



**California Foster Youth Education
Task Force**

Frequently Asked Questions & Answers *About AB 490*

Principal Authors:
Jennifer Troia, Sara Woodward,
Alice Bussiere & Maria Ramiu

Produced May 2006

FREQUENTLY ASKED QUESTIONS & ANSWERS ABOUT AB 490
TABLE OF CONTENTS

I. Introduction

- Q1: What is AB 490?
- Q2: What does AB 490 require?
- Q3: Which children or youth does AB 490 cover?
- Q4: When a child leaves foster care and returns home to live with her¹ biological parents, must the school district allow her to immediately enroll? If she wants to stay in her school of origin, can she? Finally, is the foster youth liaison required to work with a child in these circumstances?
- Q5: Does AB 490 apply to voluntary placements or informal placements with relatives?
- Q6: Does AB 490 apply to a child 5.5 years old who is enrolling in Kindergarten, even though compulsory education does not begin until age 6 in California?
- Q7: What is the remedy if districts or schools don't comply with the provisions of AB 490?

II. Educational placement decisions: School of origin and child's best interest

- Q8: If a foster child has the right to stay in her school of origin if it is in her "best interest," how is best interest determined?
- Q9: If the decision makers (i.e. person with educational rights, child, liaison) disagree over whether it is in the child's best interest to remain in her school of origin, how is the dispute resolved?
- Q10: Who is responsible for providing transportation to the child's school of origin?
- Q11: Is it true that the child welfare agency has no input into whether it is in the child's best interest to remain in the school of origin?
- Q12: What recourse do attorneys or case workers have if they disagree with the educational placement decision made by the person holding educational rights, the child, and the educational liaison?

¹ "Her" and "she" are used throughout this document as inclusive of her/his and she/he in order to simplify the text.

- Q13: Once the person with educational rights, child, and educational liaison decide that a child should stay in her school of origin, can the district of origin require the child to complete inter-district transfer paperwork (as if they came from the new school of residence)?
- Q14: If a foster child experiences a change of placement during the summer, but would like to attend her school of origin in the fall, does AB 490 give her this right?

III. Immediate enrollment

- Q15: How can schools allow foster children to enroll without immunization records? Won't this jeopardize the health of other students?
- Q16: How does the automatic enrollment provision apply to children with Individualized Education Programs (IEPs) that require a specific placement?
- Q17: If a foster child has an expired IEP or the new school has not yet obtained a copy of her IEP, must she be immediately enrolled? Can the school district postpone enrollment until an IEP meeting can be held?
- Q18: Can a school or district require a foster child to provide a birth certificate before they enroll her?
- Q19: Some schools have requirements that students successfully complete a certain number of credits before they can participate in certain extra curricular activities. Can schools apply these requirements to foster children?

IV. Transfer of records

- Q20: Does the list of documents referred to in AB 490 include the student's cumulative file?
- Q21: Can a school refuse to forward transcripts for a foster child to her new school because she owes an outstanding debt (e.g. for textbooks)?
- Q22: What is the definition of "deliver" for the requirement that a school "deliver" a foster child's educational records to a new school within 2 business days? Is it sufficient for the old school to put them in the mail within in 2 days?

V. Educational rights

- Q23: Who has the right to make education-related decisions for a child?
- Q24: How does the court decide that parents/guardians are unable or unwilling to hold educational rights?
- Q25: Can the school district appoint a surrogate parent for special education purposes if the court has not limited the rights of the child's parents/guardians, but the school district can't find the parents/guardians?

Q26: What should a child welfare worker or school do if they have difficulty determining who holds educational rights? Where should they turn?

Q27: Who can sign the emergency information card for a child? Must that person have educational rights?

VI. Partial credits and grade protection

Q28: Are there existing county/district models for how to calculate partial credits?

Q29: Can a teacher require a foster child to make up work missed as the result of absences caused by a change in placement or attendance at a court hearing or court-ordered activity?

VII. McKinney-Vento and AB 490

Q30: If both McKinney-Vento and AB 490 cover a student, which one governs?

