

Legislative Changes Impact Placement of Foster Children

On September 26, 2012, Governor Brown signed into law Senate Bill (SB) 121 and SB 1568, both of which further clarify procedures for educational placements of foster children by amending the Education Code. The amendments will become effective on January 1, 2013.

Placement Decisions:

The purpose of SB 121, as noted by the Legislature, is to protect against placement decisions for foster children made outside of the Individualized Education Plan (IEP) process or by those who do not have educational rights relative to foster children.

In amending Education Code section 48853, SB 121 reaffirms and clarifies existing law requiring foster children to attend programs operated by the local education agency (LEA), except under certain circumstances, such as when the child's parent/guardian unilaterally determines that the child's best interests call for placement in another program. SB 121 modifies existing law in the instance where the foster child's parent/guardian makes a unilateral placement decision, and now requires the parent/guardian to submit a written declaration to the LEA setting forth the decision and acknowledging that the new program may not be financed or reimbursed by the LEA. LEAs may provide written notice of the need for a declaration to the parent/guardian. The timing of when the declaration is to be received by the LEA is not specified.

Further, SB 121 clarifies existing law for placement of foster children in programs at non-public, non-sectarian schools when public settings are not appropriate, which may only occur after convening an IEP team meeting. Following amendments to Education Code sections 56157 and 56342.1, the foster child's IEP must now specify in writing whether placement in a non-public, non-sectarian school is appropriate.

Additionally, SB 121 adds prohibitions on licensed children's institutions (LCI), within amendments to Education Code sections 56155.7 and 56366.9, against requiring a child to be identified as an individual with special needs as a condition of admission into the LCI, and against referring foster children to programs offered by non-public schools unless the child's IEP specifies the program is appropriate.

School of Origin:

The purpose of SB 1568, according to the Legislature, is to provide a foster child in high school the opportunity to remain in his/her school of origin (either the school attended when housed under foster care or his/her most recently attended school) after jurisdiction of the court is terminated and the child is no longer under foster care. The Legislature noted that the recent changes will avoid uprooting former foster children in high school by giving them the option of keeping their social and academic structure intact.

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In amending Education Code section 48853.5, SB 1568 affirms existing law that a foster child may continue his/her education in his/her school of origin for the duration that the court holds jurisdiction over the child. However, SB 1568 modifies existing law for former foster children in high school, who are now permitted to remain in his/her school of origin up until graduation if jurisdiction of the court is terminated when he/she is already enrolled in high school. Districts are not required to provide transportation to former foster children who remain in high school under this newly-amended code section, unless the student's IEP calls for transportation as a related service. Former foster children in grades 1 through 8, however, may only finish out the academic year in their school of origin after jurisdiction is terminated, which is consistent with previous laws for all former foster children.

SB 1568 also provides additional duties to LEA-designated educational liaisons for foster children. Existing law provides that liaisons are to assist in enrollment, transfer, placement, and checkout of foster children within the LEA; however, SB 1568 provides that liaisons for foster children may also, if so designated by their superintendent, notify appropriate parties of a foster child's expulsion proceedings and recommendations.

As both SB 121 and SB 1568 likely will require additional costs mandated by the State, both bills provide provisions to pursue reimbursement of these costs pursuant to statutes within the Government Code.

If you have any questions regarding SB 121 and SB 1568, or other issues related to educational placement of foster children, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).

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