

FIX SCHOOL DISCIPLINE BILLS

AB 1909 – FACT SHEET

(Notice When Foster Youth Face School Removal; Amends Education Code 48853.5, 48911, 48915.5, Welfare & Institutions Code 317, 16010; Adds Education Code 48918.1)

WE DID IT. WITH YOUR HELP, FIVESCHOOL DISCIPLINE REFORM BILLS WERE SIGNED INTO LAW THIS YEAR!

Now the hard work begins! We need your help to make certain that school districts around the state **change their local discipline policies** to follow the law and **educate everyone** about the changes.

What does AB 1909 do and how does it help students?

AB 1909 creates new procedures that apply when foster youth become involved with school discipline.

1. **When a foster child faces removal from school, the school district must notify the child's attorney and child welfare agency representative.** There are three situations in which the school district must notify a foster child's attorney and a representative from the child welfare agency that the foster child might be removed from school. These notice requirements allow attorneys and social workers to better support and advocate for foster children who risk being pushed out of their schools.
 - **First**, a school must provide notice of the expulsion hearing whenever it recommends expulsion of a foster child if the decision to recommend expulsion is within the school's discretion.¹ The school district must provide the child's attorney and child welfare agency representative with notice at least ten days before the expulsion hearing. Even in cases where an expulsion recommendation is required, the school district may notify the child's attorney and child welfare representative.
 - **Second**, a school must provide notice when a foster child has been suspended and the school, in its discretion, wants to extend the suspension while waiting for the expulsion hearing and decision of the school board. The school cannot extend the suspension without first inviting the child and the child's parent or guardian to a special meeting. AB 1909 now requires that a foster child's attorney and child welfare representative also be invited to this meeting.
 - **Third**, there are special notice requirements for foster children who have special education needs under federal law. For these children, a school must provide notice whenever (1) the child does something for which the school could, within its discretion, recommend expelling the child, and (2) the school has proposed changing the child's school placement because of the child's behavior. Before changing the child's placement, the school district must invite the child's attorney and child welfare representative to a meeting to determine whether the child's behavior was a manifestation of the child's exceptional needs. If it was, then the school cannot go forward with the expulsion. Of course, even if the expulsion recommendation is required, the school district may invite the child's social worker and attorney, something that would be helpful for the foster child!

¹ Sometimes, the school is required by law to recommend a child for expulsion. If the law allows, but doesn't *require*, an expulsion referral, then the expulsion referral is "discretionary."

2. **The person who holds education rights for a foster child should be notified of and invited to all discipline-related meetings for the child.** Sometimes, an adult other than a parent or guardian is given the legal right to make education-related decisions for a child who is in foster care. AB 1909 makes clear that a child's education rights holder should be notified of and invited to all discipline-related meetings. This ensures that the person empowered to make decisions about the child's schooling is able to advocate for the child during disciplinary incidents and provide valuable information and support.
3. **Attorneys for foster youth must provide their contact information to the school district (or local education agency) educational liaisons.** Every school district must have a staff person designated as the "educational liaison" for foster children. AB 1909 creates a process for attorneys who work with foster children to provide their contact information to the educational liaisons who serve their foster children clients. This new process will facilitate better communication between schools and foster children's attorneys and, hopefully, ensure that schools are more aware of the people in the foster child's life who can help.

At the end of this fact sheet, you can find the exact text of AB 1909. The bill goes into effect on January 1, 2013!

How can you help make certain your school district follows the new law?

California law is clear: school board rules and policies governing discipline must be consistent with law, and parents have a right to be informed in advance about discipline rules and procedures. Educ. Code §§ 35291; 51101. When they develop new rules and procedures, schools must get input and participation from a parent representative. Educ. Code § 35291.5.

When the new law takes effect on January 1, 2013, you can help make certain your school district is following it by:

1. **Requesting a copy of the district's policies, rules, and procedure governing discipline.**
 - Where can you find them?
 - Parent/student handbook
 - School district's website
2. **Checking:** Do they include the new laws?
3. **Advocating** for the school district and your local school to change the policies and to educate all school personnel, parents, and students!
4. **Meeting with the Superintendent (and/or principal)** and request that your school board members hold a hearing on the changes and update discipline policies. Bring other parents, students and community members who care about fixing school discipline.
5. **Spreading the word:** Educate parents and students about these new laws.
6. **Reporting any problems:** If you see that students' rights are being violated or a school district refuses to follow the law, go to FixSchoolDiscipline.org and click on "I Need Help" to report any problems you see.

What can I do to help?

- **Request** that a meeting be convened in your County between the County Office of Education, local school districts, the County child welfare agency, the organizations that represent foster youth, and the Juvenile Court so that best procedures and protocols can be put in place quickly to make certain that notice is provided, effectively, and by the least costly means possible and so that everyone can discuss the best way to help the foster youth who are struggling with school removal.
- **Go to FixSchoolDiscipline.org** to read the article about the process that Elk Grove Unified School District put in place, which also involves attorneys and social workers in any suspensions, and how they have reduced school removals for foster youth district-wide! Advocate for the leaders in your county to go beyond AB 1909's explicit requirements and set up procedures to involve these key people when other disciplinary incidents threaten a foster youth's educational outcomes or opportunities.
- **Make sure that the school district has changed its policy** to require that appropriate notice be given to foster children's attorneys, child welfare representatives, and education rights holders when they are faced with discipline or a removal from school.
- **Urge the district to adopt procedures** to ensure that these notice requirements are tracked and followed.
- **Advocate** for the school districts and attorneys for foster children to come together to create the best process through which attorneys for foster children can share their contact information to the right people at the schools, to facilitate strong communication that will benefit the children.

So, what **EXACTLY** does the law say?

The changes to prior law are in color and italics below.

