for a list of requirements.* 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 YOUTH SERVICES COORDINATING PROGRAMS

Foster Youth Services Coordinating (FYSC) Programs is a program of the California Department of Education administered by some county offices of education. The program helps to improve children's educational performance and personal achievement. 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 pupils pursuant to a foster youth services coordinating plan with the purpose of ensuring positive educational outcomes.

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

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

DEFINITIONS OF FOSTER YOUTH

- **Local Control Funding Formula**

For purposes of the Local Control Funding Formula (LCFF), EC Section 42238.01(b) defines "foster youth" as any of the following:

A child or youth who is the subject of a petition filed under Welfare and Institutions Code (WIC) Section 300 (meaning a court has taken jurisdiction over a child and declared the child to be a dependent of the court due to the presence or risk of abuse or neglect). This includes both children who are living at home while a dependent of the court as well as children who the court has ordered to be removed into the care, custody and control of a social worker for placement outside the home.

A child or youth who is the subject of a petition filed under WIC Section 602 (meaning a court has taken jurisdiction over a child and declared the child to be a ward of the court due to the child's violation of certain criminal laws) and has been ordered by a court to be removed from home pursuant to WIC Section 727 and placed in foster care as defined by WIC Section 727.4(d).

A youth between ages 18 and 21 who is enrolled in high school, is a non-minor dependent under the placement responsibility of child welfare, probation, or a tribal organization participating in an agreement pursuant to WIC Section 10553.1, and is participating in a transitional living case plan.

- **Right to School of Origin**

Education Code section 48853.5(a) defines a "foster child" as a child who has been removed from his or her home pursuant to WIC 309 (temporary custody), is the subject of a petition filed under WIC 300 (dependent-victim of abuse or neglect), or WIC 602 (juvenile who has violated the law), or has been removed from his or her home and is the subject of a petition under WIC section 300 or 602.

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For purposes of granting the right to be placed in the school of origin, the clear intent of the Legislature was to apply that right to foster children, as defined in Education Code section 48853.5(a), who have been removed from their home. Children who have remained in their original home with their parents would therefore be in their school of origin and experience school stability.

- **Exemption from Local Graduation Requirements**

Education Code section 51225.2(a)(1) defines a “pupil in foster care” as a child who has been removed from his or her home pursuant to WIC 309 (temporary custody), is the subject of a petition filed under WIC 300 (dependent-victim of abuse or neglect), or WIC 602 (juvenile who has violated the law), or has been removed from his or her home and is the subject of a petition under WIC section 300 or 602.

For purposes of granting exemptions to local graduation requirements, a pupil in foster care, as defined in Education Code section 51225.2(a)(1), who transfers between schools any time after the completion of the pupil’s second year of high school is exempted from all coursework and other requirements adopted by the governing board of the school district that are in addition to the statewide coursework requirements specified in Education Code section 51225.3, unless the school district

makes a finding that the pupil is reasonably able to complete the school district’s graduation requirements in time to graduate from high school by the end of the pupil’s fourth year of high school. The exemption from local graduation requirements applies to foster youth who have been removed from their home and former juvenile court schools pupils.

SCHOOL STABILITY

Students in foster care may attend programs operated by the local educational agency of the licensed children’s institution or foster family home in which the foster youth is placed (EC 48853(a)) or the foster child may continue in his or her school of origin for the duration of the jurisdiction of the court (EC 48853.5(f) and EC 48853(a)(1)) unless one of the following applies: (1) The student has an individualized education program requiring placement in a nonpublic, nonsectarian school or agency, or in another local educational agency (EC 48853(a)(2)); 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 pupil to be placed in another educational program, in which case the ERH shall provide a written statement that he/she has made that determination (EC 48853(a)(3)).

Before placing a child in a juvenile court school, community school, or other

alternative school setting, the educational rights holder must consider placement in the regular public school. EC 48853(c).

- **School of Origin**

A foster child’s school of origin is (1) the school in which he/she was last enrolled, (2) the school he/she attended when permanently housed, or (3) any other school he/she 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 his/her school of origin for as long as the court has jurisdiction over the child’s placement. EC 48853.5(f).

When transitioning between grade levels, the child has the right to continue in his/her 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).

