

**EDUCATION OF  
FOSTER YOUTH**

**Schools Legal Service  
Orange County Department of Education**

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# EDUCATION OF FOSTER YOUTH

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Ronald D. Wenkart  
General Counsel  
Orange County Department of Education  
200 Kalmus Drive, P.O. Box 9050  
Costa Mesa, CA 92628-9050

## SCHOOLS LEGAL SERVICE STAFF

Ronald D. Wenkart, General Counsel  
Claire Y. Morey, Counsel  
Lysa M. Saltzman, Counsel  
Kelly R. Barnes, Counsel  
Ruth Y. Diep, Counsel  
Norma Garcia, Paralegal

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## I. RIGHTS OF FOSTER CHILDREN

Education Code section 48850(a)(1) states that it is the intent of the Legislature to ensure all students in foster care and those who are homeless, as defined by the McKinney-Vento Act, have a meaningful opportunity to meet the challenging state academic achievement standards to which all students are held. Section 48850 states that in fulfilling their responsibilities to foster care children, educators, county placing agencies (e.g., probation and social services departments), care providers, advocates and the juvenile court shall work together to maintain stable school placements and to ensure that each student is placed in the least restrictive educational program and has access to the academic resources, services and extracurricular and enrichment activities that are available to all students. In all instances, educational and school placement decisions must be based on the best interests of the child, and shall consider, among other factors, educational stability and the opportunity to be educated in the least restrictive educational setting necessary to achieve academic progress.

Education Code section 48850(a)(2) states that a foster child who changes residence pursuant to a court order or decision of a child welfare worker or a homeless child or youth shall be immediately deemed to meet all residency requirements for participation in interscholastic sports or other extracurricular activities. Section 48850(a)(3) states that pursuant to the McKinney-Vento Act,<sup>1</sup> public schools, including charter schools, and county offices of education shall immediately enroll a homeless child or youth seeking enrollment except where the enrollment would be in conflict with Education Code section 47605(d).<sup>2</sup>

The McKinney-Vento Act,<sup>3</sup> defines, “homeless children and youth,” as individuals who lack a fixed, regular and adequate nighttime residence and includes:

1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship or a similar reason; are living in motels, hotels, trailer parks or camping grounds due to the lack of alternative adequate accommodation; are living in emergency or transitional shelters; are abandoned in hospitals.<sup>4</sup>
2. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

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<sup>1</sup> 42 U.S.C. Section 11301 et seq.

<sup>2</sup> Education Code section 47605(d) relates to charter schools and their admission policies.

<sup>3</sup> 42 U.S.C. Section 11434(a).

<sup>4</sup> As of December 10, 2016, “awaiting foster care placement” was deleted from the McKinney-Vento Act’s definition of “homeless children and youths” in every state except Delaware and Nevada. Children in any stage of foster care proceedings will not be eligible for McKinney-Vento Act protections unless they meet the other elements of the Act’s definition of “homeless.”

3. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations or similar settings.
4. Migratory children who qualify as homeless for the purpose of this part.

Education Code section 48850(b) states that every county office of education shall make available to agencies that place children in licensed children's institutions information on education options for children residing in licensed children's institutions within the jurisdiction of the county office of education for use by the placing agencies in assisting parents and foster children to choose educational placements.

## **II. DEFINITION OF FOSTER YOUTH**

Education Code section 48853.5(a) establishes the definition of foster child for purposes of granting foster children the right to be placed in their school of origin in accordance with Education Code section 48853. A foster child is defined as a child who has been removed from his or her home pursuant to Welfare and Institutions Code section 309 (temporary custody), is the subject of a petition filed under Welfare and Institutions Code section 300 (dependent-victim of abuse or neglect), or 602 (juvenile who has violated the law), or has been removed from his or her home and is the subject of a petition under Welfare and Institutions Code section 300 or 602.

Education Code section 48853.5(g) defines the school of origin as a school that the foster child attended when permanently housed or the school in which the foster child was last enrolled. If the school the foster child attended when permanently housed is different from the school in which the foster child was last enrolled, or if there is some other school that the foster child attended with which the foster child is connected and that foster child attended within the immediately preceding fifteen (15) months, the education liaison, in consultation with the foster child and the person holding the right to make educational decisions for the foster child, shall determine, in the best interests of the foster child, the school that shall be deemed the school of origin.

From this definition of school of origin, the clear intent of the Legislature was to apply the right to attend the school of origin to foster children who have been removed from their home. Children who have remained in their original home with their parents would continue to attend the school where they reside and there would be no need for the child to attend their school of origin.<sup>5</sup>

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<sup>5</sup> See, California Foster Youth Education Task Force Fact Sheet Number One – AB 490, which states that AB 490 (which includes Education Code section 48853.5) and the school of origin requirements apply to out-of-home placements not youth who remain at home with their parents (April 2005). See also, Department of Social Services All County Letter No. 07-48 (November 20, 2007); Legal Center for Foster Care and Education (2013), page 6, citing Education Code section 48853.5, and stating, "This section applies to any child who has been removed from his or her home." California Department of Education Report to the Governor and the Legislature: Foster Youth Services Program (October 2014), page 41, which states, "The CDSS has not defined youth under court supervision in Family Maintenance and Guardian placement as foster youth . . ."

