



CAREGIVERS

Your duty to monitor, promote and encourage the educational progress of the children in your care

An overview of AB 490's changes to the law regulating the education of foster children

Introduction

As you probably know, the youth in your care face daunting obstacles to successfully completing their education. As a result, it is not surprising that foster youth fall behind their peers in educational attainment. Here are a few of the distressing facts:

- 30% of foster youth perform below grade level.¹
- 50% of foster youth are held back in school.²
- In a national study, 46% of foster youth had not completed high school within 2.5 to 4 years after exiting care.³
- In California, less than 3% of foster youth go on to four-year colleges.⁴
- Despite these low outcomes, the aspirations of foster youth are very high: 70% of foster youth plan to attend college, and 19% plan to continue their education past college graduation.⁵

Effective January 1st, 2004, **Assembly Bill 490** imposes new duties and rights related to the education of youth in foster care. The new law provides for increased school placement stability and improved school transfer procedures. As caregivers, you have always been charged with the duty to monitor, promote and encourage the educational progress of the children placed in your care. AB 490 further defines and describes your responsibilities, as well as the responsibilities of social workers, school districts, and others involved in the lives of foster children, so that foster children may finally have the educational opportunities they deserve.

¹ Elisabeth Yu et al., *Improving Educational Outcomes for Youth in Care, A National Collaboration*, CWLA Press, 2000.

² Courtney et al., *Foster Youth Transitions to Adulthood: A Longitudinal View of Youth Leaving Care*, CWLA 2001.

³ Ronna J. Cook, *Are We Helping Foster Youth Prepare for Their Future?*, 16 *Child. & Youth Services Rev.* 213 (1994).

⁴ California Department of Social Services, Data Systems and Survey Design Bureau, Independent Living Program, Annual Statistical Report (2002), <http://www.dss.cahwnet.gov/research/res/pdf/Soc405a/2002/SOC405AOct01-Sep02.pdf>.

⁵ Curtis McMillen et al., *Educational Experiences and Aspirations of Older Youth in Foster Care*, 82 *Child Welfare* 475 (2003).

I. Responsibility for the education of foster youth is shared

AB 490 clarifies that as caregivers, you must work with the children’s educators, social workers, advocates, juvenile court officers, and the children themselves to ensure that the children in your care achieve educational success. *EC 48850(a)*.⁶

II. Key Provisions

a. Educational Placements are Determined by the Child’s Best Interest

If you have the right to make educational decisions for a youth in your care, all decisions that you make regarding his or her school placement must be made to ensure:

- i. That your child has access to the same academic resources, services, and extracurricular activities available to all students;
- ii. That your child is placed in the *least restrictive* educational program; and
- iii. That the placement is in your child’s *best interest*. *WIC 361, 726, EC 48853*.

b. Child’s right to remain in school of origin.

If your child is moved to a new placement in a different school district, the school district the child was initially attending *must* allow the child to remain in his or her school of origin for the remainder of the academic year, provided it is in his or her best interest to do so.

i. Who determines what is in your child’s best interest?

1. Your child’s best interest is determined by the school district educational liaison for foster children, in consultation with the person holding educational rights *and* the child.
2. Every school district will have an *educational liaison for foster children*; one of the liaison’s responsibilities is to make recommendations about whether or not it is in the best interest of a foster child to remain in his or her school of origin.
3. **Your right:** Prior to making a recommendation to move a foster child from his or her school of origin, the liaison must provide the

⁶ Throughout this document, abbreviations will be used to refer to California statutes. The Welfare and Institutions Code is “*WIC*,” the Education Code is “*EC*,” and the Government Code is “*GC*.”

person holding educational rights and the child with a *written explanation* stating the basis for the recommendation.

