

# ***Every Child, Every Hearing***

**HOW TO ENSURE THE DAILY WELL-BEING OF CHILDREN  
IN FOSTER CARE BY ENFORCING THEIR RIGHTS**



ADMINISTRATIVE OFFICE  
OF THE COURTS

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CENTER FOR FAMILIES, CHILDREN  
& THE COURTS

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## **HOW TO ENSURE THE DAILY WELL-BEING OF CHILDREN IN FOSTER CARE BY ENFORCING THEIR RIGHTS**

*Transitioning a child into adulthood requires constant attention to all aspects of the child, including the child's physical and mental health, social and cognitive development, and education. It is the responsibility of all court participants to help children who come before the juvenile court with their development and ultimately with their transition into adulthood. Whether you are a parent or guardian, a relative, a foster parent, an Indian custodian, a tribal member, a social worker, a probation officer, a Court Appointed Special Advocate, a mentor, an important individual in the child's life, an attorney, a teacher, an educational representative, an employer, a doctor, a nurse, a therapist, or a judicial officer—whatever your role, our shared responsibilities are great.*

*This booklet will assist the court and other interested persons who have this responsibility. It offers key questions (with accompanying citations) that must be asked and followed up on for every child. For children served by the juvenile court, consistent inquiry into these questions is necessary to help transition them back to their home of origin or to another permanent plan when reunification is not possible.*



ADMINISTRATIVE OFFICE  
OF THE COURTS

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CENTER FOR FAMILIES, CHILDREN  
& THE COURTS

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## **A MESSAGE FROM CHIEF JUSTICE RONALD M. GEORGE**

Approximately 88,000 children are in foster care at any given time in California. Courts play an important role in the life of a child in foster care. No child enters or leaves care without a judge's decision. When a child comes before juvenile court, the many responsibilities of caring for and assisting the child become shared by the family, the court, court participants, and the child's home placement and service providers. It is therefore critical that the court and others who share this responsibility have vital information concerning the child's mental, physical, and emotional health and education and development.

This booklet offers a comprehensive set of questions that will help us gather information and share responsibility for ensuring that every child's rights are enforced at every hearing. I hope you find this booklet useful as you work to help California's children in foster care.

A handwritten signature in black ink that reads "Ronald M. George". The signature is written in a cursive style with a large initial "R" and "G".

Ronald M. George  
Chief Justice of California

## HOW TO USE THE CITATIONS

The information and questions contained in this checklist are based on federal and state laws, rules, regulations, forms, and manuals and on general information relating to children. The following information will help you find the referenced citations:

### **Federal and state laws are contained in code books:**

- U.S.C. = United States Code
- Ed. Code = California Education Code
- Fam. Code = California Family Code
- Gov. Code = California Government Code
- Health & Saf. Code = California Health and Safety Code
- Welf. & Inst. Code = California Welfare and Institutions Code

### **Laws are often further explained in regulations and rules of court:**

- C.F.R. = Code of Federal Regulations
- FR = Federal Register
- Cal. Code Regs. = California Code of Regulations
- Cal. Rules of Court = California Rules of Court

Forms are often used to help comply with laws. The *Health and Education Questionnaire* (Form JV-225), *Order Limiting Parent's Right to Make Educational Decisions for the Child and Appointing Responsible Adult as Educational Representative—Juvenile* (Form JV-535), and *Local Educational Agency Response to JV-535—Appointment of Surrogate* (Form JV-536) may be found at this Web site: [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

### **Other references:**

- MPP = California Manual of Policies and Procedures, Child Welfare Services
- *Ibid.* means the statement is based on the previous citation.
- Citations beginning with *www* are Web site addresses that require Internet access.

*These questions are of a sensitive and private nature. Juvenile court judges should encourage all persons to respect the child's privacy and emotions when addressing the child's needs.*

## GENERAL COURT-RELATED QUESTIONS FOR THE INITIAL OR DETENTION HEARING

### Physical Health

- **Child's history.** At the initial hearing, did the court direct each parent to provide the child's complete medical, dental, mental health, and educational information to the child welfare agency? Welf. & Inst. Code, § 16010(f)
  - Did the parents submit a completed *Health and Education Questionnaire* (form JV-225)? Welf. & Inst. Code, § 16010(f)
  - At the dispositional hearing, did the court ensure that the parents provided this information? Welf. & Inst. Code, § 16010(f)
  - Has an assessment of the child's mental health, physical health, and educational needs begun? Has an assessment of any identified substance abuse concerns begun?
  - Did the child arrive at the temporary placement with required medication, if any?

### Education

- **Educational rights.** Are there reasons for the court to consider temporarily limiting the parent's or guardian's educational rights concerning the child and appointing a responsible adult to make educational decisions? Welf. & Inst. Code, § 319(g); see Welf. & Inst. Code, §§ 361, 726; Gov. Code, § 7579.5
- **School of origin.** Has the parent or other person with educational rights determined that remaining in the school of origin is in the child's best interest? Ed. Code, § 48853.5(d)
  - If yes, is the child's local educational agency allowing the child to continue attending the school of origin for the duration of the academic year? Ed. Code, § 48853.5(d)(1)
  - If no, see **Change of School**, section 4b.

### Mental Health

- How is the child responding emotionally to separation from the family of origin?

