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LEGAL UPDATE

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To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin, Associate General Counsel *CC*

**Subject: New Legislation Regarding Foster Child/Student and Student Discipline
Memo No. 01-2013**

A number of legislative bills (including SB 1568, AB 1712, and AB 1909) regarding foster children/students were signed into law by the Governor and became effective on January 1, 2013. This Legal Update will summarize the new legislation.

As a preliminary issue, Education Code section 48853.5 defines a foster child as:

[a] child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and 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 and Institutions Code.

Education Code section 48853.5 further requires each local educational agency (which includes school districts and county offices of education) to designate a staff person as the educational liaison for foster children and the statute assigns various duties to the educational liaison.

SB 1568

SB 1568 amended Education Code section 48853.5 to clarify the right of a high school foster student to continue to attend a school (school of origin) through graduation even if the jurisdiction of the court is terminated prior to the student's graduation. SB 1568 also clarified that a school district is not required to provide transportation to a foster student who is attending the school of origin except when the student receives special education transportation as a related service pursuant to the student's Individualized Education Program ("IEP").

AB 1712

AB 1712 extended foster care benefits to youth (described as nonminor dependents) through 21 years of age if specified conditions are met. While the provision of these benefits is a non-educational agency responsibility, school districts should be aware of the status of these adult students, in particular for students who receive special education services, as eligibility under the Individuals with Disabilities Education Act (“IDEA”) may continue through age 21 if the student has not obtained a regular high school diploma.¹

AB 1909

AB 1909 created several significant requirements regarding the discipline of foster students, including foster students who also receive special education services.

- Extension of Suspension Pending Expulsion Hearing: Existing law, Education Code section 48911(g), allowed for a school district to extend a student’s suspension pending the completion of an expulsion hearing upon the district superintendent or designee determining at a meeting, which the student and student’s parents are invited, that the presence of the student at school would cause either a danger to persons or property or would cause a threat of disrupting the instructional process. AB 1909 now requires the school district to also invite to the meeting the foster student’s attorney and “an appropriate representative of the county child welfare agency.” The law does not specify the manner upon which the foster student’s attorney and the representative of the county child welfare agency will be invited to the meeting, but other provisions of AB 1909 allow notice to be made by the most cost-effective method, which may include electronic mail or a telephone call.
- Expulsion Hearing for Non-Mandatory Expellable Acts: Existing law, Education Code section 48915, provides three classes of student acts that allow for student expulsion: Class I acts², which the superintendent/designee “may recommend” expulsion; Class II acts³, which the superintendent/designee “shall recommend” expulsion unless the superintendent/designee determines that expulsion is inappropriate due to the particular circumstances; and Class III acts⁴, which the superintendent/designee “shall recommend” expulsion. The Class III acts that a superintendent/designee must recommend expulsion consist of: possessing, selling, or otherwise furnishing a firearm; brandishing a knife at another person; unlawfully selling a controlled substance; committing or attempting to commit a sexual assault or battery; and possession of an explosive. AB 1909 added Education Code section 48918.1, which requires the school district to provide notice of at least 10 calendar days before the date of the expulsion hearing to the foster student’s

¹ Education Code section 56026.

² Education Code section 48915(b).

³ Education Code section 48915(a).

⁴ Education Code section 48915(c).

attorney and an appropriate representative of the county child welfare agency for Class I and Class II acts. For Class III acts, the school district may, but is not required to, provide notice of at least 10 calendar days before the date of the expulsion hearing to the foster student's attorney and an appropriate representative of the county child welfare agency. Notice may be made by the most cost-effective method, which may include electronic mail or a telephone call.

- Manifestation Determination for Foster Student receiving Special Education: Existing law, Education Code section 48915.5 and IDEA federal law, requires a school district to convene an IEP meeting within 10 school days of the decision to change the placement of a special education student as a result of student discipline for the purpose of determining whether or not the act subject to discipline was a manifestation of the student's disability. AB 1909 now requires that for Class I and Class II acts the school district shall invite to the manifestation determination IEP meeting the attorney representing the foster student receiving special education services and an appropriate representative of the county child welfare agency. Notice may be made by the most cost-effective method, which may include electronic mail or a telephone call.

