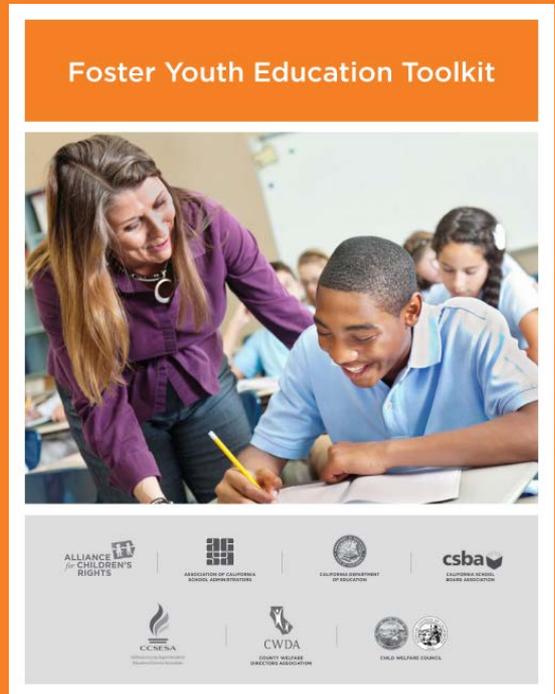


Toolkit for Foster Youth Education Success

Meeting the Special Education Needs of Foster Youth

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Danielle Tenner
Staff Attorney
Education Program
Alliance for Children's Rights



Kevin Hernandez
Staff Attorney
Learning Rights Law Center

Special Education & Foster Youth

Overview of Topics

1. Special Education & Foster Youth
2. Special Education Laws
3. Foster Youth Education Toolkit
4. FAQs

SPECIAL EDUCATION & FOSTER YOUTH

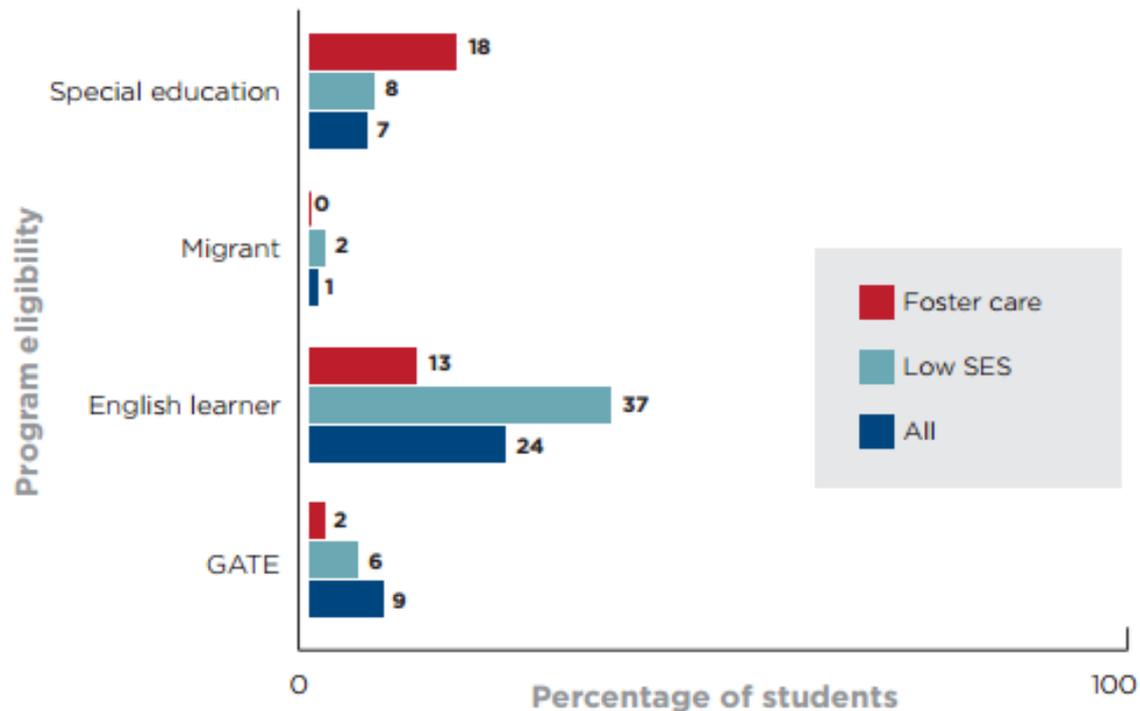
Foster Youth & Special Education

- Youth who are both in foster care and eligible for special education
 - Have lower GPAs
 - Change schools more often
 - Earn fewer credits towards graduation
 - Have lower scores on state testing
 - Are more likely to be exempted from state testing
 - Are more likely to be in segregated special education classes
 - Have more instability in foster care placement

- SARAH GEENEN & LAURIE POWERS, ARE WE IGNORING FOSTER YOUTH WITH DISABILITIES? (Fostering Futures Project 2006).

