

POLICY BRIEF – EDUCATIONAL DECISION- MAKING & PARENTAL NOTICE

EDUCATIONAL DECISION-MAKING & PARENTAL NOTICE:

Parental notice is a key element of the statutory framework of California's Education Code. The various provisions of the Education Code that mandate parental notice are too numerous to list. However, Education Code § 51100 provides a good summary of parental rights, including the right to receive notice on issues and policies that may impact their children. The underlying intent of this statute is expressed as follows

"The Legislature finds and declares . . . involving parents and guardians of pupils in the education process is fundamental to a healthy system of public education. . . Research has shown conclusively that early and sustained family involvement at home and at school in the education of children results both in improved pupil achievement and in schools that are successful at educating all children, while enabling them to achieve high levels of performance." EDUC. CODE § 51100(a)-(b).

Parents and guardians of students enrolled in public schools *"have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children"* to be informed and to participate in their children's education, including, but not limited to, the following:

- To be notified on a timely basis if their child is absent from school;
- To receive the results of their child's performance on standardized tests and information on the performance of the school that their child attends;
- To request a particular school for their child, and to receive a response;
- To examine curriculum materials;
- To be informed of their child's progress in school and of the appropriate school personnel whom they should contact if problems arise with their child;
- To have access to the school records of their child;
- To receive information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish;

- To be informed in advance about school rules, including disciplinary rules and procedures, attendance policies, dress codes, and procedures for visiting the school;
- To question anything in their child's school records that a parent feels is inaccurate or misleading and to receive a response from the school;
- To be notified, as early in the school year as practicable, if their child is identified as being at risk of retention;

EDUC. CODE § 51101(a)(1)-(16).

Federal law also recognizes the importance of parental involvement in the education of their children. One of the underlying goals of the federal "No Child Left Behind Act" (NCLB) is to afford "parents substantial and meaningful opportunities to participate in the education of their children." 20 U.S.C. §6301(12). NCLB has numerous provisions mandating that parents be involved and that they be provided meaningful notice concerning the programs and special services available to students who are not performing well academically and for those who are attending underperforming schools, such as the right to school choice and the availability of supplemental services.¹

Parental Notice for Foster Youth

Parental involvement in the educational lives of foster youth is extremely problematic. Too often foster children are left in a state of limbo concerning the status of their parents and to what extent their parents retain the right to make educational decisions for them. Issues concerning notice and educational decision making with respect to foster youth include, but are not limited to, the following:

- Schools and child welfare agencies too often do not have information about whether the juvenile court has limited the educational rights of the parent and, if so, who is responsible for making education decisions for foster youth.
- Parents and/or those who retain the right to make educational decisions are not always informed about essential developments, such as discipline (including suspension and expulsion), retention decisions, special education, availability of supplemental services, etc.
- Parents and/or education decision makers do not always receive information about appropriate educational placements and all options available.

¹See, 20 U.S.C. §§ 6311(h)(6), 6312(g), 6316(b)(6), 6318, 6394(c)(3), 6812(6) and 6826(b)(4).

Possible Courses of Action:

A. Developing Coordination and Cooperation on a Local Level.

Ensuring the educational needs of foster youth are met and the relevant statutes are complied with requires the cooperation of the juvenile court, child advocates and attorneys, county placing agencies, caregivers, parents, and the local education agencies. Because these issues are often complicated, these agencies need to develop protocols in order to effectively communicate with each other.

For example, the juvenile court is responsible for determining which adult has the authority to make education decisions on behalf of dependent children. This decision is crucial for children with special needs since the person who holds education rights should play a key role in the process that determines the type of special educational services available to a student. The decision also impacts other decisions such as enrollment issues pursuant to AB 490 and discipline-related matters. Once the court makes this determination, it is critical that this information is immediately provided to the school district in order to ensure the district provides appropriate and timely notice of Individualized Education Program (IEP) meetings, disciplinary proceedings, etc.

The coordination of services and sharing of information required to effectively implement existing law will require the court, school districts, children's attorneys, and local education agencies to commit the necessary resources and time to develop protocols and policies tailored to meet the particular county's needs.

B. Possible Legislative Action

1. Need to Re-Examine the Definition of "Parent":

There is no single definition of "parent" within the California Education Code, which may result in some adverse consequences for foster youth. For instance, the Discipline Code refers to a "pupil", which includes "a pupil's parent or guardian or legal counsel". EDUC. CODE § 48925(e).² No where is it stated that expulsion or suspension notices should be sent to a person holding educational decision making rights for a foster care youth. The failure to receive such a notice may result in a youth being expelled from school without being afforded the right to attend a due process hearing. Do we need to examine the Education Code and provide suggested amendments to ensure that those holding educational rights for foster youth receive all relevant notices? If so, below is a summary of some possible amendments:

- Amend Education Code § 48852 to add the requirement that placing agencies notify the local education agency of any limitations on the parent's right to make educational decisions for the pupil and that they provide the name and contact

²For other examples of "parent" definitions, see Education Code §§ 51131, 8208(u), 68014, 49061(a) and 56028(a).

information of any responsible adult appointed to make those decisions pursuant to Welfare & Institutions Code §§ 319(g), 366.27, 361(a), 366.1(e), or 726.

