

Truancy

Information and resources that define truancy and truancy penalties and other related information.

Definition of a Truant

The California Legislature defined a truant in very precise language. In summary, it states that a student missing more than 30 minutes of instruction without an excuse three times during the school year must be classified as a truant and reported to the proper school authority. This classification and referral helps emphasize the importance of school attendance and is intended to help minimize interference with instruction. Effective January 1, 2013, the law was amended to authorize school administrators to excuse school absences due to the pupil's circumstances, even if the excuse is not one of the valid excuses listed in the California *Education Code (EC)* or the uniform standards established by the governing board of the district. The *EC* section that defines a truant reads as follows:

EC Section 48260 (a) A pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse three full days in one school year or tardy or absent for more than a 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination thereof, shall be classified as a truant and shall be reported to the attendance supervisor or to the superintendent of the school district.

(b) Notwithstanding subdivision (a), it is the intent of the Legislature that school districts shall not change the method of attendance accounting provided for in existing law and shall not be required to employ period-by-period attendance accounting.

(c) For purposes of this article, a valid excuse includes, but is not limited to, the reasons for which a pupil shall be excused from school pursuant to Sections 48205 and 48225.5 and may include other reasons that are within the discretion of school administrators and, based on the facts of the pupil's circumstances, are deemed to constitute a valid excuse.

Definition of a Chronic Truant

Effective January 1, 2011, *EC* Section 48263.6: Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse for ten percent or more of the school days in one school year, from the date of enrollment to the current date, is deemed a chronic truant, provided that the appropriate school district officer or employee has complied with *EC* sections 48260, 48260.5, 48261, 48262, 48263, and 48291.

First Notification Mandate

In addition to the reporting requirement, the law states that the school district must notify the parent or guardian of the truant by the most cost-effective method possible, and that the notification must include specific information related to the student's unexcused absences. The *EC* Section regarding notification reads as follows:

EC Section 48260.5: Upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian, by using the most cost-effective method possible, which may include electronic mail or a telephone call:

- (a) That the pupil is a truant.
- (b) That the parent or guardian is obligated to compel the attendance of the pupil at school.
- (c) That parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27.
- (d) That alternative educational programs are available in the district.
- (e) That the parent or guardian has the right to meet with appropriate school personnel to discuss solutions to the pupil's truancy.
- (f) That the pupil may be subject to prosecution under Section 48264.
- (g) That the pupil may be subject to suspension, restriction, or delay of the pupil's driving privilege pursuant to Section 13202.7 of the *Vehicle Code*.
- (h) That it is recommended the parent or guardian accompany the pupil to school and attend classes with the pupil for one day.

Habitual Truant Mandate

The law further requires that after a student has been reported as a truant three or more times in one school year and after an appropriate school employee has made a conscientious effort to hold at least one meeting with the parent and the student, the student is deemed a *habitual* truant. The intent is to provide solutions for students who failed to respond to the normal avenues of school intervention, and the most cost-effective method possible should be used to notify the parent or guardian about the meeting at the school. The *EC* Section outlining habitual truancy reads as follows:

EC Section 48262: Any pupil is deemed an habitual truant who has been reported as a truant three or more times

per school year, provided that no pupil shall be deemed an habitual truant unless an appropriate district officer or employee has made a conscientious effort to hold at least one conference with a parent or guardian of the pupil and the pupil himself, after the filing of either of the reports required by Section 48260 or Section 48261. For the purposes of this section, a conscientious effort means attempting to communicate with the parents of the pupil at least once using the most cost-effective method possible, which may include electronic mail or a telephone call.

Interventions

When a student is a *habitual* truant, or is irregular in attendance at school, or is habitually insubordinate or disorderly during school, the student may be referred to a school attendance review board (SARB) or to the county probation department pursuant to EC Section 48263. The student may also be referred to a probation officer or district attorney mediation program pursuant to EC Section 48263.5. The intent of these laws is to provide intensive guidance to meet the special needs of students with school attendance problems or school behavior problems pursuant to EC Section 48320. These interventions are designed to divert students with serious attendance and behavioral problems from the juvenile justice system and to reduce the number of students who drop out of school.

