



# California Foster Youth Education Task Force

## California Foster Care Education Law Fact Sheets

Third Edition, October 2008



## Member Organizations

Alameda County Foster Youth Alliance	Children's Law Center of Los Angeles
American Bar Association, Center on Children and the Law	Columbia College
California Administrative Office of the Courts, Center for Families, Children & the Courts	County Welfare Director's Association of California
California Alliance of Child and Family Services	Family Matters Foundation
California CASA Association	Honoring Emancipated Youth
California Child Welfare Co-Investment Partnership	Law Foundation of Silicon Valley
California Community Colleges Chancellor's Office	Learning Rights Law Center
California Department of Education	Los Angeles County Department of Children and Family Services
California Department of Social Services	Los Angeles County Education Coordinating Council
California Foster Youth Services	Los Angeles Unified School District Foster Care Unit
California School Boards Association	Mental Health Advocacy Services, Inc.
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California Youth Connection	Orangewood Children's Public Counsel Law Center
Casey Family Programs	Protection & Advocacy, Inc.
Child & Family Policy Institute of California	Sacramento Child Advocates, Inc.
Child Guidance Foster Family Agency	Stuart Foundation
	Youth Law Center

## Citations and Abbreviation Key

Abbreviations included in citations or referenced throughout the fact sheets

AB	Assembly Bill
CCR	California Code of Regulations
CFR	Code of Federal Regulations
EC	California Education Code
GC	California Government Code
IEP	Individualized Education Plan
WIC	Child Welfare & Institutions Code
USC	United States Code

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*produced courtesy of Casey Family Programs*

## AB 490

pre-K-12  
and beyondCalifornia Foster Youth Education  
Task Force**Introduction**

Effective January 1, 2004, Assembly Bill 490 (Steinberg) created new duties and rights related to the education of dependents and wards in foster care.

**Guiding Principles**

*Everyone shares the duty to promote the educational progress of children in out of home placements.*

Educators, school personnel, social workers, probation officers, caretakers, advocates, and juvenile court officers must work together to serve the educational needs of children in foster care.

Foster youth must have access to the same academic resources, services, and extra-curricular and enrichment activities available to all students. All educational decisions must be in their best interests. *EC §§ 48850(a), 48853(g); WIC §§ 361(a), 726(b).*

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)* for a detailed list of requirements.

**School Stability****Role of the Placing Agency**

When making an out-of-home placement, the placing agency must consider both the placement's proximity to the child's current school and the impact the placement will have on the child's educational stability. *WIC § 16501.1(c).*

Within 24 hours of determining that a proposed placement or placement change would result in a change of school, the social worker or probation officer must notify the court, child's attorney, and educational representative or surrogate parent. *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 and the receiving Special Education Local Plan Area at least 10 days in advance. *CRC 5.651(e)(1)(B).*

**Role of the Court**

The child's attorney must discuss any proposed school change with the child and the child's educational rights-holder, as appropriate, and may request a hearing on the proposed change by filing form JV-539 within 2 court days of receiving notice. *CRC 5.651(e)(2)(A).*

The child's educational rights-holder may also file form JV-539 to request a hearing on a proposed school change. *CRC 5.651(e)(2)(B).*

If there is a hearing request, the social worker or probation officer must provide a report on the proposed change within 2 court days, and the hearing must be held within 7 calendar days. Pending the result of the hearing, the child has a right to remain in his or her current school. *CRC 5.651(e)(2)-(4).*

**Role of the School District**

If a child's residential placement changes, the school district must allow the child to remain in his/her "school of origin" (usually the child's current school) for the rest of the school year. The district's foster youth liaison may recommend that this right be waived after consulting with the child and his/her educational rights-holder and providing them with a written explanation. If a dispute arises, the child has the right to remain in the school of origin until the dispute is resolved. *EC § 48853.5(d).*

**School District Liaison**

Each school district and county office of education must designate an educational liaison for foster youth, whose duties are:

- To ensure proper educational placement, school enrollment, and checkout from school,
- To assist with the transfer of grades, credits, and records when there is a school change, and
- To request or provide school records within 2 business days when there is a change of school. *EC § 48853.5(b), (d)(4)(C).*

**Local Public Schools Preferred**

Foster children must attend programs operated by the local educational agency unless:

- The child remains in the school of origin,
- The child has an IEP requiring a different educational placement, or
- The child's educational rights-holder determines that it is in the child's best interest to attend a different educational program. *EC § 48853(a).*

Before any decision is made to place a child in a juvenile court school, community school, or other alternative educational setting, the child's educational rights-holder must first consider placement in the regular public school. *EC § 48853(b).*

**Immediate Enrollment**

If a child changes schools, he/she has the right to be enrolled in the new school immediately, even if there are outstanding fees, fines, textbooks, or other items or money due to a school or if the student

does not have the clothing or records normally required for enrollment. *EC § 48853.5(d)(4)(B).*

**Timely Transfer of Records  
Placing Agency's Duties**

As soon as the social worker or probation officer becomes aware of the need to transfer a child to a new school, he/she must notify the school district of the child's last expected day of attendance and request that the child be transferred out. *EC § 49069.5(c).*

