

**Cited Codes Regulations and Statutes****Welfare and Institutions Code (W.I.C.) Section 361**

(a) (1) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent, guardian, or Indian custodian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent, guardian, or Indian custodian to make educational or developmental services decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent, guardian, or Indian custodian to make educational or developmental services decisions for the child, or, for the nonminor dependent, if the court finds the appointment of a developmental services decision maker to be in the best interests of the nonminor dependent, the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child or nonminor dependent until one of the following occurs:

(A) The minor reaches 18 years of age, unless the child or nonminor dependent chooses not to make educational or developmental services decisions for himself or herself, or is deemed by the court to be incompetent.

(B) Another responsible adult is appointed to make educational or developmental services decisions for the minor pursuant to this section.

(C) The right of the parent, guardian, or Indian custodian to make educational or developmental services decisions for the minor is fully restored.

(D) A successor guardian or conservator is appointed.

(E) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) of subdivision (g) of Section 366.21, Section 366.22, Section 366.26, or subdivision (i) of Section 366.3, at which time, for educational decision making, the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code, and for decisions relating to developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family member of the planned permanent living arrangement has the right to represent the child or nonminor dependent in matters related to developmental services.

(2) An individual who would have a conflict of interest in representing the child or nonminor dependent shall not be appointed to make educational or developmental services decisions. For purposes of this section, "an individual who would have a conflict of interest" means a person having any interests that might restrict or bias his or her ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorney's fees for the provision of services pursuant to this section. A foster parent shall not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

(3) Regardless of the person or persons currently holding the right to make educational decisions for the child, a foster parent, relative caregiver, nonrelated extended family member, or resource family shall retain rights and obligations regarding accessing and maintaining health and education information pursuant to Sections 49069.3 and 49076 of the Education Code and Section 16010 of this code.

(4) (A) If the court limits the parent's, guardian's, or Indian custodian's educational rights pursuant to this subdivision, the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

(B) If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child, subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply, and the child has either been referred to the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

(C) If the court cannot identify a responsible adult to make educational decisions for the child, the appointment of a surrogate parent as defined in subdivision (a) of Section 56050 of the Education Code is not warranted, and there is no foster parent to exercise the authority granted by Section 56055 of the Education Code, the court may, with the input of any interested person, make educational decisions for the child.

(5) (A) If the court appoints a developmental services decision maker pursuant to this section, he or she shall have the authority to access the child's or nonminor dependent's information and records pursuant to subdivision (u) of Section 4514 and paragraph (23) of subdivision (a) of Section 5328, and to act on the child's or nonminor dependent's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order.

(B) If the court cannot identify a responsible adult to make developmental services decisions for the child or nonminor dependent, the court may, with the input of any interested person, make developmental services decisions for the child or nonminor dependent. If the child is receiving services from a regional center, the provision of any developmental services related to the court's decision must be consistent with the child's or nonminor dependent's individual program plan and pursuant to the provisions of the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(6) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, prior to each review hearing held under this article, provide information and recommendations concerning the child's educational needs to the child's social worker, make

written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(7) Nothing in this section in any way removes the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures as required by state and federal law, including Section 1415(b)(2) of Title 20 of the United States Code, Section 56050 of the Education Code, Section 7579.5 of the Government Code, and Rule 5.650 of the California Rules of Court.

(b) (1) Subdivision (a) does not limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services, to a county adoption agency, or to a licensed private adoption agency at any time while the child is the subject of a petition to declare him or her, or is, a dependent child of the juvenile court, if the department, county adoption agency, or licensed private adoption agency is willing to accept the relinquishment.

(2) When accepting the relinquishment of a child described in paragraph (1), the department or a county adoption agency shall comply with Section 8700 of the Family Code and, within five court days of accepting the relinquishment, shall file written notice of that fact with the court and all parties to the case and their counsel.

(3) When accepting the relinquishment of a child described in paragraph (1), a licensed private adoption agency shall comply with Section 8700 of the Family Code and, within 10 court days of accepting the relinquishment, shall file or allow another party or that party's counsel to file with the court one original and five copies of a request to approve the relinquishment. The clerk of the court shall file the request under seal, subject to examination only by the parties and their counsel or by others upon court approval. If the request is accompanied by the written agreement of all parties, the court may issue an ex parte order approving the relinquishment. Unless approved pursuant to that agreement, the court shall set the matter for hearing no later than 10 court days after filing, and shall provide notice of the hearing to all parties and their counsel, and to the licensed private adoption agency and its counsel. The licensed private adoption agency and any prospective adoptive parent or parents named in the relinquishment shall be permitted to attend the hearing and participate as parties regarding the strictly limited issue of whether the court should approve the relinquishment. The court shall issue an order approving or denying the relinquishment within 10 court days after the hearing.

