

# Education Issues Impacting Youth in the Child Welfare and Juvenile Justice Systems

(Monday, June 29, 2009, Youth Law Center, San Francisco, CA)

“The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity.”

*Butt v. State of California*, 4 Cal. 4th 668, 685 (1992)

## **POLICY MAKERS AND LIKELY DEFENDANTS:**

- **State Boards of Education (SBE):** The State Board of Education (SBE) is charged with establishing educational policy, not inconsistent with Legislative intent, for all students in the State. (See *State Board of Education v. Honig* (1993) 13 Cal. App.4th 720 and Educ. Code §§33030-33032). All eleven members are appointed by the Governor.
- **State Superintendents of Public Instruction (SPI) and Departments of Education:** In CA the SPI is an elected official who directs the **California Department of Education (CDE)**. He is the executive officer and secretary of the Board and is charged with carrying out the policies decided by the Board. Educ. Code § 33111. The CDE administers California’s public education system at the state level. Educ. Code § 33301.
- Local Superintendents and local governing boards have similar roles and responsibilities.
- Generally, these policy making bodies do not reflect the diversity of their student and parent populations, nor are they knowledgeable about the special needs of at risk youth.
- Low-income, minority and/or immigrant parents have not been appointed to the SBE nor are they generally elected to local school boards, the local entities charged by statute with effectuating policy decisions so critical to low-income students.

## **ADVOCACY TOOLS:**

- U.S. Department of Education’s website
- State Dept. of Education websites
  - State Board Minutes
  - Funding Applications

- DATAQUEST (California)
- Local school district websites
- Local rules, regulations, policies
- School and District Accountability reports
- FOIA or state public records act requests

**STUDENT DEMOGRAPHICS:**

California now has a majority/minority student enrollment:<sup>1</sup>

CALIFORNIA STUDENT ENROLLMENT DATA – 2008-09					
Total Enrollment	Latino	White	Black	Asian/Pac. Islan./Fil.	Amer. Indian
6,258,006	(3,064,557) 49.02%	(1,741,677) 27.86%	(454,815) 7.28%	(734,652) 11.75%	(46,409) .74%

- Approximately, 53.5% of all students enrolled in California schools are enrolled in the free or reduced lunch program.

**Children Of Immigrants:**

- 47% of all CA students in PK to 5th grade are children of immigrants!<sup>2</sup>
- Children cannot be denied access to our schools, solely on the basis of their undocumented immigration status. *Plyler v. Doe* (1982) 457 U.S. 202.
- The majority of immigrants (67%) live in: California; Texas; New York; Florida; Illinois; and New Jersey
- The states with the fastest growing immigrant children populations: North Carolina; Nebraska; Arkansas; Nevada; Colorado; Georgia; Iowa; Tennessee; Oregon; and Idaho

**Limited English Proficient (LEP) Student Enrollment:**

- LEP students are the fastest growing student group in most of our schools.

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<sup>1</sup>In 1981-82, California’s student enrollment was 56% white, 26% Latino, 10% black and 7% Asian.

<sup>2</sup>“See the “New Demography of America’s Schools” (Urban Institute, 2005) at [http://www.urban.org/UploadedPDF/311230\\_new\\_demography.pdf](http://www.urban.org/UploadedPDF/311230_new_demography.pdf)

- Approx. 10% of all students are LEP and 80% are Spanish speakers.
- Most LEP students are NOT immigrants. (Urban Institute).

### California LEP Enrollment:

- 24.7% of all students enrolled in California schools are LEP (also referred to as English Learners) and 86% of all LEP students are Spanish-speakers<sup>3</sup>
- 43.4% of all students speak a language other than English in their homes!

### Foster Youth Enrollment:

- One of the most academically at risk student groups enrolled in our schools
  - 75% are working below grade level;
  - 83% are being held back by the third grade;
  - 46% become high school dropouts;<sup>4</sup>
- A disproportionate number of foster youth are “homeless, dependent on public assistance, unemployed . . . [and] are also much less likely to attend college than other youth.” Ed. Code §89341(a)(1).
- Do we have an accurate number concerning the number of foster youth enrolled in our schools? **NO**
- Do we know how many foster care students statewide are LEP, special education eligible and/or migrant students? **NO**
- Although statewide educational data is collected for several subgroups of students, there is no systematic statewide educational data collected, disaggregated, and submitted to CDE for foster youth students.

### AB 490 IMPLEMENTATION ISSUES:

- **Educational Placements:**

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<sup>3</sup> The other two largest language groups are Vietnamese (34,263 or 2.2%) and Cantonese (22,756 or 1.4%).

