

# ENSURING THAT A FOSTER YOUTH'S EDUCATIONAL AND DEVELOPMENTAL SERVICES NEEDS ARE MET

It takes a village!!

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## Part I: Defining the Problem

Educational Obstacles Confronted by Foster Youth

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### California Students' Educational Performance

- Overall California Student Population Performing at Grade Level:



52%

- California Foster Student Population Performing at Grade Level:



25%

See Fricano, 9; see also California STAR Program.

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### California Students' Educational Performance

- Overall California Student Population Retained in Grades K-3:



- California Foster Student Population Retained in Grades K-3:



See Fricano, 9; see also Repeating a Grade.

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### California Students' Educational Performance

- Overall California Student Population Graduating High School:



- California Foster Student Population Graduating High School:



See Fricano, 10; see also Torlakson.

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### Contributing Factors

- Educational Neglect
- Trauma
- High Rates of School Mobility
  - Curricular Discontinuity
  - Lack of School Records or Misinformation
  - School Disconnectedness
- Special Education
  - Under-served
  - Over-represented in Emotional Disturbance Category
- Disproportionate School Discipline
- Nobody accountable for tracking progress

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Part II.

Enhancing the Educational Performance  
of Pupils in Foster Care  
by Addressing Their Needs and  
Promoting Stable Placement

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- We Improve Educational Performance when we ...
- Maintain stable school placements
  - Assess and understand each child's individual needs
  - Ensure that each child has access to needed resources, services, extracurricular and enrichment activities

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- WHO ARE THE PLAYERS?
- The court
  - Parents/guardians
  - Placing agency
  - Attorneys
  - CASA volunteer
  - Local educational agencies
  - Educational rights holders

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THE COURT CONDUCTS HEARINGS  
CRC Rule 5.651

- Starts with questions at the Initial or Detention hearing:
  - School of origin (Ed. Code § 48853) - or enrollment in new school?
  - Educational rights holder?

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### At Dispositional Hearing

- Identify needs from information provided by social worker or probation officer re:
  - Grade level performance
  - School record and number of school transfers
  - Academic proficiency scores, credits toward graduation, general academic progress
- Services, assessments, or evaluations necessary to meet needs
- Identify educational rights holder (ERH) and give directions re: his/her authority and duties

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### All Subsequent Hearings

- Report on child's continuing appropriate development
- Report on school environment of child
- Have any disabilities been identified and are needs being assessed and addressed? (including copy of IEP or 504)
- Is ERH doing his/her job?
  - HAS CHANGE OF SCHOOL TAKEN PLACE?

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## Change of Placement – or – Do I have to go to another new school?

Notify court, attorney, ERH – 1 day after decision made, and before move if possible

If disability or active IEP, **10 days before change**, notify current school before removal

Notify receiving special ed local plan area of impending change of placement

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## IF CHILD/YOUTH OPPOSES CHANGE

Attorney requests hearing and provides notice

Hearing set **5 days** after request. Report due **3 days** before hearing

Child must be allowed to remain at school of origin pending hearing and resolution

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## WHY IS THIS IMPORTANT?

- Moves of foster kids disrupt their education
- Efficient transfer of kids and their records is critical
  - both county placing agency and local educational agency are responsible

**Education Code Section 49069.5**

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## Part III. Tools for tracking progress

- Recent changes to federal and state law
  - Uninterrupted Scholars Act/AB 643
  - California Rules of Court, rules 5.649–5.651
  - Judicial Council forms JV-535 to JV-540
- are intended to
  - simplify tracking a foster youth’s educational progress and placement
  - ensure that the youth’s educational rights are respected and her educational needs are met.

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## Uninterrupted Scholars Act

- New exception to FERPA’s (Family Educational Rights & Privacy Act) requirement of parental consent for **information sharing**
- Implemented in CA by AB 643 (Stats. 2013, ch. 80), adds Ed. Code § 49076(a)(1)(L)
- **School district may now share a foster youth’s educ. records with agency worker or representative without parental consent or court order if**
  - The requester has a “legitimate educational interest” in the records
  - The agency has “legal responsibility ... for the child’s care and protection.”
    - Note: The exception includes state, local, and tribal agencies. Appears to include a probation officer supervising a ward placed in foster care.
- The receiving agency may share the records **only**
  - With an individual or entity engaged in addressing the student’s educational needs (a) who is authorized by the agency to receive the records (b) consistent with California confidentiality laws or
  - With an individual who meets another FERPA exception.
- Requirement in Ed. Code §§ 49077–49078 that school district furnish information in response to a court order or subpoena remains in effect.
- Best practice: seek consent of parent or ERH before requesting records.