Recommendations

1. We often encounter school districts where the internal department responsible for addressing special education for students and the internal department responsible for addressing discipline for students do not always share information in the most effective manner. This new legislation affecting foster youth will now require three departments of the school district to cooperate closely when there is a discipline issue regarding a foster student who also receives special education services. We strongly encourage school districts to review their internal systems to ensure the responsible departments are effectively communicating with each other.

2. Our office has recently updated our Student Discipline guide to incorporate the new legislation affecting student discipline described in this Legal Update, the changes described in Legal Update 31-2012, and the changes regarding student bullying⁵ that became effective January 1, 2013. Our updated Student Discipline guide provides detailed guidance regarding student discipline issues and includes model student discipline forms in Word that may be placed on school district letterhead. Please contact our office if your school district would like a copy of this updated Student Discipline guide.

3. We encourage local educational agencies to update their discipline forms and policies to comply with these changes in the law regarding foster student discipline. For your convenience, attached is a copy of Education Code sections 48853.5, 48911, 48915.5, and 48918.1.

Please contact our office with questions regarding this or any other legal matter.

⁵ Education Code section 48900(r).

**CALIFORNIA EDUCATION CODE
SECTIONS**

§ 48853.5. Educational liaisons for foster children; duties; continuation in school of origin; transfer to new school; funding options; educational placements in juvenile court schools

(a) This section applies to a foster child. "Foster child" means a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and 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 and Institutions Code.

(b) Each local educational agency shall designate a staff person as the educational liaison for foster children. In a school district that operates a foster children services program pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24 of Division 3, the educational liaison shall be affiliated with the local foster children services program. The educational liaison shall do all of 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 school or from one school district to another school district in ensuring proper transfer of credits, records, and grades.

(c) 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 of 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, if the foster child is an individual with exceptional needs, pending manifestation determinations pursuant to Section 1415(k) of Title 20 of the United States Code 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.

(d) This section does not grant authority to the educational liaison that supersedes the authority granted under state and federal law to a parent or legal guardian retaining educational rights, a responsible adult appointed by the court to represent the child pursuant to Section 361 or 726 of the Welfare and Institutions Code, a surrogate parent, or a foster parent exercising the authority granted under Section 56055. The role of the educational liaison is advisory with respect to placement decisions and determination of school of origin.

(e)(1) 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.

(2) 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.

(3)(A) 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.

(B) For purposes of this paragraph, 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 pursuant to this paragraph, unless the individualized education program team determines that transportation is a necessary related service.

(4) 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.

(5) Paragraphs (2), (3), and (4) do 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. This paragraph 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.

(6) The educational liaison, in consultation with, and with the 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.

(7) Before making a recommendation to move a foster child from his or her school of origin, the educational liaison shall 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 interest.

(8)(A) If the educational liaison, in consultation with the foster child and the person holding the right to make educational decisions for the foster child, agrees that the best interests of the foster child would best be served by his or her transfer to a school other than the school of origin, the foster child shall immediately be enrolled in the new school.

(B) 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 pursuant to Chapter 1 (commencing with Section 120325) of Part 2 of Division 105 of the Health and Safety Code, proof of residency, other documentation, or school uniforms.

(C) 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 moneys owed to the school last attended. The educational liaison for the school last attended shall provide all records to the new school within two business days of receiving the request.

(9) 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 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.

(10) The local educational agency and the county placing agency are encouraged to collaborate to ensure maximum use of available federal moneys, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability.

(11) It is the intent of the Legislature that this subdivision shall not supersede or exceed other laws governing special education services for eligible foster children.

(f) For purposes of this section, "school of origin" means 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 and that the foster child attended within the immediately preceding 15 months, the educational liaison, in consultation with, and with the agreement of, 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.

(g) This section does not supersede other law governing the educational placements in juvenile court schools, as described in Section 48645.1, by the juvenile court under Section 602 of the Welfare and Institutions Code.

§ 48911. Suspension by principal, principal's designee, or district superintendent of schools

(a) The principal of the school, the principal's designee, or the district superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays.

(b) Suspension by the principal, the principal's designee, or the district superintendent of schools shall be preceded by an informal conference conducted by the principal, the principal's designee, or the district superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the district superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense.

