



# JUVENILE COURT JUDGES

**Your duty to monitor, promote and encourage the educational progress of foster children**

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

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## Introduction

As you know, children living in foster care and group homes 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.<sup>1</sup>

50% of foster youth are held back in school.<sup>2</sup>

In a national study, 46% of foster youth had not completed high school within 2.5 to 4 years after exiting care.<sup>3</sup>

In California, less than 3% of foster youth go on to four-year colleges.<sup>4</sup>

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.<sup>5</sup>

Juvenile court judges have always been responsible for monitoring, promoting, and encouraging the educational progress of the children on their caseloads. Juvenile Court Administrative Standard §24(h) charges you with the responsibility to oversee the education of youth in foster care. Effective January 1<sup>st</sup>, 2004, Assembly Bill 490 imposes new duties for all parts of the system involved in the lives of foster youth, further defining and describing the responsibilities of judges, school districts, caregivers, case workers, and probation officers, in order to ensure that youth in foster care and group homes have the educational opportunities they deserve. This document outlines AB 490's changes to the law regulating the education of foster children, highlighting in particular the roles and responsibilities of juvenile court judges in regard to the educational attainment and stability of these youth.

### **I. Guiding principle: Judicial oversight of educational attainment**

- a. Juvenile court judges are charged with the responsibility to provide oversight of county social service and probation agencies to ensure that the educational rights of foster children are investigated, reported, and monitored. *JCAS §24(h)*.<sup>6</sup>

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

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

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

<sup>4</sup> 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>.

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

<sup>6</sup> The abbreviation "JCAS" refers to the Juvenile Court Administrative Standards, while "WIC," "EC," and "GC" will refer to the Welfare and Institutions Code, the Education Code, and the Government Code.

- i. Judges must require that court reports, case plans, assessments, and permanency plans:
    1. Address the child’s educational entitlements and how those entitlements are being satisfied;
    2. Contain information to assist the court in deciding whether the parent/guardian’s educational rights should be limited; and
    3. Provide information regarding whether the school has met its obligation to provide educational services to the child. *JCAS §24(h)*.
  - ii. Where appropriate, the court may join the child’s school district as a party in order to ensure that the district fulfills its legal obligation to provide special education.
- b. Responsibility for the education of foster youth is shared: The court must work with foster children’s caregivers, case workers, advocates, and educators to ensure that foster children achieve educational success. *EC 48850(a), JCAS §24(h)*.

## **II. Youth covered by AB 490**

- a. AB 490 covers youth who are:
- i. Supervised by either the county probation or child welfare agency, and
  - ii. In out of home placements (in group homes, foster care, or with relatives or non-relative extended family members). *EC 48853.5*.
- b. In this document, the phrases “foster children,” “foster youth,” and “children in foster care or group homes” will be used interchangeably, and will refer to the group described in this section and covered by the new law.

## **III. AB 490: New Rights for Foster Youth**

- a. **Educational stability must be considered as a factor when making out of home placements.**

When deciding which placement option is most appropriate for a child, one of the factors that must be considered is the placement’s *proximity to the child’s present school* and the impact the placement would have on the *child’s educational stability*. *WIC 16501.1(c)*

- b. **Educational placements must be determined by the child’s best interest**

All decisions regarding educational placements for foster children must be made to ensure:

- i. That the child has access to the same academic resources, services, and extracurricular activities available to all pupils;

- ii. That the child is placed in the *least restrictive* educational program; and
- iii. That the placement is in the child's *best interest*. *WIC 361, 726; EC 48853.*

**c. Child's right to remain in school of origin**

- i. If a child is removed from the home or otherwise 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 school year, provided it is in his or her best interest to do so.
- ii. If the district foster care liaison wishes to recommend that it is *not* in the child's best interest to remain in his or her school of origin, the liaison must provide the person holding educational rights and the child with a **written explanation** stating the basis for the recommendation.
- iii. **Child's right to remain in school of origin if a dispute arises:** If the person holding educational rights and the child disagree with the liaison's recommendation, the child has the right to remain in his or her school of origin until the dispute is resolved. *EC 48853.5.*

*Note: To ensure implementation of these provisions, judges should inquire into the child's school placement status following the removal of the child from the home and any subsequent placement disruption. If a change in school has resulted, inquire into the basis for that decision and ensure that the mandates of AB 490 have been considered and complied with.*

**d. Right to immediate enrollment**

Once it has been determined that it is in the best interest of the child to transfer between schools, the new school must *immediately enroll* the foster child even if fees or materials are owed to the previous school, and even if the child is unable to produce the records or clothing normally required for enrollment (such as previous academic records, medical records, immunizations records, proof of residency, other documentation or school uniforms). *EC 48853.5*