- Was the child receiving emotional or mental health supportive services before removal?
- Does it appear that mental health services are necessary to assist the child's adjustment to foster care?
- If the child was detained from his or her parent or legal guardian as a result of the child's severe mental health needs, did the child's Individual Education Plan (IEP) team refer the child for AB 3632 and AB 2726 mental health services, and was residential placement considered? If not, why not? Cal. Code Regs., tit. 2, § 60040, 60100
- Does the child have a current IEP that identifies the child as "emotionally disturbed" and makes the child eligible for residential treatment? *Note: Jurisdiction may not be necessary if the only reason for the child welfare agency's involvement is the need for residential services. AB 3632 and AB 2726 services are available to all eligible children and are not limited to children placed in foster care.*

### Procedural and Substantive Due Process Rights Under the Indian Child Welfare Act (ICWA)

- Have the court, social worker, and probation officer asked the parents and all adults appearing at the hearing whether the child may have Indian ancestry? Welf. & Inst. Code § 224.3; Cal. Rules of Court, rule 5.664
  - If yes, have the court and the social worker or probation officer complied with applicable ICWA requirements such as notice, active efforts, and placement requirements? 25 U.S.C. § 1900 et seq.; Welf. & Inst. Code, §§ 224-224.6; Cal. Rules of Court, rule 5.664

### Relatives

- Has the court conducted a parentage inquiry? Welf. & Inst. Code §316.2
- Has the court ordered the parent to disclose to the social worker the contact information for any known relatives of the child? Welf. & Inst. Code § 319(f)
- Has the social worker investigated placement with an appropriate relative? Welf. & Inst. Code §§ 309(d), 319(f), 361.3, 361.4

**These questions are of a sensitive and private nature. Juvenile court judges should encourage all persons to respect the child's privacy and emotions when addressing the child's needs.**

For the following questions, consider:

- What has been done to address any obstacles to respecting these rights?
- What more needs to be done to ensure that these rights are protected?

Ask these of the child (if the child is of cognitive age), the child's advocate, the placing agency, and any other interested person.

## RIGHTS OF FOSTER YOUTH

For additional rights of foster youth, review Welf. & Inst. Code, § 16001.9; Cal. Code Regs., tit. 22, §§ 83072, 84072, 89226, 89372.

- **Searches.** Is the child protected from unreasonable searches of personal belongings? *Ibid.*
  - Does the child have storage space to safeguard his or her personal belongings? Are the child's valuables safeguarded? *Ibid.*
- **Religion.** Is the child given the opportunity to attend religious activities of his or her choice and not forced to attend other religious activities? *Ibid.*
- **Discrimination and harassment.** Is the child protected—at the placement, at all activities, and in the delivery and determination of need of all services—from discrimination or harassment on the basis of actual or perceived ethnic group identification, race, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status? *Ibid.*
  - Is personal information kept confidential and disclosed only when appropriate? *Note: Inappropriately disclosing a young person's foster-care status, gender identity, sexual orientation, political affiliation, religion, race, or disability could subject the young person to rejection, ridicule, and even violence.*
- **Placement.** Is the child's placement safe, comfortable, and healthy? *Ibid.*
- **Protection from abuse.** Is the child protected from physical, sexual, emotional, or other abuse and protected from corporal punishment in his or her placement? *Ibid.*
- **Respect.** Is the child being treated with respect? *Ibid.*
- **Rights and needs.** Are the child's needs being met and his or her rights being respected?

- **Equal access.** Is the child receiving fair and equal access to all available services, placements, care, treatment, and benefits? *Ibid.*
- **Daily needs.** Is the child receiving adequate clothing and sufficient and healthy food? Is the child receiving an allowance, if placed in a group home? *Ibid.*
- **Prevention or treatment of pregnancy.** Is the child's right to consent to medical care related to the prevention or treatment of pregnancy respected and ensured? Fam. Code, § 6925; Health & Saf. Code, § 123450 *Note: Parental consent is not required for abortions.* American Academy of Pediatrics v. Lungren (1997) 16 Cal.4th 307

## RIGHTS IN JUVENILE COURT PROCEEDINGS

- **Case plan.** Does the child give input into his or her own case plan, if appropriate? Welf. & Inst. Code, §§ 16001.9, 16501.1
- **Attendance.** Does the child attend court hearings and have an opportunity to speak to the judicial officer? Welf. & Inst. Code, § 16001.9
- **Informed of rights and complaint procedures.** Does the social worker review the child's rights with him or her at least every six months? Welf. & Inst. Code, § 16501.1(f)(4)
- **Contact information.** Does the child have contact information for the California Foster Care Ombudsman's Office (telephone 877-846-1602), the child's social worker or probation officer, and the child's attorney?
- **Indian Child Welfare Act.** Have the court and placing agency both complied with applicable ICWA requirements, including inquiry, case plan, expert witness, burden of proof, and placement requirements of the Indian Child Welfare Act? 25 U.S.C. § 1901 et seq.; Welf. & Inst. Code, §§ 224-224.6; Cal. Rules of Court, rule 5.664
- **Immigration.** If the child did not have legal residency when he or she became a dependent—and if the court has found that family reunification is no longer an option, that it is not in the child's best interest to return to his or her home country, and that the court will be ordering a permanent plan—has immigration counsel or specialized assistance been provided to the child to complete an application for Special Immigrant Juvenile Status? 8 U.S.C. § 1101(a)(27); 8 C.F.R. § 204.11 (1993); California Manual of Policies and Procedures, Child Welfare Services (MPP) 31-236(i)(4)(D)

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## HEALTH CARE

### Health and Education

- Did the child receive a medical and dental examination within 30 days of placement? MPP 31-405.1(n)(1)
- Does the child's current case plan include a summary of his or her health and education information? Welf. & Inst. Code, § 16010(a)
- Does the current court report include a copy of the child's current health and education summary? Welf. & Inst. Code, § 16010(b)
- Does the child have a complete and up-to-date health and education passport? Welf. & Inst. Code, § 16010

### Insurance

- Does the child have Medi-Cal or other health insurance? 42 U.S.C. § 1396 et seq.