(c) A principal, the principal's designee, or the district superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal, the principal's designee, or the district superintendent of schools determines that an emergency situation exists. "Emergency situation," as used in this article, means a situation determined by the principal, the principal's designee, or the district superintendent of schools to constitute a clear and present danger to the life, safety, or health of pupils or school personnel. If a pupil is suspended without a conference before suspension, both the parent and the pupil shall be notified of the pupil's right to a conference and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.

(d) At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. If a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension.

(e) A school employee shall report the suspension of the pupil, including the cause for the suspension, to the governing board of the school district or to the district superintendent of schools in accordance with the regulations of the governing board of the school district.

(f) The parent or guardian of a pupil shall respond without delay to a request from school officials to attend a conference regarding his or her child's behavior.

No penalties shall be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with school officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at the conference.

(g) In a case where expulsion from a school or suspension for the balance of the semester from continuation school is being processed by the governing board of the school district, the district superintendent of schools, or other person designated by the district superintendent of schools in writing, may extend the suspension until the governing board of the school district has rendered a decision in the action. However, an extension may be granted only if the district superintendent of schools or the district superintendent's designee has determined, following a meeting in which the pupil and the pupil's parent or guardian are invited to participate, that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process. If the pupil is a foster child, as defined in Section 48853.5, the district superintendent of schools or the district superintendent's designee, including, but not limited to, the educational liaison for the school district, shall also invite the pupil's attorney and an appropriate representative of the county child welfare agency to participate in the meeting. If the pupil or the pupil's parent or guardian has requested a meeting to challenge the original suspension pursuant to Section 48914, the purpose of the meeting shall be to decide upon the extension of the suspension order under this section and may be held in conjunction with the initial meeting on the merits of the suspension.

(h) For purposes of this section, a "principal's designee" is one or more administrators at the schoolsite specifically designated by the principal, in writing, to assist with disciplinary procedures.

In the event that there is not an administrator in addition to the principal at the schoolsite, a certificated person at the schoolsite may be specifically designated by the principal, in writing, as a "principal's designee," to assist with disciplinary procedures. The principal may designate only one person at a time as the principal's primary designee for the school year.

An additional person meeting the requirements of this subdivision may be designated by the principal, in writing, to act for purposes of this article when both the principal and the principal's primary designee are absent from the schoolsite. The name of the person, and the names of any person or persons designated as "principal's designee," shall be on file in the principal's office.

This section is not an exception to, nor does it place any limitation on, Section 48903.

§ 48915.5. Suspension or expulsion of pupils with exceptional needs; schools; schoolbuses; change of placement of foster child

(a) An individual with exceptional needs, as defined in Section 56026, may be suspended or expelled from school in accordance with Section 1415(k) of Title 20 of the United States Code, the discipline provisions contained in Sections 300.530 to 300.537, inclusive, of Title 34 of the Code of Federal Regulations, and other provisions of this part that do not conflict with federal law and regulations.

(b) A free appropriate public education for individuals with exceptional needs suspended or expelled from school shall be in accordance with Section 1412(a)(1) of Title 20 of the United States Code and Section 300.530(d) of Title 34 of the Code of Federal Regulations.

(c) If an individual with exceptional needs is excluded from schoolbus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian provided that transportation is specified in the pupil's individualized education program.

(d) If the individual with exceptional needs is a foster child, as defined in Section 48853.5, and the local educational agency has proposed a change of placement due to an act for which a decision to recommend expulsion is at the discretion of the principal or the district superintendent of schools, the attorney for the individual with exceptional needs and an appropriate representative of the county child welfare agency shall be invited to participate in the individualized education program team meeting that makes a manifestation determination pursuant to Section 1415(k) of Title 20 of the United States Code. The invitation may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call.

§ 48918.1. Foster children; notice of expulsion hearing to pupil's attorney and representative of county child welfare agency

(a) If the decision to recommend expulsion is a discretionary act and the pupil is a foster child, as defined in Section 48853.5, the governing board of the school district shall provide notice of the expulsion hearing to the pupil's attorney and an appropriate representative of the county child welfare agency at least 10 calendar days before the date of the hearing. The notice may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call.

(b) If a recommendation of expulsion is required and the pupil is a foster child, as defined in Section 48853.5, the governing board of the school district may provide notice of the expulsion hearing to the pupil's attorney and an appropriate representative of the county child welfare agency at least 10 calendar days before the date of the hearing. The notice may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call.