

Warehousing Foster Care Students in Continuation High Schools Would Violate State Law

A. Students Cannot be Involuntarily Transferred to a Continuation High School Unless They Have Committed Certain Acts.

Neither foster care students, nor students in general, can be *involuntarily* transferred to a continuation high school solely on the basis that they are not performing well academically in school, that they are behind in their academic work, or that they have insufficient credits.

By law, any decision to involuntarily transfer or place any student in a continuation high school must be based on a finding that a student:

[C]ommitted an act enumerated in Section 48900 [grounds for expulsion], or. . . has been habitually truant or irregular in attendance from instruction upon which he or she is lawfully required to attend. Education Code § 48432.5.

Even if such a finding can be made, an involuntary transfer can only be imposed when other means have failed to bring about pupil improvement, unless the pupil is found to have violated one of the grounds for expulsion and the “pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process.” Education Code § 48432.5.

B. Specific Procedures Must be Followed for Involuntary Transfers to Continuation High Schools.

A school district that desires to *involuntarily* transfer any student to a continuation high school on the grounds set forth above must adopt rules and regulations, not inconsistent with state law, governing procedures for such a transfer. Pursuant to Education Code § 48432.5, these procedures must include the following safeguards:

- Written notice to the pupil and the pupil's parent or guardian informing them of the opportunity to request a meeting with a designee of the district superintendent prior to the transfer;
- The pupil or the pupil's parent or guardian must be informed of the specific facts and reasons for the proposed transfer and must be given the opportunity to inspect all documents relied upon, question any evidence and witnesses presented and present evidence on the pupil's behalf;
- The pupil must be allowed to have a representative and witnesses present with him or her at the meeting;
- A decision to transfer must be in writing, must state the facts and reasons for the decision, and must be sent to the pupil and the pupil's parent or guardian and must indicate whether the decision is subject to periodic review;

- Generally, no involuntary transfer to a continuation school shall extend beyond the end of the semester following the semester during which the acts leading directly to the involuntary transfer occurred.

Education Code § 48432.5

C. Placement of Foster Care Students in Continuation High Schools is Inconsistent with AB 490.

Pursuant to AB 490, the educational placement of a foster care child in our public schools must be based on the “best interests of the child.” Students in foster care are entitled to be placed in “the *least restrictive* educational programs” and to have “access to academic resources, services, and extracurricular and enrichment activities that are available to all pupils.” Education Code § 48853 (g). Generally speaking, students enrolled in continuation high schools do not have access to the same academic resources, services or enrichment activities that are available in regular comprehensive high schools. Furthermore, placement in any educational program *involuntarily* is usually not considered the least restrictive educational environment for any student.

State law allows the *voluntary* placement of students in continuation high schools. Education Code § 48432.5. However, continuation high schools are considered alternative educational settings; as such, they are specifically frowned upon and should be considered the educational placement of last resort for foster care students:

Before any decision is made to place a pupil in a . . . 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. Education Code § 48853(b).

(Students who voluntarily transfer to continuation high schools have the right to return to a regular high school at the beginning of the following school year. Education Code § 48432.5)

D. Conclusion.

It is clear under state law that school districts cannot use continuation high schools to warehouse foster care students who are not doing well academically. Rather, these students should be given meaningful access to appropriate educational programs and services that are funded by the millions of dollars allocated to school districts to address the needs of *all* academically “at risk” students in the regular school setting.

Any attempt by a school district to place foster care children in continuation high schools without regard to the mandates set forth in Education Code §48432.5 or AB 490 would subject a district to a possible legal challenge.