

# Foster Child Expulsion from Public School

A Fact Sheet Prepared by Youth Law Center

The general rules and regulations regarding expulsion treat foster children the same as any other student. However, unlike other students, foster children have a number of people involved in ensuring their educational needs are met, rather than just parents.

## Who is responsible for making educational decisions for a foster child?

Parents and guardians have the right to make educational decisions on behalf of their children. For children in out-of-home care, parents and guardians retain the right to make educational decisions, unless the juvenile court limits the rights of the parent/guardian by court order and appoints a responsible adult to make educational decisions on behalf of the child.<sup>1</sup> An individual who has a conflict of interest, any interest that might restrict or bias his or her ability to make educational decisions for the child, may not be appointed as the adult responsible for making educational decisions.<sup>2</sup> The juvenile court is likely to appoint a relative caregiver, foster parent or a court-appointed special advocate. If the court is unable to appoint a responsible adult, the court may make educational decisions for the child except that if the foster child is receiving, or eligible for, special education, the court will refer the child to the local education agency for an appointment of a surrogate parent.<sup>3</sup>

An appointment as a responsible adult lasts until:

1. The child reaches 18 years of age; or
2. Another adult is appointed to make educational decisions for the foster child; or
3. The educational rights of the parent or guardian are fully restored; or
4. A successor guardian or conservator is appointed.
5. The child enters into planned permanent living arrangement, at which time the foster parent, relative caregiver, or non-relative family member has the right to make educational decisions for the child.<sup>4</sup>

## Who is responsible for the foster child's educational needs once the child is recommended for expulsion?

A number of individuals have a role and responsibility for ensuring that the foster child's educational needs are met, and thus must work together throughout the expulsion process.

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<sup>1</sup> Cal. Welf. & Inst. Code §§ 361, 358.1(e).

<sup>2</sup> Cal. Welf. & Inst. Code § 361(a)(5). A foster parent may not be deemed to have a conflict of interest solely because he or she receives a foster care payment. *Id.* However, social workers and other individuals who are employed by agencies that provide education, care or supervision to the child should be deemed to have a conflict by virtue of their employment.

<sup>3</sup> *Id.*

<sup>4</sup> Cal. Welf. & Inst. Code § 361.

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Regardless of whether the parent, foster parent, caregiver or an educational decision-maker holds responsibility for making educational decisions for the child, once the child is recommended for expulsion there needs to be timely communication and cooperation between the child's:

- Parent, foster parent or caregiver;
- Educational decision-maker (if one is appointed);
- Social worker;
- Attorney.

Foster parents and relative caregivers are responsible to work with the child's educators, social workers, and advocates to ensure the child's educational success, and to make sure the child participates in an educational program, even if the foster parent or caregiver is not the appointed educational decision-maker for the child.<sup>5</sup> It is the responsibility of the child's social worker to monitor the child's educational placement and progress<sup>6</sup> and to ensure that the child's educational progress is met.<sup>7</sup>

The child's dependency court attorney is responsible, in general, for representation of the child's interests<sup>8</sup> and is specifically charged with investigating the interests of the child beyond the scope of the juvenile proceeding and reporting to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings, including education.<sup>9</sup> Thus, the attorney is responsible to either represent the interests of the child in the expulsion process, or if the attorney is not competent to do so, request that the juvenile court to appoint someone who has the expertise to represent the child on the expulsion.

### **What is the school's responsibility when a foster child is recommended for expulsion?**

The California Education Code requires that every school district have rules and regulations regarding expulsion and identifies, at minimum, what those rules and regulations should be,<sup>10</sup> but does not make any special provisions for foster youth. If a student is recommended for expulsion he or she is entitled to a hearing to challenge the expulsion. The hearing must occur within 30 school days after the date the principal or superintendent recommended expulsion, UNLESS an extension is requested. If the expulsion hearing is scheduled outside of the 30 days, the student can challenge the expulsion as invalid.<sup>11</sup> A school day is any day on which the schools of the district are in session or weekdays during the summer recess.<sup>12</sup>

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<sup>5</sup> 22 Cal. Code Regs. § 89379(a); Cal. Educ. Code § 48850(a).

<sup>6</sup> CDSS Manual of Policies and Procedures §§ 31-405.1(1), 31-405.1(o).

<sup>7</sup> Cal. Welf. & Inst. Code § 16500.1(a).

<sup>8</sup> Cal. Welf. & Inst. Code § 317(e).

<sup>9</sup> *Id.*

<sup>10</sup> Cal. Educ. Code § 48918.

<sup>11</sup> *Id.*

<sup>12</sup> Cal. Educ. Code § 48925.

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The expulsion hearing must be arranged by the local school board, and should be conducted by people not on the staff of the student's school. The school district must send written notice of the expulsion hearing to the student, as well as the student's parent, guardian or attorney at least 10 calendar days before the date of the hearing.<sup>13</sup> If the juvenile court has limited the educational rights of the foster child's parent, the school should send the notice to the person who has the right to make educational decisions for the child instead of the child's parent.

