

# *AB 379: Uniform Complaints & Foster Youth*

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Foster Youth Education Toolkit



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# Why are you here?

## You'll Learn:

1. Your district's requirements under AB 379
2. Best practices for complying with AB 379

*NOTE: When we refer to foster youth, that includes both foster youth with open dependency court cases and probation youth with open delinquency court cases.*

# AB 379: Uniform Complaints



# What does AB 379 do?

- It makes all foster/probation youth education laws enforceable
- The process for enforcement is the Uniform Complaint Procedures Act
  - Think special education compliance complaints

# Which youth does it apply to?

- Applies to all youth removed from their home or subject to a petition under Welfare and Institutions Code Sections 300, 309, or 602
- This means any dependent/foster youth or any delinquent/probation youth, regardless of where they live
  - Youth living at home with biological parents qualify!
- Subject to a petition: could be alleged to have been abuse or alleged to have committed a crime but not yet found to have been/done so

# Which schools does it apply to?

- All local education agencies, including:
  - School districts
  - County offices of education
  - Charter schools
  - Special Education Local Plan Areas

Cal. Educ. Code Section 48859

# What rights are enforceable?



# Education Decision Making

- All education decisions, including educational/school placement, must be made by the youth's education rights holder (ERH), in the student's best interests
- If the school, group home, social worker, or other non-education rights holder is making education placement decisions, a district could be found out of compliance.

Cal. Educ. Code Sections 48853. For more information on Education Rights Holders, see Foster Youth Education Toolkit pages 7-9



# Enrollment Rights

- Enrollment Rights:
  - Right to attend their local comprehensive school (foster youth have a right to be educated in the least restrictive environment, similar to special education students) unless
    - They are attending their school of origin
    - Their IEP requires a different placement
    - Their ERH determines in writing that the child's best interests requires a different educational placement
  - Right to immediate enrollment, even without normally required documents
  - Right to enrollment in same/equivalent classes, even if they are transferring mid-semester
  - Cannot be forced to attend a continuation, independent, or other alternative educational setting, even if they have failing grades, are credit deficient, or have behavioral problems

Cal Education Code Sections 48853 and 48853.5; For more information, see Foster Youth Education Toolkit pages 11-15

# Equal Access

- Equal access to all the supports and services on the school campus available to other students. This includes:
  - Academic Resources (e.g., tutoring, A-G/Honors courses)
  - Services (e.g., mental health)
  - Extracurricular activities (e.g., arts/drama/music)
  - Enrichment activities (e.g., field trips, college fairs)
- This is regardless of try out or sign up deadlines

Cal Education Code Section 48853; For more information, see Foster Youth Education Toolkit page 11

# Use of Emergency Shelter Schools

- Use of emergency shelter schools for inappropriate reasons
- Can only utilize emergency shelter schools:
  - For short periods of time
  - For health and safety emergencies
  - When awaiting an ERH decision re whether or not to utilize school of origin (SOO) if:
    1. A SOO decision cannot be made quickly
    2. It is not practical to transport the child to the SOO in the meantime
    3. The child would otherwise not receive educational services and
    4. Temporary, special, and supplementary services are available to meet the child's unique needs

# School of Origin Rights

## School of Origin

### School Stability Matters

- Foster youth transfer schools an average of eight times while in foster care, losing four to six months of learning each time.<sup>1</sup>
- As a result of school instability, only 21% of foster youth are proficient in English by 11th grade, and 6% in math.<sup>2</sup>
- Fewer than 60% of foster youth graduate from high school.<sup>3</sup>

### Overview of the Law

- Foster youth have a right to remain in their school of origin if it is in their best interest, as determined by their ERH.
- **Definition of School of Origin:** A youth's school of origin may be: (1) the school the youth attended at the time they entered the foster care system; (2) the school the youth most recently attended; or (3) any school the youth attended in the preceding 15 months with which they have a connection (e.g., sports team, relationships with peers or teachers).
- **Feeder Patterns:** If youth are transitioning between elementary and middle or middle and high school, then school of origin includes the next school within the school district's feeder pattern.

- **Scope of School of Origin:** School of origin rights apply to all schools, including magnet programs and charter schools.
- **Duration of School of Origin Rights:** If a youth's court case closes while they are in elementary or middle school, then they have a right to remain in their school of origin until the end of the current school year. If youth are in high school when their case closes, then they have a right to remain in their school of origin until they graduate from high school.
- **Transportation Funding:** Many foster parents, including relatives, are eligible for funding from their local child protective services agency if they transport a youth to their school of origin after a placement change. See [All County Letter 11-51](#), page 3 for funding rates. School districts also have a responsibility to work with child protective services agencies to help a youth access transportation. School districts have a duty to provide transportation if a youth has an Individualized Education Program that requires it.
- **Dispute Resolution:** If at any time, there is a dispute regarding a youth's right to remain in a school of origin, then the youth has a right to remain in that school until the dispute is resolved. Disputes should be referred to the school district's dispute resolution process.