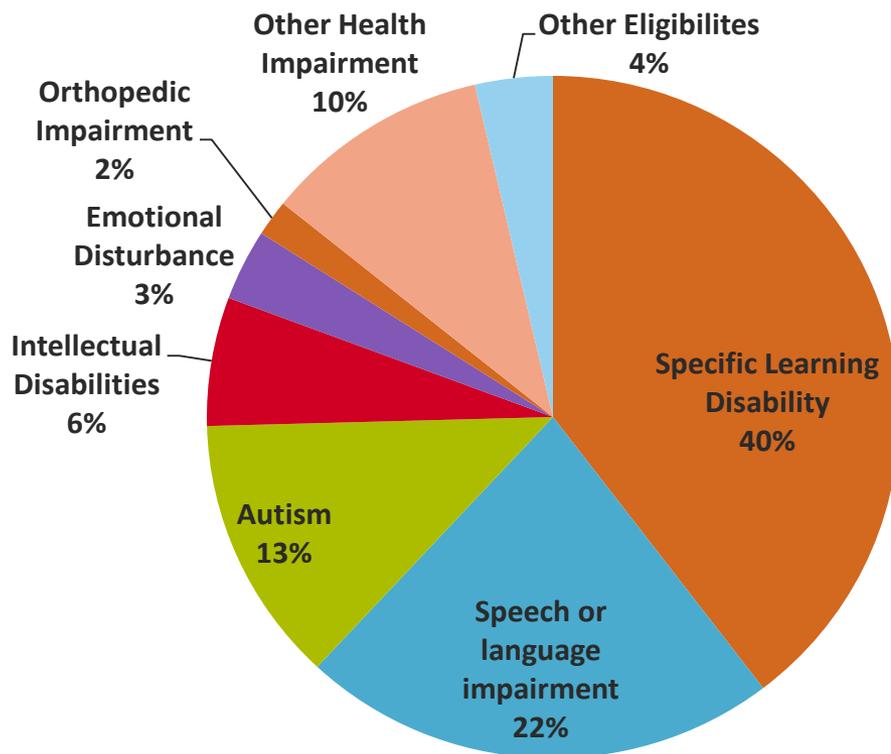
Students in foster care qualify for special education at a higher rate than comparison groups.

Figure 3. Percentage of students by program eligibility, for students in foster care, low-socioeconomic-status students, and all students in California public schools, 2009/10



Barrat, V. X., & Berliner, B. (2013). *The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California's Public Schools*. San Francisco: WestEd.

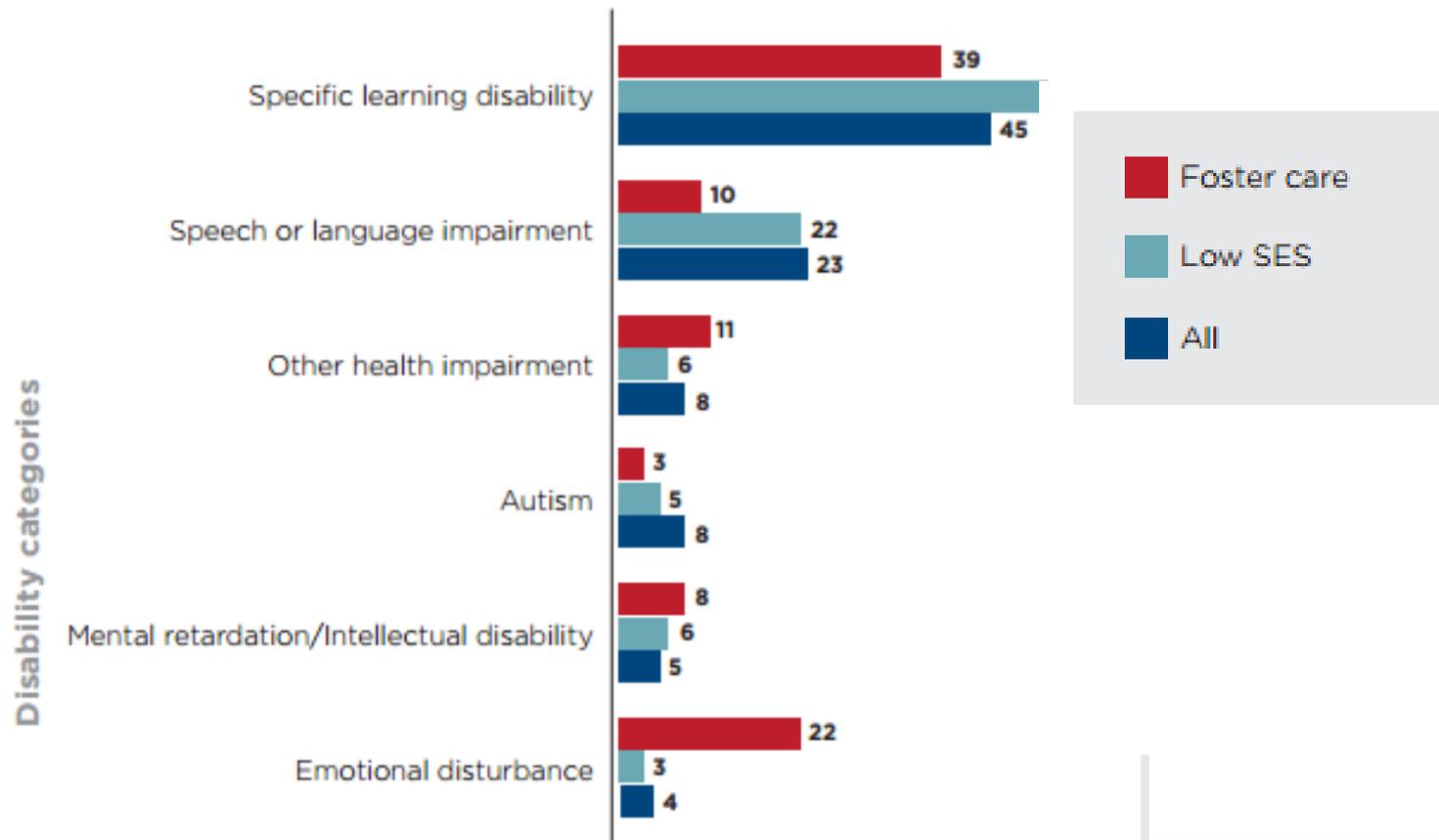
Special Education Eligibility Categories