### Appointments and Exams

- **Prevention.** Is the child receiving ongoing primary and preventive health-care services? Welf. & Inst. Code, § 16001.9(a)(4)
- If the child is less than three years old, is the child receiving preventive health-care examinations on the periodicity schedule required for his or her age group as recommended by the American Academy of Pediatrics? Cal. Code Regs., tit. 17, § 6847; [www.cispimmunize.org/LZSchedule\\_2006.pdf](http://www.cispimmunize.org/LZSchedule_2006.pdf)
- If three years or older, is the child receiving annual preventive health-care examinations? If not, why not? Cal. Code Regs., tit. 17, § 6847; California Department of Social Services All County Information Notice No. 1-82-05
  - When was the child's last well-child exam? When should the next one be scheduled? Do such examinations meet Child Health Disability Prevention (CHDP) criteria? 42 U.S.C. § 1396 et seq.; MPP 31-405.1(n)
- When was the child's sight last evaluated? When should the next examination be scheduled?
  - Does the child have, or need, any glasses or contact lenses?
- When was the child's hearing last evaluated? When is the next examination due?
  - Does the child have, or need, any hearing aids?
- If appropriate, has the child been placed in a home that serves medically fragile children? Welf. & Inst. Code, §§ 17710, 17730-17733
- **Immunization.** Is the child up to date on his or her immunizations? Cal. Code Regs., tit. 17, § 6846(b)(9)
- **Dental.** If the child is at least one year old, is he or she receiving dental examinations every six months, as recommended by the American Academy of Pediatric Dentistry? CHDP Provider Information Notice 04-13; Welf. & Inst. Code, § 14132.88; [www.aapd.org/media/Policies\\_Guidelines/G\\_Periodicity.pdf](http://www.aapd.org/media/Policies_Guidelines/G_Periodicity.pdf)
  - When was the child last seen by a dentist? When is the next examination due?

### Basic Health Care

- Does the child have a primary health-care physician?
- Does the child have any current medical problems?
- Is the child taking prescribed medications? If yes, does the child have these medications at the current placement?
- Have any substance abuse concerns been identified? If yes, how are these concerns being addressed? See Fam. Code §6929; Welf. & Inst. Code, § 359

### Information Sharing and Follow-Up

- Has the placing agency provided the substitute care provider with the child's medical history? Welf. & Inst. Code, § 16010(c); MPP 31-405.1(s)(2)
- Who is taking the child to medical appointments?
  - Is this person aware of the child's health-care needs?
- Are all identified health-care needs being followed up with appropriate referrals and treatment? Cal. Code Regs., tit. 17, § 6850
- Has the substitute care provider received information about CHDP services? MPP 31-405.1(m)

### Privilege and Consent to Medical Care

- Has the child invoked the physician-patient privilege? Welf. & Inst. Code, § 317(f)
- Has the child invoked the right to consent to medical care related to the prevention or treatment of pregnancy? Fam. Code, § 6925; Health & Saf. Code, § 123450 *Note: Parental consent is not required for abortions.* American Academy of Pediatrics v. Lungren (1997) 16 Cal.4th 307
- Has the child invoked the right to consent to medical care related to the diagnosis or treatment of sexual assault or, if the child is age 12 or older, of sexually transmitted diseases or drug- or alcohol-related problems? Fam. Code, §§ 6926, 6928-6929; Welf. & Inst. Code, §§ 220-222

### Children Exiting the Juvenile Court System

- If the youth will soon be transitioning from the child welfare system, has he or she received:
  - A recent comprehensive health and dental examination? Welf. & Inst. Code, §§ 391, 16010
  - Assistance in understanding his or her health-care needs and in locating health-care providers that can meet those needs? *Ibid.* For further discussion, see **Transition From Juvenile Court Jurisdiction**, section 4c.

### Additional Health Services

- Does the child have any physical, mental, or learning disabilities that may qualify for accommodations or services? 42 U.S.C. § 12101 et. seq.; 29 U.S.C. § 794; 20 U.S.C. § 1400 et seq.; 34 C.F.R. 104.1 (2000) et seq.
- If yes, see **Accommodations and Services**, section 6b.