# Rights at Disenrollment

- A youth's right to be appropriately checked out of school when they move. This includes:
  - Gathering of check out grades and awarding of partial credits on an official transcript
  - Forwarding of all education records to the new school within 2 business days
  - Consideration of whether or not student should stay at current school pursuant to SOO
- Practical problem: what happens when kids just disappear?

For more information, see Foster Youth Education Toolkit page 57

# Partial Credit Rights

- Partial Credits
  - Right to partial credits when transferring high schools mid-semester
  - Sending school duties
    - Award partial credits based on check-out grades determined as of the last day of actual in-seat attendance
  - Receiving school duties
    - Accept partial credits and apply them to the same/equivalent graduation requirement
    - Student cannot be required to retake a course if it would throw them off-track of high school graduation
    - Right to enroll in same/equivalent courses
    - Right to take/retake A-G courses or any other courses that other students are eligible to take

California Education Code Sections 48853.5, 49069.5, 51225.2; For more information, see the Partial Credit Model Policy in the Foster Youth Education Toolkit pages 44-48

# Records Transfer

- Receiving school must request them within 2 days of enrollment
- Sending school must send them within 2 days of a request

California Education Code § 48853.5; 49069.5; For more information, see Foster Youth Education Toolkit pages 21-22

# Right to Grades

- Foster/probation youths' grades cannot be lowered due to:
  - Court appearances
  - Court ordered activities (e.g., therapy)
  - Changes in placement
    - A student cannot be required to make-up work they missed prior to enrolling in a new school
    - A student's grade cannot be lowered for days they were officially enrolled but not actually attending a school due to already having moved to a new home (i.e., last day of actual in-seat attendance)

California Education Code Sections 48853.5; 49069.5; 51225.2



# AB 167/216 Graduation

Foster youth who transfer high schools after their second year may graduate by completing minimum state graduation requirements if, at the time of transfer, they cannot reasonably complete additional local school district requirements within four years of high school.\*

- **Who Qualifies:** AB 167/216 graduation applies to any youth in foster care or on probation who is either removed from their home under Cal. Welf. & Inst. Code § 309 or subject to a petition under Cal. Welf. & Inst. Code § 300 or 602, regardless of where they live.
  - **Transfer Schools After Second Year:** To determine whether a youth completed their second year of high school, schools must use either the length of enrollment or the number of credits earned, whichever method will make the youth more likely to be eligible.
  - **Graduation Options:** (1) Accept the exemption and graduate using minimum state requirements. (2) Reject the exemption and graduate using school district requirements. (3) Remain in high school a 5th year to complete all school district requirements. Youth have a right to remain in high school for a 5th year even if they turn 19 years old. (4) Acknowledge eligibility but defer decision until a later date. Regardless, youth graduate receiving a normal high school diploma.
  - **Length of Eligibility:** Once a youth is found eligible, they remain eligible, even if they transfer schools again, return to their biological parents' care, or their court case closes.
  - **Reconsideration:** If a youth is found ineligible for AB 167/216 graduation when they transfer schools, they can request that the school reconsider the decision at any later time.
  - **Notification Requirements:** The new school district must determine whether a foster youth is eligible to graduate under AB 167/216 within 30 days of the youth's transfer into a new school. This determination, as well as the impact of AB 167/216 graduation on admissions to a four-year university, must be provided in writing to the youth, their ERH, and social worker/probation officer within 30 days of enrollment. The legal duty to determine eligibility and provide notification still exists, even if a school district missed their 30 day notification timeline and even if a youth's case is later closed.
  - **Who Decides:** Only the ERH or a youth who is over 18 years old can determine whether graduating under AB 167/216 is in the youth's best interest. An ERH can change their decision of whether or not to graduate under AB 167/216 at any time prior to the youth's graduation.
  - **Military Service:** AB 167/216 diplomas constitute normal high school diplomas and should allow students to fall into priority enlistment categories for Military Service.
- NOTE:** Additional resources for youth transitioning out of foster care or off probation (e.g., housing, employment, finances, college) can be found on our website: [KnowB4UGo.org](http://KnowB4UGo.org)

AB 1166 (effective 1/1/16), Cal. Educ. Code § 51225.1.

\*AB 167/216 graduation applies to any school operated by a school district, including adult schools.