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## Cal. Rules of Court

- Rule 5.649: Establishes mandatory procedures for
  - identifying ERH at every hearing
    - Parent or guardian is default rights holder for a child; **nonminor dependent** holds own decisionmaking rights
  - determining whether limitation of the right of parent or guardian to make educational or **developmental-services** decisions necessary to protect the child
  - distinguishing **temporary** limitation at detention hearing from limitation at or after disposition
    - **Different, 3-part test:** Parent or guardian unavailable, unable, or unwilling; (2) agency has made diligent efforts to secure parental participation; and (3) the child’s needs cannot be met without temporary appointment of ERH.
  - **filing of order with court** by party requesting limitation or, if no request, by child’s attorney.

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## Cal. Rules of Court

- Rule 5.650: Prescribes procedures to be followed after limitation of parental decisionmaking rights
  - Court must appoint an ERH **unless**
    - The court has ordered the dependent or ward's **permanent plan to be placement in a PPLA** and the caregiver is not prohibited from exercising decisionmaking rights (Ed. Code § 56055; W&I Code §§ 361, 726) *or*
    - The court **cannot identify a responsible adult** to serve as ERH
      - If the child is/may be eligible for **special education** or already has an IEP, the court must refer the child to the LEA for appointment of a surrogate parent
      - If the appointment of a **surrogate parent is not warranted**, the court may, with the input of any interested person, make educational decisions for the child
        - » Before dispo, the court must order “every effort” made to identify a responsible adult to serve as ERH

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## Cal. Rules of Court

- Rule 6.650, cont.
  - Different standard to appoint ERH for **NMD**: Only if (1) NMD chooses not to make decisions *or* is deemed incompetent *and* (2) with respect to developmental-services decisions, court finds that appointment of ERH would be in best interests of NMD
  - **Limits** on appointment: (1) court should consider appointing relative or adult known to child as ERH before appointing stranger; (2) court may not appoint adult with conflict of interest
  - Rights and responsibilities of ERH (augmented by AB 2060 (Stats. 2012, ch. 176))

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### Order Designating Educational Rights Holder (form JV-535)

TELEPHONE NO. E-MAIL ADDRESS ATTORNEY FIRM NAME	FILE NO.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS MAILING ADDRESS CITY AND ZIP CODE BRANCH NAME	
CHILD'S NAME:	
ORDER DESIGNATING EDUCATIONAL RIGHTS HOLDER	CASE NUMBER

**Educational Rights Holder for Child or Youth**

1.  The following adult(s) is (are) designated as the educational rights holder(s), as defined in rule 5.502.

a. Name:	a. Name:
b. Address:	b. Address:
c. Telephone:	c. Telephone:
d. E-mail:	d. E-mail:
e. Relationship to child or youth:	e. Relationship to child or youth:

2. The adult(s) identified in 1. is (are) (check all that apply):

- The first educational rights holder identified by the court for this child or youth.
- The same educational rights holder as last identified by the court.  New contact information in item 1. above.
- A different educational rights holder from the one last identified by the court.
- The successor guardian or conservator and, as such, holds decisionmaking rights.
- The caregiver in a planned permanent living arrangement and holds:  educational  developmental-services decisionmaking rights under section 361(a)(1)(E). See item 6 for limitation of parental decisionmaking rights.

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2. The adult(s) identified in 1. is (are) (check all that apply):

- a.  The first educational rights holder identified by the court for this child or youth.
- b.  The same educational rights holder as last identified by the court.  New contact information in item 1, above.
- c.  A different educational rights holder from the one last identified by the court.
- d.  The successor guardian or conservator and, as such, holds decisionmaking rights.
- e.  The caregiver in a planned permanent living arrangement and holds  educational  developmental-services decisionmaking rights under section 361(a)(1)(E). See item 6 for limitation of parental decisionmaking rights.

Having considered the evidence and made the findings required by law, THE COURT ORDERS that

- 3.  The responsible adult identified in 1. is appointed the educational rights holder for the child or youth and is authorized to make  educational  developmental-services decisions for the child or youth to the extent permitted by law.