With respect to Education Code section 51225.1(a), which exempts a pupil in foster care from additional local requirements for graduation, the Legislature has amended Section 51225.1, effective January 1, 2017, to exempt former juvenile court school pupils from local graduation requirements as well.<sup>6</sup> Former juvenile court pupils are defined as a pupil who, upon completion of the pupil's second year of high school, transfers to a school district from a juvenile court school.

In summary, the school of origin requirement applies to foster youth who have been removed from their home. The waiver of local graduation requirements applies to foster youth who have been removed from their home and former juvenile court school pupils.

### **III. PLACEMENT OF FOSTER CHILDREN**

Education Code section 48853(a) states that a foster child who is placed in a licensed children's institution or foster family home shall attend programs operated by the local educational agency, unless one of the following applies:

1. The pupil is entitled to remain in his or her school of origin pursuant to Education Code section 48853.5.
2. The pupil has an IEP requiring placement in a nonpublic, nonsectarian school or agency or in another local educational agency.
3. The parent or guardian, or other person holding the right to make educational decisions for the student determines that it is in the best interest of the pupil to be placed in another educational program, in which case the parent or guardian or other person holding the right to make educational decisions for the pupil shall provide a written statement that he or she has made that determination to the local educational agency. This statement shall include a declaration that the parent, guardian, other person holding the right to make educational decisions for the pupil is aware of all of the following:
  - a. The pupil has a right to attend a regular public school in the least restrictive environment.
  - b. The alternate program is a special education program, if applicable.
  - c. The decision to unilaterally remove the pupil from the regular public school and to place the pupil in an alternate education program may not be financed by the local educational agency.

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<sup>6</sup> Stats. 2016, ch. 464 (AB 2306). It should be noted that AB 2306 does not amend the definition of foster youth but creates a new exception to local graduation requirements (but not school of origin) for former juvenile court pupils.

- d. Any attempt to seek reimbursement for the ultimate education program may be at the expense of the parent, guardian, or other person holding the right to make educational decisions.

Education Code section 48853(b) states that for purposes of ensuring a parent, guardian, or other person holding the right to make educational decisions for the student is aware of all of the information above, the local educational agency may provide him or her with that information in writing.

Education Code section 48853(c) states that before any decision is made to place a student in a juvenile court school, the parent or guardian or person holding the right to make any educational decisions for the student shall first consider placement in a regular public school. Section 48853(d) states that if any dispute arises as to the school placement of the student, the student has the right to remain in his or her school of origin, pending resolution of the dispute. The dispute shall be resolved in accordance with existing dispute resolution process available to any pupil served by the local educational agency. However, 48853(e) states that Section 48853 does not supersede other laws that govern pupil expulsion. Therefore, if the student had been expelled from the school of origin, the student would not have the right to remain in his or her school of origin.

Education Code section 48853(f) states that Section 48853 does not supersede any other law governing the educational placement in a juvenile court school, of a student detained in a county juvenile hall, or committed to a county juvenile ranch camp, forestry camp, or regional facility. Therefore, if the juvenile court or county placing agency has decided that the student should be placed in a county juvenile hall or committed to a court juvenile ranch camp, forestry camp, or other regional facility, pursuant to another law, Section 48853 does not supersede those provisions of law.

Education Code section 48853(g) states that foster children living in emergency shelters may receive educational services at the emergency shelter, as necessary, for short periods of time for health and safety emergencies or to provide temporary, special and supplementary services to meet the child's unique needs if a decision regarding whether it is in the best interests of the child 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 otherwise not receive educational services. Educational services may be provided at the shelter pending a determination by the person holding the right to make decisions regarding the educational placement of the child.

Education Code section 48853(h) states that all educational and school placement decisions shall be made to ensure that the child is placed in the least restrictive educational programs and has access to academic resources, services, and extracurricular and enrichment activities that are available to all students. In all instances, educational and school placement decisions shall be based on the best interests of the child.

Education Code section 48853(i) states that a complaint of noncompliance with the requirements of Section 48853 may be filed with the local educational agency under the Uniform Complaint Procedures. A complainant not satisfied with the decision of a local educational agency may appeal the decision to the California Department of Education and shall receive a written decision regarding the appeal within sixty (60) days of the California Department of Education's

receipt of the appeal. If the local educational agency finds merit in the complaint, or the Superintendent of Public Instruction finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil. Information regarding the Uniform Complaint Procedures shall be included in the annual notification distributed to pupils, parents or guardians of pupils, employees, and other interested parties.

#### **IV. APPOINTMENT OF EDUCATIONAL LIAISON FOR FOSTER CHILDREN**

Education Code section 48853.5(a) applies to any foster child who has been removed from his or her home pursuant to Welfare & Institutions Code section 309 (temporary custody), is the subject of a petition filed under Section 300 (dependent-victim of abuse or neglect) or 602 (juvenile who has violated the law) of the Welfare & Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare & Institutions Code.

Education Code section 48853.5(b) states that the California Department of Education, in consultation with the California Foster Youth Education Task Force, shall develop a standardized notice of the educational rights of foster children. The notice shall include complaint process information. The California Department of Education shall make the notice available to educational liaisons for foster children for dissemination by posting the notice on its Internet Web site. Any version of this notice prepared for use by foster children shall also include, to the greatest extent practicable, the rights established pursuant to Welfare and Institutions Code section 16001.9. In developing the notice that includes the rights in Section 16001.9, the California Department of Education shall consult with the Office of the State Foster Care Ombudsperson.