- Amend Education Code § 49069.5(e) to add information concerning any limitations on a parent's right to make educational decisions for the pupil and the name and contact information of any responsible adult appointed to make those decisions pursuant to Welfare & Institutions Code §§ 319(g), 366.27, 361(a), 366.1(e), or 726 to the list of things that have to be included in a pupil's education record that is transferred to a new school. In addition, Title 5 regulations could be amended so that such information is deemed to be a "mandatory permanent pupil record" which must be transferred with a student's record to any subsequent school district. (See, 5 C.C.R. § 430 et seq).
- Strengthen Education Code § 56156(b) to require the placing agencies to provide the name and contact information of any person appointed to make educational decisions, if the rights of the parents are limited by the court. Revise to make it clear that the information must not only be in writing but must also be provided to the appropriate district/entity and must be included in the student's permanent educational records.
- Amend Education Code § 56156(c) to require licensed child care institution administrators to provide specific information to the school district, e.g., any limitations on the parent's right to make educational decisions for the pupil and the name and contact information of any responsible adult appointed to make those decisions pursuant to Welfare & Institutions Code §§ 319(g), 366.27, 361(a), 366.1(e), or 726 when it notifies the district about a child. (Also see Government Code § 7579(a) - maybe add specific information to that section.)

Educational Liaison

- Amend Education Code § 48853.5(b) to add a requirement that the education liaison determine whether parental rights have been limited pursuant to Welfare & Institutions Code §§ 319(g), 366.27, 361(a), 366.1(e), or 726, and if so, to include the name and contact information of any responsible adult appointed to make education decisions for a pupil in the pupil's record. If a parent retains educational rights, they should also record the name and contact information for the parent.

Expulsion/Suspension Notices

- Add to notice, meeting, and conferences requirements in Education Code §§ 48900, et seq., a provision that all obligations/rights extend to an adult appointed to make educational decisions for a pupil when parental rights have been limited.
- It is recommended that similar provisions be added throughout the Education Code or a single definition section to make clear that "parent or guardian" also

means the responsible adult appointed to make education decisions for the pupil when parental rights are limited.

2. Need to Re-Examine Court Forms JV 535-536:

The court must use JV-535 to limit the rights of the parent and to appoint a responsible adult as an educational representative. CAL. RULES CT., R 5650 (a) & (b). When the court makes a referral, it must order that JV-536 be served by first class mail on the local education agency, along with form JV-535, and the local education agency must notify the court of the appointment or termination of appointment of the surrogate parent. CAL. RULES CT. R. 5650 (d).

- Should these forms, the rules of court and/or the Title 5 regulations be amended to require that copies of both of these forms be deemed "mandatory permanent pupil records" which must be transferred with a student's record to any subsequent school district. (See, 5 C.C.R. § 430 et seq).?
- Should other entities or individuals be served these forms, such as the school site in which the youth is enrolled, the district's AB-490 liaison, and, where appropriate, a school district's special education office?
- Amend the JV-535 to specifically include a section to note that parents retain education rights. This section should contain the parents contact information.
- The JV-535 should include a section to note that education rights have been limited, the court has been unable to identify a responsible adult, and the child is not eligible for special education so the court holds education rights. In such cases, protocols should also be developed so that the court is made aware of all relevant educational related notices that may impact a youth's academic progress and/or eligibility for special programs or services.

Relevant Education Code Provisions

Education Code § 48852 - Every agency that places a child in a licensed children's institution shall notify the local educational agency at the time a pupil is placed in a licensed children's institution. As part of that notification, the placing agency shall provide any available information on immediate past educational placements to facilitate prompt transfer of records and appropriate educational placement. Nothing in this section shall be construed to prohibit prompt educational placement prior to notification.

Education Code Section § 56055 (c) - Foster parent has right to make education decisions if the court has limited the parents' rights to make education decisions and the child has been permanently planned.

Welfare and Institution Code §§ 319(g), 361, 366.27, 366.1(e), 726 - Address the juvenile court's authority to limit parents' education rights and appointment a responsible adult to make education decisions.

Government Code § 7979.5 - Addresses a local educational agency's responsibility to appoint a surrogate parent for special education purposes.

Education Code § 56156(b) - At the time of placement in a licensed children's institution or foster family home, each court, regional center for the developmentally disabled, or public agency shall identify all of the following:

- (1) Whether the courts have specifically limited the rights of the parent or guardian to make educational decisions for a child who is a ward or dependent of the court.
- (2) The location of the parents, in the event that the parents retain the right to make educational decisions.
- (3) Whether the location of the parents is unknown.

Education Code § 56156 (c) - Each person licensed by the state to operate a licensed children's institution, or his or her designee, shall notify the special education administrator of the district, special education local plan area, or county office in which the licensed children's institution is located of any child potentially eligible for special education who resides at the facility.

Education Code § 48853.5 (b) - Each local educational agency shall designate a staff person as the educational liaison for foster children. In a school district that operates a foster children services program pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24, the educational liaison shall be affiliated with the local foster children services program. The liaison shall do all of the following:

- (1) Ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children.
- (2) Assist foster children when transferring from one school to another or from one school district to another in ensuring proper transfer of credits, records, and grades.

Education Code § 49069.5 (a) - The Legislature finds and declares that the mobility

of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer procedures and transfer of pupil records is a critical factor in the swift placement of foster children in educational settings. . . .

Education Code § 49069.5 (e) - As part of the transfer process described under subdivisions (c) and (d), the local educational agency shall compile the complete educational record of the pupil 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 pupil's plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) or individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