Social workers and probation officers may access the child's school records—without needing parental consent or a court order—to help with school transfer and enrollment, compile the child's health and education summary, and conduct educational case management. *EC § 49076(a)(11).*

**New School District's Duty**

Within 2 business days of receiving a request for enrollment, the foster youth liaison for the new school must contact the school last attended by the child to obtain all academic and other records. *EC § 48853.5(d)(4)(C).*

**Old School District's Duties**

Within 2 business days of receiving a transfer request, the current school district must transfer the child out and deliver the student's school records to the next school. The records must include a determination of seat time, full or partial credits earned, current classes and grades, immunization records, and, if applicable, special education or Section 504 records. *EC § 49069.5(d)-(e).*

All records must be provided to the new school regardless of any outstanding fees, fines, textbooks, or other items or money owed to the school last attended. *EC § 48853.5(d)(4)(C).*

**Grade and Credit Protections**

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

Local educational agencies must award all students (not just foster youth) with credit for full or partial coursework satisfactorily completed at a public school, juvenile court school, or non-public, non-sectarian school or agency. *EC § 48645.5.*

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# Education Rights

# California Foster Youth Education Task Force

## Introduction

Parents have the right to make educational decisions for their children unless their child is in a legal guardianship, their child has been freed for adoption (parental rights terminated), or the juvenile court has limited their educational rights. *WIC* §§ 361, 726; *GC* § 7579.5; *EC* § 56055; 34 *CFR* § 300.30.

The social worker or probation officer must confirm and indicate in every court report who is the current educational rights holder for the child. *CRC* 5.650

## Why Does This Matter?

Important decisions often are not made in a timely manner, if at all, when it is unclear who has the right to make educational decisions for a youth. For example:

### • Special Education Evaluation

School districts generally cannot start evaluating a student for disabilities that make him/her eligible for special education until the adult with educational rights signs a proposed assessment plan.

### • Individualized Education Program (IEP)

A student's IEP cannot be implemented without the approval and signature of the adult who holds educational rights.

### • School Placement

The educational rights-holder has a role in deciding whether the youth will remain in his/her "school of origin" after a residential placement change. *EC* § 48853.5(d).

A foster youth's educational rights-holder may determine it is in the youth's best interest to attend an educational program other than one operated by the local educational agency. *EC* § 48853(a).

## Considerations for the Court

Educational matters, including who has the authority to make educational decisions for a foster youth and whether someone else should be appointed, must be considered at every court hearing. *CRC* 5.651(b).

All findings and orders about educational decision-making must be documented in court form JV-535. *CRC* 5.650(b).

## Appointing Educational Representatives

The 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* §§ 361(a), 726(b); *CRC* 5.650(a).

Prior to disposition, the court can temporarily limit the parents' educational rights. This limitation expires if the petition is dismissed or after a hearing under *WIC* § 361 (Disposition). *WIC* § 319. The court may re-limit educational rights at the Dispositional Hearing or at any subsequent hearing. *WIC* § 361

### • Appointing an Educational Representative

At the same time the court limits educational rights, it must appoint a "responsible adult" to make educational decisions for the child. *WIC* §§ 361(a), 726(b). (The California Rules of Court refer to this person as an "educational representative." *CRC* 5.502(13), 5.650(b).) The appointment must be made regardless of whether the child has been identified as needing special education or other services.

The educational representative has all of the educational rights normally held by parents. See *CRC* 5.650(e)-(f) for a list of rights and responsibilities. The representative is entitled to receive notice of and participate in hearings related to educational matters and may use court form JV-537 to explain the child's educational needs to the court. *CRC* 5.650(j).

### • Appointing a Surrogate Parent

If the court is unable to locate a responsible adult for the child, and the child has either been referred to the local educational agency (LEA) for special education or has an IEP, the court shall refer the child to the LEA for appointment of a "surrogate parent" using form JV-535. *WIC* §§ 361(a), 726(b); *GC* §§ 7579.5-6; *CRC* 5.650(b).

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 CASA if one is willing and able to serve. *GC* § 7579.5(b). Court form JV-536 must be used for communication with the court about appointments and changes. *CRC* 5.650(d).

The surrogate parent makes decisions related to special education evaluation, eligibility, planning, and services. *GC* § 7579.5(c).

### • Court as Educational Decision-Maker

If the court cannot identify a responsible adult to make educational decisions for the child and the child does not qualify for special education, the court may make educational decisions for the child with the input of any interested person. *WIC* §§ 319(g)(2), 361(a); *CRC* 5.650(b).

## Limitations on Appointments

### • Court-Appointed Decision-Makers

A person who has a conflict of interest cannot be appointed to be the educational representative. This includes social workers, probation officers, the child's attorney and group home staff. A foster parent is not deemed to have a conflict of interest solely because he/she receives compensation. *WIC* §§ 361(a), 726(b).

### • Surrogate Parents

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. *GC* § 7579.5(i)-(j); 20 *USC* § 1415(b)(2)(A); 34 *CFR* § 300.519(d)(2).