Education Code section 48853.5(c) requires each local educational agency to designate a staff person as the educational liaison for foster children. Section 48853.5(b) requires the educational liaison for foster children to do the following:

1. Ensure and facilitate the proper educational placement, enrollment in school and checkout from school of foster children.
2. Assist foster children when transferring from one school to another or from one school district to another in ensuring proper transfer of credits, records and grades.

Education Code section 48853.5(d) states that if so designated by the superintendent of the local educational agency, the educational liaison shall notify a foster child's attorney and the appropriate representative of the county child welfare agency pending expulsion proceedings if the decision to recommend expulsion is a discretionary act, pending proceedings to extend a suspension until an expulsion decision is rendered if the decision to recommend expulsion is a discretionary act, and, that the foster child is an individual with exceptional needs, and a manifestation determination pursuant to federal law if the local educational agency has proposed a change in placement due to an



act for which the decision to recommend expulsion is at the discretion of the principal or the district superintendent of schools.

Education Code section 48853.5(e) states that Section 48853.5 does not grant authority to the educational liaison that supersedes the authority granted under state and federal law to a parent or guardian retaining educational rights, a responsible adult appointed by the juvenile court to represent a child, a surrogate parent, or a foster parent exercising the authority granted under Education Code section 56055. The role of the educational liaison is advisory with respect to placement decisions and determination of the school of origin.

## **V. SCHOOL OF ORIGIN**

Education Code section 48853.5(f)(1) states that 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 his or her education in the school of origin for the duration of the jurisdiction of the court. Section 48853.5(f)(2) states that if the jurisdiction of the court is terminated before the end of an academic year, the local educational agency shall allow a former foster child who is in kindergarten or any of grades 1 to 8, inclusive, to continue his or her education in the school of origin through the duration of the academic school year. Section 48853.5(f)(3)(A) states that if the jurisdiction of the court is terminated while a foster child is in high school, the local educational agency shall allow the former foster child to continue his or her education in the school of origin through graduation.

Education Code section 48853.5(f)(3)(B) states that a school district is not required to provide transportation to a former foster child who has an individualized education program that does not require transportation as a related service and who changes residence but remains in his or her school of origin, unless the individualized education program team determines that transportation is a necessary related service. To ensure that the foster child has the benefit of matriculating with his or her peers in accordance with the established feeder patterns of school districts, if the foster child is transitioning between school grade levels, the local educational agency shall allow the foster child to continue in the school district of origin in the same attendance area, or, if the foster child is transitioning to a middle school or high school, and the school designated for matriculation is in another school district, to the school designated for matriculation in that school district.

Education Code section 48853.5(f)(5) does not require a school district to provide transportation services to allow a foster child to attend a school or school district, unless otherwise required under federal law. Section 48853.5(f)(5) does not prohibit a school district from, at its discretion, providing transportation services to allow a foster child to attend a school or school district.

Education Code section 48853.5(f)(6) states that the educational liaison, in consultation with, and with agreement of, the foster child and the person holding the right to make educational decisions for the foster child, may recommend, in accordance with the foster child's best interests, that the foster child's right to attend the school of origin be waived and the foster child be enrolled in

a public school that pupils living in the attendance area in which the foster child resides are eligible to attend.

Prior to making any recommendation to move a foster child from his or her school of origin, the educational liaison is required to provide the foster child and the person holding the right to make educational decisions for the foster child with a written explanation, stating the basis for the recommendation and how the recommendation serves the foster child's best interests.<sup>7</sup> If the educational liaison, in consultation with the foster child and the person holding the right to make educational decisions for the foster child, agree that the best interests of the foster child would be served by his or her transfer to a school other than the school of origin, the foster child should immediately be enrolled in the new school.<sup>8</sup>

The new school shall immediately enroll the foster child even if the foster child has outstanding fees, fines, textbooks, or other items or moneys due to the school last attended or is unable to produce clothing or records normally required for enrollment, such as previous academic records, medical records, including but not limited to, records or proof of immunization history, proof of residency, other documentation, or school uniforms.<sup>9</sup>

Within two business days of the foster child's request for enrollment, the educational liaison for the new school shall contact the school last attended by the foster child to obtain all academic and other records. The last school attended by the foster child shall provide all required records to the new school regardless of any outstanding fees, fines, textbooks, or other items or monies owed to the school district last attended. The educational liaison for the school last attended shall provide all records to the new school within two business days of receiving a request.<sup>10</sup>

If a dispute arises regarding the request of a foster child to remain in the school of origin, the foster child has the right to remain in the school of origin pending the resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to a pupil served by the local educational agency.<sup>11</sup>

The local educational agency and the county placing agency are encouraged to collaborate to ensure maximum utilization of available federal funds and other funding sources to promote the well-being of foster children through educational stability.<sup>12</sup>

Education Code section 48853.5(g) defines "school of origin" as the school that the foster child attended when permanently housed or the school in which the foster child was last enrolled. If the school the foster child attended when permanently housed is different from the school in which the foster child was last enrolled, or if there is some other school that the foster child attended with which the foster child is connected, the educational liaison, in consultation with and the agreement

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<sup>7</sup> Education Code section 48853.5(f)(7).

<sup>8</sup> Education Code section 48853.5(f)(8)(A).

<sup>9</sup> Education Code section 48853.5(f)(8)(B).

<sup>10</sup> Education Code section 48853.5(f)(8)(C).

<sup>11</sup> Education Code section 48853.5(f)(9).

