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LEGAL UPDATE

September 12, 2011

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

From: Marko Fong, Assistant General Counsel *MFP*

Subject: Foster Children School Choice
Memo No. 12-2011

As we head into the regular 2011-2012 school year, districts should be aware that key sections of AB 490 were quietly amended by AB 1933 at the beginning of 2011. Under the old AB 490, foster children whose home residence changed in the middle of the school year had the right to stay in their “school of origin” only for the remainder of the semester. Transportation costs were not addressed, though they were generally shared by the district of origin and the new district of residence. The new law¹ gives the foster child the right to stay in the school of origin for as long as the court has jurisdiction over the student² and specifically provides that school districts do not pay the cost of transportation unless they choose to do so.³

Districts should also be aware that foster students who are attending high school and whose residence and high school change, have special rights under Education Code section 51225.3 (AB 167).

The Process Under AB 1933 When a Foster Child Moves out of the District:

1) Who is a foster child?

A student removed from the home by a public agency and made a dependent of the court pursuant to Welfare and Institutions Code section 309 or Welfare and Institutions Code

¹ Amended Education Code section 48853.5

² If the court relinquishes custody of the child during the school year, the child’s right to stay in the school of origin continues until the end of the regular school year EC 48853.5 (d) (2).

³ Education Code section 48853.5 (d) (4).

section 602. The rights under AB 1933 apply to any student who is a dependent of the court, regardless of whether the student qualifies for Special Education or 504 services.⁴

2) What is a School of Origin?

Either the school that the student attended when “permanently housed” (i.e., where the child lived with the parents or custodial relative prior to the court taking custody or any school which the student attended in the previous 15 months that the educational guardian identifies as the “School of Origin”).⁵

In a non-unified district, school of origin can also include the high school district that serves the district of origin. For instance, if the student’s residence changes between 8th and 9th grade, the student retains the right to attend the high school district that serves the elementary district.⁶

3) Who makes the decision about staying in the school of origin?

Before a student can be moved from the “school of origin,” the student’s educational guardian must agree to the change. The educational guardian is designated by the court, through either Welfare and Institutions Code section 361 or Welfare and Institutions Code section 726. The educational guardian may be the natural parent, the regular legal guardian for other purposes, an educational surrogate appointed by the court directly or through the recommendation of the SELPA, a foster parent, or the court itself. Neither the student’s social worker nor an LCI employee currently serving the student may serve as the child’s educational guardian. Districts should take care to make certain they have properly identified the student’s current educational guardian. For foster children, the identity of the educational guardian can change very suddenly. The student’s social worker will usually have up to date information about any proposed or pending changes to the identity of the educational rights holder. Districts should be careful because natural parents will often continue to have the right to information about their child, but they may not be legally empowered to make educational decisions for their children.

Although the district’s foster student liaison (the code does not specify which district, but we recommend that it be the liaison for the district where the student was last enrolled, since they have more direct knowledge of the student’s needs and strengths) makes a written recommendation about which school and district will best serve the student’s educational interest, the liaison’s written recommendation is advisory only.

If there is a dispute regarding the request of a foster child to remain in the school of origin or about the identity of the school of origin, the child has the right to remain in the school of origin, as determined by the educational guardian, pending resolution of the dispute. Disputes are to be resolved in accordance with the existing dispute resolution

⁴ These students would be subject to a petition filed under Section 300 or 602 of the Welfare and Institutions Code and Districts which should be available to the District.

⁵ Education Code section 48853.5(b)(c).

⁶ Education Code section 48853.5(d) (3).

process available to any pupil served by the local educational agency.⁷ To minimize confusion, districts should have a policy that identifies their dispute resolution process.

4) Does the student have to stay in the school of origin?

No, the student can move to a new school in the new district if the foster student liaison, in consultation with the foster child and the student's educational guardian, agree that the best interests of the child will be best served in the new school. A sample form for the educational guardian to complete is included with this update.

