

## California Foster Youth Education Task Force

# Foster Care Education Fact Sheets

Alameda County Foster Youth Alliance

American Bar Association,  
Center on Children and the Law

California Administrative Office of the Courts,  
Center for Families, Children and the Courts

California CASA Association

California Department of Education

California School Boards Association

California State Ombudsman for Foster Care

California State University, San Marcos

California Youth Connection

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Sacramento City Unified School District

San Diego County Department of the Public  
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Youth Law Center

written by Sarah Vesecky, Sara Woodward & Amy Levine

produced courtesy of Casey Family Programs



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## AB 490

### Introduction: AB 490

Effective January 1, 2004, Assembly Bill 490 (Steinberg) imposes 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, caregivers, advocates and juvenile court officers must all work together to serve the educational needs of children in foster care.

Foster youth must have access to the same academic resources, services, extra-curricular and enrichment activities available to all students. EC 48850(a)

### School Stability

**ROLE OF THE COUNTY PLACING AGENCY**  
When making out of home placements, the placing agency must consider both the placement's proximity to the child's present school *and* the impact the placement will have on the child's educational stability. WIC 16501.1(c)

#### ROLE OF THE SCHOOL

- Educational placements of foster youth must be made to ensure that youth have access to the same resources available to all students, that the educational placement is the least restrictive environment, and that the educational placement is in the youth's best interest. WIC 361, 726, EC 48853

- Right to remain in school of origin:** If the child's residential placement changes, the school district must allow the child to remain in her school of origin for the duration of the school year, provided it is in her best interest to do so. The child's best interest is determined by the school district foster care liaison, the person who holds education rights, and the child. If a dispute arises,

the child has the right to remain in her school of origin until the dispute is resolved. EC 48853.5

#### SCHOOL DISTRICT

##### FOSTER CARE LIAISON

Every school district and County Office of Education must have an educational liaison for foster children. The duties of a liaison are:

- To ensure proper school placement, enrollment and checkout from school
- To assist with the transfer of grades, credits and records when youth transfer schools
- To complete school record transfers within 2 business days. EC 48853.5

#### PREFERENCE FOR PUBLIC SCHOOL

Foster children must attend programs operated by the local education agency unless the child has an IEP requiring a different educational placement, *or* the person with education rights determines that it is in the child's best interest to attend a different educational program or to remain in the school of origin. EC 48853

#### IMMEDIATE ENROLLMENT

The child has the right to be immediately enrolled in the new school without school records, immunization records, uniforms, etc. EC 48853.5(d)(4)(B)

### Timely Transfer of Records

The timely transfer of records is the responsibility of both the placing agency and the school district. EC 49069.5

#### COUNTY PLACING AGENCY

When the case worker or probation officer becomes aware of the need to transfer a student to a new school, he or she must:

- Notify the school of the student's last expected day of attendance
- Request the calculation of the student's educational information
- Request the student be transferred out. EC 49069.5

Case workers and probation officers may access the child's school records without parental consent or court order so that they may assist with school transfer or enrollment, compile the child's health and education summary, or fulfill educational case management duties. EC 49076

#### OLD SCHOOL

Within 2 business days, the old school must transfer the student out, and deliver the student's educational record to the next school. The record must include a determination of seat time, full or partial credits earned, classes, grades, immunizations and, if applicable, special education or § 504 plans. EC 49069.5

#### NEW SCHOOL

The liaison for the new school shall, within 2 business days of the foster child's request for enrollment, contact the school last attended by the foster child to obtain all academic and other records. EC 48853.5(d)(4)(c)

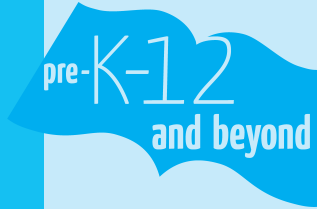
### Protection for Grades and Credits

A foster child's grades cannot be lowered due to absences caused by a change in placement, attendance at a court hearing, or a court ordered activity. EC 49069.5

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

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Fact Sheets have incorporated the Individuals with Disabilities Education Improvement Act of 2004 (effective July 1, 2005). Fact sheets produced April 2005.



## Education Rights

### Introduction: Education Rights

Parents have the right to make educational decisions for their children unless the child is in a legal guardianship, has been freed for adoption (parental rights terminated), or the court has specifically limited the parents' educational rights.