<http://www.cde.ca.gov/sp/se/sr/cefspeced.asp>

Foster youth are underrepresented in some eligibility categories and overrepresented in others.

Figure 4. Distribution of students with disabilities by the Individuals with Disabilities Education Act (IDEA) disability categories, for students in foster care, low-socioeconomic-status students, and all students in California public schools, 2009/10



SPECIAL EDUCATION LAW 101

Special Education and Related Laws

- Individuals with Disabilities Education Improvement Act (IDEA), 20 USC 1400 et seq.
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act (ADA)

*** And a whole host of State laws!!!

What Do These Laws Say?

Special Education Laws

Individuals with Disabilities Education Improvement Action (“IDEIA”)

The IDEIA’s primary purpose is to “ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living”. The individualized education program (“IEP”) is the cornerstone of the IDEIA. IEP is a written document that is generally the result of an IEP team meeting.

Anti-Discrimination Laws

Section 504 of the Rehabilitation Action of 1973 (“s 504”)

Provides in pertinent part: “[N]o otherwise qualified individual with a disability . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. . . .” The regulations explain that the purpose of the Rehabilitation Act is to “prohibit discrimination on the basis of handicap in any program or activity...”

Title II of the American’s with Disabilities Act (“ADA”)

Provides in pertinent part: “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity”

Major Differences Between The Laws

- To get an IEP through the IDEIA a student must need specialized instruction and related services to benefit from his/her education, not just accommodations for access
- An IEP has a lot of requirements, including goals and objectives, whereas a Section 504 does not (apart from giving student access and an appropriate education)
- To be eligible for an IEP through the IDEIA you have to fit into one of 10 specific eligibility categories, not just generally have a disability
- IDEIA has strong enforcement mechanisms (due process and CDE Compliance Complaints), Section 504 and ADA have more moderately effective enforcement mechanisms (OCR Complaint)
- ADA also protects from discrimination in any public program (ie those open to public), not just those that receive federal funds

What are the big picture differences?

- ADA and 504 protect people with disabilities from discrimination
- IDEIA assists eligible students with disabilities who cannot benefit from their education without specialized support services
- Some students may not be eligible for special education, but are still protected by ADA and 504

IDEIA Basics – FAPE & LRE

- Free Appropriate Public Education (“FAPE”) must be made available to students with eligible disabilities that require specialized services to benefit from school
- Elements of FAPE
 1. IEP must meet the student’s unique needs
 2. IEP must be reasonably calculated to provide meaningful educational benefit
 3. IEP must be implemented as written
 4. Program be provided in the least restrictive environment (“LRE”)

Least Restrictive Environment

Again, a requirement of FAPE is that it be provided in the **least restrictive environment** (“LRE”)

- Meant to ensure that children with disabilities are educated with children without disabilities to the **maximum extent appropriate.**
- Reaction to a sad and unfortunate history* of segregating children with disabilities from peers without disabilities

*Not to say this phenomenon is completely behind us

More on Least Restrictive Environment

Federal Law

Inclusion in general education environment to the “maximum extent appropriate” means:

- Special classes, separate schools, or other removal from the general education environment occurs **only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily**

CA State Law

- Again generally about inclusion
- A “full continuum of program options” to meet students’ needs

More on Least Restrictive Environment

Rachel H. 9th Circuit balancing test for LRE

1. Educational benefits available to the student in general education classes with appropriate aids and services
2. Non-Academic benefits of interaction with peers without disabilities
3. Effect of the presence of the student on the teacher and other students
4. Costs of aids and services needed for placement in the general education environment.

