

ADDITIONAL CALIFORNIA-LAW BASED QUESTIONS TO ENSURE THAT THE EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN FOSTER CARE ARE BEING ADDRESSED

This supplement to *Asking the Right Questions: A Judicial Checklist to Ensure that the Educational Needs of Children and Youth in Foster Care Are Being Addressed*, published by the National Council of Juvenile and Family Court Judges, Reno, Nevada, 2005, provides additional citations and details specific to California law. **It is not a stand-alone document.**

Additional **California Foster Care Education-Law Fact Sheets** are also available at: http://clcla.org/train_educat.htm

EDUCATIONAL RIGHTS

Who holds the rights to make educational decisions for the child? WIC § 361; GC § 7579.5

- Has the court limited the parents/guardian's right to make these decisions? *WIC § 361*
 - If so, did the court appoint a "responsible adult" to make these decisions? *WIC § 361*
 - If the court appointed a responsible adult, did the youth's attorney, child welfare worker, caregiver, or other appropriate adult forward a copy of the JV-535 Form that identifies who now holds educational rights for the child to the school district?
 - If 1) the parent/guardian's rights were limited, 2) the court could not identify a responsible adult, and 3) the child is eligible or suspected of being eligible for special education, has the school district been notified that it needs to appoint a surrogate (*GC § 7579.5*) and given a JV-536 form?
 - If so, did the district appoint a surrogate within 30 days of the request? *20 USC § 1415(b)(2)(B); GC § 7579.5(a).*

Note: County social workers can NEVER be appointed to make educational decisions. If a group home or other non-public agency provides the child with educational care or has another conflict of interest, an employee of that agency may NOT be appointed to make educational decisions for a child or sign special education documents. See *GC § 7579.5(i)-(j)*

TRANSFER & ENROLLMENT ISSUES (AB 490 / MCKINNEY-VENTO)

Did the child move to a new school district?

- If so, did the child remain in his/her school of origin? *EC § 48853.5(d)*

Note: If yes and the child is "awaiting foster care placement," the federal McKinney-Vento Act entitles the child to transportation to the school of origin. *42 U.S.C. § 11434a(2)(B)(i)*

- If the child did NOT remain in the school of origin, why not?
 - Did the social worker/probation officer who chose the placement consider *proximity to the child's school* and the impact the placement would have on the *child's educational stability*? *WIC § 16501.1(c)(1)*

Note: Social workers and probation officers may access education records to perform educational case-management responsibilities. *EC § 49076(a)(11)*

- Was a regular public school considered as the first school placement option? *EC § 48853*

- As soon as the placing agency knew the child would need to transfer schools, did the agency: 1. Notify the school of the student's last expected day of attendance; 2. Request calculation of the student's seat time, credits, and grades; and 3. Request that the student be transferred out? *EC § 49069.5(c)*
- Did the former school check the child out and forward school records (including, current classes and grades, immunization records, special education records like 504 plans or IEP documents, and partial credits if mid-year) to the new school within 2 days? *EC §§ 49069.5(c-e); 48645.5*
- Was the child immediately enrolled in the new school regardless of whether the new district had transcripts, immunization records, etc ? *EC § 48853.5(d)(4)(B)*
- If the child was in special education and transferred to a new school, were services comparable to the services required by the existing IEP immediately provided following transfer? *EC § 56325(a)*.
 - If the child's new school is in a different special education local plan area (SELPA) and the local education agency did not adopt the previous IEP, did the SELPA/district hold a meeting within 30 days of transfer to develop a new IEP? *EC § 56325(a)*.

Note: When a child receiving special education services moves, it is especially important to transfer records as soon as possible to ensure appropriate placement.

GROUP HOMES / FOSTER FAMILY AGENCIES AND NON-PUBLIC SCHOOLS

Does the child attend a non-public school?

