



ATTORNEYS

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

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

Effective January 1st, 2004, **Assembly Bill 490** gives foster youth new rights related to their education. The new law provides for increased school placement stability and improved school transfer procedures. As attorneys for these children, you play an important role in helping foster youth enforce their rights. This document outlines the changes in the law regulating the education of foster children. By monitoring and furthering the implementation of these new provisions, you can help ensure that foster youth receive the educational opportunities they deserve.

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

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

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

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

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

I. 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.

II. Key Provisions of AB 490 -- Your Client’s Educational Rights**a. Educational stability must be considered as a factor when making out of home placements**

When the child’s social worker or probation officer is deciding which placement option is most appropriate for a child, one of the factors he or she must consider 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, you should inquire – and ask the court to inquire – into the child's school placement 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: Always inquire into a child's school status and ensure that no youth are out of school for reasons at odds with these provisions.

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 foster care and group homes 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:
 - a. Notify the school of the student's expected last day of attendance;

- b. Request calculation of the student's seat time, credits, and grades; and
 - c. Request that the student be transferred out. *EC 49069.5(c)*.
2. **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)*.
 3. **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*

III. Limiting the educational rights of parents/guardians
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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 social worker or others can ask the court to limit the parent/guardian's educational rights. If you recommend limiting the parent/guardian's educational rights, you

should try to determine whether or not there is a responsible adult available to make those decisions. *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 if appropriate, the court is likely to appoint relative caregivers, foster parents, and 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.

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)*. 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. Attorneys representing the child may not be able to hold educational rights.

The law forbids granting educational rights to someone with a conflict of interest, and defines "conflict of interest" to include a person having any interests that might restrict or bias his/her ability to make educational decisions, including, but not limited to, receipt of attorney's fees for provision of education related services. However, attorneys receiving compensation solely for representation in the dependency matter are not necessarily precluded from serving as responsible adults. *WIC 361(a)(5)*.

e. 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)(5)*.