# Disciplinary Rights

- Disciplinary Notices
  - Notification of child’s attorney and county child welfare agency of pending expulsion proceedings if:
    - The decision to recommend expulsion is a discretionary act
    - And, for children with IEPs in this situation, of pending manifestation determinations

California Education Code § 48853.5; For more information, see Foster Youth Education Toolkit pages 38-42

# District Responsibilities

- Adopt policies and procedures consistent with Title 5 CCR Sections 4600-4695 for the investigation and resolution of complaints
- Ensure complainants (students and their ERHs) are protected from retaliation
- Identify the person(s)/employee(s) responsible for receiving and investigating complaints and ensuring LEA compliance
  - Those responsible for compliance/investigations must be knowledgeable about laws/programs they are assigned to investigate

For more information, see Title 5, California Code of Regulations, Section 4600 et. seq.

# District Responsibilities

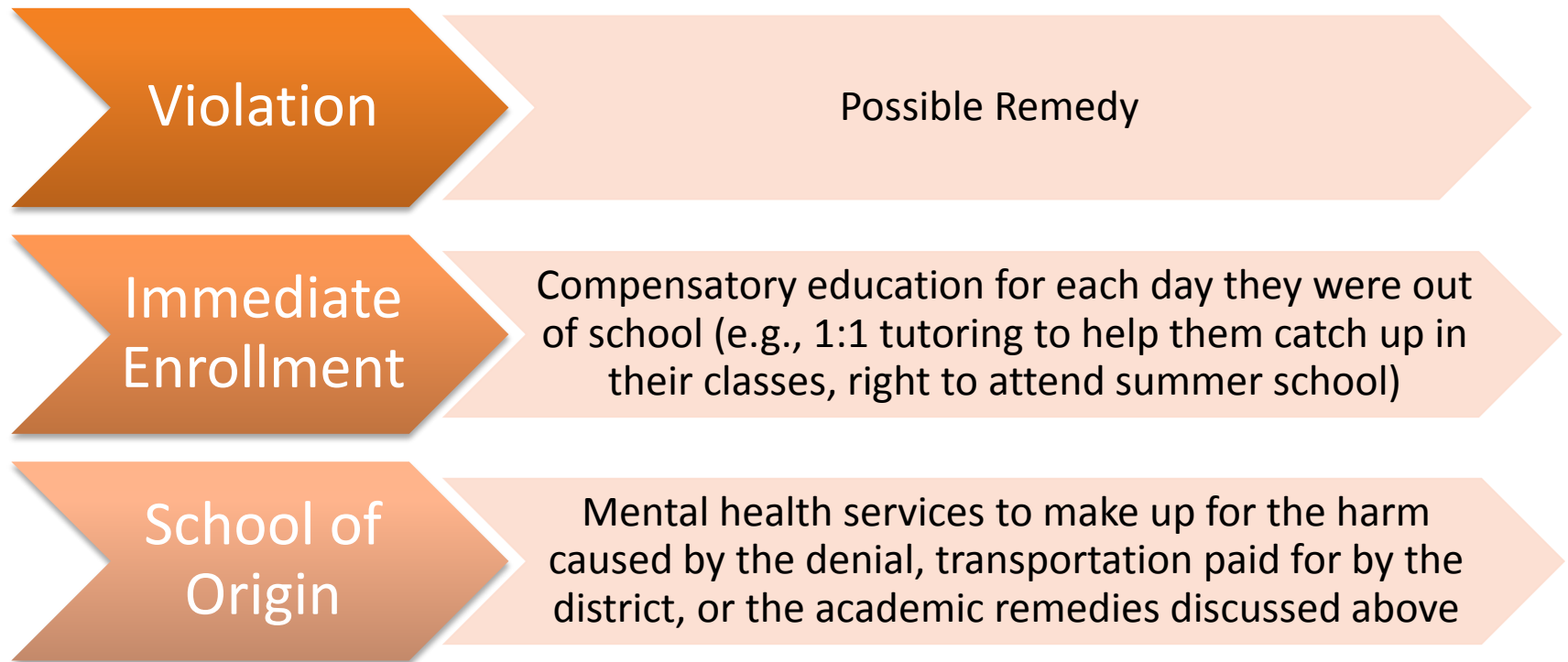
- LEA can provide a complaint form, but cannot require its use
  - See ACR Sample Complaint Form
- Provide annual notification to pupils, parents or guardians, employees, other interested parties including complaint process information and identity of person responsible for processing complaints pursuant to Section 4622 of Title 5 of the California Code of Regulations
- AB 224 also requires more specific notice of education rights available to foster youth

For more information, see Title 5, California Code of Regulations, Section 4600 et. seq.