WIC 361, GC 7579.5

*When it matters:*

#### SPECIAL EDUCATION

**Proposed assessment plan:** The school district's proposed assessment plan must be signed by the person holding education rights. Without this consent, the assessment cannot go forward *unless* (1) the child is a ward of the state, *and* (2) the LEA cannot find the parent, the parent's education rights have been terminated, or a judge has removed the parent's educational rights and appointed another person to represent the child, *and* (3) it is an initial evaluation to determine eligibility. 20 USC § 614(a)(1)(D). *See fact sheet on special education.*

**IEP:** The *Individual Education Plan* (IEP) must be signed by the person with education rights in order for the plan to go into effect.

#### GENERAL EDUCATION

**Enrollment, preference for regular school placement:** Foster youth who are not in special education must attend a school operated by the local school district, unless the person with education rights determines that it is in the child's best interest to be placed in another educational program or to continue in her school of origin. EC 48853

**School of origin:** If a foster youth is moved to a new placement, the school district the child was initially attending must allow her to remain in her school of origin for the remainder of the academic school year provided it is in her best interest to do so. The person

with education rights, the child, and the school district foster care liaison determine the child's best interest. EC 48853.5

### Appointing Someone to Hold Education Rights

**IF A CHILD'S PARENT OR GUARDIAN IS UNABLE OR UNWILLING** to make educational decisions for the child, the juvenile court can limit the parent or guardian's educational rights. WIC 361

#### APPOINTING A RESPONSIBLE ADULT

If the juvenile 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 decisions for the youth, regardless of whether or not the youth is receiving or in need of special education. WIC 361

#### 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 to appoint a surrogate parent. WIC 361(a), GC 7579.5(a)(1)(A)

The school district must appoint a surrogate parent within 30 days of making a determination that the child needs a surrogate. 20 USC § 1415 (b)(2)(B)

**NOTE:** While the state law refers to those appointed by the juvenile court as "responsible adults," and those appointed by school districts as "surrogate parents," the federal IDEA specifically states that the juvenile court may appoint a "surrogate parent." 20 USC § 1415 (b)(2)(A)(i) *Despite the confusing use of two different terms, surrogate parents and responsible adults have the same rights & responsibilities.*

### Who Can Be Appointed to Hold Education Rights?

**RESPONSIBLE ADULTS:** Responsible adults cannot have a conflict of interest

or be employed by an agency involved in the education or care of the child.

WIC 7579.5, 20 USC § 1415 (b)(2)(A)

**SURROGATE PARENTS:** The law requires school districts to appoint relative caregivers, foster parents and court-appointed special (CASA) advocates if available. If none is available, the school can select the surrogate of its choice, as long as that person does not have a conflict of interest. GC 7579.5

### How Long Does an Appointment as a Responsible Adult or Surrogate Parent Last?

Appointment as a responsible adult or surrogate parent lasts until (WIC 361):

- The youth reaches 18 years of age. Students hold their own educational rights when they reach 18 unless the student has been determined to be incompetent under state law.

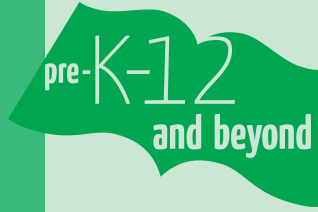
EC 49061, EC 56041.5, 34 CFR 300.517

- Another adult is appointed to make educational decisions
- The educational rights of the parent or guardian are fully restored, or
- The youth 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 on behalf of the youth. WIC 361, EC 56028

*Remember: the right to make educational decisions only transfers to the caregiver in a planned permanent living arrangement if education rights were previously limited.*

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## Special Education

The following information pertains to children between the ages of 3 – 21 who are eligible for special education services. The procedures are slightly different for children between the ages of 0 – 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.

### 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 (d)(1)(A), 1402(9); 34 CFR §300.4

**RELATED SERVICES:** Any services necessary to help student benefit from special education program, e.g. transportation, psychological services, physical, speech and occupational therapy, etc.

20 USC §1402(26), 34 CFR §300.24(a).iii

**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(1)(5)(A).v

## 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.

**CHILD FIND:** School districts/SELPA have a duty to actively and systematically seek out individuals with exceptional needs who may be entitled to special education services. EC 56300

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: CCR §§30000 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 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; specific learning disability; multiple disabilities.

20 USC §1402(3), 34 CFR §300.7, EC 56026

**AGE:** Students may be eligible for special education services between the ages of 0 – 21.

### EARLY INTERVENTION SERVICES:

children between the ages 0 – 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 5-21; 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. SSTs can be the “first step” towards determining whether a student needs special education services.