## Length of Court Appointments

An appointment to make educational decisions lasts until one of the following things occurs:

- The youth reaches 18 years of age, at which time the youth holds his/her own educational rights. *EC* §§ 49061(a), 56041.5. (Exceptions are if the youth chooses not to make her own educational decisions or has been deemed by the court to be incompetent to do so).
- Another adult is appointed to make educational decisions. (An educational representative may resign after giving notice to the court and the child's attorney).
- The right of the parent or guardian to make educational decisions is fully restored.
- A successor guardian or conservator is appointed.
- The child is placed in a planned permanent living arrangement, at which time the foster parent, relative caretaker, or non-relative extended family member has the right to make educational decisions. *EC* § 56055; *WIC* §§ 361(a), 726(b); *CRC* 5.650(e)(2), (g). *Remember: the right to make educational decisions only transfers to the caretaker in a planned permanent living arrangement if education rights were previously limited.*

## Hearing to Make New Appointment

If a child needs a new educational representative to be appointed, his/her attorney may request a hearing using court form JV-539. *CRC* 5.650(d)(4), (g)(2).

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# Special Education

pre-K-12  
and beyond

## California Foster Youth Education Task Force

The following information pertains to children between the ages of 3 – 22 who are eligible for special education services. The procedures are slightly different for children under age 3 who are eligible for *Early Intervention Services*.

### What is Special Education?

Special education is a system of services and supports designed to meet the specific learning needs of a child with disability. *EC § 56031*

### Who Receives It?

**MYTH:** All special education students attend a special education class or special school with other disabled students.

**REALITY:** Special education services can be provided in an array of individualized educational placements appropriate to the individual student. Not all are extremely restrictive. Where appropriate, they can be provided in the mainstream classroom with additional supports.

### What is Provided Under Federal and California Law?

**FAPE:** *Free, Appropriate, Public, Education.* Refers to the provision of highly individualized special education and related services provided at public expense. *20 USC §1401(9); 34 CFR §300.17; EC §56000; 5 CCR §3001(o)*

**Related Services:** Any services necessary to help a student benefit from special education program, e.g. transportation, psychological services, physical, speech and occupational therapy, etc. *20 USC §1401(26); 34 CFR §300.34; EC §56363*

**LRE:** FAPE must be provided in the *Least Restrictive Environment*. Children with disabilities are to receive education to the maximum extent appropriate with nondisabled 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 §56031*

**Child Find:** School districts/SELPAS have a duty to actively and systematically identify, locate and assess individuals with exceptional needs who may be entitled to special education services. *20 USC §1412(a)(3); EC §56301(a); 34 CFR §300.111*

### Laws Governing Special Education

#### FEDERAL LAW

**IDEA:** The Individuals with Disabilities Education Act, found at *20 USC §§ 1400* and the following sections, ensure that all children with disabilities have access to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet unique needs.

IDEA's corresponding federal regulations are found at *34 CFR Part 300*.

**Section 504:** Sec. 504 of the Rehabilitation Act of 1973 is found at *29 USC §794, 34 CFR §104.1* and the following sections.

SECTION 504 covers a broader group of students than IDEA. All children that qualify under IDEA also qualify for protections under 504, but there are some students who *only* qualify for 504. Usually students with 504 plans are those who do not qualify under IDEA.

**Eligibility for 504:** Section 504 provides services to students who have a physical or mental impairment that substantially impairs a major life activity (such as learning). *34 CFR §104.3(j)*  
Some examples of disabilities that may warrant a 504 plan are asthma, allergies, diabetes, ADD, or ADHD.

**Similarities and Differences Between 504 and IDEA:** Both require districts to provide disabled students with FAPE.



IDEA requires districts to develop an Individualized Education Program (IEP) While Section 504 requires a plan, it is not called an IEP, and different districts process these plans differently.

California Law parallels IDEA: Found at *Cal. Ed. Code §§ 56000 and following; State Regulations: 5 CCR §§3000 and the following sections.* Each district will have its own Section 504 policy.

### Eligibility for Special Education Services under IDEA

*Two triggering conditions must be met:*

- Child has an impairment adversely affecting his/her educational performance that requires special education.
- Impairment fits into one of the following qualifying categories of disabilities: mental retardation; hearing impairment; speech or language impairment; visual impairment; emotional disturbance; hearing and visual impairment; severe orthopedic impairment; autism; traumatic brain injury; other health impairment; or specific learning disability. *20 USC § 1401(3); EC §56026*

**Age:** Students may be eligible for special education from birth to age 22. *EC §56026*

### Early Intervention Services:

children under age 3; provided through the regional center.

**Preschool Services:** children between ages 3 – 5; provided through the school district.

**Special Education Services:** children between the ages of 5-22; provided through school district.

### Timelines and Procedures

SST (Student Study Team). An SST is a function of regular education, not special education, and is governed by school district policy, not federal or state law. It is not mandatory to have an SST prior to an IEP or referral for special education assessment. Students struggling in school may be referred to an SST. SST's can be the "first step" towards determining whether a student needs special education services.

