

EDUCATIONAL AFTERCARE TOOLKIT FOR JUVENILE JUSTICE PROFESSIONALS

*A toolkit for Juvenile Probation
Officers in Los Angeles*

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About This Toolkit

This toolkit is designed to address one of the most important aspects of supporting justice-involved youth: helping youth returning from placement reintegrate back into school. This toolkit is designed to equip juvenile justice professionals with the knowledge and tools they need to support reintegrating youth and act as educational advocates.

How to Use This Toolkit

Youth who are adjudicated delinquent often encounter problems in obtaining appropriate education services when they are released from placement and are reintegrating into their communities. Frequently, both youth and families have difficulty navigating the education system and do not know how to advocate for themselves. This toolkit provides the basic information and resources needed to help juvenile probation officers and other juvenile justice professionals overcome, or at least minimize, these problems.

While this toolkit is specifically directed to juvenile probation officers, this toolkit may also be useful for the youth's attorney or other juvenile justice professionals to help them plan for and participate in the educational aftercare of their clients.

The toolkit should serve as a roadmap for identifying issues related to the education of delinquent youth during placement and when they are released and reintegrated into their communities. The Toolkit should also act as a guide to resources that are available to help juvenile justice professionals answer education-related questions and as a link to individuals and organizations that can provide additional technical support and assistance with complicated issues.

SECTION ONE:

INTRODUCTION

A. Who Participates in ensuring appropriate educational aftercare for delinquent youth?

There are many “key players” when it comes to ensuring appropriate educational aftercare for delinquent youth. Many individuals and organizations must work together to organize their services to help these youth transition smoothly from a delinquency placement to a community setting and experience educational success.

The **youth’s parent and/or education rights holder** must work with the juvenile justice and education systems to facilitate the movement of the youth from one to the other and be intimately involved with the educational planning so that the parent understands the terms of probation and will be prepared to advocate for the youth once he or she leaves placement.

The **youth** must “buy in” to the planned educational program and be willing and ready to comply with the terms of this program and juvenile probation.

The **youth’s legal representative(s)** must be knowledgeable about the educational needs of the student and advocate for appropriate educational services while in placement and during the reintegration phase of aftercare.

The **court** must continue its oversight and stress the importance of education and/or require that the youth complete his or her education.

And, the **placement school district** (i.e. LACOE) and **home school district** must maintain and

transmit education records in a timely manner and otherwise ensure that the youth receives appropriate educational services before, during, and after placement in a residential facility.

B. What is the role of the juvenile probation officer (JPO) in educational aftercare?

A JPO has an important and significant role in the educational aftercare of delinquent youth. A JPO is no longer just an officer who simply enforces the terms of probation, but is instead an advocate who promotes the best interests of the youth consistent with aftercare system principles. Under a “best practices” model, a JPO’s role in education aftercare is:

- Fulfilling the obligations as a monitor, as well as a planner for re-entry, and supporting a youth who has left residential care when he or she returns to a community educational placement.
- Attending the initial Multi-Disciplinary Team meetings to ensure that educational goals are clearly understood and a solid plan is put in place to achieve them.
- Collaborating with residential treatment staff on a single plan, that integrates treatment and aftercare services, including educational programming and goals developed in consultation with the appropriate school staff from the home and host school districts.
- Advocating on behalf of the client so that any existing educational gaps will be addressed. This will require ongoing communication with the youth, family, and staff from the

residential facility, home school district, and host school district.

- Overseeing academic and rehabilitative progress, maintaining contact with the family to manage a successful return, and completing a post-release plan for achieving them. All appropriate educational options should be reviewed and considered (such as attending a neighborhood school, charter school, alternative education program, taking the GED/HiSET tests, etc.).
- Collaborating with placement staff, parents, an education specialist (when appropriate), and key education personnel from the school where the youth will be enrolled upon release, during the transition multi-Disciplinary team. This meeting should result in the establishment of clear guidelines and expectations for the youth's return to school.
- Adjusting the intensity of supervision proportionate to the risks and needs of the delinquent youth and developing appropriate linkages within the juvenile justice and education systems to facilitate the smooth reintegration of the youth into a community educational placement.

SECTION TWO:

DETERMINING EDUCATIONAL NEEDS

A. How do I determine the educational needs of a youth?

The best way to determine the educational needs of the youth is to **talk** to those who are familiar with the youth's educational status (teachers, school administrators, family members, other probation officers, and the youth). In particular, you should seek out the involvement and input of the education "experts" – the youth's classroom teachers and other school staff who are familiar with the youth, to get a complete picture of the youth's strengths and needs. The more you can engage school staff, the easier it should be to ensure a more positive reintegration when the youth returns from placement (especially when you can engage school staff during the preparatory and planning stage, before a youth is released from placement). Remember, you should feel comfortable reaching out to school staff to discuss a student.

TIP: If a youth has an IEP, they will also have a designated school staff member who acts as their case carrier. It is often a good idea to speak with the case carrier, as (s)he will have information on the student's academics (for example, this person may be able to contextualize poor grades or explain whether teachers are working well with a particular student).

Seeking parent/guardian and student input, can also be very helpful. When speaking to a youth's parents, you can discuss how a student describes his or her school experience or perhaps get

information on a student's medication or changes to medication. In addition, speaking directly to a student can provide critical insight into what is happening in the classroom everyday, how the student feels about particular classroom interventions, and what engages the student.

You should also **review** his or her education records. Education records can likely be found in the student's probation file, however there are additional ways of accessing the records. Parents have a right to see the public school education records of their own child, if the child is under 18 (when youth turn 18 years old, they have the right to see and control the release of their own education records). **Education records** include most of the information a public school keeps on a student, such as report cards, disciplinary reports, attendance records, standardized test results, and special education reports and programs (like assessments and Individualized Education Programs (IEPs)). However, personal notes of a teacher or other school official that are kept private and are not shared with anyone, are not considered to be education records.

Note about English language learners: A parent or guardian's lack of English fluency does not preclude him or her from exercising the right to access their student's records. A school district shall take all reasonable steps to ensure that all parents and guardians of pupils who speak a language other than English are properly notified in English and in their home language, of the rights and opportunities available to them.

A parent (or legal guardian or individual acting as the education rights holder) can “release” his or her right to inspect and review the student’s education records to a JPO or other juvenile justice professional.

A juvenile probation officer can use **Tool # 1: Authorization to Release Education Records, and Tool # 2: School Records Request** to send to a school district. Schools are required to comply with a request to access records within 5 business days (Cal. Ed. Code § 49069). There is no absolute right to have copies of the records sent to you, but many school districts will do so. As such, it may be a better practice to call the school and make an appointment to review the records at a time that is convenient for you and the school staff, and that allows you ample time to go over the information. Note that Schools can charge a per page copy fee for any records provided, but cannot charge for the time of the staff gathering the records.

In addition, a juvenile probation officer may access a student’s records, without first getting parental consent, under Cal. Ed. Code § 49076 in special circumstances.

TIP: A youth’s parents may already have copies of many of the youth’s education records, so you should also ask the parents what records they may have. In addition, when you ask the school to see the records, make sure you ask to see ALL the student’s records. Many school districts keep records in several different locations (such as a central administration building and the youth’s school), and you want to make sure the school collects the student’s entire file.

B. What should I look for when reviewing educational records?

Present levels of academic performance and ability can be determined by reviewing assessments, student work, and, sometimes, standardized-based tests¹, like the CAASPP. In-school behavior and the youth’s relationship with teachers, administrators, and peers will help you understand the level of his or her social skills and behavioral needs (if any). Special education records will reveal if the student has been identified as having a disability and what services and accommodations are necessary to ensure meaningful educational progress.

¹ Standardized testing has a tendency to be inaccurate, and therefore the results should be interpreted with caution.

SECTION THREE:

RELEASE AND REINTEGRATION INTO THE COMMUNITY

This section covers detailed information about what a juvenile justice professional needs to know to plan for the education and the reintegration of a youth after he or she is released from placement. It explains the range of educational placement options available, and it discusses the various types of living arrangements that impact where a child has the right to attend school.

A. The Right to Attend School

The right to a public education is a fundamental right guaranteed by the California constitution. Students in California, including delinquent youth, have a right to attend school in the school district in which they reside.

B. Compulsory School Attendance

Children between the ages of six and eighteen are subject to compulsory full-time education under CA law. (Cal. Ed. Code § 48200). These students *must* attend a public or private school, or other educational program, according to the designated school day. A youth who does not comply with this attendance requirement risks facing truancy charges. There are very limited exceptions to this mandatory requirement, and they are not commonly seen (for example, exemptions for youth who hold a work permit to work in the entertainment industry). For more information on exceptions, see Cal. Ed. Code §48210-48216.