4. (Check only if 1, 2, and 3 do not apply.) The court cannot identify a parent, guardian, or other responsible adult to act as the educational rights holder.

- a.  The court hereby refers the child to the local educational agency for appointment of a surrogate parent under section 7879.3 of the Government Code.
- b.  The court, with input from any interested person, will make  educational  developmental-services decisions.
  - The appointment of a surrogate parent is not warranted.
  - (Before the dispositional hearing) The child's attorney and the social worker or probation officer must make every effort to identify a responsible adult to make future educational or developmental services decisions for the child.

5.  The appointment of any previous educational rights holder or developmental-services decision maker is terminated.

**NOTICE**

Provision of the information on this form—as well as on forms JV-535(A), JV-536, JV-537, JV-538, JV-539, JV-540, or any equivalent form—to the parent(s) or guardian(s) named in it will create a safety risk (for example, because of the placement's confidentiality). The information may not be disclosed to the parent or guardian.

Form adopted by the Judicial Branch of California  
Judicial Council of California  
JV-535 (Rev. January 1, 2016)

**ORDER DESIGNATING EDUCATIONAL RIGHTS HOLDER**

Page 1 of 2  
Judicial Branch of California  
www.courts.ca.gov

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6. The rights of (name): (name)

mother  mother  
 father  father  
 guardian  guardian

to make  educational  developmental-services decisions for the child or youth

- a.  are retained.
- b.  are fully restored.
- c.  are temporarily limited under section 319(g).
- d.  are limited under section 361(a) or 725(b).
- e.  have been terminated under section 366.26 or 727.31.
- f.  transferred to the youth on his or her 18th birthday.

**Appointed Educational Rights Holder—Rights and Duties**

7. The appointed educational rights holder is authorized to have access to the child's or youth's  educational  developmental-services records and information to the extent permitted by law.

8. The appointed educational rights holder may authorize the release of  educational  developmental-services records to the child's attorney or CASA volunteer to the extent permitted by law.

9. The appointed educational rights holder must comply with all applicable state and federal confidentiality laws, including sections 362.5, 827, 4514, and 5328 and Government Code section 7879.5(f), and may share information only to the extent necessary to further the interests of the child or youth.

10. The appointed educational rights holder must meet with the child or youth; investigate the child's or youth's educational and developmental-services needs and whether those needs are being met; and, before each scheduled review hearing, provide information and recommendations to the social worker or probation officer OR make written recommendations to the court OR attend the review hearing and participate in any part of the hearing that concerns the child's education or development OR all of these. The rights holder may submit written recommendations on Educational Rights Holder Statement (form JV-537) or in any other suitable format. To the greatest extent possible, the educational rights holder must consult and collaborate with the educational liaison or regional center service coordinator, as applicable, to gather information needed to meet the needs and protect the rights of the child or youth.

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11. If this is the first form JV-535 completed in this case or it includes any information different from information on the previous JV-535, the clerk will provide a copy of this form and any attachments to the child (if 10 years old or older) or youth; the attorney for the child or youth; the social worker or probation officer; the Indian child's tribe, if applicable; the local foster youth educational liaison; the county office of education foster youth services coordinator; the regional center service coordinator, if applicable; and the educational rights holder or surrogate parent in person or by first-class mail no later than five court days after the order is signed. The clerk may also make the form available to the parent or guardian (unless otherwise indicated on this form, or parental rights have been terminated, or the child has reached 18 years of age and reunification services have been terminated), to the CASA volunteer, and if requested, to any other person entitled to notice under section 233.

12. The assigned social worker or probation officer must notify the educational rights holder of the date, time, and location of each court hearing.

**This order applies to any local educational agency, school, school district, or regional center serving the child or youth in the State of California.**

Related findings and orders are attached on form JV-535(A) or its equivalent.