Penalties (Student)

The law provides schools and school districts with discretion regarding student penalties for truancy as long as they are consistent with state law. The penalties for truancy for students defined in EC Section 48264.5 become progressively severe from the first time a truancy report is required through the fourth time a truancy report is required. The EC Section regarding penalties for students who are truant reads as follows:

EC Section 48264.5: Any minor who is required to be reported as a truant pursuant to Section 48260 or 48261 may be required to attend makeup classes conducted on one day of a weekend pursuant to subdivision (c) of Section 37223 and is subject to the following:

- (a) The first time a truancy report is required, the pupil may be personally given a written warning by any peace officer specified in Section 830.1 of the *Penal Code*. A record of written warning may be kept at the school for a period of not less than two years, or until the pupil graduates or transfers, from that school. If the pupil transfers, the record may be forwarded to any school receiving the pupil's school records. A record of the written warning may be maintained by the law enforcement agency in accordance with that law enforcement agency's policies and procedures.
- (b) The second time a truancy report is required within the same school year, the pupil may be assigned by the school to an after school or weekend study program located within the same county as the pupil's school. If the pupil fails to successfully complete the assigned study program, the pupil shall be subject to subdivision (c).
- (c) The third time a truancy report is required within the same school year, the pupil shall be classified a habitual truant, as defined in Section 48262, and may be referred to and required to attend, an attendance review board or a truancy mediation program pursuant to Section 48263 or pursuant to Section 601.3 of the *Welfare and Institutions Code*. If the district does not have a truancy mediation program, the pupil may be required to attend a comparable program deemed acceptable by the school district's attendance supervisor. If the pupil does not successfully complete the truancy mediation program or other similar program, the pupil shall be subject to subdivision (d).
- (d) The fourth time a truancy is required to be reported within the same school year, the pupil shall be within the jurisdiction of the juvenile court which may adjudge the pupil to be a ward of the court pursuant to Section 601 of the *Welfare and Institutions Code*. If the pupil is adjudged a ward of the juvenile court, the pupil shall be required to do one or more of the following:
 - (1) Performance at court-approved community services sponsored by either a public or private nonprofit agency for not less than 20 hours but not more than 40 hours over a period not to exceed 90 days, during a time other than the pupil's hours of school attendance or employment. The probation officer shall report to the court the failure to comply with this paragraph.
 - (2) Payment of a fine by the pupil of not more than one hundred dollars (\$100) for which a parent or guardian of the pupil may be jointly liable.
 - (3) Attendance of a court-approved truancy prevention program.
 - (4) Suspension or revocation of driving privileges pursuant to Section 13202.7 of the *Vehicle Code*. This subdivision shall apply only to a pupil who has attended a school attendance review board program, or a truancy mediation program pursuant to subdivision (c).

Education Code Penalties (Parent)

Penalties against parents apply when any parent, guardian, or other person having control or charge of any student fails to compel the student to attend school. The penalties against parents in EC Section 48293 (a) become progressively severe with a second and third conviction. The EC Section regarding penalties for parents of a truant reads as follows:

- EC Section 48293 (a):* Any parent, guardian, or other person having control or charge of any pupil who fails to comply with this chapter, unless excused or exempted there from, is guilty of an infraction and shall be punished as follows:
- (1) Upon a first conviction, by a fine of not more than one hundred dollars (\$100).
 - (2) Upon a second conviction, by a fine of not more than two hundred fifty dollars (\$250).
 - (3) Upon a third or subsequent conviction, if the person has willfully refused to comply with this section, by a fine of not more than five hundred dollars (\$500). In lieu of the fines prescribed in paragraphs (1), (2), and (3), the court may order the person to be placed in a parent education and counseling program.

EC Section 48293 (b): A judgment that a person convicted of an infraction be punished as prescribed in

subdivision (a) may also provide for the payment of the fine within a specified time or in specified installments, or for participation in the program. A judgment granting a defendant time to pay the fine or prescribing the days of attendance in a program shall order that if the defendant fails to pay the fine, or any installment thereof, on the date it is due, he or she shall appear in court on that date for further proceedings. Willful violation of this order is punishable as contempt.

EC Section 48293 (c): The court may also order that the person convicted of the violation of subdivision (a) immediately enroll or re-enroll the pupil in the appropriate school or educational program and provide proof of enrollment to the court. Willful violation of an order under this subdivision is punishable as civil contempt with a fine of up to one thousand dollars (\$1,000). An order of contempt under this subdivision shall not include imprisonment.