*Note: Judges should verify that youth are not out of school awaiting enrollment due to missing records or other documentation.*

**e. Right to the assistance of a School District Foster Care Liaison**

- i. Every school district must appoint an educational liaison for foster children.
- ii. The duties of the liaison are:
  - 1. To ensure and facilitate proper school placement, enrollment, and checkout from school. *EC 48853.5(b)(1)*
  - 2. To assist foster children when transferring schools by ensuring proper transfer of credits, records, and grades. School transfers must be processed within two business days. *EC 48853.5(d)(4)(C).*

**f. Preference for Regular School Placement**

Children in out of home placements must attend a school operated by the local school district, *unless*:

- i. The child has an Individualized Education Plan (IEP) requiring another educational placement; or
- ii. The person holding the right to make educational decisions for the child determines that it is in his or her best interest to be placed in another educational program or to continue in his or her school of origin. *EC 48853.*

**g. Juvenile court school placements**

- i. Before placement in a juvenile court school, the parent or person holding the right to make educational decisions shall *first consider placement in the regular public school.*
- ii. **Exception:** This does not apply to a pupil detained in a county juvenile hall, or committed to a county juvenile ranch, camp, forestry camp, or regional facility. *EC 48853(b).*

**h. Foster children in emergency shelters**

Children living in emergency shelters may receive educational services at the emergency shelter as necessary for short periods of time for either of the following reasons:

- i. For health and safety emergencies; or
- ii. If a decision regarding whether it is in the child's best interest to attend the school of origin cannot be made promptly, it is not practical to transport the child to the school of origin, and the child would not otherwise receive educational services. *EC 48853*

**i. Right to proper and timely transfer between schools**

- i. Efficient transfer of educational records is the responsibility of both the county placing agency *and* the school district
- ii. As soon as the case worker or probation officer becomes aware of the need to transfer a student to a new school, he or she must:
  1. Notify the school of the student's expected last day of attendance
  2. Request calculation of the student's seat time, credits, and grades, and
  3. Request that the student be transferred out. *EC 49069.5(c).*
- iii. **Old school district:** Within *two business days* of receiving a request, the school must transfer the student out and deliver a determination of the student's seat time, full or partial credits earned, classes, grades,

immunizations, and special education plan to the student's next educational placement. *EC 49069.5(d), (e)*.

- iv. **New school district:** Within *two business days* of the child's request for enrollment, the new school must contact the last school attended by the child to obtain all academic and other records. *EC 48853.5 (d)(4)(C)*.

**j. Grade protection**

A child's grades *may not be lowered* due to absences caused by a change in placement, attendance at a court hearing, or other court ordered activity. In the case of a change in placement, the child's grades must be calculated as of the date the student left school. *EC 49069.5(g),(h)*.

**k. School credit calculation**

School districts must award credit to foster children for full *or partial* coursework satisfactorily completed while attending another public school, juvenile court school, or nonpublic, nonsectarian school. *EC 48645.5*.

**l. Diploma**

If a foster child completes the graduation requirements for a school district while being detained, the district may have to issue a diploma from the school the student last attended. *EC 48465.5*

<b>IV. Limiting the educational rights of parents/guardians</b>
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**a. Educational rights**

- i. Parents and guardians have the right to make educational decisions on behalf of their children.
- ii. Whenever a child's parent or guardian is unable/unwilling to make educational decisions for the child, the court shall limit the parent/guardian's educational rights. *WIC 358.1(e)*.

**b. Appointing a responsible adult**

If the court limits the right of the parent/guardian to make educational decisions, it must at the same time appoint a responsible adult to make those decisions. *WIC 361(a)*. The law does not give the court specific guidelines on who should be appointed as a responsible adult, but relative caregivers, foster parents, and court-appointed special advocates (CASAs) may be well positioned to fill this role. The court may also appoint other adults in the child's life who are willing to make educational decisions on behalf of 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.

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*WIC 361(a)*. The law requires the school district to appoint relative caregivers, foster parents, and CASAs if available. If none is available, the school district can select the surrogate parent of its choice. *GC 7579.5*.

**d. Educational rights transfer to caregiver in planned permanent living arrangement**

If the child is later placed in a planned permanent living arrangement, the child's caregiver assumes educational rights, and the previously appointed responsible adult or surrogate parent can no longer make educational decisions on behalf of the child. *WIC 361(a)*.