Citation & Abbreviation Key:

AB 490 = Assembly Bill 490

CFR = Code of Federal Regulations

EC = California Education Code

GC = California Government Code

IEP = Individualized Education Program

WIC = California Welfare & Institutions Code

USC = United States Code

FREQUENTLY ASKED QUESTIONS & ANSWERS ABOUT AB 490

I. Introduction

Q1: What is AB 490?

Assembly Bill 490 (AB 490) refers to California legislation that addresses many of the barriers to equal educational opportunity for foster children and youth. AB 490 was passed in 2003 and became effective January 1, 2004. Its provisions charge school districts, county social service agencies, and other professionals with additional responsibilities to facilitate educational equity for foster children. Recognizing how often these children face educational disruptions, AB 490 added new provisions to the law and amended others, mostly in the California Education Code. If these provisions are followed, they should facilitate stability and educational opportunity in the best interest of each child in foster care.

Q2: What does AB 490 require?

AB 490 creates or amends the following provisions of law:

- **Educational Equity:** Educational placements for foster children must ensure that they have access to academic resources, services, enrichment and extracurricular activities available to all other students. *EC § 48853(g)*
- **Basis for Placement:** In all instances, educational placement decisions for foster children must be based on the best interests of the child and must ensure that the child is placed in the least restrictive educational program that can serve her needs. *EC § 48853(g)*
- **School of origin:** If a foster child's placement changes, the child has the right to remain in her school of origin for the duration of the school year. *EC § 48853.5(d)(1)*
- **Immediate enrollment:** When a foster child changes schools, her new school must immediately enroll her, even if she is missing things that are usually required for enrollment (e.g. academic and medical records, immunization records, proof of residency, a school uniform) or if she owes fees or materials to her prior school. *EC § 48853.5(d)(4)(B)*
- **School district foster care liaison:** Every school district must appoint an educational liaison to serve foster children. *EC § 48853.5(b)*
- **Preference for mainstream school:** Foster children must attend a regular, mainstream school unless: 1) they have an IEP requiring a different educational placement, 2) the person who holds the right to make educational decisions for the child determines it is in the child's best interest to attend a different educational program, or 3) the person with educational rights and the child decide that it is in the child's best interests to remain in her school of origin for the remainder of the school year. *EC § 48853(a)*
- **Timely transfer of records:** County placing agencies and school districts must work together to transfer records in a timely manner. As soon as the youth's case worker or probation officer becomes aware of the need to transfer a student to a new school, he or she must notify the school of the last day of attendance, request calculation of student's educational information, and request that the student be transferred. *EC §*

49069.5(c). The school the student is transferring from must deliver the student's educational record to the next school within 2 business days. *EC* §§ 49069.5(d),(e).

- The school the student is transferring to must request the student's records from the old school within 2 business days of the student's enrollment. All required records shall be provided to the new school regardless of any outstanding fees, fines, textbooks, or other items or moneys owed to the school last attended. *EC* § 48853.5(d)(4)(C).
- **Protection for grades:** A foster child's grades cannot be lowered due to absences caused by a change in her placement or her attendance at a court hearing or court-ordered activity. *EC* §§ 49069.5(g),(h).
- **Partial credits:** Schools must award all students credit for full or partial coursework satisfactorily completed at another public school, a juvenile court school, or a non-public, non-sectarian school. *EC* § 48645.5.
- **Case worker and probation officer access to school records:** Case workers and probation officers may access a foster child's school records without parental consent or a court order, so that they may compile the youth's health & education summary, fulfill educational case management duties, or assist with school transfer or enrollment. *EC* § 49076(a)(11).

Q3: Which children or youth does AB 490 cover?

The legislative intent of AB 490 is to ensure that students in foster care "...have a meaningful opportunity to meet the challenging state pupil academic achievement standards..." and that "...educators, care providers, advocates, and the juvenile courts shall work together to maintain stable school placements and to ensure that each pupil is placed in the least-restrictive educational programs, and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all other pupils..." *EC* § 48850(a).