(4) Nothing in this subdivision suspends the requirements for voluntary adoptive placement under the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(c) A dependent child shall not be taken from the physical custody of his or her parents, guardian or guardians, or Indian custodian with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive, and, where it is known or there is reason to know that the child is an Indian child, as defined by Section 224.1, paragraph (6):

(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's, guardian's, or Indian custodian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the

parent, guardian, or Indian custodian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, each of the following:

(A) The option of removing an offending parent, guardian, or Indian custodian from the home.

(B) Allowing a non-offending parent, guardian, or Indian custodian to retain physical custody as long as that parent, guardian, or Indian custodian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent, guardian, or Indian custodian of the minor is unwilling to have physical custody of the minor, and the parent, guardian, or Indian custodian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent, guardian, or Indian custodian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, Indian custodian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent, guardian, or Indian custodian, or the minor does not wish to return to his or her parent, guardian, or Indian custodian.

(5) The minor has been left without any provision for his or her support, or a parent, guardian, or Indian custodian who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent, guardian, or Indian custodian is unwilling or unable to provide care or support for the child and the whereabouts of the parent, guardian, or Indian custodian is unknown and reasonable efforts to locate him or her have been unsuccessful.

(6) In an Indian child custody proceeding, continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that finding is supported by testimony of a "qualified expert witness" as described in Section 224.6.

(A) For purposes of this paragraph, stipulation by the parent, Indian custodian, or the Indian child's tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.), and has knowingly, intelligently, and voluntarily waived them.

(B) For purposes of this paragraph, failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of this section, will not support an order for placement in the absence of the finding in this paragraph.

(d) A dependent child shall not be taken from the physical custody of his or her parents, guardian, or Indian custodian with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent, guardian, or Indian custodian to live with the child or otherwise exercise the parent's,

guardian's, or Indian custodian's right to physical custody, and there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's, guardian's, or Indian custodian's physical custody.

(e) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those efforts, or, where it is known or there is reason to know that the child is an Indian child, as defined by Section 224.1, whether active efforts, as defined by Section 224.1 and as required in Section 361.7 were made and that these efforts have proved unsuccessful. The court shall state the facts on which the decision to remove the minor is based.

(f) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent, guardian, or Indian custodian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

*(Amended by Stats. 2018, Ch. 833, Sec. 27. (AB 3176) Effective January 1, 2019.)*

## **W.I.C. 726**

(a) In all cases in which a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over the ward or dependent child by any parent or guardian and shall, in its order, clearly and specifically set forth all those limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of the following facts:

(1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(2) That the minor has been tried on probation while in custody and has failed to reform.

(3) That the welfare of the minor requires that custody be taken from the minor's parent or guardian.

(b) Whenever the court specifically limits the right of the parent or guardian to make educational or developmental services decisions for the minor, the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational or developmental services decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational or developmental services decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational or developmental services decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) or (6) of subdivision (b) of Section 727.3 , at which time, for educational decisionmaking, the foster parent, relative caretaker, or nonrelative extended family member, as defined in Section 362.7 , has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code , and for decisions relating to developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family member of the planned permanent living arrangement has the right to represent the child in matters related to developmental services.

(c) An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational decisions. The limitations applicable to conflicts of interest for educational rights holders shall also apply to authorized representatives for developmental services decisions pursuant to subdivision (b) of Section 4701.6 . For purposes of this section, “an individual who would have a conflict of interest” means a person having any interests that might restrict or bias his or her ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code , and the receipt of compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

(1) If the court limits the parent's educational rights pursuant to subdivision (a), the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child and who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child and paragraphs (1) to (5), inclusive, of subdivision (b) do not apply, and the child has either been referred to the local educational agency for special education and related services or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code .

(2) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, before each review hearing held under Article 10 (commencing with Section 360 ), provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(3) Nothing in this section in any way removes the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures as required by state and federal law, including Section 1415(b)(2) of Title 20 of the United States

Code , Section 56050 of the Education Code , Section 7579.5 of the Government Code , and Rule 5.650 of the California Rules of Court.

If the court appoints a developmental services decisionmaker pursuant to this section, he or she shall have the authority to access the child's information and records pursuant to subdivision (u) of Section 4514 and subdivision (y) of Section 5328 , and to act on the child's behalf for the purposes of the individual program plan process pursuant to Sections 4646 , 4646.5 , and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700 ) of Division 4.5, and as set forth in the court order.

(d)(1) If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602 , the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

(2) As used in this section and in Section 731 , “maximum term of imprisonment” means the longest of the three time periods set forth in paragraph (3) of subdivision (a) of Section 1170 of the Penal Code , but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930 , 2931 , and 2932 of the Penal Code , plus enhancements which must be proven if pled.