Note: An IEP can modify the school day of a particular student. For instance, a student may have a half-day placement if he has a medical issue that stops her from going to school.

C. Educational Placement Options

When planning for the release of delinquent youth from a juvenile justice placement facility, a juvenile justice professional should identify, review, and consider all the possible educational options available for when the student is released, and help facilitate the student's movement to the appropriate program. Many factors, including the student's age, preferences and abilities, the family's wishes, and the court's mandates will weigh in this determination

The following is a range of education placement options that can be considered based on the *individual* circumstances of the youth.

1. Neighborhood School

Reintegration into a neighborhood public school is generally the preferred choice for many youth returning from a delinquency placement. If a child will enroll in his or her neighborhood school upon release from residential placement, a juvenile justice professional may *first* have to determine what the "home" school district is for that student and *then* determine what the child's specific school in the district will be.

Step One: Determining the Child's "Home" School District

In California, a youth has the right to attend school where he or she lives with his parent or legal guardian. This is known as a 'home' school district. Once the 'home' district is determined, then the youth has the right to be educated by that district. The exact neighborhood school

which the child will attend generally depends on where the child lives within the 'home' district. This school can often be identified by accessing a school district's website and conducting a search through their resident school finder (LAUSD has a school finder located at <http://rsi.lausd.net/ResidentSchoolIdentifier>).

i. Youth Living with Their Parents/Legal Guardians

A student has the right to attend public school in the school district where he or she lives with his or her parents or a legal guardian. If the student's parents live in different school districts, the student may attend school in the district where he or she lives with a parent most of the time, unless a court order or court approved custody agreement specifies otherwise. If the parents have joint custody and the student spends an equal amount of time with each parent, the parents may choose to enroll the student in either district (but not both).

ii. Youth Living with a Non-Parent Resident of Another School District

A student who lives in the home of a caregiving adult, may attend a school located within the boundaries of the school district where the caregiver resides. Normally, in this situation the execution of an affidavit by the caregiving adult is a sufficient basis for a determination that the pupil lives in the home of the caregiver, unless the school district determines from actual facts that the pupil is not living in the home of the caregiver. For more information about enrollment requirements, you can visit school district websites.

iii. Foster Youth

In California, the term '**foster youth**' means a child that has been removed from his or her home as a result of being placed in foster care or being the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code. This encompasses youth who have been placed in a residential placement by a delinquency court. Cal. Ed. Code § 48853.5(a).

Foster youth have a right to stay and/or return to their **school of origin** at any time while their foster or delinquency case is open and through the conclusion of the school year in which the case is closed unless they are in high school, in which case they are allowed to remain at that school until graduation. This includes following feeder patterns when matriculating from one level of school to the next. School of origin includes the school the child was last enrolled in, the school the child attended when last permanently housed or any other school the child attended in the past 15 months to which the child is connected. If any dispute arises, the child has the right to remain in their school of origin until it is resolved. Cal. Ed. Code § 48853.5.

Youth living with foster families have the right to attend school where the foster family lives, regardless of where their birth parents reside. They should be treated in the same manner as students who live in the school district with their birth families, and schools cannot place additional enrollment requirements on children in foster care.

iv. Youth Who Are Homeless

A federal law called the McKinney-Vento Act provides substantial protections for homeless youth to make sure that they continue to attend school. Youth are considered to be “homeless” for school purposes under this law if they:

- Lack a permanent home (meaning a fixed, regular, and adequate place to stay at night);
- Live in a temporary shelter (like a homeless shelter or a motel);
- Live in a space not usually used as a residence (such as a car or abandoned building);
- Live with friends or relatives because they do not have a home (for example, the family lost their home due to a foreclosure or was evicted from an apartment due to failure to pay rent);
- Have run away or have been abandoned or forced out of their homes by their parents or caretakers, separated from their parents for any other reason or are “not in the physical custody of a parent or guardian.” These youth are called “unaccompanied youth” and are considered homeless under federal law; or
- Are awaiting foster care placement.

Homeless youth have the following rights:

- They are entitled to the same free public education and access to services and school programs as all other students.
- They have the right to immediate enrollment in school in the school district in which they are now living, even though the living arrangements may be temporary. If a homeless youth is missing documents required for enrollment, the school district must enroll the youth first, and then seek

the records after the child has already started school.

- A homeless student can stay in the same school he or she attended prior to becoming homeless (the **school of origin**), if that is what is best for him or her, even if he or she has moved to another school district. Homeless youth have the right to remain in their “school of origin” for the entire school year in which they became homeless.
- Homeless students can gain a permanent residence in a new district during the academic year, but can still remain in the old school district for the rest of that year regardless of where they are currently living (or, if a new home is gained over the summer, they can remain in the old school district for the next academic year). The school districts involved must arrange and pay for transportation of the student.
- Homeless students have the right to receive help from the school district’s “McKinney-Vento liaison” in order to enroll in school, get records, and explain the child’s special legal protections.

For more information, see page 32 of section 6 below.

Step Two: Determining In-District School or Specific School Placement Options

Once the school district in which the youth will attend school is determined, you will have to review any district policies that will affect the decision about the specific school to which the student will be assigned. For example, you will need to consider **district “feeder” patterns** (how the district assigns students to each school, which is usually done on a geographic basis) and any **administrative transfer policies** that might be applied due to past in-school violations by the student (for instance, the student may have been

assigned to an alternative education program prior to his juvenile placement, and the district may want the student to return to that program.) You will also need to consider grade level placement and class scheduling options.

NOTE: It is possible that a school district may refuse to accept some or all of the credits a youth earned during his or her stay at a juvenile placement facility. However, these high school-aged youth who move in the middle of a semester have a right to partial credits calculated based upon their 'seat time' or hours in each class. Each district must have a policy in place for issuing partial credits. (Cal. Ed. Code § 48853.5). As such, you should advocate that the youth's home school district accept the credits the youth has earned in placement. If you are unable to work out an agreement with a school district about the number of credits a student returning from placement should have, you should contact an education attorney.

There is NO absolute right to attend a particular neighborhood school within a district. The district has discretion and its assignment policies can impact the placement. If the child or family prefers High School A to High School B in the district, they certainly can request such a placement, but the ultimate school placement decision rests with the district.

2. Charter Schools

Charter schools offer other educational options for some youth returning from a delinquency placement. Charter schools are public schools created by agreement (a "charter") with a local school board.

Charter schools are free of charge to students like traditional public schools. They must provide a minimum of 170 days of instruction per year, but

they can offer a longer or different school calendar. Charter schools must provide special education services to eligible students, and charter schools must follow the same rules as traditional public schools when disciplining students. (For more information about suspensions and expulsions, please see Section 6, School Discipline of this Toolkit.)

Any youth who is a resident of California is eligible for admission to a charter school and may apply. If a charter school has more students apply for admission than it has available slots, the charter school should admit students on a lottery basis.

Charter schools cannot limit admission on any basis that would be illegal if used by a school district (such as race or ethnicity). They also cannot limit admission on the basis of intellectual or athletic ability, measures of achievement or aptitude, English proficiency, or disability. Charter schools are permitted to limit their enrollment to a particular grade level or area of concentration (such as the arts, mathematics, or science). They can also limit enrollment to "at risk" students. Charter schools can establish reasonable criteria to evaluate prospective students, but the criteria must be outlined in the charter agreement.

A charter school may be appropriate for a student who needs a smaller school environment or different structure than the neighborhood public school can offer. A charter school may also be appropriate for a student who is interested in a particular area of study, such as performing arts or science.

For more information about charter schools in Los Angeles, see the California Charter Schools Association website, at <http://www.ccsa.org/regions/losangeles/>. For a list of charter schools in Los Angeles, see the California Department of Education's website at:

<http://www.cde.ca.gov/ds/si/cs> click to view the map of California charter schools, and then click Los Angeles.

3. Alternative Schools

Alternative schools include county community schools, community day schools, and continuation schools.² These schools may be beneficial for some students but they often do not afford the same educational or extra-curricular opportunities as traditional neighborhood schools.

Returning from delinquency placement is not a reason by itself to send a child to an alternative program. The relevant question is whether the child is **currently fit** to return to the regular classroom. If a school district wants to transfer the child to a CDS, the child has some due process rights before he or she can be transferred.