<sup>4</sup> Foster Youth Services- 2008 Year End Report  
<http://www.cde.ca.gov/ls/pf/fy/documents/fyslegreport2008.doc>

- **Best Interest of Child:** The educational placement of a foster care child in CA's public schools must be based on the "*best interests of the child.*" EDUC. CODE §§ 48850(a), 48853(g).
- **Least Restrictive Program:** Students in foster care are entitled to be placed in "*the least restrictive educational programs*" and to have "*access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils.*" EDUC. CODE §§ 48850(a), 48853(g).
- **Alternative Education - Placement of Last Resort:** Under AB 490, alternative educational settings are specifically frowned upon and are considered the educational placement of last resort for foster youth:
  - "*Before any decision is made to place a pupil in a juvenile court school. . . a community school . . . or other alternative educational setting, the parent or guardian, or person holding the right to make educational decisions for the pupil . . . shall first consider placement in the regular public school.*" EDUC. CODE § 48853(b), see also EDUC. CODE § 48853.5(d)(1).
- **Right to Remain in School of Origin:**
  - At the initial detention or placement, or any subsequent change in placement of a foster child, the local educational agency serving the foster child shall allow the foster child to continue in the school of origin for the duration of the academic school year. EDUC. CODE § 48853.5(d)(1).
  - If any dispute arises as to the school placement of a pupil placed in a group home or foster home, the pupil has the right to remain in his or her school of origin, pending resolution of the dispute. EDUC. CODE § 48853.5(d)(5).
- **Right to Immediate Enrollment:** If a change in schools occurs, the new school shall immediately enroll the foster child even if the foster child **has outstanding fees, fines, textbooks, or other items due the school last attended or is unable to produce records or clothing normally required for enrollment, such as previous academic records, medical records, immunization records, proof of residency, other documentation, or school uniforms.** EDUC. CODE § 48853.5(d)(4)(B).
- **Transfer of Student Records:** Recognizing that the transfer of student records is a critical factor "*in the swift placement of foster children in educational settings*", AB 490 has additional requirements concerning the transfer of student records that should facilitate "*efficient transfer*" procedures for foster youth. EDUC. CODE § 49069.5(a).
- **Sending School:** Upon receiving a transfer request from a county placing agency, a school district is required, "*within two business days,*" to deliver the "*educational*

information and records of the pupil to the next educational placement.” EDUC. CODE § 49069.5(d).

- It is also required to “*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 a pupil’s 504 Plan and/or IEP. EDUC. CODE §49069.5(e).
- **Foster Care Liaison:** Every local education agency must have an educational liaison for foster children who must ensure and facilitate proper school placement, enrollment and checkout from school. EDUC. CODE § 48853.5(b)(1).
  - The liaison must assist foster children when transferring from one school to another, including ensuring proper transfer of credits, records, and grades. EDUC. CODE § 48853.5(b)(2).
- **No Lowering of Grades Based on Placement or Court-Related Absences:** Grades of a student in foster care may not be lowered due to absence from school because of a change in placement, attendance at a court hearing or other court-related activity. EDUC. CODE § 49069.5(g) & (h).
- **School Credits:** Each public school district and county office of education shall accept for credit *full or partial* coursework satisfactorily completed by a pupil while attending a public school, juvenile court school, or nonpublic, nonsectarian school or agency. EDUC. CODE § 48645.5. **NOTE: THIS PROVISION IS APPLICABLE TO ALL STUDENTS.**

## JUVENILE COURT SCHOOLS:

- CDE refers to detained youth as “*high risk*” students and to juvenile court schools as “interventions or schools of last resort.”
- Over 67,000 students were enrolled in California’s juvenile court school system throughout the 2005-2006 school year.
- **Responsibility:** County boards of education are responsible for the administration and operation of juvenile court schools in conjunction with chief probation officers. Educ. Code § 48645.2; 15 C.C.R. § 1370(a).
- **Must Comply with Education Code:** A juvenile court school program “*shall comply with the State Education Code.*” 15 C.C.R. § 1370(b).
  - **Discipline:** Expulsion/suspension from school shall follow the appropriate due process safeguards as set forth in the Ed. Code. 15 C.C.R. § 1370(c)(3).
  - **Special Ed:** State and federal laws shall be observed for individuals with

special education needs. 15 C.C.R. § 1370(d)(2).

- **LEP:** Non-English speaking minors, and those with limited English-speaking skills, shall be afforded an educational program. 15 C.C.R. § 1370(d)(3).
- **Special Units:** Minors restricted to high security or other special units must be provided educational instruction. 15 C.C.R. § 1370(d)(1).
- **Admission and Preliminary Education Plan:** “*Not later than three school days after admission to the facility the minor shall be enrolled in school*” and the student must be assessed to determine his or her general academic functioning level. A preliminary education plan must also be developed within five school days after admission to the facility. 15 C.C.R. § 1370(e)(2)-(3).
- **Request Minor’s Transcript:** If a minor is detained “*the education staff shall request the minor’s transcript from his/her prior school*” along with a minor’s IEP and 504 Plan. 15 C.C.R. § 1370(e)(4).
- **Length of Stay Issue:**
  - School personnel will state that these students are under their supervision for very short periods of time and therefore it is difficult to provide them with a comprehensive program.
  - “Length of stay” does not excuse non-compliance with the law and may not be factually valid. In one county:
    - Long term confinements ranged anywhere from 120 to 365 days.
    - Those youth considered “short term” were detained anywhere from 10 to 90 days.
  - A month is a significant amount of education time for any student. For those students who are already at risk for academic failure, a month to a year of educational time is an eternity.
- **LEP Court School Enrollment:**
  - Thirty (30) percent of all students enrolled in the juvenile court schools in California are either LEP or Fluent English Proficient (FEP).
- **Court Schools – Other Non-compliance Issues:**
  - Failure to provide comprehensive educational programs;
  - Denied minimum number of instructional minutes per day;