Date: \_\_\_\_\_

JUDICIAL OFFICER

**ORDER DESIGNATING EDUCATIONAL RIGHTS HOLDER**

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JV-535 (Rev. January 1, 2016)

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Attachment to Order Designating Educational Rights Holder  
(form JV-535(A))

JV-535(A)

CHILD'S NAME: \_\_\_\_\_ CASE NUMBER: \_\_\_\_\_

**General Information**

1. Child's or youth's date of birth: \_\_\_\_\_

2. School information

a. School district: \_\_\_\_\_

b. School (name and address): \_\_\_\_\_

c. Foster youth educational season (Ill. Code, § 4885.0) (name and contact information): \_\_\_\_\_

d.  The child is currently expelled from school and may be eligible for readmission on or after (date): \_\_\_\_\_

3. Regional center (name and address): \_\_\_\_\_  
Service coordinator (name and contact information): \_\_\_\_\_

4. County placing agency (specify): \_\_\_\_\_

a. Assigned social worker or probation officer (name and contact information): \_\_\_\_\_

b. Supervising social worker or probation officer (name, address, and contact information): \_\_\_\_\_

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5. Child's or youth's attorney (name, address, and contact information): \_\_\_\_\_

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**THE COURT FINDS AND ORDERS**

6.  The child or youth is the subject of a petition filed under section 320. The child's parent or guardian is unavailable, unable, or unwilling to exercise educational or developmental services rights. The agency has made diligent efforts to locate and secure the participation of the parent or guardian in educational and developmental-services decisionmaking, and the child's or youth's educational and developmental-services needs cannot be met without the temporary appointment of a responsible adult as educational rights holder.

7. Limitation of the rights of the parent(s) or guardian(s) to make  educational  developmental-services decisions is necessary to protect the child or youth.

8. The youth is at least 15 years old and

a.  has chosen not to make  educational  developmental-services decisions for himself or herself.

b.  is deemed incompetent to make educational or developmental-services decisions for himself or herself.

9. (If 8a. or 8b. is checked) The appointment of an educational rights holder to make developmental-service decisions for the youth is in his or her best interests.

10.  The court has not ordered or has terminated reunification services for the parent or guardian, and the child or youth is placed in a planned permanent living arrangement under section 366.21(g)(5), 366.22, 366.25, 366.3(i), or 727.3(b)(5)-(6).

11. There  is  is not a responsible adult relative, nonrelative extended family member, or other adult known to the child who is available and willing to serve as the educational rights holder.

Form Approved by Superior Court  
Illinois Council of Juvenile & Family Court Judges  
JV-535(A) (Rev. January 1, 2016)

**ATTACHMENT TO ORDER  
DESIGNATING EDUCATIONAL RIGHTS HOLDER**

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Stat. & Ill. Code, §§ 911, 729  
www.jcfcjv.org

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JV-535(A)

CHILD'S NAME: \_\_\_\_\_ CASE NUMBER: \_\_\_\_\_

12. The child or youth is receiving special education, general education accommodations and modifications, early intervention services, or developmental services.  Yes  No

13.  The child or youth is receiving services under the following plan (check all that apply):

a.  Individualized education program (IEP)

b.  Section 504 plan

c.  Individualized family service plan (IFSP)

d.  Individual program plan (IPP)

e.  Other (specify): \_\_\_\_\_

The LEA or regional center must ensure that a copy of any plan is provided to the designated educational rights holder.

14.  The child or youth needs the following educational or developmental assessments or services (check all that apply):

a.  The child is 0-3 years old, is at risk for a disability or has a developmental delay, and needs assessment for services.

b.  The child is 0-3 years old, has a disability, and needs the development of an IFSP.

c.  The child or youth is 3 years old or older, may have a disability, and needs intake and assessment for services.

d.  The child or youth is 3 years old or older, has a disability, and needs the development or revision of an IEP, IPP, or Section 504 plan.

15. The appointed educational rights holder must (check all that apply):

a.  Submit to the LEA a written referral for assessment for special education and related services or for services under section 504 of the Rehabilitation Act of 1973.

b.  Submit to the regional center a written referral for an initial intake and eligibility assessment or evaluation.

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15. The appointed educational rights holder must (check all that apply):

- a.  Submit to the LEA a written referral for assessment for special education and related services or for services under section 504 of the Rehabilitation Act of 1973.
- b.  Submit to the regional center a written referral for an initial intake and eligibility assessment or evaluation.
- c.  Submit to the LEA a written referral for assessment or services, or a written request to convene the IEP team to develop, review, or revise the pupil's IEP.
- d.  Submit a written request to the regional center to convene the IFSP team to develop, review, or revise the IFSP.
- e.  Submit a written request to the regional center to convene the IPP team to develop, review, or revise the IPP.
- f.  Other: \_\_\_\_\_

16.  The following person is directed under rule 5.649(c)-(d) to take whatever steps are necessary to request any assessments or services identified in item 14 or 15 (name and address unless confidential): \_\_\_\_\_

17.  The current educational program and school placement are in the best interests of the child or youth.

18.  The current IFSP, IPP, or other developmental services plan is in the best interests of the child or youth.

19.  The child or youth  is  is not attending his or her school of origin. If not,

- a. The educational rights holder  has  has not waived the child's or youth's right to attend the school of origin.
- b. The child or youth  has  has not waived his or her right to attend the school of origin.