If the court’s jurisdiction ends during an academic year and the child is in kindergarten or grades 1 through 8, inclusive, the right to remain in the school of origin lasts through the end of that academic year. If the court’s jurisdiction ends while the child is in high school, the right to remain in the school of origin lasts through graduation. EC 48853.5(e)(1)-(4).

A foster child who remains in his/her school of origin satisfies the residency requirements for attendance in that school district. EC 48204(a)(2). 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 his/her school of origin and transportation between his/her foster care placement and the school is needed,



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Education Code section 48853.5(f)(3)(B) states that a school district is not required to provide transportation services to allow a foster child to attend a school or school district, unless otherwise required under federal law. Education section 48853.5(f)(5) does not prohibit a school district from, at its discretion, providing transportation services to allow a foster child to attend a school or school district.

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)*.

Under the Every Student Succeeds Act 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 the 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 475(4)(A) of the Social Security Act *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 local educational agency will provide transportation to the school of origin under certain conditions. *20 USC 6312(c)*.



In many cases, the caregiver may be able to provide transportation, in which case the placing agency can reimburse them for reasonable costs. *42 USC 675(4)(A)*. The California Department of Social Services' All County Letter No. 11-51 explains how to calculate the reimbursement. In general, LEAs and county placing agencies are "encouraged to collaborate to ensure maximum use of available federal funds."

• 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 his or her educational stability and assurances that the placing agency has taken steps to ensure such stability. *WIC 16010(d), 16501.1(d), (e) and (g)*.

Within one court day of deciding to change a child's placement to a location that could result in a school change, the social worker or probation officer must notify the court, the child's attorney, and the child's educational rights holder or surrogate parent (hereinafter collectively referred to as "educational rights holder"). *CRC*

5.651(e)(1)(A). If a child who is changing schools has an individualized education program (IEP), the social worker or probation officer must give written notice of the impending change to the current local educational agency (LEA) and the receiving Special Education Local Plan Area (SELPA) at least 10 days in advance. *CRC 5.651(e)(1)(B)*.

LEAs and placing agencies must work together to ensure foster children attend the school of origin as the default following a change of placement unless the Educational Rights Holder, in consultation with the other parties in court and the school districts, determines it is in their best interest to change schools. *20 USC 6312(c)(5)(B)* and *EC 48853.5(f)*.

• Role of the Court

Generally, parents hold the educational and developmental-services decision-making rights for their child. *CRC 5.649*. However, if necessary to protect a foster child, the court may limit a parent's or guardian's rights. *CRC 5.649(a)*. At each hearing, the court must identify the educational rights holder for the child. *CRC 5.649*.

At any hearing that follows a decision to change a foster child's initial placement or any subsequent change of placement, which could lead to a removal from the school of origin, the placement agency must

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demonstrate that, and the court must determine whether:

- The social worker notified the court, the child's attorney and the educational rights holder, no more than one court day after making the placement decision, of the proposed placement decision. *CRC 5.651(e)(1)(A)*.
- If the child had a disability and an active individualized education program before removal, the social worker, at least 10 days before the change of placement, notified in writing the local educational agency that provided a special education program for the child before removal and the receiving special education local plan area. *CRC 5.651(e)(1)(B)*.

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

If there is a hearing request, the social worker or probation officer must provide a report on the proposed change including whether a dispute exists, how the proposed change serves the best interest of the child, and the responses of all interested parties within two court days after the hearing is set, and the hearing must be held within five court days. Pending the hearing, the child has a right to remain in his/her current school. *CRC 5.651(e)(2)-(4)*. The court must consider whether it is in the child's best interest to change schools and may make orders related to this issue. *CRC 5.651(f)*.

• Role of the LEA

"Local Educational Agency (LEA)" has different definitions throughout the Education Code but, for purposes of these fact sheets, generally means a school district, a county office of education, a charter school participating as a member of

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

Each local educational agency shall designate a staff person as the educational liaison for foster children. *EC 48853.5(c)*. The educational liaison is responsible for the following: (1) ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children; and, (2) assist foster children when transferring from one school to another school or from one school district to another school district in ensuring 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 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: (1) consults with the foster child and the person holding educational rights and (2) provides them 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)(8)*.

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 pupil served by the local educational agency. *EC 48853.5(f)(9)*.

If so designated by the school district's superintendent, the educational liaison shall

notify a foster child's attorney and the appropriate representative of the county child welfare agency of the following:

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

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

LOCAL PUBLIC SCHOOL

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

• Immediate Enrollment

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