5) How does transportation work?

The law specifically says that "it shall not be construed to require a school district to provide transportation services to allow a child to attend a school or school district."⁸

Education Code does not specify which non-educational agency shall pay, but under federal law⁹, the cost of reasonable travel for the child to remain in the school of origin is an allowable foster care maintenance cost. Foster parents and group homes are also legally responsible for making certain that students in their charge get to and from school. Foster care maintenance costs are customarily administered by the Department of Social Services. Districts should coordinate with the student's social worker to arrange for coverage of reasonable transportation costs and to promote cooperation between the agencies prior to a change of schools. If the social worker does not cooperate, the child's educational guardian should request that the student's dependency attorney petition the court to order the county to cover the cost of transportation to the school of origin from the student's new residence.

The Act includes provisions for agencies to pursue reimbursement for this as a mandated cost.¹⁰ At its discretion, a school district may provide transportation.

6) Special education and 504 students in non-public schools:

A student's current non-public school (NPS) pursuant to an IEP can be deemed to be a foster student's "school of origin". If a student in district A is sent to an NPS through his IEP, the foster student can move out of the district and stay in the same NPS under AB 1933.

Education Code section 48853.5 does not directly address the question of District of Residence. Should a foster student move out of District, but stay in his/her non-public school after the move, AB 1933 gives the student the right to stay in that non-public school. The Act does not, however, specify the district of service or responsibility only

⁷ Education Code section 48853.5 (8).

⁸ Education Code section 48853.5 (4).

⁹ 42 USC Section 365

¹⁰ Education Code section 48853.5 10 (f) provides that mandated cost may be sought pursuant to Government Code 17500.

that the “local educational agency serving the foster child shall allow the foster child to continue his/her education in the school of origin.”¹¹

Under California law, a student’s district of service follows residence.¹² If a student remains in a regular public school as the school of origin, it would be practical for the student’s district of residence and service should stay with the district that serves that regular public school. While the student has a right to stay in the school of origin regardless, the district for the school of origin could ask the educational guardian to complete paperwork for an interdistrict transfer to ensure that the district of origin holds the IEP rather than the district of residence and to minimize confusion about which district has legal responsibility for meeting the student’s IEP or 504 needs. Neither district may deny an interdistrict transfer request made on this basis.

A student placed in a non-public school presents a different practical question because the district does not control the non-public school and IEP teams often do send students to non-public schools outside their attendance area. If the student stays in the non-public school after moving out of district, it appears that the student’s district of service will change to the new district. The new district would be responsible for holding the IEP and have financial responsibility for the student’s continued placement in the non-public school.

Once an IEP is called, the IEP team will determine the best educational placement for the student and whether or not transportation is a related IEP service for that placement. The IEP team may decide that it is in student’s best interest to attend an NPS or even to attend school at a general education site in the district within the district boundaries of the foster student’s new residence. Because IDEA is Federal Law, the student would attend the new school or NPS regardless of AB 1933.

7) What are the duties of the foster student liaison?

Each district must designate a foster student liaison. If the district has a foster child services program, the liaison must be affiliated with the local Foster Children services program.

The liaison has 3 basic responsibilities:¹³

- 1) Assist foster children who are moving from one district or school to another and getting them enrolled immediately.
- 2) Make certain that educational records including immunization records are sent or received in timely fashion by the new school
- 3) Communicate with the student’s educational guardian or guardians about the student’s rights under AB 1933 and prepare written recommendation about the

¹¹ Education Code section 48853.53(d).

¹² Education Code section 48204. EC 56325 (2) if a student in an NPS moves to a new district in the same local plan area (SELPA), the student may stay in the NPS or comparable placement, but the District of service shifts to the District that serves the student’s home.