An alternative education program may be appropriate for some youth in some limited circumstances. For instance, an alternative program might be appropriate if the student needs a high level of structure, if the district operates an alternative school that provides special services tailored to meet the student's individual needs (such as a credit recovery program), or if the student would have trouble succeeding in the regular education environment right away for various reasons (for example, the student may need a smaller setting for a while). However, you should make sure the student will be able to return to the regular education environment within a specific time period. In addition, not all alternative programs are created equal. Some programs provide youth with very little real academic instruction, and so you need to

proceed cautiously before recommending an alternative program for a client.

i. County Community Schools

County community schools are public schools that are run by county offices of education (i.e. LACOE). Students may be involuntary transferred to a county community school if they are expelled, referred by a school attendance review board, or referred under court order. Additionally, a parent or guardian may request for their child to be transferred to a county community school if they feel it is in the student's best interest.

A student has the the right to object to his or her transfer to a county community school if the school cannot meet his educational needs, he has safety concerns, or if the school is geographically inaccessible. If a student is transferred based on a school attendance review board referral, the student has the right to return to his original school at the end of the transfer period.

ii. Community Day Schools

Community day schools (CDS) are schools for students who have been expelled from school, who have had trouble with attendance or behavior, and other at-risk students. Cal. Ed. Code § 48662.

Community day schools may include services for youth returning from delinquency placements and/or who are on juvenile or adult probation. However, districts cannot automatically send youth to community day schools simply because they have been adjudicated delinquent. Youth cannot be involuntarily assigned to a community day school unless

² In contrast to other states, homeschooling is not a common practice in California, however there are additional alternatives such as online charter schools

and independent study programs. As these are not in common practice, we have elected not to include further information on these programs.

- They are formally expelled and provided with all due process rights (further information provided in section 6, School Discipline, below)
- The youth is referred by probation pursuant to sections 300 and 602 of the Welfare and Institutions Code
- The youth is referred by a school attendance review board; OR
- The youth is referred by another district-level procedure, where the appropriate due process is followed

CDS programs may operate outside the normal school days of the district, including Saturdays, and may modify the number of days or hours of instruction as compared to regular education programs. Cal. Ed. Code § 488666.

iii. Continuation Schools

Continuation schools are for students that are 16 or older, have not graduated from high school, and who are at risk of not graduating. A district may not transfer a student to a continuation school unless attempts to change the student's behavior fail or the student's presence at school causes a danger to others or disrupts the instructional process. Cal. Ed. Code § 48432.5.

The minimum required attendance of these programs is as little as 15 hours per week or 180 minutes daily. In addition to academic courses, the program may emphasize an occupational or career orientation or a work–study schedule.

The California Department of Education's website also includes basic information about alternative education programs which receive funding from CDE, including a statewide directory of alternative education programs.

4. High School Equivalency Tests

Taking the GED or HiSET may be an appropriate educational option for:

- A youth who is 18 years old or older who wants to enter the workforce quickly or who wants to apply for college immediately;
- A youth who is 18 years or older who believes a return to high school would not be appropriate for him or her; or
- A youth who is 17 years old who meets the criteria listed above

A juvenile justice professional should exercise caution before advising a client to pursue a high school equivalency certificate, when that client may otherwise have the right to return to school. The best interests of the student should be the main factor in making this recommendation, and not pressure from the school district. For more information about the GED, see CDE's website, at <http://www.cde.ca.gov/ta/tg/gd/gedtest.asp>

i. GED Test

The Tests of General Educational Development (GED) were developed to measure those major outcomes associated with four years of high school education. Many employers consider the GED credential, a California High School Equivalency Certificate, in the same manner as a high school diploma and almost all U.S. colleges and universities accept the GED transcript for admissions purposes.

To be eligible to take the GED tests in California, a youth must be:

- 18 years or older (or within 60 days of your 18th birthday),
- A resident of California,
- Not enrolled in a public, licensed private, registered accredited, or licensed nonpublic secondary school, and
- Able to provide necessary documentation to prove his or her identity.

To be eligible at the age of 17, a youth must have meet one of the following:

- Has been out of school for at least 60 consecutive school days and has provided a letter of request for the test from the military, a post-secondary educational institution, or a prospective employer; OR
- is incarcerated in a California state or county correctional facility.

ii. HiSET

Similar to the GED test, the HiSET is a high school equivalency certification examination. The HiSET can be taken in multiple formats and languages, and it provides a number of accommodations for students with disabilities or health-related needs.

The eligibility requirements are very similar to those of the GED Test. You can find more information and the exact eligibility requirements at the HiSET website

(<https://hiset.ets.org/requirements/ca>).

5. Enrollment Options for Expelled Students

If a delinquent youth was expelled from school prior to a delinquency placement, he or she may not be able to return to his or her previous school depending upon the terms of the expulsion (for example, if the youth has not served the term of an expulsion).

NOTE: An expulsion is a long term removal (usually two semesters) from all traditional schools in the district; it can be longer for a “Zero Tolerance” offence such as weapons, drugs, serious bodily injury or sexual harassment. A student can only be expelled after a formal hearing. Youth have to apply to be readmitted to the district once they have complied with all requirements of their Rehabilitation Program (usually good grades, behavior, attendance). Cal. Ed. Code § 48900, et seq.

However, students under 17 are still subject to the compulsory school attendance law even if they are expelled from school, and so they must receive an education post-expulsion. When a student is expelled the governing board of a school district is responsible for referring the student to an alternative program of study.

It is possible, however, that if the parents or guardian does not feel the alternative school placement is in the best interest of the child, they may attempt to enroll the youth in another district, charter school, or private school. This is only possible if the attendance at the assigned school is not made mandatory, and with the requirement that the parent notify the new school of the expulsion.

6. Options for Pregnant and Parenting Students

Like all other children, pregnant and parenting students are subject to the compulsory school attendance law until they turn 18. They have the same educational options as other students. They may NOT be excluded from school or discriminated against based on pregnancy or parenting status. School districts may not require

pregnant or parenting teens to enroll in alternative education programs.

School districts may offer special programs for pregnant and parenting students (such as support programs, classes that operate outside normal school hours, counseling, or parenting skills instruction), but those students cannot be required to enroll in such programs. For more information, you can research a school district's Cal-SAFE program. In addition, some school districts may offer designated school campuses for pregnant teens.

You should consider the whole range of educational options for a pregnant or parenting student in the same manner as any other student.

SECTION FOUR:

ENROLLMENT, ATTENDANCE, AND TRUANCY

This section covers information about public school enrollment requirements, including the documents needed for a child to be enrolled in school. This section also reviews the laws governing school attendance and highlights the need for students of compulsory school age to follow school rules regarding attendance or else risk facing truancy penalties.

A. Enrollment in the Home District

1. Enrollment Requirements

Youth on probation have special protections when it comes to school enrollment, just like youth in the dependency system. *See Cal. Ed. Code § 48853.5.* A school district cannot require more or different documentation from a delinquent youth before permitting enrollment. To help minimize delays, a juvenile justice professional should help a client apply for enrollment as soon as the date of release from the delinquency placement is known so that the student can start school immediately upon release.

Important Note: Youth on probation (as well as foster youth) have a right to immediate enrollment even if they are unable to produce records normally required for enrollment, such as transcripts, other education records, immunization records, or proof of residency. They also have a right to attend school even if they do not have uniforms or other supplies required by the school. Cal. Ed. Code § 48853.5

A school district or a charter school should normally enroll a student within **one (1) business day**. In no case should they take longer than **five (5) business days** from the date the district or charter school receives the required documents.

a. Required Documents

Listed below are the **only** documents that the school district or charter school can require from the parent, guardian, or other person in charge of the student as a condition of enrolling the student.

1. Proof of the student's age: Acceptable documentation for proof of the child's age includes a birth certificate, passport, or a prior school record indicating the date of birth.

2. Proof of the student's residence: Proof of the child's residence can include a utility bill with the address on it of the child's parent or guardian, a rental agreement or lease, property tax payment receipts, a copy of a paycheck stub with the name and address of employee and employer on it, voter registration, **or** a declaration of residency executed by the parent or legal guardian of the student. Remember that a child is considered a resident of the school district in which his or her parents or guardian reside – so a child's residence for school attendance purposes is dependent upon his or her parent's or guardian's residence – with some notable exceptions. For more information about how to determine where a child can attend school, see Determining the Child's "Home" School District in Section 3 on page 11.