<sup>12</sup> Education Code section 48853.5(f)(10).

of the foster child and the person holding the right to make educational decisions for the foster child, shall determine in the best interest of the foster child, the school that shall be deemed the school of origin. Section 48853.5(h) states that 48853.5 does not supersede other laws governing the educational placements in juvenile court schools.

Education Code section 48859 defines a county placing agency as the county social service department or county probation department.

Education Code section 48853.5(i) states that a complaint of noncompliance with the requirements of Section 48853.5 may be filed with the local educational agency under the Uniform Complaint Procedures. A complainant not satisfied with the decision of a local educational agency may appeal the decision to the California Department of Education and shall receive a written decision regarding the appeal within sixty (60) days of the California Department of Education's receipt of the appeal. If a local educational agency finds merit in a complaint, or the Superintendent of Public Instruction finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil. Information regarding the requirements of Section 48853.5 shall be included in the annual notification distributed to pupils, parents or guardians of pupils, employees, and other interested parties.

## **VI. TRANSFER OF STUDENT RECORDS**

Education Code section 49069.5, as amended, states that the proper and timely transfer of student records between schools is the responsibility of both the local educational agency and the county placing agency. As soon as the county placing agency becomes aware of the need to transfer a student in foster care out of his or her current school, the county placing agency is required to contact the appropriate person at the local educational agency of the student. The county placing agency shall notify the local educational agency of the date that the student will be leaving the school and request that the student be transferred out. Upon receiving a transfer request from a county placing agency, the local educational agency must, within two business days, transfer the student out of school and deliver the educational information and records of the student to the next educational placement. As part of the transfer process, the local educational agency is required to compile the complete educational record of the student 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 the student's plan under Section 504 of the Rehabilitation Act or IEP.

Education Code section 49069.5(f) states that the local educational agency shall assign the duties listed in Section 49069.5 regarding the transfer of records to "a person competent to handle the transfer procedure and aware of the specific educational record keeping needs of homeless, foster, and other transient children who transfer between schools." Section 49069.5(g) states, "The local educational agency shall ensure that if the student in foster care is absent from school due to a decision to change the placement of the student made by a court or placing agency, the grades and the credits of the student will be calculated as of the date the student left school, and no lowering of grades will occur as a result of the absence of the student under these circumstances." Section 49069.5(h) states that the local educational agency shall ensure that if the student in foster care is

absent from school due to a verified court appearance or related court ordered activity, no lowering of his or her grade will occur as a result of the absence of the student under these circumstances.

Education Code section 49076(a)(1)(K) states that a county placing agency when acting as an authorized representative of a state or local educational agency pursuant to Section 49076(a)(1)(C) shall be permitted access to student records without written parental consent or a judicial order. School districts, county offices of education and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of student information by electronic mail, facsimile, electronic format or other secure means, if the agreement complies with Section 99.35 of Title 34 of the Code of Federal Regulations.<sup>13</sup> Education Code section 49076(a)(1)(N) states that an agency caseworker or other representative of a state or local child welfare agency that has legal responsibility, in accord with state law, for the care and protection of the pupil, shall be permitted access to student records without written parental consent or a judicial order.

Education Code section 49076(a)(4) states that notwithstanding any other provision of law, a school district, including a county office of education or county superintendent of schools, may participate in an interagency data information system that permits access to a computerized database within and between governmental agencies or school districts as to information or records that are nonprivileged, and where release is authorized as to the requesting agency under state or federal law or regulation, if each of the following requirements are met:

1. Each agency and school district is required to develop security procedures or devices to ensure that unauthorized personnel cannot access data contained in the system;
2. Each agency and school district shall develop procedures or devices to secure privileged or confidential data from unauthorized disclosure;
3. Each school district shall comply with the access log requirements of Section 49064;
4. The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data; and,
5. An agency or school district shall not make public or otherwise release information on an individual contained in the database if the information is protected from disclosure or release as to the requesting agency by state or federal law or regulation.

Education Code section 49069.5(i) states that a complaint of noncompliance with the requirements of Section 49069.5 may be filed with the local educational agency under the Uniform Complaint Procedures. A complainant not satisfied with the decision of a local educational agency may appeal the decision to the California Department of Education, and shall receive a written decision regarding the appeal within sixty (60) days of the California Department of Education's receipt of the appeal. If a local educational agency finds merit in a complaint, or the Superintendent of Public Instruction finds merit in an appeal, the local educational agency shall provide a remedy to

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<sup>13</sup> Education Code section 49076(a)(1)(K).

the affected pupil. Information regarding requirements of Section 49069.5 shall be included in the annual notification distributed to pupils, parents or guardian of pupils, employees, and other interested parties.

## **VII. FOSTER PARENTS**

If the juvenile court has limited the right of the parent or guardian to make educational decisions on behalf of the child and the child has been placed in a planned permit living arrangement, then Education Code section 56055 authorizes a foster parent to exercise parental rights for the duration of the parent/foster child relationship in matters relating to identification, assessment, instructional planning and development, educational placement, IEP development, and all other matters relating to the provision of a free appropriate public education for the foster child. Section 56055 authorizes the foster parent to consent in writing to the IEP, including nonemergency medical services, mental health treatment services, and occupational or physical therapy.

## **VIII. COURSEWORK AND CREDITS**

Education Code section 48645.5(a) states that 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. The coursework shall be transferred by means of the standard state transcript. If a pupil completes the graduation requirements of his or her school district of residence while being detained, the school district of residence shall issue to the pupil a diploma from the school the pupil last attended before detention or, in the alternative, the county superintendent of schools may issue the diploma.