¹³ Education Code section 48853.5 (1) (b).

student's best educational interests with respect to school placement after the foster child moves out of the District.¹⁴

When Foster Students Change High Schools after a Change of Residence:

Under Education Code section 51225.3 a foster student who changes high school districts in his/her junior or senior year of high school is only required to meet the state minimum requirements for graduation to graduate with a regular diploma in the new district. The district shall exempt a foster student from any local requirements if the student moves into the district during the eleventh or twelfth grade year.¹⁵ The district may also make a finding that the pupil is reasonably able to complete the additional local requirements in time to graduate. The district must also notify the student's educational guardian¹⁶ about the impact of waiving the local requirements on the student's ability to gain admissions to any postsecondary educational institutions.

As a CIF matter, a foster student who moves pursuant to a court order and who moves to a new high school will be eligible immediately with respect to residence in the new high school for athletic competitions against other schools. This applies only to CIF sanctioned sports and activities though.¹⁷

Please contact any attorney in our office, if you have questions about AB 1933 or an individual foster student's educational rights.

¹⁴ Education Code section 48853.5 (d) (7).

¹⁵ Education Code section 51225.3 (d).

¹⁶ A foster student can sometimes turn 18 and still have an educational guardian.

¹⁷ CIF Constitutions Section 206 (b) (7).

To:

From:

Re: Foster Child's Educational Rights

Date:

Student Name:

Date of Birth:

Special Education or 504?

Educational Rights Holder:

Dear Sir or Madam,

Our records identify you as the current educational guardian for _____, who is identified as a foster child. As a foster child, _____ has specific legal protections under Education Code Section 48533.5 whenever _____'s home placement changes. It is important that we work closely with you as _____'s educational guardian to help maintain educational stability for _____ during this time of transition.

As a foster child, _____ has the right to remain at his/her school of origin as long as _____ remains in foster care. If his/her foster care case closes, _____ may stay in his/her school of origin until the end of the regular school year. _____ also has the right to continue his/her public school education through high school with his/her peers from the school of origin. Please note that if _____ has an IEP or 504 plan, the IEP or 504 team will ultimately determine the placement that best serves _____'s best educational interests.

As _____'s educational guardian, you have the right to determine the identity of _____'s school of origin. This can be any public school placement which remains age appropriate and which served _____ in the last 15 months. You will also determine in consultation with the student and this District's Foster Student Liaison, _____, whether it is in _____'s best educational interest to remain in that school of origin or for _____ to attend school in the district that serves _____'s current home placement. The District's Foster Student Liaison will also be providing you with a written analysis and recommendation about the school placement that the District believes will best serve _____'s educational interests after the move.

Should there be any dispute about either the identity of the school of origin or whether or not _____ should stay there, _____ has the right to remain in the school of origin that you, as the Educational Guardian, identify until the dispute is resolved. The dispute will be resolved through _____ (name of District's dispute resolution process).

Should you agree with the District's recommendation for _____ to attend school in the district served by his/her new home placement, the District is legally required to enroll _____ without delay and to ensure that credits, record, grades, are properly transferred in timely fashion. A copy of the District's written recommendation is attached to this form.

To assist in this determination, we ask that you complete the following:

Student's Current School and Grade Level: _____

Student Name: _____

Student's School of Origin Identified by Educational Guardian: _____

1. Circle one:
 - a. This is the school he/she was enrolled in when student was permanently housed.
 - b. This is the school student was last enrolled in while in foster care.
 - c. This is the school student attended within the last 15 months with which I believe that student has the strongest connection.

2. Circle one:
 - a. I have communicated with the Foster Student liaison and have had the opportunity to review the District's written recommendation for future enrollment, I request that student be enrolled in or continue to be enrolled in _____ as student's school of origin. I will contact _____'s social worker or dependency attorney immediately to arrange for transportation to and from the home placement to the school of origin.
 - b. The District's written recommendation is that _____'s educational interests are best served by changing to a school that serves his/her current home placement. As _____'s educational guardian, I agree with this recommendation.

Sincerely,

C: Foster Student Liaison for District
County Office of Education Foster Youth Liaison
Student's Social Worker and/or Foster Parent