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*Relationships, home life, daily activities, and the information necessary for a child to transition to adulthood are core personal rights of every child. Children in foster care often experience frustration and obstacles when trying to enjoy these basic, daily rights. Ensuring constant attention to these rights will strengthen the child's experience of self, permanency, community, and stability.*

## RELATIONSHIPS AND LIFELONG CONNECTIONS

- **Family.** Is the child always allowed to contact and visit with his or her family members with whom the court has not limited contact, and with his or her Tribe or Indian custodian, social worker or probation officer, authorized representative, attorney, CASA, Community Care Licensing Division of the State Department of Social Services, and the State Foster Care Ombudsman? Welf. & Inst. Code, §§ 16001.9, 16501.1
    - Has “Family Finding” been done to identify the youth’s family and connections? See [www.aecf.org/initiatives/familytofamily/](http://www.aecf.org/initiatives/familytofamily/)
    - If yes, who was found and what actions have been taken to engage extended family and other connections (e.g. a family meeting/conference)? See [www.f2f.ca.gov/](http://www.f2f.ca.gov/) and [www.cyp.org](http://www.cyp.org)
  - What effort is the placing agency making to find or contact the child’s extended family members?
  - **Siblings.** Are siblings placed together? If not, has the social worker or probation officer made diligent efforts to place siblings together and to develop and maintain sibling relationships? Welf. & Inst. Code, § 16002(b), 306.5, 362.1
    - For dependent children, does the social worker’s report address the nature of the sibling relationship, the frequency and nature of sibling visitation, and the impact of the sibling relationships on the child’s placement and permanency planning? Welf. & Inst. Code, § 366(a)(1)(D)
  - **Important individuals.** If the child is more than 10 years old and has been in out-of-home placement for more than six months, does the social worker ask the child whether there are other individuals who are important to the child? Welf. & Inst. Code, § 366.1(g)
    - Who are the important individuals in the child’s life? Has placement with these important individuals or a nonrelative, extended family member been considered? Welf. & Inst. Code, §§ 366.1, 362.7, 727
    - Does the social worker help to maintain those relationships if it is consistent with the child’s best interest? Welf. & Inst. Code, § 366.1(g)
  - **Contact.** Does the child have access to a telephone to make and receive confidential calls to and from anyone with whom the court has not limited contact? Welf. & Inst. Code, § 16001.9; Cal. Code Regs., tit. 22, §§ 83072, 84072, 89372
- Note: If the court limits specific contacts, it is appropriate for a placing agency or caregiver to restrict a child’s calls with those individuals, but they may not restrict calls beyond court limitations.*
- Is the child receiving unopened mail (unless prohibited by court order)? Welf. & Inst. Code, § 16001.9; Cal. Code Regs., tit. 22, §§ 83072, 84072, 89372

## STABILITY IN PLACEMENT

### Home Placement

- Who is the child placed with? Is this caregiver committed to being in the child’s life permanently? Is the caregiver committed to legalizing that commitment (i.e. reunification, adoption, guardianship)? 42 U.S.C. § 671 (a)(15)(F); Welf. & Inst. Code, §§ 358(b), 366.21, 727.2, 727.3, 727.4
  - If not, what characteristics of the relationship make it a viable, permanent lifelong connection?
- During the past six months, what specific steps have been taken by all court participants to finalize the child’s permanent plan and give the child a permanent placement? Welf. & Inst. Code §§ 366.21, 366.3, 727.2, 727.3, 727.4, 16501.1
  - Is the child present in court to discuss permanency? If not, why not?
  - If the child is not returning home, what postpermanency support services are needed and planned?
- Was proximity to the child’s school taken into consideration when determining placement? Welf. & Inst. Code, § 16501.1(c)(1)

### School Placement

- Where is the child going to school and was placement based on the best interests of the child? Ed. Code, §§ 48850(a), 48853(g)
- Is the child now attending an alternative school (e.g. continuation, community, independent study) or a regular comprehensive school? If the placement is an alternative school, on what basis was this placement made? Ed. Code, § 48853(b)
- Has the child been placed in a nonpublic school onsite at the child’s placement?
  - If yes, is this school placement based on an IEP and has the person who holds education rights consented? Ed. Code, § 48853(a)(2)

*Note: Foster youth are entitled to be placed in the least restrictive educational placement. Regular comprehensive school placements must be considered first, before any alternative school placement. Ed. Code, § 48853(b)&(g)*

Foster children with special needs may be placed in a nonpublic school only if the district has no public program that can meet the child’s needs or the person who holds educational rights consents. Ed. Code, §§ 48853, 56157(a)

- Are the educator, advocates, court and emergency placement, group home or caregiver working together to maintain a stable school placement? Ed. Code, §§ 48850(a), 48853.5(d)(1), 48853.5(d)(6); if the child is awaiting foster-care placement, 42 U.S.C. §§ 11434a(2)(b)(I), 11432(e)(3)(c)(i) (III)(cc)
  - Was transportation to and from school provided? If not, did this affect the child’s educational placement? If the child is awaiting foster-care placement, 42 U.S.C. §§ 11434a(2)(b)(I), 11432(e), (g)
- While in foster care, how many schools has the child attended before this one?
- Is the child safe in the school, surrounding community, and en route to and from school?

### Change of Home Placement

- Is there a plan to change the child's placement?
  - If yes, how is the proposed change of placement in the child's best interest? Welf. & Inst. Code, §16501.1(c); see Welf. & Inst. Code, §§ 361, 726; Ed. Code §§ 48853, 48853.5
- Was the placement based on a selection of a safe setting that:
  - Actively involved the child?
  - Is the least restrictive or most family-like?
  - Is the most appropriate setting available?
  - Is near the parent's or guardian's home or Tribe?
  - Is consistent with the selection of the environment best suited to meet the child's special needs and best interest?
    - Promotes educational stability by taking into consideration nearness to the child's school and Tribe? Welf. & Inst. Code, § 16501.1(c); see Welf. & Inst. Code §§ 361, 726; Ed. Code, § 48853
- How many times has the child's placement changed during this stay in foster care?
- If the placement has changed, have all required medications been provided to the new caretaker?
- **School of Origin.** Is the child's local educational agency allowing the child to continue attending the school of origin for the rest of the academic year? Ed. Code, § 48853.5(d)(1)
  - If no, has this resulted in a change of school for the child?
  - If yes, see **Change of School** below.
- **Impact on Child.** What impact has this move had on the child and the child's educational progress? Welf. & Inst. Code, § 16501.1(c); Ed. Code, § 48853.5