- Failure to adequately assess youth to determine if they are in need of special education programs and related services;
- Failure to provide adequate instructional staffing;
- Denied re-entry to a regular comprehensive school once released;
- Failure to give partial credits for work done while detained;
- Denied meaningful access to the state's accountability system.

**ALTERNATIVE EDUCATION:**

- Are these programs dead-end tracks for minority or other low-income students who will never be given the opportunity to re-enter a regular program?
- Are ethnic, racial and/or LEP student groups disproportionately enrolled in alternative programs?
- Do school districts *involuntarily* place students into these programs without affording them the procedural protections mandated by the Education Code?

<b>SELECT CALIFORNIA ALTERNATIVE EDUCATION 2008-2009 ENROLLMENT DATA</b>						
	<b>Total Enrollment</b>	<b>African-American</b>	<b>Latino</b>	<b>Asian/Pa.Is/Fil.</b>	<b>White</b>	<b>Amer. Indian</b>
<b>Court Schools</b>	12,786	2,725 (22.1%)	7,078 (57.3%)	400 (3.3%)	1,774 (14.4%)	137 (1.1%)
<b>County Community</b>	18,242	1,619 (8.9%)	9,164 (50.2%)	681 (3.7%)	5,834 (32.0%)	303 (1.7%)
<b>All California Schools</b>	6,258,006	454,815 (7.28%)	3,064,557 (49.02%)	734,652 (11.75%)	1,741,677 (27.86%)	46,409 (.74%)

**Important Questions To Ask:**

- The number of foster youth, post-detention youth and probation supervised youth **not** currently enrolled in a regular school and the type of alternative placement for each youth (i.e. continuation high school, community school, independent study, opportunity school, etc.) for each school district;
- For each alternative placement, it should be determined how long each student has been there, when the student is scheduled to return to a regular school, if at all, and if the student has a right to return to a regular school setting and that has not occurred, why not;

- Alternative school enrollment data for these youth should be broken down by race, ethnicity, and language ability;
- There should also be separate data that reveals the educational placement of all probation supervised youth who are also foster youth and whether such youth is residing in a group home;
- The specific barrier to each youth's enrollment in a regular school should be identified, which may include the following: failure to accept partial credits; need for more adjustment time; need to serve out expulsion term; placement of foster youth in a group home; need to make up credits; tracking of certain youth by a school district into certain placements; or other reasons.



## USEFUL EDUCATION-RELATED WEB RESOURCES

**National Child Welfare Resource Center on Legal and Judicial Issues: Education Issues** - <http://www.abanet.org/child/rciji/education>

**Legal Services for Children (LSC)** <http://www.lsc-sf.org/web/index.html>

**Protection & Advocacy (PAI) Inc.** <http://www.pai-ca.org/>

**National Center on Education, Disability, and Juvenile Justice**  
<http://www.edji.org>

**National Center on Homelessness and Poverty (Children and Youth)**  
<http://www.nlchp.org/program.cfm?prog=2>

**Ensuring Educational Rights and Stability for Foster Youth: Assembly Bill 490 Training and Implementation Materials**  
<http://www.ylc.org/publications.php#Education>

**Foster Care Ombudsman Program - California** - responds to complaints from foster youth on a variety of issues, including violations of educational rights.  
<http://www.fosteryouthhelp.ca.gov>

**California Department of Education:** [www.cde.ca.gov](http://www.cde.ca.gov)

- **DATAQUEST:** <http://data1.cde.ca.gov/dataquest/>
- **Foster Youth Services:** <http://www.cde.ca.gov/lsp/fy/>

**Office for Civil Rights** - [www.ed.gov/offices/OCR](http://www.ed.gov/offices/OCR)

- LEP Resources link - [www.ed.gov/about/offices/list/ocr/ellresources.html](http://www.ed.gov/about/offices/list/ocr/ellresources.html)

**U.S. Department of Education** - <http://www.ed.gov/index.jhtml?src=a>

- No Child Left Behind Link [www.ed.gov/nclb/landing.jhtml](http://www.ed.gov/nclb/landing.jhtml)

**The National Evaluation and Technical Assistance Center for the Education of Youth Who are Neglected, Delinquent, or At Risk**  
[www.neglected-delinquent.org/nd/default.asp](http://www.neglected-delinquent.org/nd/default.asp)

**National Clearinghouse for English Language Acquisition**  
[www.ncela.gwu.edu/](http://www.ncela.gwu.edu/)