AB 490 protects the educational opportunities of children who are declared dependents or wards of the juvenile court and whose cases are supervised by child welfare and probation agencies. *EC* § 48853.5(a). This includes children who have been abandoned, abused or neglected,² as well as children who violated a state or federal law while they were under the age of 18.³

Q4: When a child leaves foster care and returns home to live with her biological parents, must the school district allow her to immediately enroll? If she wants to stay in her school of origin, can she? Finally, is the foster youth liaison required to work with a child in these circumstances?

Again, AB 490 protects the educational opportunities of children who are declared dependents or wards of the juvenile court and whose cases are supervised by child welfare and probation agencies. *EC* § 48853.5(a). As a practical matter, any child who is a dependent or ward would rarely be sent back home without the court retaining jurisdiction for some period (for family maintenance, an extended home visit, or as part of the child welfare or juvenile justice systems). Thus, the child is likely to still be a dependent or ward and the

² Under WIC § 300, children who have been abused, abandoned or neglected are subject to the jurisdiction of the juvenile court, which may declare them "**dependents.**"

³ Under WIC § 602, children who have violated a state or federal law while they were under the age of 18 are subject to the jurisdiction of the juvenile court, which may declare them "**wards.**"

“subject of a petition,” ” which would entitle her to immediate enrollment, the opportunity to remain in her school of origin, and services from the foster youth liaison.

Q5: Does AB 490 apply to voluntary placements or informal placements with relatives?

While many provisions of AB 490 do not directly apply to voluntary or informal placements, the spirit of AB 490 is to increase the academic achievement of children who are in out-of-home care. The partial credit provision of the law in particular applies to *all* students in California. Thus, a child in a voluntary or informal placement would clearly be entitled to receive partial credit for work satisfactorily completed at another public school, at a juvenile court school or non-public, non-sectarian school. *EC § 48645.5*.

Q6: Does AB 490 apply to a child age 5.5 years who is enrolling in Kindergarten, even though compulsory education does not begin until age 6 in California?

Education Code § 48853(a) provides that a foster child “shall attend programs operated by the local educational agency, unless” one of the exceptions applies. Further, Education Code § 48000 states that a child *shall* be admitted to kindergarten at the beginning of a school year, or at any later time in the same year if the child will have a fifth birthday on or before December 2 of that school year. This means that foster children have the right to attend the local kindergarten program if the person who holds educational rights and/or placing agency decides to enroll the child.

Education Code § 48000 also allows school districts to enroll children who have attained the age of five years at any time during the school year “on a case-by-case” basis with the approval of the parent or guardian, if it is determined that admittance is in the child’s best interest and the parent or guardian is given information regarding the effect of early admittance. *EC § 48000(b)*. School districts may not implement this law in an arbitrary or discriminatory manner. Advocates should be wary of any kindergarten admissions policy that excludes children without regard to their educational needs or that adversely impacts a certain group of children as a result of their particular circumstances. For instance, a policy that five year old children will not be admitted after the first month of the school year, regardless of their circumstances, would likely have an adverse and disproportionate effect on foster children and should be challenged.

Also, Education Code § 48853.5(d)(1) requires the school district to “allow the foster child to continue his or her education in the school of origin for the duration of the academic year” when the child’s placement changes. This should allow a child who moves to remain in the same kindergarten program.

Q7: What is the remedy if districts or schools don’t comply with the provisions of AB 490?

If a district or school fails or refuses to comply with the provisions of AB 490, advocates should attempt to resolve the issue locally by contacting the school **district’s liaison** for foster children. If the district liaison is unresponsive or does not help quickly enough, advocates should contact the **County Office of Education’s liaison** (list of county liaisons available at: <http://www.cde.ca.gov/ls/pf/fy/ab490contacts.asp> or **foster youth services coordinator** (<http://www.cde.ca.gov/ls/pf/fy/contacts.asp>), who can help them work with the district. If advocates and liaisons are unable to resolve the issue right away, they should also

notify **the child's attorney**. In addition, advocates, attorneys or educational liaisons can contact the **California Department of Education** directly for assistance at 916-445-5737.

If the matter is not resolved within a few days and the school district fails or refuses to comply with the provisions of AB 490, the child's attorney can ask the juvenile court to join the school district to court proceedings pursuant to Welfare and Institutions Code §§362(a) and 727(a) (i.e. file a Joinder Motion asking the court to order the school district to appear and explain why they failed to provide the child with the services she is entitled to pursuant to the California Education Code).