### Individualized Education Program (IEP)

The meeting and document that sets forth what services a child found to be eligible for special education is to receive. Also the meeting where eligibility is determined. *EC §§56032, 56341*

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## Who Attends?

An IEP Team consists of: a parent/ educational representative or surrogate parent, one regular education teacher, an educational agency representative other than the teacher, individual who conducted the assessment, other individuals with expertise or knowledge about the child's needs at the local education agency's or parent's discretion, and the child, when appropriate. *20 USC §1414(d)(1)(b); 34 CFR §300.344; EC §56341*

## The IEP Process

Referral for assessment to determine eligibility for special education service starts the process (may be made by parent, teacher, or other provider) but must be in writing to ensure that assessment and meeting timelines will begin. *EC §56029; 5 CCR §3021*

"Proposed assessment plan" must be submitted to the person who holds education rights, within 15 calendar days of receipt of written referral. *EC §56321(a)*. This plan explains what types of assessments will be conducted. Generally a child cannot be assessed without written consent. Exceptions may apply if:

- child is a ward of the court (in limited circumstances)
- district prevails at a due process hearing

*EC §§ 56321, 56381(f)*

Person who holds education rights has 15 calendar days to provide written consent to proposed assessment. *EC §§ 56321(c), 56043(b)*

The initial IEP team meeting to determine eligibility must be held within 60 calendar days (not school days) of receipt of written consent to assessment, not counting summer vacation or school breaks of 5 days or more. *EC §§ 56344(a), 56043(c)*

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 goals and objectives, accommodations, related services, behavioral plans, where necessary (see *fact sheet on behavioral plans*) and, transitional plans for no later than 16 years of age. *20 USC §1414(d); EC §56345.1; 5 CCR §3042(b); EC §56043(g)(1)*

IEP reviewed at least once annually, or more frequently upon request.

*20 USC § 1414(d)(4); EC §§ 56343, 56043*

Note that the IDEA Reauthorization does permit 15 pilot states to create "long-term" IEPs that are reviewed every three years. California has *not* been identified as a pilot state. *20 USC §1414 (d)(5)*

A complete reevaluation must be done every three years, or more frequently upon request. *20 USC §1414(a)(2)(B); 34 CFR §300.536, EC §§56381, 56043(k)*

Educational Representative or surrogate parent appointed by the court or school district may sign the IEP in lieu of the natural parent if natural parent's educational rights have been limited (see *fact sheet on educational rights*). *WIC 361, 726; GC §§7589.5, 7579.6; 20 USC §1415(b)(2)(A)(i); EC § 56055*

## Procedural Rights/Disagreements with Schools

If the person who holds education rights needs time to think over or disagrees with parts of an IEP plan, they should not sign it at the IEP meeting. It is their right to withhold consent. Any parts of the IEP to which the parent or equivalent has not consented may become the basis for a due process fair hearing. *20 USC §1415; EC §56346*

## Due Process

If the person who holds education rights disagrees with the services provided under the IEP and thinks they do not provide FAPE, he/she may file for a due process fair hearing. *EC §56502*. Requests are filed with the Office of Administrative Hearings (OAH).

If the person who holds education rights files for a due process hearing, the youth must generally "stay put" (i.e. remain) in his/her current placement until the disagreement is resolved. *20 USC §1415 (j); 34 CFR §300.518; EC §56505(d)*

After filing, the person who holds education rights may attend mediation with the district. During the time of this mediation process, the student is generally entitled to remain in his/her current school placement and an attorney may represent any of the parties to the mediation. *20 USC §1415e; 34 CFR §§300.506, 507(a)(2); EC§56501(b)(1)(2); EC §56503*

The due process hearing should be conducted at a time and place reasonably convenient to the parent and the child. *34 CFR §300.511(d); EC §56505 (b)*

An impartial hearing officer should conduct the hearing. *20 USC §1415(f)(3); 34 CFR §300.508; EC §56505(c)*

Compliance Complaint: Parents/ educational representatives should file a compliance complaint with the State Department of Education when they feel that the school district has violated their duty under a student's IEP or the special education laws. Anyone may file a Compliance Complaint (i.e. individual does not have to hold education rights for the child). *20 USC §1415(b)(6); 34 CFR §300.660-662; 5 CCR §4650; 5 CCR §4600; EC§56500.2*

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# Nonpublic Schools

# California Foster Youth Education Task Force

## Nonpublic Schools Definition:

*NPS: A private, nonpublic, nonsectarian school that enrolls individuals with exceptional needs pursuant to an Individualized Education Program (IEP).*

EC §56034

## Placement in an NPS

Students may not be placed in an NPS unless they have a valid IEP requiring placement at the NPS, or the person holding educational rights consents. EC §48853 (see Education Rights fact sheet)

A student must have an IEP and be assessed for special education services prior to placement in a NPS. EC §§56342.1, 56320

- The assessments conducted must conform with state and federal law.
- The student may not be assessed for special education services unless the person who holds educational rights has provided consent, *with certain exceptions*. EC §56321