If a final expulsion order is issued, the student is entitled to an appeal of the order. The school must provide the student with information about the appeals process.<sup>14</sup>

### **Is a foster child entitled to any form of education during the period of the expulsion?**

Yes. Generally, a school board must ensure that an educational program is provided to all expelled students during the period of their expulsions.<sup>15</sup> The program must be capable of accommodating students who exhibit discipline problems; the program cannot be physically located at a regular middle, junior or senior high school, or at any elementary school; and the program cannot be housed at the school site attended by the student at the time of the expulsion.<sup>16</sup> For some offenses, the educational program can be located at a regular school so long as it is not housed at the school site attended by the student at the time of the expulsion.<sup>17</sup>

Every school district must have an educational liaison to the county child welfare agency for foster children. It is the joint responsibility of the educational liaison and the child welfare agency to ensure and facilitate the proper educational placement, enrollment and transfer of foster children.<sup>18</sup> It is the responsibility of the educational liaison to assist the foster child student's transfer of records to any educational program during the period of expulsion and to assist the foster child's reenrollment in school following the expulsion period (see below).

### **When can the expelled student return to school?**

At the time of expulsion, the school board must provide a rehabilitation plan for the student and set a date for considering whether to readmit the student to the school district. The readmit date cannot be longer than the last day of the semester following the semester in which the expulsion occurred.<sup>19</sup> For mandatory expulsions, the review for readmission is set for one year from the date the expulsion occurred,<sup>20</sup> but the school board may opt to set an

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<sup>13</sup> Cal. Educ. Code § 48918 (2006) ("Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing."); Cal. Educ. Code § 48925(e) ("Pupil" includes a pupil's parent or guardian or legal counsel.")

<sup>14</sup> Cal. Educ. Code § 48918(j)(1).

<sup>15</sup> Cal. Educ. Code § 48916.1.

<sup>16</sup> Cal. Educ. Code § 48915(d).

<sup>17</sup> Cal. Educ. Code §§ 48916.1(c), (f).

<sup>18</sup> Cal. Educ. Code § 48853.5.

<sup>19</sup> Cal. Educ. Code § 48916(a).

<sup>20</sup> *Id.*

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earlier date on a case-by-case basis. The school board must also have a procedure to consider requests from students to be readmitted to the district.<sup>21</sup>

The school board must readmit the student following review unless it determines that the student has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other students or employees of the school district.<sup>22</sup>

If the school board denies the students readmission to the school district, then it must either: (1) decide to continue the placement of the student in the alternative educational program, or (2) place the student in another program such as a county community day school.<sup>23</sup> In either case the school board must give written notice to the student and the student's parent, legal guardian or appointed educational decision-maker explaining the reasons for denying the readmission to the regular school district program and the reasons for the recommended alternative placement.<sup>24</sup>

The student who is under mandatory expulsion must enroll in the recommended alternative placement unless the student's parent, guardian or appointed educational decision-maker chooses to enroll the minor in another school district.<sup>25</sup> The educational liaison is responsible to assist in the timely transfer of records so that the foster child student can enroll in the recommended alternative placement.

Typically, students under mandatory expulsion may not enroll in another school or school district during the period of expulsion. However, students may be enrolled in county community schools, juvenile court schools or community day schools.<sup>26</sup> Students expelled discretionarily may submit a request for enrollment to the school board of another school district.

### Who is responsible for getting the foster child back into school?

The responsibility for ensuring a foster child's educational needs are met is shared. Foster parents and caregivers must work with the foster child's educators, social workers, attorneys, and the child to ensure that the child in their care achieves educational success.<sup>27</sup> If the foster parent or relative caregiver is not the adult legally responsible for making educational decisions for the child, then they must also work with the appointed educational decision-maker to make decisions about where the child will enroll in school.

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<sup>21</sup> Cal. Educ. Code § 48916(c).

<sup>22</sup> *Id.*

<sup>23</sup> Cal. Educ. Code § 48916(d).

<sup>24</sup> Cal. Educ. Code § 48916(e).

<sup>25</sup> *Id.*

<sup>26</sup> Cal. Educ. Code § 48915.2(a).

<sup>27</sup> Cal. Educ. Code § 48850(a).

## Foster Child Expulsion from Public School (cont.)

### Resources:

Legal Services for Children, *A Student's Guide to School Discipline: What Are my Rights?* (2001).

[www.lsc-sf.org/problems/discipline.html](http://www.lsc-sf.org/problems/discipline.html)

Steve Christian, The Children's Policy Institute, *Educating Children in Foster Care* (December 2003).

<http://www.ncsl.org/programs/cyf/cpieducate.pdf>

The ACLU of Northern California, *School Discipline Guide* (2002).

<https://web.mail.umich.edu/horde/services/go.php?url=http%3A%2F%2Fwww.aclunc.org%2Fyouth%2Fpublications%2Fschool%20discipline%20a%20guide%20for%20students%20parents.shtml%3Fht%3Dschool%2520discipline%2520guide%2520school%2520discipline%2520guide>

The Youth Law Center, *Education Related Duties in California Juvenile Dependency and Delinquency Cases Imposed by AB490* (November 2003).

[http://www.ylc.org/AB490chart fnl.htm](http://www.ylc.org/AB490chart%20fnl.htm)