Penal Code Penalties (Parent)

In addition to the *EC* penalties for parents in Section 48293, *Penal Code* Section 270.1 is effective January 1, 2011 and provides penalties for a parent or guardian of a pupil of six years of age or more who is in kindergarten or any of the grades from one to eight:

Penal Code Section 270.1. (a) A parent or guardian of a pupil of six years of age or more who is in kindergarten or any of grades one to eight, inclusive, and who is subject to compulsory full-time education or compulsory continuation education, whose child is a chronic truant as defined in Section 48263.6 of the *EC*, who has failed to reasonably supervise and encourage the pupil's school attendance, and who has been offered language accessible support services to address the pupil's truancy, is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. A parent or guardian guilty of a misdemeanor under this subdivision may participate in the deferred entry of judgment program defined in subdivision (b).

(b) A superior court may establish a deferred entry of judgment program that includes the components listed in paragraphs (1) to (7), inclusive, to adjudicate cases involving parents or guardians of elementary school pupils who are chronic truants as defined in Section 48263.6 of the *EC*:

(1) A dedicated court calendar.

(2) Leadership by a judge of the superior court in that county.

(3) Meetings, scheduled and held periodically, with school district representatives designated by the chronic truant's school district of enrollment. Those representatives may include school psychologists, school counselors, teachers, school administrators, or other educational service providers deemed appropriate by the school district.

(4) Service referrals for parents or guardians, as appropriate to each case that may include, but are not limited to, all of the following:

(A) Case management.

(B) Mental and physical health services.

(C) Parenting classes and support.

(D) Substance abuse treatment.

(E) Child care and housing.

(5) A clear statement that, in lieu of trial, the court may grant deferred entry of judgment with respect to the current crime or crimes charged if the defendant pleads guilty to each charge and waives time for the pronouncement of judgment and that, upon the defendant's compliance with the terms and conditions set forth by the court and agreed to by the defendant upon the entry of his or her plea, and upon the motion of the prosecuting attorney, the court will dismiss the charge or charges against the defendant and the same procedures specified for successful completion of a drug diversion program or a deferred entry of judgment program pursuant to Section 851.90 and the provisions of Section 1203.4 shall apply.

(6) A clear statement that failure to comply with any condition under the program may result in the prosecuting attorney or the court making a motion for entry of judgment, whereupon the court will render a finding of guilty to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

(7) An explanation of criminal record retention and disposition resulting from participation in the deferred entry of judgment program and the defendant's rights relative to answering questions about his or her arrest and deferred entry of judgment following successful completion of the program.

(c) Funding for the deferred entry of judgment program pursuant to this section shall be derived solely from non-state sources.

(d) A parent or guardian of an elementary school pupil who is a chronic truant, as defined in Section 48263.6 of the *EC*, may not be punished for a violation of both this section and the provisions of Section 272 that involve criminal liability for parents and guardians of truant children.

(e) If any district attorney chooses to charge a defendant with a violation of subdivision (a) and the defendant is found by the prosecuting attorney to be eligible or ineligible for deferred entry of judgment, the prosecuting attorney shall file with the court a declaration in writing, or state for the record, the grounds upon which that determination is based.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the *Government Code*, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Truancy Rate

The truancy rate of a school is determined by the number of students in a school who are classified as truants pursuant to *EC* Section 48260 during the school year compared to the enrollment of the school as reported to the California Basic Educational Data System (CBEDS) in October of that school year. For example, if the school has an enrollment of 600 students, it will have a

50 percent truancy rate if it has 300 students classified as truants during the year.

Questions: Educational Options, Student Support, and American Indian Education Office | CWA@cde.ca.gov | 916-323-2183

Last Reviewed: Tuesday, February 12, 2013



California's foster children need Foster Youth Services (FYS).

Help preserve FYS by removing it from the list of categorical programs included in Governor Brown's proposed local control formula.

Educational Needs of Foster Youth: At any given time, there are approximately 60,000 children in foster care in California. These children have been removed from their homes because of abuse or neglect. Once placed into foster care, the state assumes a special responsibility for these children, including ensuring they receive appropriate services and supports to succeed in school.

Foster children face a unique set of educational challenges. Nationwide, their educational outcomes are significantly worse than even other economically disadvantaged students. For example, foster children:

- Have significantly higher rates of absenteeism and disciplinary referrals;
- Are more likely to perform below grade level (75% perform below grade level);
- Are about twice as likely to be held back in school (83% are held back by third grade);
- Drop out of school nearly twice as frequently (50% obtain a high school diploma/GED);
- Attend a four-year college at a significantly lower rate (fewer than 3% do so).