## Exceptions:

- The school district has prevailed at a due process hearing. EC §§56321(c), 56506.
- IDEA does not require parental consent for the initial evaluation of a child who is a ward of the state and not living with his/her parents if the LEA cannot find the parent, the parent's rights have been terminated, or a judge has removed the parent's educational decision-making rights and appointed another person to represent the child. 20 USC §1414(a)(1)(d)(iii); EC § 56321.1

Consent for an initial assessment is not consent for placement in an NPS or provision of any other special education services. EC §56321(d)

## Least Restrictive Environments (LRE)

Students *must* be placed in the *least restrictive environment* to meet his/her needs. A child shall not be placed in a special class or NPS unless the severity of the disability is such that education in a regular class with the use of supplementary aids and services cannot be achieved satisfactorily. EC § 56040.1

Foster Children (LRE): School Districts/SELPA/County Office of Education shall first consider placement and services through programs operated by public education – regardless of whether the child is placed with a relative, foster parent, or group home/licensed children's institution. Foster youth with special needs may only be placed in a nonpublic school if the district/SELPA does not have a public program that can meet the child's needs. EC §56157(a)

Children Placed in Group Homes / Licensed Children's Institutions (LCI)



A Group Home/Licensed Children's Institution may *not* condition placement at the LCI on attendance at a nonpublic school owned or operated by an agency associated with the LCI. EC §56366.9

A licensed children's institution or nonpublic, nonsectarian school, or agency may *not* require as a condition of placement that educational authority for a child, as defined in Section 48859, be designated to that institution, school, or agency. EC §48854

When a child is placed in a licensed children's institution with an on-grounds nonpublic school, the child may attend the on-grounds school *only* if the SELPA's IEP Team has determined that there is no appropriate public program in the community (i.e. RSP, Special Day class, etc) and the on-grounds program is appropriate and can implement the child's IEP. 2 CCR §60510(b)(2)

## Assembly Bill 1858

Assembly Bill 1858 was passed in 2004. AB 1858 requires that an NPS provide access to:

- The same instructional materials used by the district in which the NPS is located. EC §56366.10(b)
- College preparation courses. EC §56366.10(b)(2)
- Extracurricular activities such as art, sports, music, and academic clubs. EC §56366.10(b)(3)
- Career preparation and vocational training. EC §56366.10(b)(4)
- Supplemental assistance, including academic tutoring, psychological counseling, and career and college counseling. EC §56366.10(b)(5)
- Teachers and staff who provide academic instruction and support services with the goal of integrating the students into the least restrictive environment. EC §56366.10(c)

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**What Are AB 3632 (AB 2726) Services and How Are They Provided?**

AB 3632 (also referred to as 26.5 or AB 2726) services are mental health services provided as part of a youth's Individualized Education Program (IEP) to ensure that the youth benefits from his/her education. AB 3632 services are "related" services (see *special education fact sheet*). GC §7572 Common types of services include: individual, group or family psychotherapy; day treatment services; residential placement.

**Who Provides AB 3632 Services?**

Mental health services are provided through the County Department of Mental Health (DMH). GC §§7572, 7576

**Eligibility for Mental Health/AB 3632 Services**

There are two eligibility requirements that must be met for a youth to receive AB 3632 mental health services:

- The youth must be eligible for special education services. GC §7576
- The youth must need mental health services in order to benefit from his/her special education program. GC §7572

NOTE: A student does not need to be eligible for special education services through the "emotionally disturbed" Individual's with Disabilities Education Act (IDEA) category in order to receive AB 3632 services. He/she need only be eligible for special education services in *any* category.

However, to receive residential placement AB 3632 services, the youth must be made eligible for special education because of his/her "emotional disturbance." In addition, to receive residential placement, the child must require a 24-hour therapeutic program in order to benefit from his/her educational program. 2 CCR §60100

**Obtaining AB 3632 Services: Referral Process and Timeline****Who Makes the Referral?**

In order to obtain AB 3632 mental health services, a school must make a referral to the county department of mental health (DMH). 2 CCR § 60040. The school usually makes the referral after the IEP team has met and decided that such a referral is appropriate. However, the school psychologist may make the referral without an IEP team meeting.

Once DMH has received the referral, it must provide the person who holds educational rights with an assessment plan (see *fact sheet on educational rights*). 2 CCR §60045(b). DMH cannot conduct the assessment for AB 3632 services until the person



who holds education rights has given written consent to the assessment. 2 CCR §60045

The person who holds educational rights may request that the school psychologist make the referral to DMH without an IEP meeting. If the school refuses, the person who holds educational rights may request that an IEP meeting be held within 30 days of his/her request. These requests should be in writing. EC §56343.5

At the IEP meeting, a request for an AB 3632 DMH assessment may be made and

should appear in writing on the IEP, whether or not the team agrees. 2 CCR §60040

Generally speaking, the school district must first attempt to meet the child's mental health needs through "appropriate counseling and guidance services, psychological services, parent counseling and training, social work services or behavioral intervention." GC §7576(b)(5)