- If so, does the child have a valid IEP requiring attendance at that non-public school or has the person who holds education rights provided consent? *EC § 48853(a)*

Note:

- A group home, nonpublic school, and/or foster family agency may NOT require that educational authority be designated to them as a condition of placement. *EC § 48854*.
- A group home may NOT condition residential placement on attendance at a nonpublic school or agency owned, operated by, or associated with the home. *EC § 56366.9; HSC 1501.1(b)*.

SPECIAL EDUCATION

Does the child have special needs?

If so, please be sure to reference pages 4-5 of the national Checklist for important questions. Additional California-based special education information is also in fact sheets available at: http://clcla.org/train_educat.htm.

- If the child is eligible for special education services *and* requires mental health services to benefit from that educational program, has the school district referred the child to the County Department of Mental Health for an AB 3632 / AB 2726 assessment? *GC §§ 7576; 7572*
 - If the school district refused to make this referral, did the educational rights holder immediately request an IEP meeting, as s/he is authorized to do? *EC § 56043(l)*

Note: A child does not have to be eligible for special education services as "emotionally disturbed" to qualify for AB 3632 mental health services.

- If the child is 16 years of age or older, does the IEP contain a Transition Plan? *20 USC § 1414(d)(A)(i)(VIII); EC § 56345(a)(8).*

Also note: Student Study/Success Team (SST) meetings can be useful, but are not legally mandated and should not be held instead of an IEP Meeting when a parent, teacher, or other service provider has specifically requested an assessment to determine whether the child is eligible for special education services. Once an assessment is requested in writing by any of the above individuals, the school district is subject to mandatory timelines by which it must conduct the assessment. *EC §§ 56029; 56043*

SCHOOL DISCIPLINE ISSUES

Has the child been suspended or expelled?

- If a child was suspended, did the district comply with the legal requirements prior to and following the suspension? *EC § 48900 et seq.*
- If a child was expelled, did the school district hold a formal expulsion hearing and comply with the due process provisions of the law? *EC § 48900 et seq.*
 - If the child was in special education, did the school hold a *Manifestation Determination* IEP Meeting prior to recommending the child for expulsion? *20 USC § 1415(k)(1)(E); EC § 48915.5.*

OTHER EDUCATIONAL RIGHTS UNDER CALIFORNIA LAW

Are these rights under California law being respected?

- If the child's home language is not English, has the school district assessed whether the child is an English Learner or a student of limited English proficiency (LEP)? *EC § 52164; 5 CCR §11307*
 - If the child is identified as LEP, is the district providing services to ensure s/he is acquiring English language proficiency and has meaningful access to the core curriculum? *EC §§ 305, 310; 5 CCR § 11302; 20 USC § 1703(f)*

Rights Specific to Foster Youth:

- Is an eligible child being allowed to participate in extra-curricular activities and go to Independent Living Skills Program classes? *WIC §§ 362.05; 16001.9; 22 CCR §§ 83072; 84072; 89372*
- Is the child's placement giving him/her assistance with schoolwork? *22 CCR §§ 83079 (a)(4); 84068.2 (b)(2); 84079 (a)(4)*
- Have the child's grades been unlawfully lowered due to absences caused by a change in placement, attendance at a court hearing or other court-related activity? *EC § 49069.5(h)*
- Is the child receiving information about higher education if s/he is over 16 years old? *WIC § 16001.9*
- For every child over 16 (regardless of whether the child has special needs) -- Is the placing agency offering services necessary to help make him/her make the transition from foster care to independent living? *WIC § 366.3(e)(10)*
Note: IEPs for children with special needs must also address transition plans.

Key to Citations:

CCR – California Code of Regulations
EC – California Education Code
GC – California Government Code
HSC – California Health & Safety Code
USC – United States Code
WIC – California Welfare & Institutions Code
JV Forms – Judicial Council forms used in juvenile court matters

For more information about the national Checklist, its accompanying *Technical Assistance Brief*, the evaluation project, or to obtain additional copies of that document, please contact:

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Additional copies of the national Checklist and its accompanying *Technical Assistance Brief* are also available for download at <http://www.ncjfcj.org>.

For additional copies of the California supplement or more information about the California Foster Youth Education Task Force, please contact:

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