### Change of School

*Note: Proper and timely transfer between schools is the responsibility of both the local educational agency and the county placing agency. Ed. Code, § 49069.5(b)*

- Every school must have a Foster Youth Educational Liaison. Did he or she facilitate the enrollment of the child into the new educational placement? Ed. Code § 48853.5(b); [www.cde.ca.gov/ls/pf/fy/ab490contacts.asp](http://www.cde.ca.gov/ls/pf/fy/ab490contacts.asp)

- **Notice—county placing agency.** Did the county placing agency notify the Local Education Agency (LEA) as soon as possible of the date the child will be leaving the school and request that the child be transferred? Ed. Code, § 49069.5(c)
  - If the child has a disability or an IEP, at least 10 days before the placement change, did the county placing agency notify both the LEA providing the special education program for the child and the receiving LEA of the impending placement change? Gov. Code, § 7579.1(a)
- **Efforts—county placing agency.** What were the placing agency's efforts to maintain the child in the school of origin, despite the foster care placement change? Welf. & Inst. Code, § 16501.1(c); Ed. Code, § 48853.5(d); if the child is awaiting foster-care placement, 42 U.S.C. §§ 11434a(2)(b)(I), 11432(g)(3)(B)(i)
- **Waiver.** Was the child given the opportunity to continue at his or her school of origin for the duration of the academic school year before a placement change occurred? Did the child and the person holding educational rights agree to waive the child's right to attend the school of origin? Ed. Code, § 48853.5(d)
- **Transfer of records—LEA.** After receiving the transfer request, did the LEA transfer the child out of school and deliver the records, including any evaluations of a child with a disability, to the next educational placement within two business days? 20 U.S.C. §§ 1414(b)(3)(D), 1414(d)(2)(C), 1412; 34 C.F.R. §300.304(c)(5) (2006); Ed. Code, §§ 48853.5(d), 49069.5(d), (e)
  - Did the child's school records include a determination of seat time, full or partial credits earned, classes, grades, immunization, and (if applicable) special education or plans under section 504 of the Rehabilitation Act of 1973 (hereinafter "section 504")? Ed. Code, §§ 48645.5, 49069.5
- **Enrollment—new school.** Did the new school immediately enroll the child, even if the child's records, transcripts, and other documentation had not been transferred? Ed. Code, § 48853.5
  - If not, who should be directed to ensure that records are transferred?
- **Resulting absences.** Were the child's grades and credits calculated as of the date the child left school? Ed. Code, § 49069.5(g)

### EXTRACURRICULAR ACTIVITIES

- Is the child encouraged and permitted to participate in extracurricular, enrichment, social, and recreational activities consistent with his or her interests and geared toward the community or communities with which he or she identifies? Welf. & Inst. Code, § 362.05, 16001.9

## TRANSITION INTO ADULTHOOD/TERMINATION OF JUVENILE COURT JURISDICTION

▪ **Preparation for adulthood.** For a child aged 15 to 17. 42 U.S.C. § 675(1)(D), 42 U.S.C. § 675(5)(C), 20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 20 U.S.C. § 1414(d)(1)(B)(vii); Ed. Code, § 56345(a)(8); Welf. & Inst. Code, §§ 366.3(e)(10), 391, 10609.3, 10609.4, 11403.2, 16001.9; Cal. Code Regs., tit. 22, §§ 83072, 84072, 89372

- Is the Transitional Independent Living Plan (TILP) current, and does it specify services that will assist the child's transition to adulthood?
  - Is everyone who is involved in the TILP fulfilling their responsibilities to ensure that the child receives appropriate transition services?
  - Is the child receiving independent living services? Are there any obstacles preventing the child from receiving these services that must be addressed?
  - Has the child achieved his or her TILP goals?
  - Has a child with a disability been invited to attend an IEP team meeting to discuss transition services and postsecondary goals? 20 U.S.C. § 1414 (d)(1); 34 C.F.R. §§ 300.320(b) (2006), 300.321(b) (2006); Ed. Code §§ 56043(g)(1), 56345.1
  - Does the child's IEP include transition services that are scheduled to begin no later than the child's 16th birthday or, if just determined eligible for an IEP, as soon as the IEP goes into effect? *Ibid.*
- **Transition from juvenile court jurisdiction.** For a child about to transition out of juvenile court jurisdiction, has the county provided him or her with:
- Written information about his or her case, including family and placement history and the location of the child's siblings under juvenile court jurisdiction?
  - Documents, including a social security card, birth certificate, health and education summary, ID card, death certificate of parent(s), and proof of citizenship or residence?
  - Immigration counsel or specialized assistance to complete an application for Special Immigrant Juvenile Status if the child did not have legal residency at the time of becoming a dependent? MPP 31-236
  - Referral to available transitional housing or help getting other housing, a job, or financial support?
  - Help applying for financial aid for college or vocational training?
  - The necessary education and support to obtain a driver's license?
  - Assistance with obtaining health insurance?
  - A copy of his or her health and education summary? Welf. & Inst. Code, § 391