Education Code section 48645.5(b) states that a pupil shall not be denied enrollment or readmission to a public school solely on the basis that he or she has had contact with the juvenile justice system, including being arrested, adjudicated by a juvenile court, formal or informal supervision by a probation officer, detention for any length of time in a juvenile facility or enrollment in a juvenile school, or for any other reason. Section 48645.5(c) states that pursuant to Education Code section 48853.5(f)(8)(B), a pupil who has had contact with the juvenile justice system shall be immediately enrolled in a public school.<sup>14</sup>

## **IX. GRADUATION REQUIREMENTS FOR FOSTER YOUTH**

Education Code section 51225.1 states that notwithstanding any other law, a school district shall exempt a student in foster care who transfers between schools at any time after the completion

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<sup>14</sup> Education Code section 48853.5(f)(8)(B), states, “The new school shall immediately enroll the foster child even if the foster child has outstanding fees, fines, textbooks, or other items or moneys due to the school last attended or is unable to produce clothing or records normally required for enrollment, such as previous academic records, medical records, including, but not limited to, records or other proof of immunization history . . . proof of residency, other documentation, or school uniforms.”

of the pupil's second year of high school from all coursework and other requirements adopted by the governing board of the school district that are in addition to the statewide course requirements specified in Education Code section 51225.3, unless the school district makes a finding that the pupil is reasonably able to complete the school district's graduation requirements in time to graduate from high school by the end of the pupil's fourth year of high school.

Education Code section 51225.1(b) states that if the school district determines that the pupil in foster care is reasonably able to complete the school district's graduation requirements within the pupil's fifth year of high school, the district shall do all of the following:

1. Inform the pupil of his or her option to remain in school for a fifth year to complete the school district's graduation requirements.
2. Inform the pupil, and the person holding the right to make educational decisions for the pupil, about how remaining in school for a fifth year to complete the school district's graduation requirements will affect the pupil's ability to gain admission to a postsecondary educational institution.
3. Provide information to the pupil about transfer opportunities available through the California Community Colleges.
4. Permit the pupil to stay in school for a fifth year to complete the school district's graduation requirements upon agreement with the pupil, even if the pupil is 18 years of age or older, or, if the pupil is under 18 years of age, upon agreement with the person holding the rights to make educational decisions for the pupil.

Education Code section 51225.1(c) states to determine whether a pupil in foster care is in the third or fourth year of high school, either the number of credits the pupil has earned to the date of transfer, or the length of the pupil's school enrollment may be used, whichever will qualify the pupil for the exemption. Section 51225.1(d) states that within 30 calendar days of the date that a pupil in foster care who may qualify for the exemption from local graduation requirements transfers into a school, the school district shall notify the pupil, the person holding the right to make educational decisions for the pupil, and the pupil's social worker or probation officer, of the availability of the exemption and whether the pupil qualifies for an exemption.

Education Code section 51225.1(d)(3), effective January 1, 2017, states that within 30 calendar days of the date that a former juvenile court school pupil may qualify for the exemption from local graduation requirements transfers into a school, the school district shall notify the pupil, the person holding the right to make educational decisions for the pupil, and the pupil's social worker or probation officer of the availability of an exemption from local graduation requirements. If the school district fails to provide timely notice, the pupil shall be eligible for the exemption from local graduation requirements once notified, even if that notification occurs after the termination of the court's jurisdiction over the pupil, if the pupil otherwise qualifies for the exemption. Section 51225.1(e) states that if a pupil in foster care is exempted from local graduation requirements and completes the statewide course requirements before the end of his or her fourth year in high school

and that pupil would otherwise be entitled to remain in attendance at the school, a school or school district shall not require or request that the pupil graduate before the end of his or her fourth year of high school.

Education Code section 51225.1(f) states that if a pupil in foster care is exempted from local graduation requirements, the school district shall notify the pupil and the person holding the right to make educational decisions for the pupil how any of the requirements that are waived will affect the pupil's ability to gain admission to a postsecondary educational institution and shall provide information about transfer opportunities available through the California Community Colleges. Section 51225.1(g) states that a pupil in foster care who is eligible for the exemption from local graduation requirements and would otherwise be entitled to remain in attendance at the school shall not be required to accept the exemption or be denied enrollment in or the ability to complete courses for which he or she is otherwise eligible, including courses necessary to attend an institution of higher education, regardless of whether those courses are required for statewide graduation requirements.

Education Code section 51225.1(h) states that if a pupil in foster care is not exempted from local graduation requirements or has previously declined the exemption, a school district shall exempt the pupil at any time if an exemption is requested by the pupil and the pupil qualifies for the exemption. Section 51225.1(i) states that if a pupil in foster care is exempted from local graduation requirements, a school district shall not revoke the exemption.

Education Code section 51225.1(j) states that if a pupil in foster care is exempted from local graduation requirements, the exemption shall continue to apply after the termination of the court's jurisdiction over the pupil while he or she is enrolled in school or if the pupil transfers to another school or school district. Section 51225.1(k) states that a school district shall not require or request a pupil in foster care to transfer schools in order to qualify the pupil for an exemption. Section 51225.1(l) states that a pupil in foster care, the person holding the right to make educational decisions for the pupil, the pupil's social worker, or the pupil's probation officer shall not request a transfer solely to qualify the pupil for an exemption.