(3) If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602 , the “maximum term of imprisonment” shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code , which includes any additional term imposed pursuant to Section 667 , 667.5 , 667.6 , or 12022.1 of the Penal Code , and Section 11370.2 of the Health and Safety Code .

(4) If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code , the “maximum term of imprisonment” is the longest term of imprisonment prescribed by law.

(5) “Physical confinement” means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730 , or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Justice.

(6) This section does not limit the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section 727 for the period permitted by Section 607 .

## **W.I.C. 10610**

The department may join associations of social welfare agencies having as their purpose the interchanging or supplying of information relating to the technique of social welfare administration

**W.I.C. 1600(c)**

(c) It is further the intent of the Legislature to ensure that all pupils in foster care and those who are homeless as defined by the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.) have the opportunity to meet the challenging state pupil academic achievement standards to which all pupils are held. In fulfilling their responsibilities to pupils in foster care, educators, county placing agencies, care providers, advocates, and the juvenile courts shall work together to maintain stable school placements and to ensure that each pupil is placed in the least restrictive educational programs, and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.

**Education Code Section 49069.5**

(a) The Legislature finds and declares all of the following:

(1) The mobility of pupils in foster care often disrupts their educational experience.

(2) Efficient transfer procedures and transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.

(3) Pupils who have had contact with the juvenile justice system are often denied credit or partial credit earned during enrollment in juvenile court schools. Delays in school enrollment and loss of earned credit can result in improper class or school placement, denial of special education services, and school dropout.

(b) The proper and timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency, including the county office of education for pupils in foster care who are enrolled in juvenile court schools, and the county placing agency, which includes the county probation department.

(c) As soon as the county placing agency or county office of education becomes aware of the need to transfer a pupil in foster care out of his or her current school, the county placing agency or county office of education shall contact the appropriate person at the local educational agency of the pupil. The county placing agency shall notify the local educational agency of the date that the pupil will be leaving the school and request that the pupil be transferred out.

(d) Upon receiving a transfer request from a county placing agency or notification of enrollment from the new local educational agency, the local educational agency receiving the transfer request or notification shall, within two business days, transfer the pupil out of school and deliver the educational information and records of the pupil to the next educational placement.

(e) As part of the transfer process described under subdivisions (c) and (d), the local educational agency shall compile the complete educational record of the pupil, including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records,

and, if applicable, a copy of the pupil's plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(f) The local educational agency shall assign the duties listed in this section to a person competent to handle the transfer procedure and who is aware of the specific educational recordkeeping needs of homeless, foster, and other transient children who transfer between schools.

(g) The local educational agency shall ensure that, if the pupil in foster care is absent from school due to a decision to change the placement of a pupil made by a court or placing agency, the grades and credits of the pupil will be calculated as of the date the pupil left school and no lowering of grades will occur as a result of the absence of the pupil under these circumstances.

(h) The local educational agency shall ensure that, if the pupil in foster care is absent from school due to a verified court appearance or related court ordered activity, no lowering of his or her grades will occur as a result of the absence of the pupil under these circumstances.

(i) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department's receipt of the appeal.

(3) If a local educational agency finds merit in a complaint, or the Superintendent finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

(4) Information regarding the requirements of this section shall be included in the annual notification distributed to, among others, pupils, parents or guardians of pupils, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

(j) For purposes of this section, the following definitions apply:

(1) "County placing agency" means a county social services department or county probation department.

(2) "Local educational agency" means a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area.

(3) "Pupil in foster care" means a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

**Every Student Succeeds Act (ESSA), Title I, Part A**

Title I, Part A (Title I) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA)<sup>1</sup>, now contains key protections for children in foster care that require State and local educational agencies (SEAs and LEAs) to collaborate with child welfare agencies to ensure the educational stability of children in foster care. These provisions build upon the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections), the Federal child welfare law that requires child welfare agencies to collaborate with educational agencies to ensure educational stability for children in foster care. Together, the new Title I foster care requirements and Fostering Connections ensure that children in foster care experience minimal educational disruption as the result of foster care placement and receive the same opportunities as their peers to develop the skills necessary to be successful in school and life.

**California Department of Social Services Manual of Policies and Procedures Section 23-650.1.14**

This section contains policies and procedures which shall be observed by counties in procurements by negotiation, as distinguished from formal advertising, and the limitations upon its use.

- .1 Contracts may be negotiated without formal advertising when one or more of the following exists:
  - .14 For any service to be rendered by any federal, state, or local government agency, public university, public college or other public educational institution. CDSS may require formal advertising when contracts with government agencies or public educational institutions are considered excessive in price when compared to similar services provided through competition, or where competition between public and private agencies is necessary to accomplish program purposes.