- **Employment and savings.** Does the child have a job, an "emancipation bank account," and the opportunity to manage his or her own resources? Welf. & Inst. Code, § 16001.9
- **Proof of dependency/wardship.** Did the placing agency give the youth a proof of dependency or wardship card that may assist him or her in receiving financial aid, grants, and scholarships to pursue educational goals? MPP 31-236(i)(4)(F)
- **Health care.** Has the child received a recent comprehensive health and dental examination? Has the child received assistance in understanding his or her health-care needs and in locating health-care providers who will be able to meet those needs? Welf. & Inst. Code, §§ 391, 16010
- **Medi-Cal and insurance.** Has the child received information regarding Medi-Cal eligibility and assistance in completing an application for Medi-Cal? Has the child received assistance in obtaining other health insurance? Welf. & Inst. Code, § 391
- **Social security.** Is the child eligible to receive social security?
  - Is the child receiving this benefit?
  - If yes, who is currently the payee, and who will be the payee in the future?

*These questions are of a sensitive and private nature. Juvenile court judges should encourage all persons to respect the child's privacy and emotions when addressing the child's needs.*

## EMOTIONAL HEALTH

- How is the child emotionally responding to the separation from the child's family of origin? To school? To placement?
- What else can be done to support the development of the child?

### Screening/Medication

- Has the child received a mental health screening?
  - If yes, what screening tool or tools were used?
- Did the results of the screening indicate the need for further assessment?
  - If yes, has a further assessment been completed?
- Is there a primary diagnosis?
- Is the child taking any psychotropic medication? Welf. & Inst. Code, § 369.5
  - Is there a current authorization for the medication?
  - What treatment options were tried before medication?
  - What treatment options are being used now to decrease the child's need for medication?
  - Is the child willing to use the medication and is he or she taking it regularly?
  - Is the child experiencing any benefits or complications from the medication?
  - How is the child's response to the medication being monitored?
- Should the medication be reevaluated?

### Mental Health Services

- If the child might benefit from mental health services, is the child receiving these services? Welf. & Inst. Code, § 370; Fam. Code, § 6924
  - If yes, how is the child participating in and responding to these services?
  - Should these services include family participation?
  - If the child is experiencing parental rejection due to the child's sexual orientation or gender identity, what is being done to support the family's acceptance and reconciliation?
- Do court reports contain sufficient information concerning the child's mental health status? Welf. & Inst. Code, § 16010
- Does the child have a history of psychiatric hospitalization?
  - Date of last hospitalization?

### Service Provider

- Does the child's treating therapist have experience providing mental health services to children before the juvenile court?
- Is the therapist a licensed clinician?

- Is the therapist an appropriate match for the child?
- You may want to consider the relevance of the clinician's gender, language abilities, cultural competence, and location as well as experience working with children who have been removed from, or are at risk of being removed from, the parents or guardians.

### Treatment Plan

- Do the child, family, and caretaker all have input into the treatment goals and therapeutic plan?
- Are the mental health services currently being provided adequate to meet the child's needs?
- Has the child invoked the psychotherapist-client privilege? Welf. & Inst. Code, § 317(f)
- If the child is 12 years of age or older, has the child invoked his or her right to consent to mental health treatment or counseling on an outpatient or residential shelter basis? Fam. Code, § 6924

### Additional Mental Health Services and AB 3632 Residential Placement

- Is the child eligible or thought to be eligible for special education services?
- Does the child's current IEP show that mental health services are necessary for the child to benefit from education? Gov. Code, §§ 7572, 7576
  - If yes, has the child been referred for or is the child currently receiving AB 3632/ AB 2726 mental health services? Gov. Code, §§ 7572, 7576; Cal. Code Regs., tit. 2, § 60100

### Community Treatment Facilities and Secured Settings

- Has the child voluntarily applied for inpatient or outpatient mental health services in a secured setting, such as a community treatment facility? Welf. & Inst. Code, § 6552
- How have the child's due process rights been ensured, regarding placement in a secured setting? Welf. & Inst. Code, § 6552
- Is the court satisfied that the child suffers from a mental disorder that may reasonably be expected to be cured by residential treatment? Welf. & Inst. Code, §§ 4094, 6552; Health & Safety Code, § 1502(a)(8)

### Conservatorship

- Does the child have or need a conservator? Welf. & Inst. Code, § 5350 et seq.
- When was the conservatorship granted?
  - What is the conservator's name?
  - What is the date of the next conservatorship hearing?

## GENERAL EDUCATION

### Educational Rights

See 34 C.F.R. § 300.30 (2006); Welf. & Inst. Code, §§ 319, 361, 366.27, 726; Gov. Code, §§ 7579.5, 7579.6

- Has the court addressed or limited the parent's or guardian's educational rights? If yes, who holds the educational rights for the child?
- Are the child's educational needs being met?
- Does the educational rights holder need assistance in making educational decisions for the child?
- Is the educational rights holder unwilling or unable to meet the child's educational needs?
  - If yes, the court may consider limiting educational rights.