Education Code section 51225.1(m) states that a complaint of noncompliance with the requirements of Section 51225.1 may be filed with the local educational agency under the Uniform Complaint Procedures. A complainant not satisfied with the decision of a local educational agency may appeal the decision to the California Department of Education and shall receive a written decision regarding the appeal within sixty (60) days of the California Department of Education's receipt of the appeal. If a local educational agency finds merit in a complaint, or the Superintendent of Public Instruction finds merit an appeal, the local educational agency shall provide a remedy to the affected pupil. Information regarding the requirements of Section 51225.1 shall be included in the annual notification distributed to pupils, parents or guardians of pupils, employees, and other interested parties. A similar exemption applies to homeless children.<sup>15</sup>

Education Code section 51225.2(a)(3), effective January 1, 2017, defines a "former juvenile court school pupil" as a pupil who, upon completion of the pupil's second year of high school,

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<sup>15</sup> Education Code section 51225.2.

transfers to a school district from a juvenile court school. This legislative change will expand the number of students who may qualify for an exemption from local graduation requirements.

**X**  
**ASSEMBLY BILL 854**

**A. Establishment of Foster Youth Services Coordinating Program**

On October 11, 2015, Governor Brown signed Assembly Bill 854,<sup>16</sup> effective October 11, 2015, as an urgency measure.

Assembly Bill 854 established, commencing with the 2015-16 fiscal year and for each fiscal year thereafter, the Foster Youth Services Coordinating Program, to be administered by the Superintendent of Public Instruction to coordinate and ensure that local educational agencies within its jurisdiction are providing services to foster youth pupils pursuant to a foster youth coordinating plan with the purpose of ensuring positive educational outcomes. As part of the program, Assembly Bill 854 would authorize a county office of education, or consortium of county offices of education, to apply to the Superintendent of Public Instruction for grant funding, to the extent funds are available, to operate an education-based foster youth services coordinating program to provide educational support for pupils in foster care.

**B. Legislative Findings**

Education Code section 42920 sets forth the findings of the Legislature. Among the findings, the county office of education Foster Youth Services (FYS) Program is uniquely situated to support interagency collaboration and capacity building, both at the system and individual pupil level, focusing on improving educational outcomes for pupils in foster care. The FYS program should support and facilitate collaboration and capacity building while preserving the ability to provide direct services such as tutoring, mentoring, counseling, transition, school-based social work, and emancipation assistance when there are identified gaps in service at the local level and the local Executive Advisory Council establishes that these services are needed and aligned with local control and accountability plan (LCAP) priorities.

**C. Funding of Foster Youth Services**

Education Code section 42920.5(a) states that commencing with the 2015–16 fiscal year, and each fiscal year thereafter, the Foster Youth Services Coordinating Program, administered by the Superintendent of Public Instruction, is established to provide supplemental funding to county offices of education, or a consortium of county offices of education, to coordinate and ensure that local educational agencies within its jurisdiction are providing services to foster youth pupils pursuant to the plan established in Section 42921, with the purpose of ensuring positive educational outcomes.

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<sup>16</sup> Stats. 2015, ch. 781.



Education Code section 42920.5(b) states that a foster youth services coordinating program shall meet minimum standards established by the Superintendent of Public Instruction to ensure the provisions of Section 42921 are implemented, and shall be required to meet those minimum standards annually as a condition of continued funding.

Education Code section 42920.5(c) states that as a condition of receiving funds, a county office of education, or a consortium of county offices of education, shall work with the local educational agencies within the county or consortium of counties, and shall coordinate services to ensure that, for the 2015-16 and 2016-17 fiscal years, the level of direct services provided to support foster youth pupils is not less than what was provided in the 2014-15 fiscal year through the foster youth services program established pursuant to Section 42921, as it read on June 30, 2015. In meeting this requirement, services for foster youth pupils may be provided through one or any combination of state funding, including, but not limited to, the local control funding formula, or federal local or other funding.

Education Code section 42920.5(d) states that for the 2015-16 fiscal year, the allocation amount for which any county office of education or consortium of county offices of education is eligible shall not be less than the amount allocated to that county or consortium in the 2014-15 fiscal year, including the allocation amounts of school districts identified in Section 42920, as it read on June 30, 2015. This subdivision applies only if a county office of education or consortium of county offices of education elects to apply for grant funding pursuant to Section 42921.

Education Code section 42920.5(e) states that on or before October 31, 2015, the Superintendent of Public Instruction shall develop an allocation formula to determine the allocation amounts for which each county office of education or consortium of county offices of education is eligible. The Superintendent of Public Instruction may include additional criteria in the allocation formula, but shall apply, at a minimum, the following criteria:

1. The number of pupils in foster care in the county.
2. The number of school districts in the county.

Notwithstanding Education Code section 42920.5(e), commencing with the 2016-17 school year, the superintendent shall provide a grade-based grant of \$75,000 to each participating county office of education or consortium of county offices of education that served at least one foster youth pupil in the prior fiscal year. Section 42920.5(g) states that after providing base grants pursuant to subdivision (f), the superintendent shall allocate the remaining funding to participating county offices of education or consortium of county offices of education based on the following criteria:

1. Seventy percent of the allocation shall be based on the number of pupils in foster care in the county.
2. Thirty percent of the allocation shall be based on the number of school districts in the county.