Finally, any school district that violates the provisions of AB 490 subjects itself to possible legal challenges by private or public interest counsel.

II. Educational placement decisions: School of origin and child's best interest

Q8: If a foster child has the right to stay in her school of origin if it is in her "best interest," how is best interest determined?

Education Code § 48853.5 states that three people are involved in determining whether or not it is in a child's best interest to remain in her school of origin. Those three people are the person who holds educational rights for the child, the child him/herself and the school district foster youth liaison. The role of the education liaison, however, is "advisory" with respect to placement decisions and determinations of school of origin. *EC § 48853.5(c)*. If the liaison wishes to recommend that the child's best interest is to move schools, the liaison must provide the person with education rights with a written explanation. *EC § 48853.5(d)(3)*.

Q9: If the decision makers (i.e. person with educational rights, child and liaison) disagree over whether it is in the child's best interest to remain in her school of origin, how is the dispute resolved?

If a dispute arises, the child has the right to remain in her school of origin until the dispute is resolved. The dispute must be resolved "in accordance with the existing dispute resolution process available to any pupil served by the local educational agency." *EC § 48853(d)(5)*.

Q10: Who is responsible for providing transportation to the child's school of origin?

AB 490 does not directly state who is responsible for providing transportation to a child's school of origin. Rather, the law says that meeting the needs of the child is a collective effort. Education Code § 48850(a) states, "In fulfilling their responsibilities to these pupils, educators, county placing agencies, care providers, advocates, and the juvenile courts shall work together to maintain stable school placements..." Further, Education Code § 48853.5(d)(6) states, "the local educational agency and the county placing agency are encouraged to collaborate to ensure maximum utilization of available federal moneys, explore public-private partnerships, and access any other funding source to promote the well-being of foster children through educational stability."

REMEMBER that the school district may be specifically responsible for transportation if the child is considered homeless under federal laws known as "McKinney-Vento" or if she qualifies for special education. McKinney-Vento requires that school districts provide

transportation to a homeless student's school of origin. *42 U.S.C. § 11432 (g)(4)*. Under McKinney-Vento, a student is considered homeless when she is "awaiting foster care placement." Thus, in some cases, both AB 490 and McKinney-Vento will apply to foster children.

If a foster child is disabled and receives special education services pursuant to the federal Individuals with Disabilities Education Act (IDEA), the school district may also be responsible for providing her with transportation to school. If appropriate, transportation issues should be addressed at the student's Individualized Education Program (IEP) meeting, and written into the IEP.

Finally, there are some school districts that also provide transportation to various schools in their districts beyond the requirements of McKinney-Vento and IDEA. They are sometimes allowed to charge fees for such transportation. However, they cannot charge such fees to "pupils of parents or guardians who are indigent as set forth in rules and regulations adopted by the board." *EC § 39807.5(d)*.

Q11: Is it true that the child welfare agency has no input into whether it is in the child's best interest to remain in the school of origin?

It is true that AB 490 does not directly spell out the child welfare agency's role in determining whether a child should continue in her school of origin. However, that does not mean that the law does not otherwise provide for the agency's participation. The child welfare agency has control over where the child lives in the first place. When a placing agency decides the most appropriate place for a child to live, the law requires them to consider the placement's *proximity to the child's present school* and the impact that the placement would have on the *child's educational stability*. *WIC § 16501.1(c)*. In addition, Education Code § 48850(a) requires placing agencies to collaborate with other parties in order to maintain stable school placements. Thus placing agencies, such as child welfare agencies, have a significant role in ensuring that a child is provided with educational stability.

Q12: What recourse do attorneys or case workers have if they disagree with the educational placement decision made by the person holding educational rights, the child, and the liaison?

Placement and education moves should be a coordinated and planned effort. The only recourse in this situation is to petition the juvenile court to change the educational decision maker. If the educational decision maker is the parent/guardian, the court may limit his/her/their educational rights and appoint a Responsible Adult or refer the child to the school district for the appointment of a surrogate parent to make educational decisions instead. *WIC §§ 361 or 726*. The court will only grant a limitation on the parent/guardian's right to make educational decisions to the extent needed to protect the child. Similarly, if the attorney or social worker has concerns about the decision-making of the Responsible Adult or surrogate parent, s/he may petition the court to transfer educational rights to another individual.