3. Proof of immunizations: This is proof that the student has received the immunizations required by law (See CA Health & Safety Code commencing with section 120325). Students are not permitted to attend school until they have all the required immunizations unless they have received an exemption from the school district superintendent for medical. However, a school district must enroll the child if it receives oral confirmation from the child's former school district or the child's doctor that the child has received the required immunizations with a written record to follow. In addition, children who have not yet received all the necessary immunizations may be permitted to attend school based on proof that they have received the first round of shots and are scheduled for additional immunizations. For more immunization information, see CDE's **immunization & Health Checkup Facts** at <http://www.cde.ca.gov/ls/he/hn/cefimmunization.asp>. Additionally, you can find out more about immunization laws and requirements at the Shots for School website at <http://www.shotsforschool.org/>.

NOTE: As of July, 2016, personal and religious belief exemptions for immunizations are no longer allowed. See SB 277.

4. General Registration Forms: Each school likely has its own forms to be completed by the parent or guardian, which includes contact information, student educational information (previous school), and emergency contact information. In addition, the school will likely ask the parent whether his/her student has been expelled from any public or private school. Parents are required to give notice to a receiving school if their son/daughter was expelled from his/her previous

school for an act other than those listed in Cal. Ed. Code § 48915 (A) and (C).

b. Information Not Required for Enrollment

Except for the records listed above, school districts **CANNOT** require ANY other information or documentation as a condition of a child's enrollment. In particular, school districts **cannot** require:

- A Social Security Number for the parent and/or the child;
- Visa/immigration documents;
- A copy of a court order concerning placement or guardianship (unless the child is relying on a showing of custody to establish residency);
- Reasons the child is living in the district;
- An affidavit from the child's biological parents (sometimes requested by a school district if the child is applying for admission as a non-resident student living with a non-parent resident adult – for more information about this situation, see Children Living with a Non-Parent Resident of Another School District in Section 3 on page 11); or
- A copy of the child's IEP or other education records as a condition of enrollment.

c. Enrollment Rules in Discipline Cases

A school district **CANNOT** refuse to enroll a child or automatically place the child in an alternative education program based on the child's disciplinary record. The only exception is, if a child is currently expelled for one of the following offenses, in which case the district must assign that student to county community school, juvenile court school, or community day school for the duration of the expulsion.

- Causing serious physical injury to another person, except in self-defense

- Possession of a knife or other dangerous weapon of no reasonable use to the student
- Unlawful possession of a controlled substance (with few exceptions) or selling of a controlled substance
- Robbery
- Assault or battery (according to PC §§ 240 and 242)
- Possession of a firearm or explosive
- Brandishing a knife at another person
- Committing or attempting to commit a sexual assault

These are the only circumstances that give a school district the authority to “honor” an expulsion or suspension from another school district or private school.

If a student has been expelled for another offense, not listed above, the receiving school district may hold a hearing to determine whether that student poses a continuing danger to either the other students or school employees. Only if the new school district finds the student to be a continuing danger, may the school district deny enrollment. Cal. Ed. Code § 48915.1.

2. Education Records Transfer Requirements

The law requires that school districts and charter schools receiving requests for education records from another school district or charter school forward the records within **10 school days of the receipt of the request**. Cal. Ed. Code. § 49068.

In addition, a district **cannot** keep a child out of school because it does not have the child’s IEP or because the child should be reevaluated. It is illegal for a district to refuse to allow a child who receives special education services to attend school because the school is waiting for records or because the school wants to retest him or her. If a school does this, then the school owes the child **compensatory education** (makeup services) for all

the time the child should have been in school and was not.

NOTE: Problems or delays with transferring records should never be a bar to enrollment in a school district or charter school. A student must be admitted to school while waiting for records to arrive, regardless of where records are being sent from or whether the student will receive a regular or

4. Resolving Enrollment Disputes in California

Sometimes a school district will refuse to enroll a child because the school district believes the child is not a resident of the district, or because the child’s parent or guardian is unable to provide documentation that is not actually required for enrollment. If a family has an enrollment dispute, they should contact a local advocacy organization or education attorney. (Please note that the process for resolving enrollment disputes for **homeless children** is slightly different. Children who are homeless have the right to receive written notice of a denial of enrollment and they can appeal this denial to the State McKinney-Vento coordinator.)

B. School Attendance and Truancy

1. Attendance Requirements

Once students are enrolled in school, they must follow the school’s attendance policies and rules. Failure to comply with attendance requirements could result in truancy proceedings or “disenrollment” from school. Below is additional information on attendance requirements.

As discussed in Section 3, children between the ages of six (6) and 18 are of “compulsory school age” and are required to attend school. There are a few exceptions to this requirement.

Enrolling a child in a charter school, a licensed private school, or an approved independent study program satisfies the school attendance requirement. Every parent, guardian is responsible for making sure that the child attends school regularly until the age of 18.

Once a child turns 18, he or she can drop out of school without parental permission. A child who is 18 years old or older cannot be cited for truancy because the compulsory school attendance law does not apply to students 18 years of age or older.

2. Truancy

a. Definition

Truancy is normally defined as any unexcused absence from school. A student is considered truant when he/she has been absent from school without a valid excuse, for **three (3) full days, or has been tardy or absent for more than a 30-minute period on three (3) occasions**, in one school year. Cal. Ed. Code § 48260.

If a student has been reported as truant, and is again absent from school, or tardy, on one or more days, that student will again be reported as truant. If a student is reported as truant three or more times in one school year, he/she will be deemed an **habitual truant**, but only if an appropriate school employee has made a conscientious effort to hold at least one meeting with the parent and the student. Cal. Ed. Code § 48262.

It is important that even if a child is absent from school for just one day, a parent or guardian should always provide the child's teacher or principal with a note explaining the absence as soon as possible—many districts have their own policies on how quickly a tardy, absence, or early leave must be explained/excused.

b. Notification of Truancy

If a child is truant the school district must notify the parent or guardian—this may be by mail, e-mail, or telephone—to inform them that the child is truant, that they, as parent/guardian, are obligated to compel the child to attend school, and inform them of the possible consequences.

If a child is habitually truant, the school may refer the student to the Student Attendance Review Board (SARB). Once a referral is made, the school must notify the parents of the referral and their obligation to meet with the SARB for a hearing. A SARB can direct the student and family to use community services to resolve the truancy issue, or it can notify the the district attorney or juvenile court. Cal. Ed. Code § 48263.

c. Truancy Penalties

Listed below are the possible truancy penalties for both the parents and the students.

i. Possible Penalties for the Parent May Include:

- A \$300 fine for each truancy violation;
- An order that the parent deliver the student at the beginning of each school day;
- An order that the parent attend a parent education and counseling program; and/or
- A sentence to the county jail for no more than one (1) year, and/or a fine not to exceed \$2,000, if the parent is found guilty of a misdemeanor under Penal Code § 270.1.

ii. A Parent's Defense to an Allegation of Truancy

It should be noted that, if the parent can show that he or she took every reasonable step to ensure school attendance by the child, the parent may not be convicted of a summary offense, and no fines or penalties may be imposed on the parent.

iii. Possible Penalties for the Student may include:

- Attending makeup classes or an afterschool/weekend study program
- Receiving a written warning by a peace officer, to be placed in the student's school records
- A \$50 fine for each truancy violation
- An adjudication of dependency by the juvenile court (in severe cases). The court may then impose any of the following:
 - Performance of community service hours
 - Attendance at a truancy prevention program
 - Suspension or revocation of driving privileges for up to 1 year, pursuant to Vehicle Code § 13202.7

Cal. Ed. Code § 48264.5.

SECTION FIVE:

SPECIAL EDUCATION AND OTHER IN-SCHOOL SERVICES

A. An Introduction

A juvenile justice professional should not expect to become an expert in special education law. However, you should be able to identify special education issues and guide families in the right direction to ensure that a client receives an appropriate special education program in school upon release from a delinquency placement. Many students with disabilities end up in the juvenile justice system, and quite a few are referred by their school district for behavior that is related to their disability. In some of these cases, the district has failed to identify the disability and/or failed to provide an appropriate program of supports and services prior to the referral to law enforcement. If families are aware of the disability and the student's resulting educational needs, they can work with the school to prevent problematic behavior from reoccurring.

This section briefly explains who is eligible for special education services, the process for evaluation and developing an appropriate educational program, how to decide where the student will receive services, and what to do if there is a dispute with the school.

C. An Explanation of Terms

Children with disabilities who are eligible for special education and related services, have the right to receive a **free appropriate public education** (FAPE) from their school district. An "appropriate" special education program must provide "significant learning" and must confer

"meaningful educational benefit" to the child. The benefit "must be gauged in relation to the child's potential." There is no set "formula" for deciding whether a child's program is appropriate. Appropriateness is a case-by-case determination based on the facts of each individual child's situation.