California's Foster Youth Service (FYS) Program: Overcoming these unique educational challenges requires specialized educational supports. California's FYS program was created to ensure foster children receive the specialized educational supports they need to succeed in school and life. Local FYS programs operate primarily at the county level to better coordinate with the other county agencies serving foster children including: county court systems, school districts and county child welfare agencies. Not only has California's FYS program accomplished its objective to improve the educational outcomes of foster children, but it also serves as a model nationwide. For example, studies estimate that approximately 17% of foster youth have been expelled at least once. In 2010, of the 3,645 students served by FYS core district program, only 0.69% faced expulsion.

Governor Brown's Proposed Budget Eliminates the FYS Program: Governor Brown's proposed budget eliminates 47 out of 62 "categorical" education programs, including FYS programs, and combines them into a "local control formula." With the elimination of the FYS program, approximately \$15 million currently targeted for foster youth supports and services will be distributed to County Offices of Education to use as they choose.

Effects of Governor Brown's Budget's Local Control Formula:

- A local control formula only makes sense if accompanied by accountability. School districts will not be held accountable for the academic performance of foster children; therefore, few districts will provide these children the specialized educational supports they need.
- Under the local control formula, every foster child is categorically eligible for the free and reduced lunch programs. Therefore, districts will not receive a single additional dollar as a result of a student being in foster care.
- Few school districts have the internal mechanisms to identify which of their students are in foster care. This makes it nearly impossible to hold districts accountable for the performance of these students and districts are unable to provide these students with the supports they may require.
- California's county child welfare agencies will find it much more expensive to comply with federal laws such as the Fostering Connections Act of 2008 (Public Law 110-351) requiring child welfare agencies to monitor and track the educational progress of foster children.

The Bottom Line: Without the specialized educational supports this population needs, California's foster children are likely to drop further and further behind, until many drop out of school.

Opposition to Eliminating California's FYS Program: While previous reports have recommended *eliminating* categorical programs and creating a local control formula, they specifically excluded the FYS program.¹ More recently, in the brief time since the Governor proposed his budget; over 50 organizations and agencies have signed a letter opposing the inclusion of California's FYS program in the local control funding formula.

Please join us in supporting California's foster children. Please oppose the elimination of California's Foster Youth Services program. For more information contact Susanna Kniffen (skniffen@childrennow.org) at Children Now or Maya Cooper (mcooper@youthlaw.org) at the National Center for Youth Law.

¹ The 2007 Students First report, produced by the Governor's Committee on Education Excellence, and a 2008 report from California's Legislative Analyst's Office (LAO).



JUVENILE DEPENDENCY PROGRAM

CONTRA COSTA COUNTY
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January 28, 2013



Catherine Giacalone
Youth Development Services Manager
Contra Costa County Office of Education
77 Santa Barbara Road
Pleasant Hill, CA 94523

Re: AB 1909

Dear Ms. Giacalone:

I am writing to you, foster youth educational liaison, to satisfy dependency child counsel's obligations required by AB 1909 (amended Welfare and Institutions Code section 317(e)) and as a reminder regarding new notice provisions.

I am the managing attorney for Legal Aid Society, Contra Costa County Dependency Program. We administer all assignments of court-appointed counsel for juvenile dependency court in Contra Costa County. Our agency has five staff attorneys and has contracts with eleven private counsel who represent children with cases currently pending in dependency court.

Welfare and Institutions Code section 317, as amended by AB 1909, requires:

"(4) (A) At least once every year, if the list of educational liaisons is available on the Internet Web site for the State Department of Education, both of the following shall apply:

(i) Counsel shall provide his or her contact information to the educational liaison, as described in subdivision (b) of Section 48853.5 of the Education Code, of each local educational agency serving counsel's foster child clients in the county of jurisdiction.

(ii) If counsel is part of a firm or organization representing foster children, the firm or organization may provide its contact information in lieu of contact information for the individual counsel. The firm or organization may designate a person or persons within the firm or organization to receive communications from educational liaisons."

In accordance with this provision, I am including the contact information for each of the 16 attorneys who represent dependent children with cases pending in Contra Costa County dependency court.