20.  The county placing agency has considered educational stability and the opportunity to be educated in the least restrictive educational program when making placement decisions for the child or youth.

JV-537A (Rev. January 1, 2016) ATTACHMENT TO ORDER DESIGNATING EDUCATIONAL RIGHTS HOLDER Page 2 of 2

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- ## Other Judicial Council Forms
- *Your Child's Health and Education (JV-225)*
  - *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent (JV-536)*
  - *Educational Rights Holder Statement (JV-537)*
  - *Findings and Orders Regarding Transfer From School of Origin (JV-538)*
  - *Request for Hearing Regarding Child's Access to Services (JV-539)*
  - *Notice of Hearing on Joinder—Juvenile (JV-540)*

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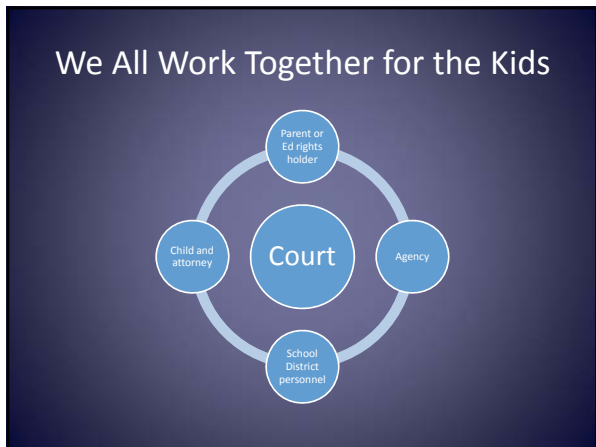
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## Sources

- Barrat, Vanessa X., & BethAnn Berliner. (2013). *The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California's Public Schools*. San Francisco: WestEd.
- California STAR Program, available at <http://star.cde.ca.gov/star2011/Index.aspx>.
- *Educational Outcomes for Children and Youth in Foster and Out-of-Home Care*. National Working Group on Foster Care and Education (18 October 2006); available at [http://www.fostercaremonth.org/GelInvolved/Toolkit/Support/Documents/Educational\\_Outcomes\\_and\\_Foster\\_Care.pdf](http://www.fostercaremonth.org/GelInvolved/Toolkit/Support/Documents/Educational_Outcomes_and_Foster_Care.pdf)
- Fricano, Stefanie. *Education of Foster Youth in California*. Legislative Analyst's Office (28 May 2009), available at <http://www.lao.ca.gov/laoapp/PubDetails.aspx?id=2069>.
- Hunt, Nancy, & Kathleen Marshall. *Exceptional Children and Youth: An Introduction to Special Education*. Houghton Mifflin (2006).
- *Repeating a Grade*. Child Trends (2010), available at [http://www.childtrendsdatabank.org/sites/default/files/99\\_Repeating\\_a\\_Grade.pdf](http://www.childtrendsdatabank.org/sites/default/files/99_Repeating_a_Grade.pdf).
- Torvikson, Tom. *CALPADS Finds Statewide Graduation Rate of 74.4 Percent*. News Release: #11-54, California Department of Education (11 August 2011), available at <http://www.cde.ca.gov/nr/nc/yr11/yr11rel54.asp>.
- Wolanin, Thomas R. *Higher Education Opportunities for Foster Youth: A Primer for Policymakers*. The Institute for Higher Education Policy (December 2005), available at <http://www.ihep.org/assets/files/publications/m-r/OpportunitiesFosterYouth.pdf>.