The term "**special education**" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. "**Specially designed instruction**" means adapting the content, methodology, or delivery of instruction in order to: 1) address the child's unique needs that result from the child's disability; and 2) ensure that the child has access to the general curriculum so that the child can meet the same educational standards that apply to all students. Special education includes instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. It includes specially designed instruction in physical education and vocational education.

The term "**related services**" means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education. Related services can include speech, physical, and occupational therapies, as well as psychological services, counseling services, social work services, and assistive technology devices and services that help the student participate and learn in school. The law does not include an exhaustive list of

related services – these are just examples of some of the most common related services.

D. Eligibility for Special Education

Under the federal Individuals with Disabilities Education Act (IDEA) and state law, school districts and charter schools in California must identify, locate, and evaluate all children with disabilities residing within the district's boundaries (including youth who are homeless). This is known as the district's "**child find**" duty. In California, children with exceptional needs, from birth to age 21, are included in the district's child find duties.

To be eligible for special education services, a child must: 1) have at least one legally recognized disability, and 2) by reason of that disability, require special education and related services.

Below is the list of the **legally recognized disabilities** under special education law:

- Intellectual Disability
- Hearing Impairment
- Deafness
- Speech or Language Impairments
- Visual Impairments (including blindness)
- Serious Emotional Disturbance (may be referred to as Emotional Disturbance or "ED")
- Orthopedic Impairments
- Autism
- Traumatic Brain Injury
- Other Health Impairments
- Specific Learning Disability
- Deaf-Blindness
- Multiple Disabilities

Some of the most frequently identified disabilities are:

Serious Emotional Disturbance (SED or ED):

Special education law defines a Serious Emotional Disturbance to mean a condition exhibiting one or

more of the following characteristics over a long period of time, and to a marked degree, that adversely affects a child's educational performance:

- An inability to learn that cannot be explained by intellectual, sensory or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of unhappiness or depression; and
- A tendency to develop physical symptoms or fears associated with personal or school problems.

Other Health Impairment (OHI): These include chronic or acute health problems such as asthma, attention deficit hyperactivity disorder (ADHD), diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome which results in limited strength, vitality, or alertness AND adversely affects a child's educational performance. If the child has a health impairment that does not adversely affect her educational performance, but he or she requires accommodations from his or her school due to physical (or mental) impairment, the child may be eligible for a Section 504 Accommodation Plan.

Specific Learning Disability (SLD): This refers to a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that presents as an imperfect ability to listen, think, speak, read, write, and spell or to do mathematical calculations. It includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include problems that are primarily the result of: visual, hearing, or motor disabilities; emotional disabilities; or environmental, cultural, or economic disadvantage.

E. Evaluations and IEPs

A child must first be evaluated by the school district to determine if he or she is eligible for special education services. Listed below are the major steps in this process.

1. Parent or School Initiates a Special Education Evaluation

Either the school district or the child's parents can initiate a special education evaluation. If the parent requests an evaluation, he or she should do so in writing. A **sample letter** to use when requesting an initial special education evaluation is provided as **TOOL #3: IEP Request Letter**. The district has **60 calendar days** (minus the summer months) to complete the evaluation and issue an Evaluation Report once the parent signs a **Permission to Evaluate-Consent Form**. Cal. Ed. Code § 56344(a).

Special education law includes a broad definition of who can be a child's "**parent**" for the purposes of making special education decisions. A "parent" can be a biological or adoptive parent, but a foster parent or a "person acting like a parent" (such as an aunt or a grandparent) can also be a "parent" under certain circumstances. In some cases, a

"surrogate parent" may need to be appointed for a child with disabilities to make special education decisions on his or her behalf.

NOTE: If a child is found ineligible for special education services, he may still be eligible for a Section 504 Accommodation Plan (also called an Accommodation Plan, a Chapter 15 Service Agreement, or a 504 Plan) if he or she has a physical or mental impairment that substantially limits a major life activity. For example, a student with diabetes may be allowed to leave class to see the school nurse in order to receive insulin injections.

2. School Conducts the Evaluation and Issues an Evaluation Report

Once the parent consents to the evaluation, the district must conduct a comprehensive evaluation and provide a written **Evaluation Report (ER)** to the parents. An evaluation team (which includes the parent, usually a certified school psychologist, the child's regular teacher, and other people with knowledge about the child) must use a variety of tests or strategies to evaluate the child. The child should be tested in the language most likely to give accurate information. All evaluations must be free to the family.

The district completes the ER which provides information on the student's present levels of academic achievement and functional performance, strengths, needs, and identifies any disabilities that interfere with educational performance. The ER must state whether the child is eligible for special education services. If so, it must also make recommendations for the types of special education services that will be needed.

NOTE: Students who were not evaluated and provided special education and related services prior to being adjudicated delinquent may be evaluated and identified while in a delinquency placement. In most cases, the school district in which the delinquency placement is located will do the evaluation and determine the appropriate educational program for the student (called an Individualized Education Program or IEP). The identification and program will follow the student during reentry and reintegration into school until the home school district or charter school develops a new special education program. Although the home school should receive the student's IEP as part of the education records sent from the placement, you may need to alert the home district to the existence of the student's IEP.

3. Individualized Education Program (IEP) is Developed

If the student is identified as eligible for services, the next step is to develop an **Individualized Education Program (IEP)** for the student. An IEP Team, consisting of the child's parents, regular and special education teachers, school administrators, the student (if appropriate), and others, will develop the child's IEP. The IEP Team must meet within the same **60 calendar days** from when the consent to evaluate was given. Cal. Ed. Code § 56043(c).

The IEP is the written **"contract"** between the parents and the child's school district that sets out what special education services the district will provide to the child for the child to receive a **free appropriate public education (FAPE)**. An IEP contains **annual measurable academic and functional goals** designed to meet the student's

needs and to help the student participate and progress in the general education curriculum. It must explain how the student's progress will be measured and when progress reports will be issued.

The IEP must also set out the **appropriate special education and related services** the child will receive in order to make progress toward his or her goals, along with other supports the student will need to be educated with his or her nondisabled peers. In the first IEP meeting after the student turns 16, the IEP must address services that will be provided to help the student **transition** to postsecondary-school objectives. Cal. Ed. Code § 56043(e).

4. IEP Reviews

An IEP team shall meet at least annually to review a student's progress, the individualized education program, including whether the annual goals for the student are being achieved, the appropriateness of the placement, and to make any necessary revisions. Cal. Ed. Code § 56043(j).

5. Reassessments

A student may be reassessed if the school district, teacher, or parents/guardians choose to request a reevaluation. Assessments may not occur more than once a year, and must occur at least once every three years, unless agreed upon by the district and parent(s). Cal. Ed. Code § 56043(k).

F. Positive Behavior Support

A child with a disability who is returning from a delinquency placement may have had a history of behavior problems in school which were never addressed appropriately. However, it is important to note that if the child exhibits behaviors that impede the child's learning or the learning of others, the child's IEP Team must consider the use

of positive behavioral interventions and supports and other strategies to address the behavior.

Positive, rather than negative, measures must form the basis of behavior support programs. Behavior support programs must include research-based practices and techniques to develop and maintain skills that will enhance a student's opportunity for learning. Behavior support programs and plans must be based on a functional assessment of behavior.

G. Educational Placement – The Least Restrictive Environment (LRE)

After the child's IEP is developed, the IEP Team must decide how much time the student will spend in a regular classroom versus a pull-out special education program (such as an emotional support classroom or learning support classroom), if any. Students with disabilities are entitled to be educated in the "least restrictive environment" (LRE) to the maximum extent appropriate to their needs using "supplementary aids and services." This means that children with disabilities should be educated with their nondisabled peers to the maximum extent appropriate, and LRE is first assumed to be the regular education classroom in the regular neighborhood school with supplementary aids and services.

A child does not have to achieve at the same level or progress at a level near to that of his or her peers without disabilities in order to be educated in a regular classroom. However, if the student needs some separate education (such as a special class or a private school), the IEP Team must decide what kind of separate program, and for how much of the school day, will meet the student's education needs appropriately and for how much of the school day the child will need this separate program.

Some **examples** of supports that can help a student with a disability in a regular classroom are:

- Special equipment such as a modified desk or communication device
- A modified regular education curriculum
- Provision of a one-to-one aide
- Training for the regular education teacher to meet the child's needs and/or the use of co-teaching (having a regular education and a special education teacher instruct all students in a regular education classroom)
- Provision of various therapies (such as speech, occupational and/or physical therapy) in the regular education classroom

Like all special education decisions, where a child will be educated must be based on the child's individual needs as described in his or her IEP and evaluations. A placement decision should not be based on administrative convenience or cost considerations.