Q13: Once the person with educational rights, child, and educational liaison decide that a child should stay in her school of origin, can the district of origin require the child to complete interdistrict transfer paperwork (as if they came from the new school of residence)?

No. Education Code § 48853.5 (d)(1) states that the school district “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 academic school year,” when the foster child is moved out of the district due to an “initial detention or placement, or any subsequent change in placement.” Thus, a foster child who moves out of the school’s district of residence should be treated as if they still reside in the district for the remainder of the school year. Interdistrict transfers, on the other hand, are appropriate in situations where a student who is *not* considered a resident of the district desires to attend one of the district’s schools. *EC § 46600*. Thus, students who remain in their schools of origin under AB 490 or McKinney-Vento cannot be required to complete interdistrict transfer paperwork.

Q14: If a foster child experiences a change of placement during the summer, but would like to attend her school of origin in the fall, does AB 490 give her this right?

The school of origin provision requires a district to “allow the foster child to continue his or her education in the school of origin for the duration of the academic school year.” *EC § 48853.5 (d)(1)*. Therefore, if a child is moved in the summer and the academic year has been completed, the district is not required to allow the child to return in the fall. However, if remaining in the school of origin would be beneficial for the child’s education, a school district can use its discretion or an interdistrict transfer (*EC § 46600 et. seq.*) to allow a child to attend her school of origin again in the fall.

III. Immediate enrollment

Q15: How can schools allow foster child to enroll without immunization records? Won’t this jeopardize the health of other students?

Education Code § 48853.5 states that when a foster child changes schools, her new school **must** immediately enroll her, even if she is missing the records and documents normally required for enrollment, including immunization records. If a foster child is missing immunization records, it is generally because no one is able to find the records, not because she has not been immunized. Foster children move frequently, and their records often fail to move with them. However, foster children receive frequent medical check-ups, and in most cases, it is more likely that they have been over-immunized than that they failed to receive the immunizations at all.

Also, it is important to remember that immunizations protect the child who is immunized, not other students. Thus, if a child enrolls without immunizations, it is that child who is at risk, not other students who are presumably immunized.

Education Code § 48853.5 seeks to eliminate the amount of time that foster children spend out of school due to missing records. It is important to remember that even if a school is required to immediately enroll a child without first receiving immunization records, the school is still entitled to work with the previous school and the county agency to locate the records. The school is only prohibited from delaying enrollment while it does so.

Q16: How does the immediate enrollment provision apply to children with Individualized Education Programs (IEPs) that require a specific placement?

The fact that a foster child receives special education services does **not** change a new school's obligation to immediately enroll her (meaning that she must be immediately registered AND begin classes). Indeed, if a child who receives special education services transfers to a new school, services that are comparable to the ones required by the IEP must be immediately provided. *EC § 56325(a)*. If the child's new school is in a different Special Education Local Plan Area (SELPA) and the local education agency does not adopt the previous IEP, the SELPA/district must hold a meeting within 30 days of the child's transfer to develop a new IEP. *EC § 56325(a)*.

The school where the child is placed is responsible for implementing the IEP until the child is enrolled in a new school. For children who receive special education services, it is especially important that the responsible individuals manage the transition properly (e.g. the placing agency takes education into consideration in making placements, consults with the parent or individual with education rights, gives advance notice of a change in placement to the school, etc.).

Q17: If a foster child has an expired IEP or the new school has not yet received a copy of her IEP, must she be immediately enrolled? Can the school district postpone enrollment until an IEP meeting can be held?

Again, the school district cannot delay enrollment of a foster child under AB 490. *EC § 48853.5(d)(4)(B)*. This is true even if the school has not yet received a copy of the student's IEP, if her IEP is expired or if she is awaiting a new IEP. As above, if a child who receives special education services transfers to a new school, services that are comparable to the ones required by the IEP must be immediately provided. *EC § 56325(a)*. If the child's new school is in a different Special Education Local Plan Area (SELPA) and the local education agency does not adopt the previous IEP, the SELPA/district must hold a meeting within 30 days of the child's transfer to develop a new IEP. *EC § 56325(a)*.