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**FosterEd**

**Foster Youth - Helpful Resources**

Beyond the Bench

December 3, 2013

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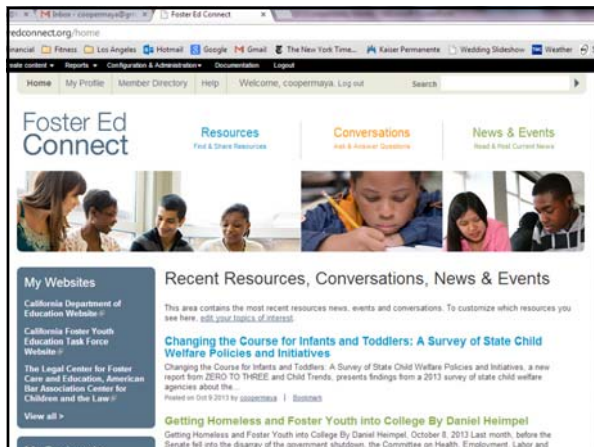
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redconnect.org/conversations

Financial | Finance | Los Angeles | Hitmail | Google | Gmail | The New York Times | Kaiser Permanente | Wedding SlideShow | Weather

create content | Reports | Configuration & Administration | Documentation | Logout

All | By Subject | By Role | By Age Group | By County

TITLE	POSTED BY	COMMENTS	POST / COMMENT
<b>Information surrounding AB 213</b> Does anyone have any information surrounding AB 213? High School, Legislation-Specific Resources, Strategies for Helping Foster Youth Succeed in School - STATEWIDE	Becky Cline	3	Oct 7 2013 - 11:02am
<b>public school offer of FAP?</b> 2013 IEP not offered in 2012 to private school student. Who is responsible for updating offer of FAP? each year that child is attending private school? - Caregivers, Child Welfare Workers, Educator Professionals, Education Rights Holders, Foster Children and Foster Youth, Foster Youth Lawyers, Students with Disabilities / Special Education	caroline tuite	1	Sep 20 2013 - 9:38am
<b>18 year old foster in high school are college funds available if not in placement when eligible?</b> My sister was recently placed in the foster care system. Her worker has informed her that in order to receive a full ride paid during her first two years in college, high school, Foster Children and Foster Youth, Educational Rights, Events, Programs, and Services. Contact information	gabrielara2013	0	Sep 9 2013 - 11:05am
<b>NPS on IEP's</b> I have multiple clients coming to us with IEP's that state NPS on them. The problem that is arising is that during the intake process with the district...	Ellie	3	Sep 3 2013 - 4:42pm
<b>Response for statistics other than Data Quest?</b> Does anyone have a link/resource that tracks graduation rates of foster youth? Data Quest only does "Socioeconomically Disadvantaged". I am unable to filter...	Karen Cross	1	Sep 3 2013 - 11:45am
<b>Verification</b> What are other counties doing to verify that their FAND is still enrolled in			

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## FosterEd Resources Available Online

- FosterEd is working to improve the educational outcomes of California foster children. In partnership with state and local agencies we are implementing a continuous cycle of data-driven interventions to ensure every foster child has at least one educational champion with the characteristics proven to support educational success.
- Mentoring Modules for Education Champions, PowerPoints, Tip Sheets, and supporting materials can be found at: [www.foster-ed.org/](http://www.foster-ed.org/)
- Spanish versions of some materials are available.

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www.foster-ed.org

Home | About Us | Our Strategy | Our Work | Resources | Volunteers | Outcomes | News

**Improving the educational outcomes of children and youth in foster care.**

Foster children are our children. We have a collective responsibility to ensure they succeed in school. FosterEd improves the educational outcomes of children and youth in foster care by ensuring each has at least one educational champion with the characteristics proven to support educational success.

Recent News

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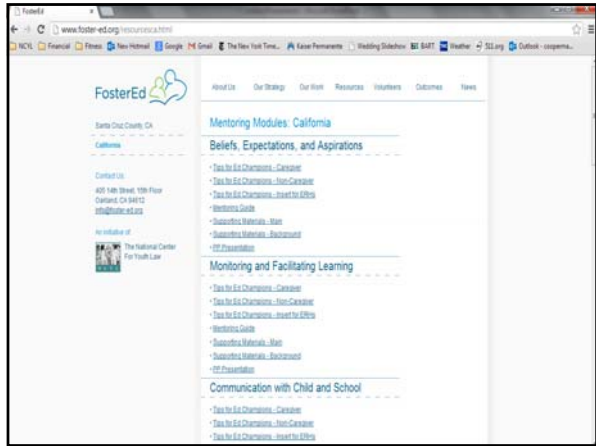
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