4. **Your child's right:** If the person holding educational rights and the child disagree with the liaison's recommendation, your child has the right to remain in his or her school of origin until the dispute is resolved. *EC 48853.5.*

c. Preference for Regular School Placement

Children in foster care or group homes must attend a mainstream public school program operated by the local school district, *unless*:

- i. Your child has an Individualized Education Plan (IEP) for special education services that requires another educational placement; or
- ii. The person holding educational rights decides that it is in the best interests of the child for him or her to attend another educational program or to remain in his or her school of origin. *EC 48853.*

d. Juvenile Court School Placements

- i. Before placement in a juvenile court school, the person holding educational rights shall first consider placement in the regular public school.
- ii. **Exception:** However, this provision does not apply to children detained in a county juvenile hall, or committed to a county juvenile ranch, camp, forestry camp, or regional facility. *EC 48853.*

III. When your child needs to transfer schools

- a. **Your child's right to immediate enrollment:** Once it has been determined that it is in the child's best interest to transfer to a new school, the new school must *immediately enroll* your child even if the child's school and immunization records are missing, even if your child does not have the uniform required, and even if your child still owes fees to his or her previous school. *EC 48853.5.*
- b. **Transferring your child's records to the new school:** The transfer of records between schools is the responsibility of both the former school district and your child's caseworker, and it must be completed in a timely manner. *EC 49069.5.* School transfers must be processed within *two business days.* *EC 48853.5(d)(4)(C).*

IV. Your child's other educational rights

- a. **Grade protection:** Your child's grades may not be lowered due to absences caused by a change in placement, attendance at a court hearing, or other court-related activity. *EC 49069.5*.
- b. **School credit calculation:** The school district must award credit to your child for full *or partial* coursework satisfactorily completed while attending a public school, juvenile court school, or nonpublic, nonsectarian school. *EC 48645.5*.
- c. **Diploma:** If your child completes the graduation requirements for the local school district while being detained, the school district may have to issue a diploma from the school your child last attended. *EC 48645.5*.

V. The right to make educational decisions for the children in your care

- a. **Educational rights:** Parents and guardians have the right to make educational decisions on behalf of their children. For children out of the care of their parents/guardians, the juvenile court may limit their ability to make such decisions.
- b. **Appointing a responsible adult:** If the court limits the right of the parent/guardian to make educational decisions, the court must at the same time appoint a responsible adult to make educational decisions for the child.
- c. **Appointing a surrogate parent:** If the court is unable to locate a responsible adult for a student who has been referred to or is currently receiving special education services, the court shall then refer the child to the local school district for the appointment of a surrogate parent. *WIC 361(a)*.
- d. **Who can be appointed as a responsible adult or surrogate parent?**
 - i. Responsible adults: The law does not give the court specific guidelines on who should be appointed as a responsible adult, but if appropriate, the court is likely to appoint relative caregivers, foster parents, and court-appointed special advocates. The court may also appoint other adults in the child's life who are willing to make educational decisions on behalf of the child.
 - ii. Surrogate parent: The law requires the school district to appoint relative caregivers, foster parents, and court-appointed special advocates if available. If none is available, the school district can select the surrogate parent of its choice. *GC 7579.5*.

e. How long does an appointment as a responsible adult or surrogate parent last?

An appointment as a responsible adult or surrogate parent lasts until:

- i. The child reaches 18 years of age, unless the child chooses not to make educational decisions for him/herself or is found incompetent;
- ii. Another adult is appointed to make educational decisions for the child;
- iii. The educational rights of the parent or guardian are fully restored; or
- iv. The child enters into 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 on behalf of the child. *WIC 361, GC 7579.5.*

VI. Rights, responsibilities and duties of those holding the right to make educational decisions

a. Are the rights and responsibilities of responsible adults and surrogate parents different?

No, it does not matter if you are appointed as a responsible adult, a surrogate parent, or if you hold education rights because your child is in a planned permanent living arrangement with you. In all cases, you have the same rights regarding your child's education as a natural parent would.

b. Special education: If you hold the right to make educational decisions for the child in your care, you may request and authorize a special education assessment for your child. You also have the right to attend and sign for your child's Individualized Education Plan meeting. *EC 56055, WIC 366.27, 726.*