H. Notice of Recommended Educational Placement/ Prior Written Notice

Once the child's program and placement have been developed, the school must give the parent a **Prior Written Notice (PWN)**. This document should summarize the recommended program and placement for the child, describe any other options that were considered, and must be provided in the native language of the parents. The parent will then be asked to **agree or disagree** with the proposed program and/or placement by signing the PWN.

If the parent disagrees, he or she can use one of the procedures listed below to try to resolve the disagreement. Parents can reject what the school is offering if they do not think it meets their child's needs! A school may not implement the services plan without written consent of the parent.

I. Resolving Special Education Disputes

A parent may decide the school's evaluation, proposed IEP, or placement is not appropriate for his or her child. There are several ways to resolve disputes about the appropriateness of a child's special education program.

1. Informal Procedures to Resolve Disputes about a Child's Program

The parents should initially talk to the child's teacher and other school staff to resolve the issue. While a child's IEP must be reviewed at least once a year, parents can **request an IEP Team meeting** at any time to discuss their concerns with the Team.

If the parents are unable to resolve their dispute by using the IEP Team process, the parents can request more formal dispute resolution procedures which include mediation and/or a due process hearing.

2. Formal Procedures to Resolve Disputes about a Child's Program

a. Mediation

Mediation is a free service provided by the State's Office of Administrative Hearings (OAH) that can be used to try to resolve a disagreement about any aspect of the child's IEP. If both the parent and the district agree to mediation (which is a voluntary process), OAH will arrange for a neutral, specially trained mediator to meet with them at a mutually convenient location. The mediator does not make a decision on the disagreement. Rather, the mediator will help both parties try to reach an agreement. If the parties reach an agreement through the mediation session, that agreement will be put in writing and, if appropriate, incorporated into the student's IEP. If the parties cannot reach an agreement, the mediator will end the session. More information about mediation is

available at OAH's website at

<http://www.dgs.ca.gov/oah/SpecialEducation>

b. Due Process Hearing (a/k/a Special Education Hearing)

A due process hearing is the most "formal" way to resolve disputes about the appropriateness of a special education program. Either a parent or a school district can request a due process hearing. It is not necessary to use mediation first before asking for a hearing. Due process hearings are similar to trials, with a hearing officer presiding and acting as a judge. An attorney will represent the district. The parent may also be represented by an attorney, or may proceed without counsel. Witnesses are questioned and cross-examined, and evidence is admitted into the record for the hearing officer's consideration. At the conclusion of the hearing, the hearing officer issues a written decision with an order, which is a legally enforceable document. A hearing officer's decision can then be appealed by either party to federal or state court.

More information about due process hearings, including how to request a hearing, can be found at OAH's website at <http://www.dgs.ca.gov/oah/SpecialEducation>.

3. Resolving Disputes about Procedural Violations or a Failure to Provide Services

You may need to help a family resolve a dispute that involves procedural violations or is due to a failure to provide services already in a child's IEP. The parents (or anyone else with knowledge of the violation, including a juvenile justice professional) can **file a complaint** with the CDE's **Special Education Division** if their child is not getting the services agreed to in the IEP or procedural rules have been violated. For example, a complaint can be filed if the child's IEP states that he will receive 45 minutes of physical therapy

per week, but the child's therapist quit and the child has not received any more therapy. Such a complaint should ask for services to make up for the therapy the child should have received but did not (called compensatory education). Another time a complaint can be filed is if a district is not complying with timelines or required procedures (for example, the district has failed to evaluate the child within 60 calendar days, minus the summer months, of receiving parental consent).

A copy of a complaint form can be found on CDE's website at

<http://www.cde.ca.gov/sp/se/qa/cmplntproc.asp>

J. Other In-School Services

A child might not qualify for special education services, but the child might still need additional help in school. A child may be able to access other support services at school even if he or she is not eligible for special education assistance. Below is just a partial list of some of the in-school services that some schools may offer. Make sure to ask guidance counselors, school psychologists, school nurses, and administrators about the availability of any academic and/or behavioral support programs for your client.

1. School-Based Behavioral and Mental Health Services

Some schools offer behavioral and mental health services to their students who may not qualify for special education services. If you have a client who would benefit from behavioral and/or mental health services in school, you should find out what supports the school might be able to offer. It is important to note, that if a student needs mental health services, they should really be assessed for special education as well.

2. School-Wide Positive Behavior Support (SWPBS)

Many schools in California and others around the country have started to implement School-Wide Positive Behavior Interventions Supports (SWPBS). SWPBS is an evidence-based approach designed to improve student behavior, reduce unnecessary discipline, and promote a climate of greater productivity, safety, and learning that uses school-wide and individualized teaching and modeling, and that recognizes and rewards positive student behavior. (The positive behavior supports included in some students' IEPs discussed under Individualized Education Programs is a separate topic; SWPBS is a school-wide initiative while positive behavior supports are individualized to meet a specific student's needs.)

SWPBS is a systematic, proactive approach to establishing the behavioral supports and social culture needed for all students in a school to achieve social, emotional, and academic success. If you are working with a client who is experiencing behavioral difficulties in school, ask the school district if it has implemented SWPBS, and if so, how SWPBS can be used to improve the student's behavior. For more information about SWPBS generally, see www.pbis.org (the U.S. Department of Education's website on Positive Behavioral Interventions and Supports).

SECTION SIX:

SPECIAL CATEGORIES

This Section briefly highlights some of the education rights of youth who fall under the special categories of crossover youth, adult youth, and homeless youth.

A. Crossover Youth

A crossover youth is a child who is dually involved in both the dependency and delinquency courts. Supporting the successful development of young people who are or have been involved with both the child welfare and juvenile justice systems, is the responsibility of many agencies (including child welfare, probation, behavioral health, education, and law enforcement). Because these youth are particularly vulnerable, it is important for all agencies to coordinate and work together for what is in the best interest of the child. As such, you should consider keeping good communication with the other people who are working with your client.

Crossover youth receive the protections of Foster youth, some of which are discussed above on page 12 of section 3, and outlined below. The protections below apply to both youth on probation and foster youth:

- In all instances, educational placement decisions for these youth must be based on the best interests of the child and must ensure that the child is placed in the least restrictive educational program that can serve her needs. Cal. Ed. Code § 48850.
- If a child's placement changes, the child has the right to remain in her school of origin for the duration of the school year. Cal. Ed. Code § 48853.5. For more information, see page 11, section 3.
- Youth have a right to immediate enrollment even if they are unable to produce records normally required for enrollment, such as transcripts, other education records, immunization records, or proof of residency. They also have a right to attend school even if they do not have uniforms or other supplies required by the school. Cal. Ed. Code § 48853.5.
- A Foster Youth Liaison must be identified within each school district to assist families in resolving any issues related to the educational safeguards listed here (and outlined in AB 490). The liaison must also request the youth's education records within two business days. The sending school must send the records within two business days of the request. Cal. Ed. Code § 48853.5.

B. Adult Youth

Students over the age of 18 become holders of their own education rights. As such, you should now approach the student in order to receive consent to access education records and for other issues.

While compulsory education laws are no longer applicable once a youth turns eighteen, if the youth is under the jurisdiction of the juvenile court, the court may require the student to attend school. If this is the case with your client, you should encourage them to see the benefits of continuing their education and work with them to find the proper educational program, either secondary or postsecondary.

For more information and frequently asked questions regarding youth with special education

services and their transition to postsecondary education, visit the U.S. Department of Education’s Office of Civil Rights guide on “Transition of Students with Disabilities to Postsecondary Education” at <http://www2.ed.gov/about/offices/list/ocr/transit ionguide.html>

C. Homeless Youth

Homeless youth have the same protections as Foster Youth, which have been discussed throughout this toolkit. In addition, the federal government has enacted educational protections outlined in the the McKinney-Vento Homeless Education Assistance Act. Under McKinney-Vento, the legal definition of homelessness is anyone who...

- Is lacking a regular, fixed and adequate nighttime residence (sub standard housing)
- Is sharing housing due to economic struggles (double-up)
- Is living in a shelter, hotel or motel
- Is living in a public place not designed for sleeping (cars, parks)
- Is an unaccompanied youth, a child or youth awaiting foster care placement
- Is a child or youth abandoned in a hospital
- Is a migrant child who qualifies under any of the above

The McKinney-Vento Homeless Education Assistance Act requires districts to ensure homeless students have access to education and other services they need to meet the same high academic achievement standards as all students. All local school districts must designate a Homeless Liaison. More information is also provided above in Section 3, page 12 “Youth Who are Homeless.”