**Exception:** Where school counseling, parent counseling/training, social work services, and behavioral intervention would clearly be inappropriate and ineffective. In these cases, the IEP Team must document what services were considered and why they were rejected. 2 CCR §60040(b)(4); GC §7576(b)(5)

**How Long Does DMH Have to Complete the Assessment after the Request by the School is Made?**

The assessment must be completed and an IEP meeting held to discuss the assessment within 50 days of the DMH receiving the signed assessment plan. 2 CCR §60045(e)

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## Definitions

### Functional Behavioral Assessments (FBA) / Functional Analysis Assessments (FAA) :

*A functional analysis assessment is an analysis of a student's maladaptive behavior. The assessment must include extensive observation of the student and an in-depth analysis of the student's environment and past history. The goal is to determine what triggers the maladaptive behavior and to learn how to best control the behavior through the use of positive intervention strategies. Prior to conducting a functional analysis assessment, the school district must obtain consent from the person who holds educational rights (see fact sheet on educational rights).*

### Who Conducts the Functional Analysis Assessment?

State law requires that a functional analysis assessment be "conducted by or under the supervision of a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions." 5 CCR §3052(b)

### Behavior Intervention Plan (BIP):

*A written document that is developed when the individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the individual's Individualized Education Program (IEP).* 5 CCR §3001(f)

### Positive Interventions

Interventions are to be positive in nature. Behavioral interventions do not include procedures which cause pain or trauma. Behavioral interventions respect the individual's human dignity and personal privacy. Such interventions shall assure the individual's physical freedom, social interaction, and individual choice. 5 CCR §3001(d); 5 CCR §3052 (d)

### FBA and BIP Procedures

When must the school district conduct an FBA and develop a Behavioral Intervention Plan?

- When an IEP Team finds that instructional/behavioral approaches specified in the student's IEP have been ineffective [5 CCR § 3052(b)], and/or
- Student exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the student's IEP. 5 CCR §3001(f)
- Behavior that violates a "code of student conduct" (i.e. school rule) is determined

by the IEP to be a manifestation of the child's disability pursuant to 20 USC §1415(k)(1)(E) & (F).

- When a student is removed from his/her current placement as a result of (1) weapon possession; (2) illegal drug possession/use; (3) infliction of serious bodily injury, regardless of whether the behavior was a manifestation of the child's disability, as appropriate so that the behavior does not recur. 20 USC §1415(k)(1)(G)
- When the child is removed from his/her placement for more than 10 school days (i.e. suspension or expulsion) and the behavior is determined not to be related to his/her disability. 20 USC §1415(k)(1)(D)(ii)

If the IEP Team determines that 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 Shall a Functional Analysis Assessment Include?

California Law requires that those conducting FBA/FAA gather information from three sources:

- Direct observation
- Interviews with significant others
- Review of available data such as other assessments and individual records. 5 CCR §3052

These sources/observations *must* include:

- Systematic observation of the targeted behavior in order to determine frequency, duration, and intensity;
- Observation of events which trigger the behavior, analysis of the consequences of the behavior;
- Ecological analysis of the settings in which the behavior occurs;
- Review of records for medical and health factors which may influence behavior; and a
- Review of the history of the behavior, including the effectiveness of previously used behavioral interventions. 5 CCR §3052(b)(1)

### What Happens if there is a "Behavioral Emergency?"

*A behavioral emergency is "the demonstration of a serious behavior problem (1) which has not previously been observed*

*and for which a behavioral plan has not been developed; or (2) for which a previously designed behavior intervention is not effective."* 5 CCR §3001(c)

Emergency interventions may only be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious harm to others which cannot be prevented by a less restrictive response. 5 CCR §3052(h)(i). Emergency interventions may *not* include (1) locked seclusion (unless it is in a facility otherwise licensed or permitted by state law to use locked room); (2) employment of a device or material or objects which simultaneously immobilize all four extremities (except that prone containment may be used as an emergency intervention by staff trained in such procedures), and (3) force that exceeds that which is necessary under the circumstances.

Whenever an emergency intervention is used, the school district *must* (1) notify the parent (and residential care provider if appropriate); (2) forward a Behavioral Emergency Report to the student's file and designated administrator; (3) schedule an IEP meeting within 2 days for any student without a current behavioral intervention plan to determine the necessity for a functional analysis assessment and to determine the necessity for an interim behavioral intervention plan. 5 CCR §3052 (h) (i)

*Federal law refers to "Functional Behavioral Assessment"; State law refers to "Functional Analysis Assessment."*

*See also Cal. Ed Code §48915.5.*

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# School Discipline

## Introduction

If student is in special education or suspected of being eligible for special education services, please see Fact Sheet 8 titled *Special Education Discipline* since additional procedural safeguards may apply.

Suspensions and expulsions are two types of school discipline. Both are regulated by California Education Code §48900 and the following sections.

