

BREAKING THE CYCLE: ENFORCING EDUCATION RIGHTS OF YOUTH IN AND OUT OF CUSTODY

How to Provide Quality Education and
Transition Supports for Students in the
Juvenile System



BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE



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Table of Contents

| | |
|---|----|
| Executive Summary..... | 4 |
| Introduction | 10 |
| Why Education? | 10 |
| Legal Requirements and Best Practices | 13 |
| Role of Juvenile Court | 14 |
| School Intake and Operations..... | 16 |
| JOINT RESPONSIBILITY | 16 |
| ENROLLMENT AND TRANSFER OF RECORDS | 17 |
| EDUCATIONAL HISTORY, ASSESSMENT, AND PRELIMINARY EDUCATION PLAN | 18 |
| CREDIT CALCULATIONS AND ADAPTING CURRICULUM..... | 18 |
| PARENT ENGAGEMENT..... | 19 |
| RIGOROUS CURRICULUM AND POSTSECONDARY PROGRAMS | 21 |
| Special Education, Section 504, and Related Services | 22 |
| INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) of 1975 and 2004 | 24 |
| ASSESSMENT, RELATED SERVICES & BEHAVIORAL INTERVENTIONS..... | 25 |
| SECTION 504 OF REHABILITATION ACT OF 1973 | 28 |
| EMERGENCY INTERVENTIONS..... | 28 |
| Behavior Management | 29 |
| POSITIVE BEHAVIORAL SUPPORTS AND INTERVENTIONS (PBIS)..... | 29 |
| DISCIPLINE WITHIN DETENTION FACILITIES..... | 33 |
| Literacy and Special Activities | 35 |
| Career and Technical Education | 35 |
| Transition and Aftercare | 36 |
| Conclusion..... | 40 |
| Appendix A: Notable Developments in California Law | 41 |
| AB 167/216/1806..... | 41 |
| SB 172 | 45 |
| AB 2276..... | 46 |

Executive Summary

Juvenile justice is at a critical turning point in California. While the number of youth in the juvenile justice system has decreased dramatically in the last 20 years,¹ system-involved young people are still among the least likely to graduate from high school and the most likely to come into contact with the adult criminal justice system.²

The aim of this publication is to illustrate the impact of a failed education on these youth and to ensure all stakeholders know the basic legal requirements and how to meet them. Bay Area Legal Aid acknowledges the work of counties throughout the state to critically examine their own practices and encourages others to begin the same challenging process in an effort to break the cycle of incarceration.

Listed and summarized below are the legal requirements and best practices discussed in this manual:

ROLE OF THE JUVENILE COURT

- **LR 1** The Juvenile Court must consider whether a young person's removal from his or her school of origin is in the youth's best interests.

¹ From 1986 to 2015, juvenile felony arrest rates dropped by 78 percent, and from 1996 to 2015, the number of young people incarcerated in the state-run Division of Juvenile Justice (formerly the California Youth Authority) declined from 10,000 to approximately 700 young people. See Nisha Ajmani, *Failure after Farrell: Violence and Inadequate Mental Health Care in California's Division of Juvenile Justice*, CENTER ON JUVENILE AND CRIMINAL JUSTICE 1-2 (2016), http://www.cjcj.org/uploads/cjcj/documents/failure_after_farrell_djj.pdf. The average daily population of young people incarcerated in county juvenile halls and camps has also decreased from 9,221 in 2009 to 6,565 in 2014. See *Incarcerations of Youths in Local Juvenile Halls and Camps*, CALIFORNIA SENTENCING INSTITUTE, CENTER ON JUVENILE AND CRIMINAL JUSTICE, <http://casi.cjcj.org> (follow "Juveniles" tab).

² Anna Aizer & Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges* 130 THE QUARTERLY JOURNAL OF ECONOMICS 4 (2015), http://www.mit.edu/~jjdoyle/aizer_doyle_juvenile_incarceration_january2015.pdf (finding that juvenile incarceration is estimated to decrease high school graduation rates by 13 percentage points and increase adult incarceration rates by 23 percentage points).

- ▶ **LR 2** The Juvenile Court must also consider and determine whether a young person’s educational, physical, mental health, and developmental needs are being met.

INTAKE AND OPERATIONS

- ▶ **LR 3** Education and probation staff must develop and implement written policies to ensure communication and coordination between the agencies.
 - **BP 1** This process should start at intake and include a “welcome center” for new students.
- ▶ **LR 4** Juvenile court schools must be a joint partnership of the Probation Department and the County Office of Education (COE).
- ▶ **LR 5** School districts and COEs should create Memoranda of Understanding (MOUs) to share data and provide transition centers for youth.
- ▶ **LR 6** Students must be enrolled in school within three (3) school days after admission to a juvenile detention facility, and COE must immediately request the student’s records.
 - **BP 2** COEs and school districts should have a tracking system that allows each entity to see when a request for records was made and when it was received.
- ▶ **LR 7** At intake, staff must interview the youth and make a written record of the youth’s educational history.
- ▶ **LR 8** Also at intake, educational staff must assess each student’s general academic functioning levels to place them in appropriate courses.
- ▶ **LR 9** Staff must then develop a preliminary education plan for each youth within five (5) school days.
 - **BP 3** In some counties, probation officers screen students during the intake process for developmental disabilities.