### Limiting Educational Rights

- **Appointment of responsible adult.** If the educational rights holder is unable or unwilling to meet the child's educational needs, the educational rights should be limited and a responsible adult appointed as the child's educational representative. Welf. & Inst. Code, §§ 319, 358.1(e), 361, 366.27, 726
- If the court has appointed a responsible adult, did the social worker, probation officer, or clerk of the court forward to the school district a copy of form JV-535 (*Order Limiting Parent's Right to Make Educational Decisions for the Child and Appointing Responsible Adult as Educational Representative—Juvenile*), which identifies who holds the educational rights? Has the school been informed that the education representative now has the education rights, including notice of meetings, grades, and participation in the child's education, previously held by the parent? Ed. Code, § 51101
- **Appointment of surrogate.** This may occur if the court has limited education rights and cannot identify a responsible adult to make educational decisions, and the child is eligible or may be eligible for special education and related services. 20 U.S.C. § 1415 (b); 34 C.F.R. §§ 300.30(a)(5) (2006), 300.519 (2006); Welf. & Inst. Code §§ 361(a), 726(b); Gov. Code § 7579.5(a)(1)(A):
  - Did the court refer the child to the local educational agency for appointment of a surrogate? Welf. & Inst. Code §§ 361(a), 726(b); Gov. Code § 7579.5(a)(1)(A)
  - Did the court provide the agency with a copy of form JV-536 (*Local Educational Agency Response to JV-535—Appointment of Surrogate Parent*), which requests the appointment of a surrogate? 20 U.S.C. § 1415(b)(2)(B); Welf. & Inst. Code, § 361(a); Gov. Code, § 7579.5(a)
  - Did the local educational agency appoint a surrogate parent not more than 30 days after determining that the child needs a surrogate parent? 20 U.S.C. § 1415(b)(2)(B); Gov. Code, § 7579.5
  - If the court cannot identify a responsible adult and if appointing a surrogate parent is not legally warranted, the court may make educational decisions for the child. Welf. & Inst. Code, §§ 319(g), 361
  - Has the holder of educational rights been fully informed of, and provided consent in writing for, the activity for which consent is sought? 34 C.F.R. § 300.9 (2006); 71 FR 46540, 46551; Ed. Code, §§ 56321, 56341(h), 56346

*Note: County social workers and probation officers do not have the authority to make decisions regarding the child's educational rights and may not be appointed to make educational decisions for the child. If a nonpublic agency is providing the child with education or care or has*

*a conflict of interest, neither it nor any person employed by it may be appointed to make educational decisions for the child. See Gov. Code, § 7579.5(i)–(j); Welf. & Inst. Code, § 361(a)(5)*

### Achievement/Participation

- What is the child's attendance record this year? What are the reasons for any absences or trancies? Has the child been wrongfully penalized for any absences related to change of placement or any court appearances? Ed. Code, § 49069.5(g), (h)
- What are the child's grades?
- What grade level should the child be in? If needed, is there a specific plan to assist the child with reaching this grade level? Welf. & Inst. Code, § 16010(a)
- What educational services (e.g. tutoring, summer school, other supplemental services) is the child receiving? Ed. Code §§ 48070.5, 48850, 48853(g)
- Has the new school district accepted for full or partial credit all coursework satisfactorily completed at the prior school placement? Ed. Code, § 48645.5
- Is the child limited in his or her ability to speak English? If yes, is the child receiving appropriate programs to address his or her English language needs? 20 U.S.C. § 1703(f); Ed. Code, § 300 et seq.
- Does the child's background suggest that he or she might qualify as a migrant student? If yes, has he or she been assessed to determine migrancy and if identified as migrant, does the child have access to appropriate programs available for migrant students? 20 U.S.C. § 6399(2); 34 C.F.R. § 200.81(d) (2002); Ed. Code, §§ 54441, 54442(a)
- What is the child's experience in school (friends, social environment, interest, etc.)?
- Is the child experiencing isolation, rejection, or harassment at school? (Explore reasons: race or ethnicity, sexual orientation, other.)
- Is the child attending a school that has been identified as a program improvement school? If yes, is the student receiving supplemental services and/or has the child been given a school choice option? 20 U.S.C. § 6316
- Is the child participating in extracurricular activities and if not, why not? Ed. Code § 48850(a); Welf. & Inst. Code, §§ 362.05, 16001.9(a)(13)

### High School Students

- Has the child obtained any of the following?
  - High school diploma or GED
  - Certificate of Completion
  - Passing of high school exit exam. Ed. Code, § 60851
- If the child is not making sufficient progress toward passing the high school exit exam, is she or he being provided supplemental instruction designed to help him or her pass? Ed. Code, § 60851(f).
- How many more credits are needed for graduation and does the school district have an alternative means for students to earn the credits to graduate? Ed. Code § 51225.3(b)
- What are the child's plans for postsecondary education or vocational school? Welf. & Inst. Code, § 16001.9; if the child is awaiting foster-care placement, 42 U.S.C. §§ 11434a(2)(b)(I), 11432(g)(4)
- What assistance is the child receiving to achieve these goals and to apply for financial aid?
- Has the social worker or probation officer provided the child with information regarding educational options available, including required coursework for vocational and post-secondary educational programs, and financial aid information for postsecondary education? Welf. & Inst. Code, § 16001.9(a)(24)