Ed Code

SECTION 1. It is the intent of the Legislature that, for purposes of implementing this act, the notification of, and invitation to, a parent or guardian for meetings and hearings related to the discipline of the pupil also be provided to a person who holds the right to make educational decisions for a foster child pursuant to Section 361 or 726 of the Welfare and Institutions Code if the right to make educational decisions by the parent or guardian has been limited or terminated.

48853.5. (a)

(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) . . . (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., or, 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 . . . law. . .

(e)(1) At the initial detention or placement, . . . (2) If the jurisdiction of the court is terminated ~~prior to~~before the end of an academic year,

(5) The educational liaison, in consultation with . . . child, may, in accordance with the foster child's best interests, recommend that the foster . . . and the foster child be enrolled in any public school that pupils living in the attendance area in which the foster child resides are eligible to attend.

(6) ~~Prior to~~Before making any 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 ~~this~~the recommendation serves the foster child's best interest.

(7) (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 ~~agree~~agrees . . .

(B) The new school shall immediately enroll the foster child even if the foster child has outstanding fees, . . . or is unable to produce . . . previous academic ~~records,~~records and medical records. . . .

(C) The educational liaison for the new school shall, within two business days of the foster child's request for enrollment . . . The school educational liaison for the school last attended shall provide all records. . .

(8) If a dispute arises . . . The dispute shall be resolved in accordance with the existing dispute resolution process available to any pupil

(f) For purposes of this section, "school of origin" means the educational liaison, in consultation . . .

(g) This section does not supersede . . .

48911. (a) The principal of the school, the principal's designee, or the district superintendent of schools may suspend a pupil from the school . . .

(b) Suspension by the principal, the principal's designee, or the district superintendent of schools shall be preceded by an informal conference e conducted by the principal ~~or,~~ 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. . .

(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. . . . means a situation determined by the principal, the principal's designee, or the district superintendent of schools . . . If a pupil is suspended without a conference ~~prior~~to~~before~~ suspension, . . .

(d) . . . ~~Whenever~~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 ~~therefor~~for the suspension, to the governing board of the school district or to the ~~school~~ district superintendent of schools in accordance with the regulations of the governing board of the school district.

(f) The parent or guardian of any pupil shall respond without delay to any request from school officials to attend a conference

regarding his or her child's behavior. No penalties ~~may~~shall be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference . . .

(g) In a case where expulsion from any school or suspension for the balance of the semester from continuation school is being processed by the governing board of the school district, the ~~school~~ 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 ~~school~~ 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. . .

(h) For purposes of this section, a "principal's designee" is one or more administrators at the school site specifically designated by the principal. . . An additional person meeting the requirements of this subdivision may be designated by the principal, in writing, to act for ~~the~~ purposes of this article when both the principal and the principal's primary designee are absent from the school site. . . .

48915.5. (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, . . .

(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. (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 written 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 written 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.

W& I Code

317. (a) (1) . . . (2) When it appears to the court that a parent or Indian custodian in an Indian child custody proceeding desires counsel . . . the provisions of ~~subsection (b) of Section 1912 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)~~ Section 1912(b) of Title 25 of the United States Code and Section 23.13 of Title 25 of the Code of Federal Regulations ~~are applicable~~ shall apply. . . .

(e) (1) Counsel shall be charged in general with the representation of the child's interests. . . .

(4)(A) At least once every year, if the list of educational liaisons is available on the Internet Web site for the State Department of Education, both of the followings shall apply:

(i) Counsel shall provide his or her contact information to the educational liaison, as described in subdivision (b) of Section 48853.5 of the Education Code, of each local educational agency serving counsel's foster child clients in the county of jurisdiction.

(ii) If counsel is part of a firm or organization representing foster children, the firm or organization may provide its contact information in lieu of contact information for the individual counsel. The firm or organization may designate a person or persons within the firm or organization to receive communications from educational liaisons.

(B) The child's caregiver or other person holding the right to make educational decisions for the child may provide the contact information of the child's attorney to the child's local educational agency.

(C) Counsel for the child and counsel's agent may, but are not required to, disclose to an individual who is being assessed for the possibility of placement pursuant to Section 361.3 the fact that the child is in custody. . . .

(6) The changes made to this subdivision during the 2011-12 Regular Session of the Legislature by the act adding ~~paragraphs~~ subparagraph (C) of paragraph (4) and paragraph (5) are declaratory of existing law. . . .

(g) . . . if counsel is to be provided to a child . . . , the court shall first ~~utilize~~ use the services of the public defender ~~prior to~~ before appointing private counsel. . . .

(h) . . . if counsel is to be appointed to provide legal counsel . . . the court shall first ~~utilize~~ use the services of the alternate public defender ~~prior to~~ before appointing private counsel. . . .

16010. (a) When a child is placed in foster care, the case plan . . . shall include. . . a summary of the health and education information or records, including . . . the child's grade level ~~performance~~, performance; the child's school ~~record~~, record; assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of ~~placement~~, placement; the number of school transfers the child has already ~~experienced~~, experienced; the child's educational progress, . . . including . . . academic proficiency ~~scores~~, scores; credits earned toward ~~graduation~~, graduation; a record of the child's immunizations and ~~allergies~~, allergies; the child's known medical ~~problems~~, problems; . . . past . . . ~~hospitalizations~~, hospitalizations; a record of the child's relevant mental health ~~history~~, history; the child's known. . . ~~medications~~, medications; . . . The health and education summary may also include the

name and contact information for the educational liaison, as described in subdivision (b) of Section 48853.5 of the Education Code, of the child's local educational agency

(b) Additionally, a court report or assessment required pursuant to . . . subdivision ~~(b)~~ (c) of Section 366.22 shall include a copy of the current health and education summary