Q18: Can a school or district require a foster child to provide a birth certificate before they enroll her?

No. Education Code § 48853.5 states that when a foster child changes schools, the new school must immediately enroll her. This is true even if a foster child is missing the records and documents normally required for enrollment. The new school is entitled to work with the previous school and other agencies or individuals to locate a foster child's records, but it cannot delay her enrollment while it waits to receive those records. Further, there is no requirement that *any* child must have a birth certificate to register for school. Parents/guardians of kindergarteners need to prove that a child has reached the minimum age for school; however, that can be accomplished in other ways. *EC § 48002*.

Q19: Some schools have requirements that students successfully complete a certain number of credits before they can participate in certain extra curricular activities. Can schools apply these requirements to foster children?

Yes. The purpose of AB 490 is to remove barriers that foster children face. However, the schools are still allowed to apply the same rules for eligibility to participate in extra curricular activities to foster children as they do for children who are living with their birth parents.

Still, advocates should be wary of and prepared to challenge any policies or practices that are arbitrarily imposed or that adversely impact the participation of foster children in extra curricular activities. Under Welfare & Institutions Code § 362.05, “no state or local regulation or policy may prevent or create barriers” to foster children’s participation in age-appropriate extracurricular, enrichment, and social activities. Also, foster children should not be charged fees as a prerequisite for participation in any extra curricular activities that are educational in nature. *Hartzell v. Connell*, 35 Cal.3d 899 (Cal. 1984).

IV. Transfer of records

Q20: Does the list of documents referred to in AB 490 include the student’s cumulative file?

Education Code § 49069.5(e) requires districts to “compile the complete educational record of the pupil 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 pupil’s [special education] plan...” A student’s “cumulative file” should be included as part of the “complete educational record.”

Q21: Can a school refuse to forward transcripts for a foster child to her new school because she owes an outstanding debt (e.g. for textbooks)?

No. Education Code § 49069.5(d) states: “Upon receiving a transfer request from a county placing agency, the local educational agency *shall*, within two business days, transfer the pupil out of school and deliver the educational information and records of the pupil to the next educational placement” (emphasis added). Education Code § 48853.5(d)(4)(C) further clarifies that “...All required records shall be provided to the new school regardless of any outstanding fees, fines, textbooks, or other items or moneys owed to the school last attended.”

Q22: What is the definition of “deliver” for the requirement that a school “deliver” a foster child’s educational records to a new school within 2 business days? Is it sufficient for the old school to put them in the mail within 2 days?

Education Code § 49069.5 states that the foster child’s old school, “upon receiving a transfer request from a county placing agency ... shall within two business days transfer the pupil out of school and *deliver* the educational information and records of the pupil to the next educational placement” (emphasis added).

The code does not provide a definition for “deliver.” However, with the widespread availability of fax machines and e-mail, districts should work together to transmit records in the most immediate manner possible. The receiving school needs the student’s records to ensure that she is placed in an appropriate educational setting, and any delay in record receipt can be detrimental to the child.

V. Educational rights

Q23: Who has the right to make education-related decisions for a child?

Parents/legal guardians usually have the right to make education-related decisions for their child. However, the judge may decide to take away the right of the parent/legal guardian(s) to make these decisions and instead give that right to another adult on a temporary or longer-term basis.

The court can *temporarily* limit the parent/guardian's educational rights after a child is removed from home in an initial (known as "Detention") hearing. *WIC § 319(g)*. If the court temporarily limits these rights, it should appoint a **responsible adult** to make those decisions in place of the parent/guardian. If (1) the court has limited the parent's right to make educational decisions, (2) the court cannot identify a responsible adult to make educational decisions for a child (including a foster parent or relative caregiver pursuant to Education Code § 56055), (3) the appointment of an educational surrogate is not warranted because the child is not eligible or suspected of being eligible for special education services, **the court** may make educational decisions for the child with the input of any interested person. *WIC § 361(a)*. This temporary limitation/appointment of an educational decision-maker expires at "Disposition" (when the court decides whether to declare the child a dependent) or if the petition is dismissed (the court does not find a reason to declare the child a dependent). If the court does not specifically re-limit the parents' education rights at Disposition, the parents' education rights are automatically reinstated.