For both suspensions and expulsions, the school district must have grounds to suspend or recommend a student for expulsion. *Grounds* for suspension or expulsion must contain two elements: an act prohibited by the Ed Code and a connection to school. EC §48900(r)

**ACT:** EC §§ 48900, 48900.2 – .4 & .7 list specific prohibited acts. Students can be suspended or recommended for expulsion for many acts, but *cannot* be suspended or expelled for being tardy or absent from school. EC §48900(v)

### Connection to School

The act must be related to school activity. A student can be suspended or expelled for acts that occur while on school grounds, while going to or coming from school, during the lunch period, or during, going to or coming from a school sponsored activity. EC §48900(r)

Disabled students have different rights regarding school discipline. *If you are working with a student who receives or should receive special education, see the fact sheet on school discipline & special education.* EC §48915.5

### Suspensions

A suspension is a temporary removal from school.

### Suspension Procedures

Suspensions should be preceded by an informal conference. EC §48911(b)

At the conference, the student must be informed of the reason for the disciplinary action and given an opportunity to present his/her story and evidence in his/her defense. EC §48911(b). A student can be suspended without a conference only in an “emergency situation.” EC §48911(c)

If a student is suspended without a conference, both the parent and the student must be notified of the student’s right to a conference. The conference must be held

within 2 school days unless the student waives the right to attend. EC §48911(c)

At the time of suspension, the school must make a reasonable effort to contact the student’s parents by telephone or in person. In addition, the parent must be notified in writing of the suspension. EC §48911(d)

While the school can request that a parent attend a conference regarding the student’s behavior before the student returns to school, if the parent fails to attend, the student cannot be penalized for this failure, and the school cannot postpone the student’s return to school. EC §48911(f)

### Limits to Suspensions

In general, a student cannot be suspended for more than 5 consecutive school days, or 20 school days total. EC §§48911(a), 48903(a)

### EXCEPTIONS

If the student is recommended for expulsion, and the school holds a meeting with the student’s parents and determines that the student poses an ongoing danger or threat of disrupting the educational process, the student can be suspended while the expulsion is pending, even if this exceeds 5 cumulative school days, or 20 total school days that year. EC §48911(g)

If the student enrolls in or transfers to a new school, he/she can be suspended for up to 30 days that school year. EC §48903(a)

Suspension can only be used after a school tries other ways to discipline a student. Exception: If the student violated EC §48900(a), (b), (c), (d) or (e), or if the school finds that the student’s presence causes a danger to other students, property, or threatens the instructional process, the school can suspend the student for a first offense, without first using other disciplinary methods. EC §48900.5

### Expulsions

An expulsion prohibits a student from attending any school within the district for a year. The school can recommend a student for expulsion, but only the governing school board can actually issue an expulsion.

### Expulsion Procedures

A student recommended for expulsion has *due process rights*. They include:

- Before a student can be expelled, the district must conduct a *hearing*. The district governing board may conduct the hearing, or the district can appoint an administrative panel or hearing officer to conduct the hearings. EC §§48918(a), 48918(d)
- The hearing must be held within 30 school days after the school recommended the student for expulsion, unless the student requests that the hearing be postponed. EC §48918(a)
- The student must receive *written notice* of the hearing at least 10 calendar days before the hearing. The notice must include the date and place of the hearing and a statement of specific facts regarding the basis for the expulsion recommendation. EC §48918(b)
- The student has the right to bring a lawyer or other advocate to the hearing. EC §48918(b)(5)
- At the hearing, the student can bring His/her own witnesses and/or ask that the district subpoena witnesses. The student has the right to question the witnesses and *present evidence*.
- In general, the governing board cannot base a decision to expel a student solely on hearsay. EC §48918(f)



### Necessary Findings

In most cases, in order to expel a student, the school district must do the following:

- Honor the student’s due process rights by meeting all procedural and time requirements.
- Demonstrate that there are grounds for the expulsion. [Grounds include an act prohibited by EC *and* a connection to school; see above].
- Demonstrate that either other means of correction are not feasible or have failed to bring about proper conduct, or

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that due to the nature of the act, the presence of the student causes a continuing danger to the physical safety of the student or others. *EC §48915(b)*

## Zero Tolerance Offenses

In some cases, the secondary findings in *EC §48915(b)* are not required. In these situations, the governing board must expel a student if the district establishes that the student committed one of the following acts + connection to school. *EC §48915(c)*

- possessing, selling, or furnishing a firearm
- brandishing a knife
- selling a controlled substance
- committing or attempting to commit sexual assault
- possession of an explosive

## Suspended Expulsions

When the governing board has made the necessary findings to expel a student, the board can decide to suspend enforcement of the expulsion for a period of up to one year. The board can also assign the student to an educational program designed to rehabilitate the student. *EC § 48917(a)*. During this period, the student is on probationary status. *EC §48917(c)*

The board can revoke the suspension or the expulsion if the student commits any of acts prohibited by the EC, or if the student violates any district rules or regulations. *EC §48917(d)*

## Terms of Expulsion

### Education Program while Suspended

The district must provide an educational program for the student while he/she is expelled. This must be set up at the time the board expels the student. *EC §48916.1*

### Readmission Dates

For non-zero tolerance offenses, the expulsion can be no longer than the last day of the semester following the semester when the student was expelled.

