



# SCHOOLS

**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

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>

Effective January 1<sup>st</sup>, 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. While schools have always been charged with the duty to monitor, promote and encourage the educational progress of foster children, AB 490 further defines and describes the role and responsibilities of the school, as well as the responsibilities of the children's social workers and caregivers. AB 490 seeks to ensure that all of California's foster children may finally have the educational opportunities they deserve.

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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).

**I. Students covered by AB 490**

- a. AB 490 covers students who are:
  - i. Supervised by either the county probation or child welfare agency, *and*
  - ii. Living in out of home placements (in group homes, foster care, or with relatives or 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.

**II. Foster Care Liaison**

- a. Each school district and county office of education **must** appoint an educational liaison for foster children.
- b. The **duties** of the liaison are:
  - i. To ensure and facilitate proper school placement, enrollment, and checkout from school. *EC 48853.5(b)(1)*
  - ii. 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).*

**III. Educational and School Placements****a. Mobility disrupts the educational experience of foster children**

- i. AB 490 states: “The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience.” *EC 49069.5(a).*
- ii. School stability for foster children should be encouraged.

**b. All educational placements must be determined by the child’s best interest**

All decisions regarding educational placements for children in foster care or group homes 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 environment*, and
- iii. That the educational placement is in the child’s *best interest*. *WIC 361, 726; EC 48853.*

**c. Who determines which educational placement in the best interest of a foster child?**

A foster 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.

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

- i. If a 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 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.*

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

**f. Juvenile Court School Placements**

Before placement in a juvenile court school, the person holding educational rights shall first consider placement in the regular public school. 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.*

<b>IV. Immediate Enrollment</b>
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- a. Foster children are entitled to *immediate enrollment* following any change in schools.

- b. Even if a foster youth owes fees to the previous school, and even if he or she is unable to produce the records or clothing normally required for enrollment (such as academic or medical records, immunizations, proof of residency, other documentation or school uniforms) you ***must enroll him or her in your school immediately.*** *EC 48853.5.*<sup>6</sup>

## V. Ensuring smooth school transfers

### a. Fast transfer of records is crucial

AB 490 states: “the Legislature ... finds that efficient transfer procedures and transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.” *EC 49069.5(a).*

### b. Proper and timely transfer between schools is the responsibility of both the county placing agency *and* the school district

- i. As soon as a case worker or probation officer becomes aware that it has been determined that it is in the child’s best interest to transfer to a new school, they will:
  - 1. Notify the old 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).*
- ii. **Old school district:** Within ***two business days*** of receiving such a request, you must transfer the student out and deliver the following information to the student’s next educational placement:
  - 1. A determination of the student’s seat time;
  - 2. Full or partial credits earned;
  - 3. Classes taken;
  - 4. Grades;
  - 5. Immunizations; and
  - 6. Special education plan. *EC 49069.5(d), (e).*
- iii. **New school district:** Within ***two business days*** of the child’s request for enrollment, you must contact the last school attended by the child to obtain all academic and other records. *EC 48853.5(d)(4)(C).*

<sup>6</sup> 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*.”

## VI. Grades, credits and diplomas

- a. **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)*.
- b. **School credit calculation:** You 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*.
- c. **Diploma:** If a foster child completes the graduation requirements for your school district while being detained, you may have to issue a diploma from the school the student last attended. *EC 48465.5*

## VII. Access to the child's school records

Parental consent and court orders are *not* needed by case workers and probation officers in order to access their client's school records. *EC 49076(a)(11)*. You must give access to school records to case workers and probation officers so that they may:

- a. Compile the child's health and education summary;
- b. Fulfill educational case management responsibilities; or
- c. Assist with the school transfer or enrollment of a pupil.

## VIII. Who holds the right to make educational decisions for foster children?

- 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 will at the same time appoint a *responsible adult* 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. *WIC 361(a)*.
- d. **Who will be appointed as a responsible adult or surrogate parent?**
  - i. **Responsible adult:** The court is likely to appoint the child's caregivers, foster parents, or court-appointed special advocates (CASAs). The court may also appoint other adults in the child's life who are willing to make educational decisions on behalf of the child.

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- ii. **Surrogate parent:** The law requires the school district to appoint relative caregivers, foster parents, and court-appointed special advocates (CASAs) if available. If none is available, the school district can select the surrogate parent of its choice. *GC 7579.5*.
  
  - e. **Figuring out who holds educational rights — don't guess, call the child's case worker!** Since any number of people involved in the child's life may hold educational rights (it could be anyone from the child's parents or foster parents to a non-custodial relative), call the child's case worker, probation officer, or attorney to find out who has been designated as the holder of these rights.