I am also writing to you, as the foster youth educational liaison for your local educational agency, to remind you that, effective January 1, 2013 pursuant to AB 1909, your agency must

provide the foster child's counsel with notices of and invitations to the following meetings and hearings concerning all Contra Costa County foster children served by your agency:

1. The meeting to discuss whether a student will be on an **extended suspension** pending the governing board's decision regarding expulsion regarding an act that that does not require an expulsion recommendation. EC §§ 48911(g), 48853.5(c).
2. An expulsion hearing regarding an act that does not require an expulsion recommendation. EC §§ 48918.1, 48853.5(c). Notice should be provided at least 10 calendar days prior to the hearing.
3. The meeting of a student's Individualized Education Program team to make a **manifestation determination** regarding an act that does not require an expulsion recommendation. EC §§ 48915.5(d), 48853.5(c).

You will need to contact the foster child's social services caseworker to obtain the name of the individual child's counsel.

Please notify me directly if you have questions or concerns.

Very truly yours,



MARTHA ROSENBERG
Managing Attorney

MR/kh

Enclosure

CONTACT INFORMATION FOR JUVENILE DEPENDENCY ATTORNEYS

Legal Aid Society
Contra Costa County Dependency Program
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Logger, Mary

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Gagliani, Pam

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925-478-2728

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Judge, Christopher

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510-262-7671

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Lawrence, Judith

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925-229-1232

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Predes, Tamara

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Hayward, CA 94544

510-537-5990

510-582-2334

Stern, Brian
201 West Richmond Ave, Ste. 2
Point Richmond, CA 94801

510-234-2700

510-234-2733

Wilson-Rice, Rhonda
525 Marina Blvd.
Pittsburg, CA 94565

925-432-7373

925-427-3018



xxx
Foster Youth Liaison
xxx
xxx

12/27/12

Dear xxx,

Pursuant to our new obligation under AB 1909 (2012), I write to inform you, as the foster youth educational liaison for your local educational agency (LEA), that my office, the East Bay Children's Law Offices, is the primary provider of legal representation for foster children and youth in Alameda County. I also write to request that your LEA provide me with the new school discipline-related notices required by AB 1909, as detailed below.

Roger Chan
Executive Director

Kristin Mateer
Managing Attorney

C. Joy Ricardo
Managing Attorney

Ronald Kimmons, PsyD, MSW
Clinical Director

Carol Barnett
Director of Training

Peggy Stone
Director of Legal Volunteers

Ana Wong
Director of Finance
and Operations

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AB 1909 has amended section 317 of the California Welfare and Institutions Code to require as follows:

(4) (A) At least once every year, if the list of educational liaisons is available on the Internet Web site for the State Department of Education, both of the following shall apply:

(i) Counsel shall provide his or her contact information to the educational liaison, as described in subdivision (b) of Section 48853.5 of the Education Code, of each local educational agency serving counsel's foster child clients in the county of jurisdiction.

(ii) If counsel is part of a firm or organization representing foster children, the firm or organization may provide its contact information in lieu of contact information for the individual counsel. The firm or organization may designate a person or persons within the firm or organization to receive communications from educational liaisons.

Beginning January 1, 2013, when AB 1909 takes effect, please contact the East Bay Children's Law Offices to notify us of and invite us to the following meetings and hearings concerning Alameda County foster children and youth who are being served by your LEA:

1. The meeting to discuss whether a student will be on an extended suspension pending the governing board's decision regarding expulsion. Cal. Educ. Code § 48911(g).
2. An expulsion hearing. Cal. Educ. Code § 48918.1. Notice should be provided at least 10 calendar days prior to the hearing.
3. The meeting of a student's Individualized Education Program team to make a manifestation determination regarding an act that does not require an expulsion recommendation. Cal. Educ. Code § 48915.5(d).

Please provide the East Bay Children's Law Offices with notice by any means that is most convenient for you. My contact information is as follows:

- Phone: 510-496-5200
- Email: Daniel.senter@ebclo.org
- Fax: 510-496-5250
- Mail: 7700 Edgewater Drive, Suite 210, Oakland, CA 94621

The notice I am requesting is separate from the notice your LEA also is required to provide, pursuant to AB 1909, to the county child welfare agency responsible for a foster child or youth facing the above discipline-related proceedings.

Please contact me with any questions.

Thank you,

Daniel Senter
Staff Attorney
510-496-5263