**IEP (Individualized Education Program):** 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.

**WHO ATTENDS?** The IEP Team consists of: a parent/educational surrogate or responsible adult, one regular education teacher, one special education teacher, an educational agency representative other than 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, 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 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 child’s parent, guardian, or educational surrogate 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 are:
- child is a ward of the court
  - district prevails at a due process hearing

Parent or equivalent has 15 calendar days to provide written consent to proposed assessment. EC 56321(c); 56043(a)

The initial IEP team meeting to determine eligibility must be held within 50 calendar days (not school days) of receipt of written consent to assessment.

EC 56344; 56043(d)

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*), transitional plans for no later than 16 years of age. 20 USC § 1414(d). In California, a statement of transition services is supposed to be included in the IEP if appropriate at age 14 and no later than age 16. EC 56345.1; 5 CCR §3042(b)

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

20 USC §1414(d)(4)

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); § 300.536, EC 56381, 56043(i)

Foster parent 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, GC 7589.5, 20 USC §1415(b)(2)(A)(i)

## PROCEDURAL RIGHTS / DISAGREEMENTS WITH SCHOOLS

If parents or persons with education rights need time to think over or disagree 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 parent or equivalent disagrees with the services provided under the IEP and thinks they do not provide FAPE, she may file for a due process fair hearing. EC 56502. Requests are filed with (Special Education Hearing Office (SEHO)).

If parent or equivalent files for a due process hearing, the youth must “stay put” (i.e. remain) in his current placement until the disagreement is resolved. 20 USC § 1415(j); 34 CFR § 300.514; EC 56505(d)

After filing, parent or equivalent may attend mediation with the district. During the time of this mediation process, the student is entitled to remain in his 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 surrogates 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. 20 USC §1415(b)(6); 34 CFR §300.660-662; 5 CCR §4650

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# Nonpublic Schools

## Definitions

**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. (see fact sheet on education rights.)

A student must be assessed for special education services prior to the development of an IEP and placement in an NPS. EC 56342.1

- 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(c)

#### 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 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)

Consent for an initial assessment is not consent for placement in an NPS or provision of any other special education services. EC 56320, 56321(d)

## Least Restrictive Environments (LRE)

Students *must* be placed in the *least restrictive environment* to meet their 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 services and behavioral support cannot be achieved. EC 56342, 56157(a)

**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. 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)(1)
- 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 AB 2726) services are mental health services provided as part of a youth's Individualized Education Program (IEP) to ensure that she benefits from 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 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 need only be eligible for special education services in *any* category.

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

**OBTAINING AB 3632 SERVICES: REFERRAL PROCESS AND TIMELINE****WHO MAY MAKE 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.

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.

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 school psychologist must simply submit an explanation with the referral to DMH explaining why the student clearly requires more intensive services.

2 CCR 60040(b)(4); GC 7576(b)(5)

**AFTER THE REQUEST BY THE SCHOOL IS MADE, HOW LONG DOES DMH HAVE TO COMPLETE THE ASSESSMENT?**

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<sup>1</sup> (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.)*

5 CCR 3052 (b), EC 56321

### 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).*

### 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) and (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)(D)(ii)

- 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)(F)(ii)

If a BIP has already been developed prior to any of the circumstances described in section ai-v, the IEP team must review the BIP and modify it, as necessary, to address the behavior. 20 USC §1415(k)(1)(F)(ii)

### 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.

### 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 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)

<sup>1</sup> *Federal law refers to “Functional Behavioral Assessment”;* *State law refers to “Functional Analysis Assessment.”*

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# School Discipline

## Introduction: School Discipline

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*.

ACT: EC §§ 48900, 48900.2 – .4 and .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.

### 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 or during/going to or coming from a school sponsored activity. EC 48900(f)

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.*

## 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 her story and evidence in 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), EC 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 threat or danger, 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, 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 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)

*continued on reverse*

#### 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* 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

#### 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 EXPELLED

The district must provide an educational program for the student while she is expelled. This must be set up at the time the board expels the student. EC 48916.I

##### 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(c)

##### 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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# Special Ed Discipline

## Introduction: Special Ed Discipline

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, 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.

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.

## 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.

## PATTERN OF SUSPENSIONS

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 §300.519

*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 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)

## APPEALS

Any appeal re: 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)

## After the Manifestation Determination Meeting

If the IEP team determines that the student’s behavior *was* a manifestation of her disability, then the student shall return to the placement from which 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)

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). *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) and (D)

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