## SCHOOL DISCIPLINE

- Has the child been expelled or suspended, or experienced any other school discipline? Ed. Code, § 48900 et seq.
- If so, what was the reason for the child's most recent exclusion from school? Ed. Code, §§ 48900, 48900.2–48900.4, 48900.7
  - How are these concerns being addressed? Ed. Code, § 48916(b)
  - Was the exclusion more than 5 consecutive days, or has the child been excluded for more than 20 total days of the school year? Ed. Code, §§ 48903(a), 48911(a) *Note: Longer exclusions are generally not permissible.*
  - Have proper due process procedures been followed for the exclusion? 20 U.S.C. § 1415; 34 C.F.R. §§ 300.504 (2006), 300.530(h) (2006); Ed. Code, §§ 48900 et seq., 48915.5
  - Did the public agency have a basis to know that the child had a disability before it disciplined the child? 20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534 (b) (2006); Ed. Code, § 48915.5
  - Did the person who holds educational rights receive a copy of the expulsion or any other discipline-related notices? Ed. Code, § 48918(b)
  - Has the child's rights to a due process hearing been waived? If yes, who agreed to the waiver, was it in writing, and what were the terms of the waiver?
  - Has the child been provided an educational placement during the period of the expulsion? Does the child have a rehabilitation plan and a set date when the child can apply for readmission to a regular school? Ed. Code, § 48916(b)
- If the child is eligible for special education services and the child's behavior appears to interfere with achieving the goals and objectives of the IEP:
  - Has an appropriate behavioral intervention plan been implemented? Cal. Code Regs., tit. 5, § 3052; Ed. Code, § 48916
  - Was an IEP meeting held before a change in placement was made as a result of behavior (including suspension totaling more than 10 days in a school year)? 34 C.F.R. § 300.530(e) (2006)
  - Was a Manifestation Determination IEP meeting held before expulsion proceedings were begun? 34 C.F.R. § 300.530(e) (2006); Ed. Code, § 48915.5

## ACCOMMODATIONS AND SERVICES

*Note: The state must have in effect policies and procedures to ensure that all children with disabilities are identified, located, and evaluated and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111 (2006); Gov. Code § 95022; Ed. Code, § 56300*

- Is the child eligible for or receiving services or accommodations for a physical, mental, or learning disability as required by the Americans With Disabilities Act (ADA), the Individuals With Disabilities Education Act (IDEA), or section 504? 20 U.S.C. § 1400; Ed. Code, § 56000; 34 C.F.R. § 104.3(j) (2000)
  - If yes, are the services appropriate and meeting the child's needs?
- **Referrals: Children under 3, and 3 to 5 years old.** If the child is under age 3 and is developmentally delayed or meets eligibility criteria for being considered "at risk of developmental delay," has the child been referred to the Early Intervention Program to determine eligibility for an Individualized Family Service Plan (IFSP)? 20 U.S.C. § 1436; Ed. Code, §§ 56425-56426.9; Gov. Code, § 95000 et seq.; Cal. Code Regs., tit. 5, § 3031; Cal. Code

Regs., tit. 17 §§ 52020, 52022; see 34 C.F.R. § 300.25 (2006) and Gov. Code, § 95014 for the definition of "infant" or "toddler."

- If yes, has a written IFSP been developed in compliance with 20 U.S.C. § 1436(d)? 20 U.S.C. § 1436; Ed. Code § 56426.8
- If the child is between 3 and 5 years old and has not met these developmental markers, has the child been referred to the district to be assessed for special education services? Ed. Code, § 56001
- If the child is receiving services, are they appropriate? Ed. Code, § 56001
- **Referrals: Children 5 to 22.** If the child or youth is between 5 and 22 years old and has not graduated from high school, has a learning deficit or other disability been suspected or identified?
  - If yes, has the child or youth been referred to the district for a special education assessment?
- The Secretary of the Interior is responsible for providing and coordinating special education and related services to children ages 5 through 21 with disabilities on reservations who are enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. 20 U.S.C. § 1411(h); 34 C.F.R. § 300.713(a), (b) (2006)
- **IEP.** If the child has been assessed and found eligible for special education services, does the child have a current IEP? 20 U.S.C. § 1414(a); Ed. Code, §§ 56043(j), 56381
  - What is the child's qualifying disability?
  - Do the IEP goals correspond to the areas of need mentioned in the assessments?
  - Are the goals specific enough that the parties can easily recognize when they have been attained?
  - Does the IEP include an appropriate setting or classroom to meet the child's needs?
  - When was the most recent IEP made?
  - Who was present at the assessment?
  - Was the educational rights holder an effective representative?
  - Are the child's needs reviewed annually?
  - Is the public agency ensuring the child has the supplementary aids and services determined necessary by the child's IEP team for the child to participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of that child? 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.117 (2006); Ed. Code, §§ 56033.5, 56345
- Are any services necessary to help the child benefit from the special education program (e.g. transportation; psychological services; and physical, speech, and occupational therapy)? 20 U.S.C. § 1401(26); 34 C.F.R. §§ 300.34 (2006), § 104.3(j) (2000); Ed. Code, § 56363; Gov. Code, §§ 7573, 7575

*Note: The Supplement to Asking the Right Questions: A Judicial Checklist provides additional citations and details specific to California law. See [http://clcla.org/train\\_educat.htm](http://clcla.org/train_educat.htm)*

- **Development.** Does the child have a developmental disability (e.g. mental retardation, autistic spectrum disorder, cerebral palsy, epilepsy)? Welf. & Inst. Code, § 4512 (a)
  - If yes, is the child receiving appropriate developmental services from the regional center? Welf. & Inst. Code § 4512 (b)
  - If no, and if the child is suspected of having a developmental disability, has a referral been made? See Gov. Code, §§ 95014, 95016; Welf. & Inst. Code § 4642



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