Education Code section 42920.5(h) states that the allocation pursuant to 42920.5(g) shall be applied after consideration of Section 42926(b).<sup>17</sup>

#### **D. Applying for Staff Funds for Foster Youth**

Education Code section 42921(a) states that a county office of education, or consortium of county offices of education, may elect to apply to the Superintendent of Public Instruction for grant funding, to the extent funds are available, to operate an education-based foster youth services coordinating program to provide educational support for pupils in foster care. Section 42921(b) states that each foster youth services coordinating program shall have at least one person identified as the foster youth educational services coordinator, if sufficient funds are available. The foster youth educational services coordinator shall facilitate the provision of educational support to any pupil in foster care residing or attending school in the county or consortium of counties.

Education Code section 42921(c) states that a pupil in foster care means a foster youth, as defined in Education Code section 42238.01(b),<sup>18</sup> or a foster child who is detained in a county-operated juvenile detention facility. Section 42921(d) states that priority shall be given to pupils who are living in out-of-home placements.

#### **E. Foster Youth Services Coordinating Plan**

Education Code section 42921(e) states that as a condition of receiving funds, each foster youth services coordinating program operated by a county office of education or a consortium of county offices of education shall develop and implement a foster youth services coordinating plan for purposes of establishing guiding principles and protocols to provide supports for foster care

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<sup>17</sup> Education Code section 42926(b) states, "The superintendent, upon approval from the Department of Finance, shall use up to five percent of the funding allocated for the Foster Youth Services Coordinating Program to contract with a local educational agency to administer the program established pursuant to this chapter, including, but not limited to, providing technical assistance to county offices of education and consortia of county offices of education as they implement this program."

<sup>18</sup> Education Code section 42238.01(b) states: "Foster youth" means any of the following: (1) A child who is the subject of a petition filed pursuant to Section 300 of the Welfare and Institutions Code, whether or not the child has been removed from his or her home by the juvenile court pursuant to Section 319 or 361 of the Welfare and Institutions Code. (2) A child who is the subject of a petition filed pursuant to Section 602 of the Welfare and Institutions Code, has been removed from his or her home by the juvenile court pursuant to Section 727 of the Welfare and Institutions Code, and is in foster care as defined by subdivision (d) of Section 727.4 of the Welfare and Institutions Code. (3) A nonminor under the transition jurisdiction of the juvenile court, as described in Section 450 of the Welfare and Institutions Code, who satisfies all of the following criteria: (A) He or she has attained 18 years of age while under an order of foster care placement by the juvenile court, and is not more than 19 years of age on or after January 1, 2012, not more than 20 years of age on or after January 1, 2013, and not more than 21 years of age, on or after January 1, 2014, and as described in Section 10103.5 of the Welfare and Institutions Code. (B) He or she is in foster care under the placement and care responsibility of the county welfare department, county probation department, Indian tribe, consortium of tribes, or tribal organization that entered into an agreement pursuant to Section 10553.1 of the Welfare and Institutions Code. (C) He or she is participating in a transitional independent living case plan pursuant to Section 475(8) of the federal Social Security Act (42 U.S.C. Sec. 675), as contained in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351), as described in Section 11403 of the Welfare and Institutions Code.

pupils aligned with the population priorities established in Section 42921(f). The plan shall include, to the extent possible, but not be limited to, the following:

1. A description of how the program will establish ongoing collaboration with local educational agencies, county child welfare agencies, and county probation departments, to determine the proper educational placement of the foster youth. This includes building the capacity of county agencies, school districts, and community organizations to better support the educational success of pupils in foster care and facilitating collaboration between county agencies, school districts, and community organizations to ensure coordinated and nonduplicative service delivery and to ensure pupils in foster care receive the educational supports and services they need to succeed in school. This may include, but is not limited to, education emancipation services such as support with transitions to postsecondary education or career technical education programs. Providing services and educational case management in support of individual pupils in foster care as necessary. This may include, but is not limited to, transition in school social work to support transition between schools or school districts.
2. The primary goal of the collaboration shall be to minimize changes in school placement by supporting the implementation of statutes that pertain to pupils in foster care **as necessary. The foster youth services coordinating program may pay for the cost of transportation services to support foster youth.**
3. If it is in the best interests of a pupil in foster care to transfer schools, the foster youth services coordinating program shall support local educational agencies in the implementation of Education Code section 48853.5 and all related statutes pertaining to pupils in foster care, such as ensuring transfers are done at an educationally appropriate time, educational records are quickly transferred, appropriate partial credits are awarded, and the pupil in foster care is quickly enrolled in appropriate classes.
4. In determining the appropriate educational placement of foster youth pupils, local educational agencies, county welfare agencies, and county probation departments shall consult with an educational rights holder, caregiver, social worker, teacher, counselor, court-appointed special advocate, other stakeholders, and the pupil, as appropriate. The purpose of the consultation shall be to ensure all educational programmatic options are considered, including, but not limited to, English learner, special education, advanced placement, and career technical education.

5. If a school district annually certifies in writing to the foster youth services coordinating program that it is unable, using any other state, federal, local, or private funds, to provide tutoring, mentoring, and counseling, and if those services are established as needed and identified by the appropriate school district, in collaboration with the county child welfare agency or county probation department, the school district may enter into a temporary agreement with the foster youth services coordinating program to provide those services.
6. It is the intent of the Legislature that local educational agencies include information provided in their LCAP when describing their services for foster youth pupils. It is the further intent of the Legislature that county offices of education, in the development and adoption of their LCAPs, include information specific to the transition requirement when describing the coordination of services for foster youth pupils.
7. Policies and procedures to ensure educational placement for a foster youth pupil is not delayed, including, but not limited to, facilitating the establishment of an IEP in accordance with the IDEA, if applicable, the transfer of records, transcripts, and other relevant educational information. The plan shall also describe how the program will facilitate coordination with local postsecondary educational institutions.
8. Policies and procedures for local educational agencies, county welfare agencies, and county probation departments to share all relevant educational information for foster youth to ensure the court has updated and accurate information as it makes decisions regarding foster youths.