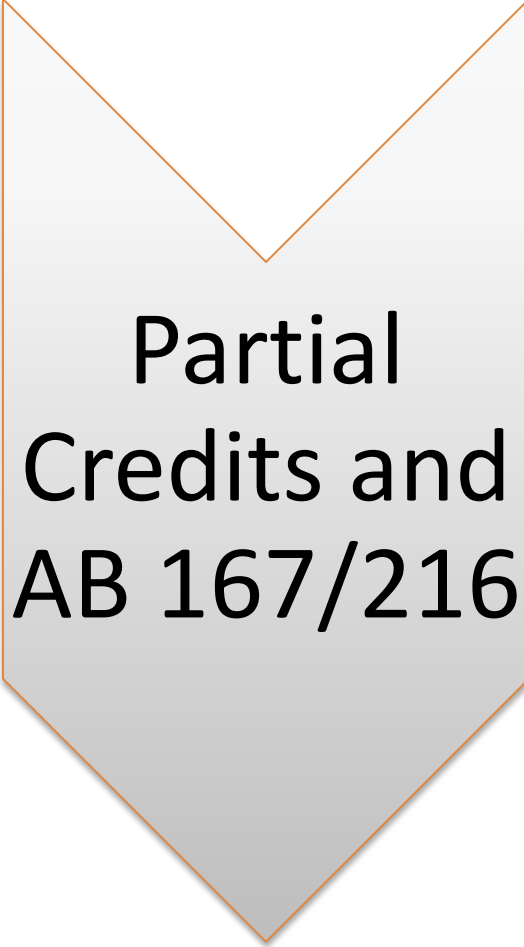
# Complaint Process

- Complainants (students/ERHs) must first file their complaint with the LEA
- Investigation must include an opportunity for complainant or their representative to present evidence or information to support the allegation of non-compliance
- LEA has 60 days to complete investigation and prepare a written decision
  - Practice Tip: If the issue is a time sensitive one (e.g., immediate enrollment or school of origin), taking the entire 60 days will be counterproductive for the student and for the school/district. Since the student has a right to a remedy, the longer the complaint takes to be resolved, the more remedy may be owed to the student
- Duty to notify complainant that they have a right to appeal the LEA's decision to the CDE and that the appeal to CDE must occur within 15 days of receipt of the written decision

# Right to Remedy



# High School Remedies



## Partial Credits and AB 167/216

- Order to immediately issue partial credits
- Violation of failing to allow a student to enroll in a core academic class, A-G class, or Honors class could result in a remedy of 1:1 teaching to help that student master that material and earn those credits
- Credit recovery services/supports
- Right to stay in high school past 19
- Intensive independent study or home school services to make up credits
- LEA services at an adult school/community college

# Additional Possible Remedies

- Order to train school and district level staff on foster youth education laws
- Remedies currently allowed under special education compliance complaints that could be requested/ordered in 379 complaints:
  - Attorneys fees
  - Withhold of state funding



# CDE Appeal Process

- The appeal must:
  - Specify the basis of the appeal including whether the LEA's complaint decision misstates the facts or misapplies the law
  - Include a copy of the local complaint and decision
- The CDE can:
  - Refer the complaint back to the LEA for further investigation
    - If new issues are raised on appeal or
    - If any issue was not addressed in the LEA's decision
    - If this happens, the LEA has 20 days from referral to address the issue
  - Issue a decision based on the LEA's investigation file
  - Accept the appeal and conduct further investigation on its own

# CDE Appeal Process

- On Appeal, the CDE will review:
  - Whether the LEA followed its own complaint procedures
  - Whether the facts in the LEA decision are supported by evidence
  - Whether the conclusions of law in the LEA decision are correct
- The CDE must issue its own decision in a written order within 60 days. The decision must include:
  - A finding that the LEA was either in compliance or not in compliance
  - Findings of fact
  - Conclusions of law
  - Remedies including orders and/or required actions to address the violations
- If a complainant (student/ERH) is still unhappy with the decision, they can:
  - Request discretionary reconsideration by the Superintendent within 35 days
  - The Superintendent then has 35 days to respond and either modify the findings or deny the reconsideration request

# Practice Tips for Informal Resolution of Issues by Students/Advocates

- Don't wait to call attention to a problem
- Reach out to the district foster youth liaison for help
- Go up through the chain of command at both the school and district level
- Let the district know that you are going to file a complaint if the matter is not resolved promptly.
  - Tell the district exactly what action you want them to take, and
  - Give them a deadline for taking that action
- Follow through and file the complaint if the matter is not satisfactorily resolved by the deadline

# Questions? Contact us



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