To find out more about the protections provided by McKinney-Vento, you can visit CDE’s website on Homeless Education at <http://www.cde.ca.gov/sp/hs/>.

SECTION SEVEN:

SCHOOL DISCIPLINE

This section covers detailed information on school discipline and the rights of students, including students with disabilities, who are being disciplined for violations of school rules.

A. Schools' Authority to Impose Discipline

Youth who have been adjudicated delinquent have the same rights and responsibilities as other students in school matters, including student discipline. All students may be subjected to school discipline for violations of school rules and/or policies. School boards and charter schools have the authority to make reasonable and necessary rules governing the conduct of students in school. Every school board and charter school adopts a written **"Code of Student Conduct."**

The district's or charter school's Code of Student Conduct includes the policies governing student discipline and it lists students' rights and responsibilities. Codes of Student Conduct must be published and distributed to students and parents or guardians. Many school districts now make Codes of Student Conduct available on their websites.

A school can punish a student for misbehavior that occurred **on school ground**, or while **going to or from school**, such as on a school bus or when the student is walking to school.

Misconduct that occurs **off school grounds and/or outside of normal school hours** can be punished by a school district:

- If it occurs during lunchtime; or
- If it occurs at a school-sponsored event (prom)

B. School Discipline in Charter Schools

The rules regarding discipline in charter schools differ from those of public school discussed in this section. Below are some important details regarding discipline in charter schools.

1. Charters

Generally speaking, charter schools are not required to follow disciplinary the rules of the California Ed. Code (except the rules regarding discipline of special education students). Instead, charter schools must follow those rules that are written in its charter agreement. Therefore, it is best to look at a charter school's charter agreement in order to determine whether it is adhering to the rules of the charter. Many charter schools include in their charter that the school must follow the Ca. Ed. Code, however not all of them have this language. If there is a situation where your client is attending a charter school and is being disciplined by the school, it is best to review the school's charter documents. Charter documents are often found on a school's website or you can request to see them.

2. Charter School Expulsions

Normally, when a charter school wants to exclude a student, it will 'dismiss' the student. A dismissal is not the same as an expulsion and a student may still retain the right to attend his/her local public school. This is a highly contested area of the law and courts continue to review this issue—should you come along an issue with a client being expelled or dismissed from a charter school, it is best to seek advice from an education law

organization, like those listed below in Section 8, below.

C. Limits on School District's Authority to Impose Discipline

California regulations **prohibit the use of corporal punishment** (meaning physically punishing a student for an infraction of the discipline policy). Cal. Ed. Code § 48900. In addition, a school district cannot deny issuance of a diploma as a form of discipline if the student earned the credits to receive a diploma (but a school district can prohibit a student from participating in graduation ceremonies as a form of punishment). However, a school district may withhold a student's diploma if the student has damaged school property and has not paid for reparations.

1. Expelled Students Who Move Into a New School District

If a student has been suspended or expelled from a prior school district, charter school, or private school, the new school district does not generally have the authority to discipline the student for behavior that occurred in the prior school district. (See page 16 of Section 3 under enrollment options for expelled students, for more information about this topic.) For example, if the student is expelled from School District A for fighting with another student, and then the student moves to School District B, School District B must enroll the student and may not punish him or her for the misconduct that occurred prior to enrollment in the new district. If the student was expelled from the prior district for a more serious offense (outlined in section E, Zero Tolerance), then the new school can place the student in an alternative education program for the duration of the expulsion.

D. Behavior Which Can Result in School Discipline

Check the School District's Code of Student Conduct for prohibited behavior that might lead to discipline. Some examples include:

- Use of offensive language
- Abuse of computer and Internet privileges
- Repeated violations of the Code of Student Conduct
- Destruction or theft of property
- Bullying or harassment
- Assault on school personnel or another student
- Possession of a weapon

E. Zero Tolerance

There are limited situations where California law requires a school district to suspend a student and *Recommend* expulsion. Only if a student is involved in one of the following offenses must the school recommend expulsion:

- Possession or otherwise furnishing of a firearm;
- Brandishing a knife at another person;
- Unlawfully selling a controlled substance;
- Committing or attempting to commit a sexual assault; or
- Possession of an explosive

School districts shall expel, for a period of not less than one year, any student who is determined to have committed one of the above offense, however there are ways a student may request to be admitted back into the district before the completion of that time. Cal. Ed. Code § 48916.

F. Common Forms of School Discipline

Schools can discipline students by excluding them from school. There are some common forms of discipline that schools use:

1. Suspension: A suspension is an exclusion from school for **one (1) to 5 (5) school days** in a row. Cal. Ed. Code § 48911. A suspension may be imposed by the principal or person in charge of the school. An **in-school suspension** is exclusion from classes but not from school. The total number of days for which a student may be suspended from school may not exceed 20 school days in a year. Cal. Ed. Code § 48903. While a suspension may only last for a maximum of five days, the school can have a meeting and determine to move forward with an expulsion hearing for a student. If this is the case, the school may extend the suspension during the duration of time until the expulsion hearing determination is made, or the student may be placed in an alternative school during this time.

2. Expulsion: An expulsion occurs when the school board formally votes to expel a student after an expulsion hearing.

3. Disciplinary Transfer: A disciplinary transfer occurs when a student is transferred to a different school or program due to misbehavior that is prohibited by the district's Code of Student Conduct. Most disciplinary transfers are to alternative education programs. For more detailed information about alternative education programs, see the discussion on page 14 in Section 3 under Alternative Schools.

G. More on Suspensions, Expulsions, and Transfers

Schools must first follow certain procedural requirements before excluding a child from school or transferring him or her.

1. Suspensions

a. Rules that Apply to All Suspensions

A student may not be suspended for any length of time until the principal has an informal conference with the student where the student is **informed** of the reasons for the suspension and given an **opportunity to respond**. Cal. Ed. Code § 48911. (This can be as simple as the principal saying to the student: "Five students saw you push John down the stairs. You are being suspended for this behavior. What do you have to say for yourself?")

An informal conference need not be given in "emergency situations," when health, safety, or welfare of the school community is threatened. If a pupil is suspended without a conference before suspension, both the parent and the pupil shall be notified of the pupil's right to a conference and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two schooldays. Cal. Ed. Code § 48911(c).

The student's parents and the superintendent must be notified immediately **in writing** of the suspension. Students must be permitted to make up exams and work missed while they are serving a suspension. Cal. Ed. Code § 48911 (d).

2. Expulsions

In all cases where a school district is pursuing expulsion, a **formal hearing** must be held before the school board, an authorized committee of the board, or a qualified hearing examiner appointed by the board. The hearing to determine whether the student should be expelled must be held **within 30 school** days after the date that the principal or superintendent determines that the student has committed an offense. Ed. Code § 48918. Written notice of the hearing must be provided to the student and parents at least ten

(10) calendar days before the date of the hearing. Within ten (10) school days after the conclusion of the hearing, a determination whether to expel the student must be made.

The student has significant “**due process**” rights at the hearing, including the right to prior notification of the charges and the date of the hearing, the right to bring an attorney, the right to question and cross-examine witnesses, and the right to testify and present witnesses on his or her own behalf. The hearing must be recorded. There must be a written adjudication containing the findings and reasons for the board’s decision.

The student has 30 days to appeal the expulsion decision to the county board of education.

H. School Discipline for Students with Disabilities

In general, students with disabilities may be disciplined under the same rules as regular education students. However, the rules for suspension and expulsion are somewhat different. Students with disabilities have the right to additional procedural protections to ensure that they are not punished for behavior that was a “**manifestation**” of a disability. They can be expelled or transferred to an alternative education program only if their IEP Team determines that the misbehavior is unrelated to the child’s disability. Students with disabilities usually are entitled to a “**Manifestation Determination Review**” (MDR) prior to a “**change in placement**” for disciplinary reasons (20 U.S. Code 1415(k)). The following is an explanation of these terms:

1. Change in Placement for Disciplinary Reasons

This occurs when a student is suspended, expelled, or transferred to an alternative education program for more than 10 school days in a row.

Schools proposing the discipline must give the child’s parents written notice of the proposed discipline (provided on a form called Prior Written Notice). The school must inform parents of their right to challenge the proposed discipline, and parents must receive a copy of a Procedural Safeguards Notice which explains these rights.

2. Manifestation Determination Review

The school district, the parent, and relevant members of the child’s IEP Team must conduct a “manifestation determination review” within 10 school days of the school’s decision to change the child’s placement for disciplinary reasons. The child remains in his or her regular placement while this review is being done (with some exceptions discussed under A Note About Special Circumstances below).