In addition to the power to temporarily limit rights as described above, the juvenile court can limit the rights of the parent/guardian of a dependent or delinquent child to make educational decisions at any time if s/he is unable or unwilling to make those decisions. *WIC §§ 361, 726*. The court must at the same time appoint a **responsible adult** to make decisions for the youth, regardless of whether or not the youth is receiving or in need of special education. If the court is unable to locate a responsible adult for a child who has been referred to or is currently receiving special education services, the court shall then refer the child to the local school district, which must appoint a **surrogate parent**. *WIC §§ 361, 726, GC §§ 7579.5(a)(1)(a); 7579.6*. The school district must appoint a surrogate parent within 30 days of making a determination that the child needs a surrogate. *20 USC §1415 (b)(2)(b)*.

Appointment as a responsible adult or surrogate parent lasts until (*WIC §§ 361, 726; GC §§ 7579.5(a)(1)(a); 7579.6*):

- The youth reaches 18 years of age; *EC §§ 49061, 56041.5; 34 CFR § 300.517*
- Another adult is appointed to make educational decisions;
- A successor guardian or conservator is appointed;
- The educational rights of the parent or guardian are fully restored; *or*
- The youth is placed in a planned permanent living arrangement, at which time the foster parent, relative caretaker, or non-relative extended family member has the right to make educational decisions on behalf of the youth. *EC §§ 56028; 56055*.

Again, if (1) the court has limited the parent's right to make educational decisions, (2) the court cannot identify a responsible adult to make educational decisions for a child, (3) the appointment of an educational surrogate is not warranted because the child is not eligible or suspected of being eligible for special education services, **the court** may make educational decisions for the child with the input of any interested person. *WIC § 361(a)*.

Q24: How does the court decide that parents/guardians are unable or unwilling to hold educational rights?

The guidance provided in the law is that the parents' educational rights should only be limited to the extent necessary to protect the child. This determination must be made on a case-by-case basis. However, factors that should be taken into consideration include: the availability of the parents, whether the whereabouts of the parents are known, the child's needs, the extent of the parent's involvement in the child's life, the stage of the proceedings, and other issues that impact the child's interests. If reunification is the case plan goal, and the parents are involved in the reunification process and acting responsibly, the parents should, in most circumstances, be encouraged and supported in retaining these rights.

Q 25: Can the school district appoint a surrogate parent for special education purposes if the court has not limited the rights of the child's parents/guardians, but the school district can't find the parents/guardians?

Parents/legal guardians retain educational rights unless they have specifically been limited by the court. *WIC §§ 361; 726*. If the parents are unavailable or unresponsive to the child's educational needs, the child's attorney and/or the attorney representing the case worker can ask the court to limit the parent/legal guardian's educational rights and appoint a Responsible Adult to make educational decisions. The school district may *only* appoint a Surrogate Parent if the court has limited the parent/legal guardian's educational rights and the court is unable to identify a Responsible Adult to appoint in their place. *WIC §§ 361, 726; GC § 7579.5; GC §§ 7579.5*.

Q26: What should a child welfare worker or school do if they have difficulty determining who holds educational rights? Where should they turn?

This information is contained in a court order; and a caseworker should begin by checking the case file and court record. Ideally, the person who holds educational rights is listed on the child's education passport and case plan. In addition, the child welfare agency and juvenile court should have a protocol for providing this information to those who need it. If the worker is still unable to determine who holds the right to make educational decisions for a child, the worker should call his/her attorney or the child's attorney. School personnel may call the child's caseworker or attorney to get this information.

