



### POLICY BRIEF - AB 490 IMPLEMENTATION

#### LEAST RESTRICTIVE EDUCATIONAL PLACEMENTS:

Students in foster care are entitled under federal and CA laws to be placed in the “**least restrictive** educational programs” that can meet their needs. 20 USC §1412(a)(5)(A); EC §§ 48853(g); 56031. This means that school districts and educational decision makers cannot track students into alternative educational placements based solely on their foster care status or academic performance. Students in foster care are also entitled to have “*access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils.*” EDUC. CODE § 48850(a). This is especially important because students enrolled in alternative schools generally *do not* have access to the same academic resources, services or enrichment activities that are available in regular comprehensive schools.

- **Placement of Last Resort:** Under AB 490, alternative educational settings are specifically considered the educational placement of last resort for foster youth: “*Before any decision is made to place a pupil in a juvenile court school. . . a community school . . . or other alternative educational setting, the parent or guardian, or person holding the right to make educational decisions for the pupil . . . shall first consider placement in the regular public school.*” EDUC. CODE § 48853(b).
- **Priority Placement - Mainstream Public School:** Children placed in a licensed children’s institution or a foster family home shall attend a mainstream public school program unless: the child has an individualized education program (IEP) requiring placement in a non-public school or agency or in another local educational agency; or the person holding educational rights determines that it is in the best interest of the pupil to be placed in another educational program, or that the pupil remains in his or her school of origin pursuant to EDUC. CODE § 48853.5(d). EDUC. CODE § 48853(a)(1)-(3).
- **Non-conditional placements:** Another CA bill (AB 1858, Steinberg, 2004) created a law that specified that group homes/licensed children’s institutions (LCIs) may *not* require as a condition of admission that a child be identified as an individual with special needs or attend a non-public school (NPS) affiliated with the LCI. EDUC. CODE §§ 56155.7; 56366.9.

Although legally, no student can be *involuntarily* placed in an alternative program without following the procedural protections mandated by the Education Code, many foster youth are involuntarily placed with little regard to such requirements. (See e.g., EDUC. CODE §§ 48430-48438, continuation high schools; EDUC. CODE §§ 1980-1986, community schools; EDUC. CODE §§ 48660-49667, community day schools; EDUC. CODE §§ 51745-51749.3,

independent study). Others are convinced to *voluntarily* enroll in such programs because they lack sufficient credits or are informed, often inaccurately, that they will graduate sooner or more easily make up credits in such programs. Indeed, some advocates would argue that foster youth are placed or “warehoused” in alternative schools inappropriately and contrary to law.

Students in foster care should not be transferred to a continuation high school or other alternative program solely on the basis that they are in foster care, are not performing well academically in school, are behind in their academic work, or have insufficient credits. Rather, these students should be given meaningful access to appropriate educational programs and supplemental services that are funded to ensure that school districts address the needs of *all* academically “at risk” students in the comprehensive school setting.

### **Possible Courses of Action:**

- 1) Need to Gather Enrollment Data:** To adequately address this issue, it would be extremely helpful for all stakeholders to have more information on students in foster care who are enrolled in mainstream and alternative school programs. Indeed, AB 1858 also created the requirement that the California School Information Services system disaggregate data on students in foster care. EDUC. CODE § 49085. It is imperative that this existing requirement be fulfilled, and that school districts also disaggregate enrollment data per school site and program for students in foster care so the state can adequately assess whether these provisions of AB 490 are being followed.
  
- 2) Foster Care Students – Alternative Program Enrollment Survey:** Until enrollment data is routinely disaggregated for foster youth, school districts can conduct their own surveys concerning the enrollment of students in foster care. They should gather at least the following information on enrollment in NPS, Juvenile Court schools, Continuation High Schools, Adult Schools, and other settings:
  - The number of foster care students **not** currently enrolled in a regular school, with the type of alternative placement for each youth by school site and grade level;
  - The race, ethnicity and type of out-of-home placement for these students;
  - For each student:
    - How the student enrolled in the alternative school and whether the placement was handled properly;
    - How long the student has been enrolled and if/when the student is scheduled to return to a comprehensive school site;
    - Whether the student’s needs can currently be met by a comprehensive school and if so, when a move is scheduled to occur;
    - If one is offered, the specific barrier to enrollment in a regular school, e.g.:
      - lack of credits (which may be exacerbated by failure to accept partial credits);
      - need to serve out expulsion term;
      - placement in a group home; or

- need to make up credits or graduation requirements.

Each school district could also survey all alternative education sites within their district boundaries to determine the percentage of their enrolled students who are in foster care.

The results of these surveys should be analyzed to identify whether students have been improperly placed in alternative programs. If such placements have occurred, steps should be taken to immediately facilitate the students' enrollment in a comprehensive school. Procedures, policies and protocols should also be reevaluated to future placements of foster youth in alternative programs will follow the proper procedures.

**3) State Guidance and Monitoring:** As with other AB-490 implementation issues, the enrollment of foster youth in least restrictive environments could also be supported by state-level guidance and intervention:

- **Statewide educational guidance:** The Superintendent and/or the State Board could encourage school districts to conduct the alternative program enrollment survey and remind them of the provisions of AB 490 related to the enrollment of foster youth in the least restrictive educational program.
- **Regulations:** Through the regulatory process, the State Board could direct school districts to adopt policies and procedures related to the enrollment of foster youth in the least restrictive educational programs and to disaggregate enrollment data for foster youth enrolled in alternative schools. The State Board could also be directed by the Legislature to promulgate regulations to effectuate a specific Education Code provision to accomplish this.
- **Local Policies & Procedures:** School districts could be required by legislation to adopt policies, procedures and protocols governing enrollment of foster youth outside of mainstream schools and/or could be directed to conduct the alternative program enrollment survey described above.
- **Inclusion in CPM:** If AB 490 is included in the CDE's Categorical Program Monitoring (CPM) process, the proper enrollment of foster youth in least restrictive environments should be included as a compliance item for review.
- **Foster Youth Services Funding:** Until all school districts are required to disaggregate foster youth student enrollment, school districts accepting Foster Youth Services funding can be required to conduct the alternative program enrollment survey. CDE could also survey school districts to identify model policies, procedures and protocols governing alternative school enrollment for foster youth and could post these models on its website.

**4) CSBA:** As with the implementation of other AB 490 provisions, CSBA could develop model policies, procedures and protocols concerning the educational placement of

foster youth consistent with the provisions of AB 490 and could encourage its members to conduct the alternative program enrollment survey.

**5) CDSS:** The California Department of Social Services Community Care Licensing Division can enforce the mandate that licensed children's institutions not require an IEP or attendance at a non-public school as a condition of placement for foster youth through its complaints and unannounced visits procedures. The Department could also release an All-County Letter reiterating these laws.