FOSTER YOUTH EDUCATION TOOLKIT

<http://kids-alliance.org/edtoolkit/>



FAQS

Frequently Asked Questions

- *Isn't the school supposed to appoint a surrogate parent if there is no parent?*
- Sometimes.
- A surrogate parent is an adult appointed to make decisions for a youth if there is no ERH. School districts must appoint one within 30 days of identifying the need for one.
- If a youth has an ERH, there is no need for a surrogate parent, and all youth *should* have an ERH.
- If the district does need to appoint a surrogate, preference must be given to relative caregivers, foster parents, or CASAs.
- Cal Educ. Code 56050; Cal. Gov't Code 7579.5; 17 CCR 52175

Frequently Asked Questions

- *What if a foster youth has poor attendance? Isn't this a disqualifier for special education?*
- Almost Always No
- Attendance is a rule out for special education eligibility *only if*
 - the student doesn't otherwise meet the eligibility criteria; AND
 - the student's educational needs are *primarily* the result of a *lack of instruction*.
 - *Cal. Educ. Code 56026(e)*

Frequently Asked Questions

- *I've heard a lot about trauma informed practices lately. What if a student is acting out because they've experienced trauma? Do they qualify for special education?*

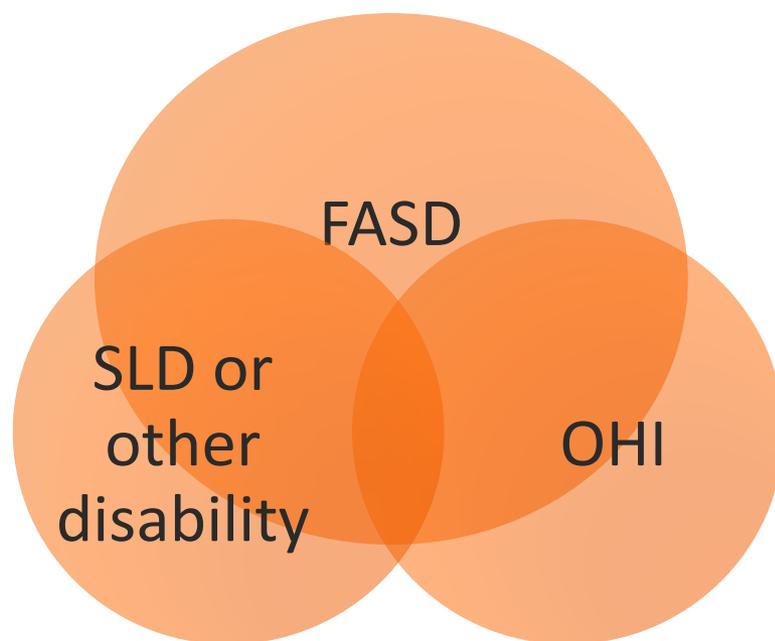
- It depends



- Students may or may not qualify for special education.
- **EITHER WAY**, schools should seek to serve foster youth who have experienced trauma in a way that accounts for their trauma.

Frequently Asked Questions

- *I know a lot of foster youth are diagnosed as having Fetal Alcohol Spectrum Disorders (FASD) or Fetal Alcohol Syndrome. Are they eligible for special education?*
- It depends



Frequently Asked Questions

- *Don't foster youth have access to mental health services? Doesn't that mean we shouldn't duplicate services?*
- Yes and No
- Foster youth should have access to mental health services through the child welfare agency.
- But the school is not “off the hook” for providing instructional counseling or educationally related mental health services if the student demonstrates a need for those services to access his or her education.



Frequently Asked Questions

- *Can a student who qualifies for special education services also graduate under AB 167/216?*
- Yes. However, whether they *should* graduate under AB 167/216 is a decision to be made by an ERH.

Pros	Cons
The student can receive a regular diploma without being penalized for school transfers	The student may not yet have developed the skills necessary to succeed.
The student can proceed with higher education or employment	The student may not immediately proceed to a 4-year university
The student will graduate with her or her peers	

Frequently Asked Questions

- *How can we make IEP transition planning successful for foster youth?*
- Coordinate!
- Youth will have child welfare transition plans. Social workers should be engaged in IEP process