If the caseworker determines that educational decision-making rights have not been addressed by the juvenile court, the worker and/or child's attorney can ask the court to hold a hearing to determine who should hold educational rights. When the court limits a parent's educational rights, a JV-535 form (Judicial Council form – an Order Limiting Parents' Right to Make Educational Decisions for the Child and Appointing Responsible Adult as Educational Representative), should be filed and provided to the local educational agency. If the court limits educational rights and is unable to identify a Responsible Adult to make educational decisions on behalf of the child, and the child is eligible or suspected of being eligible for special education services, the school district must appoint a Surrogate Parent and provide the surrogate's contact information to the juvenile court through a JV-536 form. *GC § 7579.5*. Blank JV-535 and JV-536 forms are available on the Judicial Council's website (<http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>).

Also, AB 490 educational liaisons in each county are charged with ensuring and facilitating the "proper educational placement, enrollment in school, and checkout from school of foster

children.” *EC § 48853.5(b)(1)*. In order to fulfill this responsibility, they should develop a protocol and procedure to ensure that they, the district and the school in which foster child are enrolled are aware of who holds the right to make educational decisions for each foster care youth enrolled in the district. They should also ensure that such persons are provided with all the proper notices that are provided to all other parents or guardians by each school and the district. (See *EC §§ 51100-51102*, generally, concerning parental notice).

Q27: Who can sign the emergency information card for a child? Must that person have educational rights?

The answer to this question may depend on local school district policies. However, even if there is no legal prohibition on a person filling out the form, it is important to be careful about who has that responsibility. The emergency card usually has vital information, like who to contact in an emergency and who has the right to pick up a child from school (if this is restricted).

VI. Partial credits and grade protection

Q28: Are there existing county/district models for how to calculate partial credits?

Many school districts have implemented policies for calculating partial credits; however, the policies vary among districts. For example, Fresno Unified School District (FUSD) has implemented a policy that counts 15 hours of schoolwork as the equivalent of 1 unit. Seat time alone may not always be the sole criteria for assigning credit; teachers can also consider student participation, homework and in-class assignment completion. When students leave a FUSD school mid-semester, teachers fill out a partial-credit verification form immediately to send to the new school. When students transfer into Fresno schools, teachers enter credits from the student’s prior school into their transcripts.

Q29: Can a teacher require a foster child to make up work missed as the result of absences caused by a change in placement, attendance at a court hearing or court-ordered activity?

Yes. A foster child’s grades may not be lowered as a result of absences due to court-attendance or activities related to the court case (e.g. court-ordered counseling or visitation); however, the school can ask students in foster care to complete make-up work or tests. If the child’s absences are caused by a change in her residential placement, her grades and credits must be calculated as of the date she “left school” and not lowered as a result of the absence. *EC § 49069.5 (g)*.

VII. McKinney-Vento and AB 490

Q30: If both McKinney-Vento and AB 490 cover a student, which one governs?

Both McKinney-Vento and AB 490 may simultaneously cover foster children placed into temporary living situations. Where McKinney-Vento provides greater protection (for example, McKinney-Vento specifically requires that school districts provide transportation to the school of origin), the youth is entitled to this greater level of protection.



For more information about AB 490, see:

<http://www.abanet.org/child/rciji/education/ab490.html>, and
http://www.cclca.org/train_educat.htm (underscore between "train" and "educat")

Or contact:

Children's Law Center of Los Angeles
323.980.1700

Youth Law Center
415.543.3379

*For more information about the
California Foster Youth Education Task Force, please contact:*

Leslie Heimov or Sarah Vesecky,
Children's Law Center of Los Angeles
323.980.1700

Erin Saberi
Casey Family Programs
916.563.2412

Task Force Members:

Alameda County Foster Youth Alliance • American Bar Association Center on Children and the Law • California Administrative Office of the Courts, Center for Families, Children, and the Courts • California CASA Association • California Department of Education • California School Boards Association • California State Ombudsman for Foster Care • California State University, San Marcos • California Youth Connection • Casey Family Programs • Children's Law Center of Los Angeles • Education Coordinating Council of Los Angeles • Foster Youth Services • Honoring Emancipated Youth • Mental Health Advocacy Services, Inc. • National Center for Youth Law • Protection and Advocacy, Inc. • Sacramento City Unified School District • San Diego County Department of the Public Defender, Dependence Section • Youth Law Center