The child’s misbehavior **IS** a manifestation of the disability if it:

- was caused by the disability,
- had a direct and substantial relationship to the child’s disability, or
- was the direct result of the school’s failure to implement the child’s IEP.

The parent is a member of her child’s IEP Team, but the school will ultimately make the decision about whether the child’s misbehavior was a manifestation of the child’s disability. The parent can disagree with an IEP Team’s determination that the child’s behavior was not a manifestation of the child’s disability, and the parent can challenge this decision at a special education due process hearing. The child can be expelled or transferred pending the outcome of the hearing, but if the hearing officer decides that the child’s misbehavior was a manifestation of his or her disability, then the child must be returned to the placement he or she was in prior to the disciplinary action (unless the parent and the

school agree otherwise). Additionally, if the behavior is determined to have been a manifestation of the student's disability, the IEP team must either conduct a functional behavior assessment and implement a behavioral intervention plan, or review an already existing behavioral intervention plan and modify it to better address the behavior.

3. A Note about Special Circumstances

A special education student can be immediately transferred to an interim alternative education placement for up to 45 school days without the IEP Team first conducting a manifestation determination review if the student has a weapon or drugs at school, or has inflicted serious bodily injury upon another person while at school. A manifestation determination review must still be carried out, however, even if the behavior is determined to be a manifestation of the child's disability, the school may still keep the student in an alternative placement for the 45 days.

4. A Final Thought about Preventing Behavior Problems

The best way to deal with discipline issues involving children with disabilities is to avoid them in the first place. If a child with an IEP has behavior problems that are impeding his ability to learn (or that of others), the child should have a **plan for positive behavior supports** in his IEP.

Note: A child who has not yet been determined to be eligible for special education services, may assert protections provided to students with disabilities if the school had notice of the child's disability by:

- The parent expressing concern in writing to the school that the child is in need of special education services;
- The parent having had requested an evaluation of the child; or
- The teacher or other school employee expressed concern about the child, directly to the director of special education

20 U.S. Code 1415(k)(5)

SECTION EIGHT:

WHERE TO GO FOR MORE HELP AND INFORMATION

There are other sources of information and additional resources you can use for further assistance with questions about the educational rights of youth returning from a delinquency placement.

A. Center for Juvenile Law and Policy

The Loyola Law School Center for Juvenile Law and Policy is a nonprofit legal organization devoted to fostering systemic reform of the Los Angeles Juvenile Justice system through ongoing research, discussion and advocacy. The center represents juvenile clients in delinquency cases, post-conviction cases, and on educational matters.

Loyola Law School
Casassa Building 508
919 Albany Street
Los Angeles, CA 90015
(213) 736-8339
<http://www.lls.edu/academics/centersprograms/centerforjuvenilelawpolicy/>

B. Public Counsel

Public Counsel is a pro bono law firm that advocates on behalf of children's education rights and works to improve policy affecting education protections. Public Counsel offers representation and advice on educational issues.

610 South Ardmore Avenue
Los Angeles, CA 90005
(213) 385-2977
<http://www.publiccounsel.org/>

C. Alliance for Children's Rights

The Alliance for Children's Rights is a nonprofit legal organization that protects the rights of impoverished and abused children so that they have safe, stable homes, healthcare and the education they need to thrive. The Education Program at the Alliance represents children, ages 0 to 22, in foster care who have special education needs. They also help enforce the educational rights of all children in foster care. You can find many helpful resources at their website.

3333 Wilshire Blvd., Suite 550
Los Angeles, CA 90010
(213) 368-6010
<http://kids-alliance.org/>

D. Learning Rights Law Center

Learning Rights Law Center is a legal services nonprofit that fights for a child's right to education. Learning Rights assists low-income families by providing free legal counsel and advice, advocacy, direct representation, education, training and policy work. LRLC has many wonderful resources available at its website.

205 S. Broadway, Suite 808
Los Angeles, CA 90012
(213) 489 – 4030
<http://www.learningrights.org/>

SECTION NINE: CONCLUSION

As a juvenile justice professional, you have an important and significant role in the educational aftercare of youth returning to the community from a delinquency placement. Hopefully, the information and guidance provided in this Toolkit will allow you to become even more informed about the rights of your clients in public school so that you can help your client take advantage of the various educational placement options. This Toolkit should also provide you with some basic knowledge of how the special education process should work and what other in-school support services might be available to students who are experiencing difficulty in school. In addition, this Toolkit should help you identify illegal roadblocks to enrollment in school and illegal or inappropriate disciplinary procedures.

If you have questions or concerns about a school's actions toward your client, make sure to speak up! Talk to the appropriate school officials. Share your concerns with the client's parents or guardians. Reach out to legal/advocacy organizations, if necessary.

In today's world, where having access to a high-quality education is becoming increasingly more important, the work you do in helping our youth reintegrate back into school can make an enormous difference in their long-term future. Thank you for taking the time to read this Toolkit.

TOOL 1:

**AUTHORIZATION TO RELEASE
EDUCATION RECORDS**

**STUDENT REPRESENTATIVE'S CONSENT FOR RELEASE OF EDUCATION RECORDS PURSUANT TO
CALIFORNIA EDUCATION CODE SECTIONS 56504 & 49065**

Student's Name _____

Date of Birth _____

Student's Parent, Guardian or Holder of the Student's Education Rights _____

I hereby authorize _____

to release the following **Education Records** to _____, Juvenile Probation Officer, and/or any other representative assisting my child, with the knowledge that such release discloses the fact that educational services have been or are being provided. This information shall be limited to **verbal and written** communication with the above, authorization for the above individuals to **visit the Student at the school site**, and releasing the following types of **educational records**, regardless of date, including any or all of the following:

- Attendance Records;
- Grades and/or Transcripts and/or Cumulative Histories;
- All State and School District test results, including STAR Testing, CAHSEE, CAT-6, Benchmark Testing, etc.;
- All Disciplinary Records, including Conferences, Contracts, Suspensions, Expulsions, and Hearing Decisions;
- All Communications regarding School and Student, between and among School and/or District Personnel;
Including Communication Logs, Notes of Telephone Calls, emails, Teacher Notes, Counselor's Notes, and Staff or Administrator Notes;
- Individualized Education Plan and all Special Education Assessments and associated testing protocols;
- Other School Records (specify) _____

As defined in Health and Safety Code section 123105, subdivision (e)(1), I am the "patient's (Minor's) representative." As defined in California Education Code 56504, I am either the student's parent or holder of the student's education rights. Furthermore, as the "patient's representative," and/or parent or holder of the student's education rights, I hereby authorize release of all information indicated above to the above named representatives.

Signature of Student _____ Date _____

Signature of Parent/Guardian or Education Rights Holder _____ Date _____

A PHOTOCOPY OF THIS RELEASE SHALL BE AS VALID AS THE ORIGINAL

Tool 2:

School Records Request

Month XX, 2010

[School official]

[School]

[Address]

[city], CA [zip]

RE: [Student name]

DOB: mm/dd/yyyy

Dear (Name):

I'm writing to request records for the above named student who is enrolled at your school. Records requested include:

- All special education and general education records, including:
 - Individual Education Programs;
 - Assessment records and reports;
 - All protocols of all tests administered by school personnel, including raw scores;
- Attendance records;
- Grade reports, transcripts;
- Health reports (nurse) and medication records;
- Hearing decisions;
- Discipline and expulsion records;
- All communications regarding school and student, between and among school and/or District personnel and/or parents;
- All other documents related to student and his education.

Please mail, courier or fax the records within five days of this request to:

Name, Street Address, City, Zip

A signed Client Consent for Release of Information form is attached. Please note: this is not a subpoena, so in order to protect privacy rights, records are to be released to an agent of our office only and not to the court under any circumstances.

If you have any questions, please contact me at (XXX) XXX-XXXX. Thank you in advance for your prompt response.

Sincerely,

(Your Name)

Tool 3:

IEP Request Letter

Date

VIA FIRST CLASS CERTIFIED U.S. MAIL
AND FACSIMILE No.: Fax Number

Principal
School name
Address

Dear Principal:

I'm the parent of **Student Name**, who is currently enrolled at your school. My child has not been doing well in school and I'm concerned about his educational progress. I am writing to request a special education assessment to see if he is eligible for special education services.

I hope that this assessment will aid in properly identifying and addressing my child's educational needs. I look forward to reviewing the assessment plan within 15 days. In addition, please schedule an IEP meeting after the special education evaluation is complete.

If you have any questions, please feel free to contact me. Thank you for your cooperation and assistance.

Sincerely,

Parent name
Address
Phone

CC: School District Office

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