Education Code section 42921(f) states that when developing the plan, the county office of education, or the consortium of county offices of education, shall consider the needs of specific age groups, pupils in foster care in specific geographic areas with the highest concentration of pupils in foster care, and pupils in foster care with the greatest academic need. A foster youth services coordinating program is encouraged to first provide services for pupils in foster care who reside in group homes, institutional settings, or other placements with pupils with high academic needs, as determined by the local Executive Advisory Council.

#### **F. Executive Advisory Council**

Education Code section 42921(g) states that each foster youth services coordinating program operated shall establish a local interagency Executive Advisory Council. The Executive Advisory Council may include representatives from the county child welfare agency, the county probation department, local educational agencies, local postsecondary educational institutions, and community organizations. If possible, the Executive Advisory Council may include, but is not limited to, foster

youth, caregivers, educational rights holders, dependency attorneys, court representatives, court-appointed special advocates, and other interested stakeholders. The foster youth educational services coordinator shall be a permanent member of the Executive Advisory Council. The Executive Advisory Council shall regularly review the recommendations to the foster youth services plan.

#### **G. Report to the Legislature**

Education Code section 42923(a) states that as a condition of receiving funds, each county office of education and consortium of county offices of education providing a foster youth services coordinating program shall, by May 15 of each even-numbered year, report to the Superintendent of Public Instruction any information as may be required by the Superintendent of Public Instruction and as accessible to the Foster Youth Services Coordinating Program. Section 42923(b) states that the Superintendent of Public Instruction shall, by July 1 of each even-numbered year, report to the appropriate policy and fiscal committees of the Legislature and the Governor on the Foster Youth Services Coordinating Program. The report shall include, but not be limited to, the following:

1. Recommendations regarding the effectiveness and continuation of the Foster Youth Services Coordinating Program.
2. To the extent possible, aggregate educational outcome data for each county in which there were at least 15 pupils in foster care who attended school in the county, with information on each of the following indicators:
  - a. The number of pupils in foster care who attended school in the county.
  - b. The academic achievement of the pupils in foster care who attended school in the county, as determined by quantitative and qualitative data currently collected by program participants.
  - c. The number of pupils in foster care who were suspended or expelled.
  - d. The number of pupils in foster care who were placed in a juvenile hall, camp, ranch, or other county-operated juvenile detention facility because of an incident of juvenile delinquency.
  - e. The truancy rates, attendance rates, and dropout rates for pupils in foster care.
  - f. The number of pupils in foster care participating in foster youth services coordinating programs who successfully

transition to postsecondary education. The California Department of Education shall collaborate with the Chancellor of the California Community Colleges and the Chancellor of the California State University to identify indicators that can be used to track access to postsecondary education for pupils in foster care participating in a foster youth services coordinating program.

- g. The amount of funds allocated and expended by each foster youth services coordinating program in the previous two fiscal years.
- h. Information about how the program has supported the development and implementation of new local educational agency and county agency policies, practices, and programs aimed at improving the educational outcomes of pupils in foster care.
- i. Information about how the program has improved coordination of services between local educational agencies and county agencies, including the types of services provided to pupils in foster care.

#### **H. Operation of the Foster Youth Services Coordinating Program**

Education Code section 42924 states that the Foster Youth Services Coordinating Program shall not be operative unless funding is provided in the annual Budget Act or another enacted statute. Any funds allocated to county offices of education or consortia of county offices of education for foster youth services coordinating programs shall be used only for foster youth services coordinating programs and any funds not used by county offices of education for those services shall revert to the state General Fund.

Education Code section 42925 states that a condition of receiving funds, each county office of education and consortium of county offices of education with a foster youth services coordinating program shall, to the extent possible, develop and enter into a memorandum of understanding, contract, or formal agreement with the county child welfare agency pursuant to which foster youth services coordinating program funds shall be used, to the maximum extent possible, to leverage funds received from the federal government and any other funds that may be used to specifically address the educational needs of pupils in foster care, or they shall explain in writing, annually, why a memorandum of understanding is not practical or feasible. To the extent possible, each foster youth services coordinating program is encouraged to consider leveraging other local funding opportunities to support the educational success of pupils in foster care.

## **I. State Responsibility for the FYS Coordinating Program**

Education Code section 42926(a) states that the Superintendent of Public Instruction shall administer the Foster Youth Services Coordinating Program and shall be responsible for all of the following:

1. Monitoring implementation.
2. Facilitating the data sharing and reporting necessary to meet the requirements of Section 49423.
3. Reviewing a county office of education's LCAP for any information required with respect to foster youth.

Education Code section 42926(b) states that the Superintendent of Public Instruction, upon approval from the Department of Finance, shall use up to five percent of funding allocated for the Foster Youth Services Coordinating Program to contract with a local educational agency to administer the program, including, but not limited to, providing technical assistance to county offices of education and consortia of county offices of education as they implement this program.