The *readmission date* must be set at the time when the pupil is expelled. *EC §48916(a)*

For zero tolerance offenses [listed previously], the term of expulsion will be one calendar year from the date of the expulsion. However, the governing board can decide to set an earlier readmission date on a case-by-case basis.

*EC §48916(a)*

## Rehabilitation Plans

At the time of the expulsion, the governing board must recommend a plan of rehabilitation for the period of time while the student is expelled. This plan can include recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, or community service. *EC §48916(b)*

## Readmission

At the end of the expulsion, the student can apply for readmission to the governing board. The board must readmit the student unless they find that either:

- the student has not completed her rehabilitation plan, or
- the student continues to pose a danger to campus safety, other students, or district employees. *EC §48916(c)*

## Appeals

The student has the right to appeal the board's decision. The student has 30 days to file an appeal with the county board of education. *EC §48919*. The decision of the county board is final. *EC §48924*

Grounds for appeal are limited to the following questions:

- Whether the governing board acted without or in excess of its jurisdiction;
- Whether there was a fair hearing before the governing board;
- Whether there was a prejudicial abuse of discretion at the hearing;
- Whether there is relevant and material evidence, which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing. *EC §48922*

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## Introduction

California special education discipline law incorporates federal law (IDEA) through Cal. Ed Code §48915.5.

Disabled students may be disciplined in the same manner as non-disabled students so long as the method of discipline does not constitute a *change in placement*. "Placement" refers to how and where the disabled student receives services listed in her IEP (see *fact sheet on special education*).

Even if a disabled student meets the legal criteria for expulsion or suspension, he/she is still entitled to receive a free, appropriate public education (FAPE) while suspended or expelled for a period of longer than 10 days per school year.

34 CFR §300.530(b)(2); 34 CFR §300.530

Students not yet found eligible for special education services are eligible for the protections afforded to children with disabilities IF the school district had knowledge that the child might have a disability, *unless* the person who holds education rights refused to allow an evaluation or refused services. 20 USC §1415(k)(5). See *fact sheet on education rights*.

**Change in Placement – manifestation determination meeting required** If discipline constitutes a *change in placement*, the school district must hold an IEP Team Meeting within 10 days of the decision to discipline the youth in order to determine whether the behavior was a manifestation of the child's disability. 34 CFR §300.530(e)

## Which School Disciplinary Punishments Constitute a Change in Placement?

*Some suspensions = change in placement*

If a student is suspended for more than 10 consecutive school days, the suspension constitutes a change in placement. 20 USC §1415(k)(1); 34 CFR §300.536

## Patterns of Suspension

If the student is suspended on separate occasions for more than 10 school days in a given year, and the suspensions

constitute a pattern, then the suspensions are a change in placement. A pattern is shown by considering the length of each suspension, the total amount of time the student is suspended, and the proximity of the suspensions to one another. 34 CFR §300.536

*All expulsions = change in placement*

No special education student can be expelled unless the district follows the procedures described below.

## Manifestation Determination

At the manifest determination meeting, the IEP team will determine whether or not the student's misconduct was a manifestation of her disability. The team will consider the following two questions:

- Whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability, or
- Whether the conduct in question was the direct result of the school district's failure to implement the student's IEP. 20 USC § 1415 (k)(1)(E)(i); 34 CFR § 300.530(e)

## Appeals

Any appeal of the manifestation determination shall result in an expedited due process hearing which shall occur within 20 days of the request for a hearing. 20 USC §1415(k)(4)(B); 34 CFR §300.532(c)

## After the Manifestation Determination Meeting

If the IEP team determines that the student's behavior was a manifestation of his/her disability, then the student shall return to the placement from which he/she was removed, *unless* the parent or person with education rights agrees to the change in placement, or the student committed a zero tolerance offense.

The zero tolerance offenses are:

- Possession of a weapon at school or at a school function;
- Possession/use/sale of illegal drugs at school or at a school function;
- Infliction of a serious bodily injury on another person while at school or at a school function. 20 USC §1415 (k)(1)(G); 34 CFR §300.530(g)

If the student returns to school, then the school district shall conduct a functional behavioral assessment (FBA) and implement a behavior intervention plan (BIP) unless an FBA and BIP had been conducted and developed prior to the manifestation determination. In this case, the BIP shall be modified as necessary.

20 USC §1415(k)(1)(F); 34 CFR §300.530(f)

See *fact sheet on FBA/BIP*.

If the IEP Team determines that the behavior was *not* a manifestation of the student's disability, or the student committed a zero-tolerance offense [as listed previously], then the student can be disciplined like a non-disabled student and placed in an Interim Alternative Educational Setting (IAES). The student, however, must still be provided with FAPE. A student with special needs may be moved to an IAES for not more than 45 school days if:

- The IEP Team determines that behavior was *not* a manifestation of the student's disability, or
- The student committed a zero tolerance offense [see above].

20 USC §1415(k)(1)(C) & (G); 34 CFR §§300.530(g), 300.531

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