- ▶ **LR 10** Juvenile court school programs must be designed to respond to the different learning styles and abilities of students.
- ▶ **LR 11** COEs must accept coursework completed at another school, even if the student did not complete the entire course, and must issue full or partial credits.
 - **BP 4** Educational staff should be creative in adapting course plans to complement the credits already earned at another school.
 - **BP 5** Counties should link parents to a community-based organization or education advocate who can engage and shepherd them through the process.
 - **BP 6** Facilities should provide a welcoming space available after school hours that allows for private family meetings.
 - **BP 7** Community based organizations can begin providing young people with therapeutic services and case management as soon as they arrive.
 - **BP 8** With regard to postsecondary education, COEs should partner with community colleges to offer classes and help students access federal financial aid.

SPECIAL EDUCATION, SECTION 504, AND RELATED SERVICES

- ▶ **LR 12** COEs must ensure a continuum of alternative placements for students depending on their unique needs and disabilities.
- ▶ **LR 13** All Local Education Agencies (LEAs) must provide qualifying children a free appropriate public education (FAPE) designed to meet their unique needs and prepare them for postsecondary life.
- ▶ **LR 14** To ensure FAPE, a young person's educational program must be reasonably calculated to allow the child to receive educational benefit, and school officials must comply with federally mandated procedures in developing an Individualized Education Program (IEP).

- ▶ **LR 15** LEAs must identify, locate, and evaluate all children with disabilities who may be eligible for special education.
 - **BP 9** Some counties offer special education training for probation staff, which allows those staff members to provide relevant information to the student's IEP team and helps them understand and implement consistent behavioral interventions.
- ▶ **LR 16** If a child who receives special education has behaviors that impede his, her, or others' ability to learn, the Local Education Agency must provide a Behavior Intervention Plan as part of their IEP.
- ▶ **LR 17** Generally, serious behavior problems or excessive suspensions require COE to create or modify a Behavior Intervention Plan for a child in special education.
- ▶ **LR 18** Emergency interventions can only be used against a student with disabilities to control unpredictable, spontaneous behavior. Causing pain, verbal abuse, and releasing noxious sprays are never allowed.
- ▶ **LR 19** Where emergency interventions are used, the educational team must, within two (2) days, schedule an IEP meeting to determine whether to conduct a behavior assessment and create or modify a Behavior Intervention Plan.

BEHAVIOR MANAGEMENT

- ▶ **LR 20** The educational program must be integrated into the detention facility's overall behavioral management plan.
- ▶ **LR 21** Probation must implement written policies for the discipline of youth that promote acceptable behavior.

- ▶ **LR 22** Probation and educational staff must also address the rights of any student who has continuing difficulty completing a school day, and education must be provided on all units, high security or otherwise.
- ▶ **LR 23** Discipline must be imposed at the least restrictive level and cannot deprive the young person of contact with parent or attorney, counseling, or education.
- ▶ **LR 24** Probation must define major and minor rule violations and their consequences and provide due process, including written notice of a violation prior to a hearing where the young person can present evidence with the assistance of staff.
- ▶ **LR 25** Suspension can only be imposed when all other means of correction fail to bring about proper conduct.
 - **BP 10** Other means of correction can include, but are not limited to, space to re-focus and cool down, restorative circles, and referrals to counseling or other mental health services.

LITERACY AND SPECIAL ACTIVITIES

- **BP 11** Facilities should regularly promote reading, writing, and use of the printed word, as well as provide reading specialists for students who are emerging readers.
- **BP 12** Facilities should also implement daily fifteen-minute 'drop everything and read' periods.
- **BP 13** Student librarians can help manage small book collections on the living units.

CAREER AND TECHNICAL EDUCATION

- **BP 14** In longer-term facilities, courses in building trades, culinary arts, landscaping, and office management should enable youth to earn industry standard certificates of completion.

TRANSITION AND AFTERCARE

- ▶ **LR 26** COE and Probation must have a joint transition planning policy that improves communication regarding release dates, coordinates immediate enrollment in school, and ensures probation officers in the community can support a student's reentry.
 - **BP 15** From the day a student arrives in a juvenile detention facility, the transition team should plan for his or her reentry.
 - **BP 16** The Juvenile Court can request a copy of the student's transcript to be part of the student's release hearing.

- ▶ **LR 27** A student who has had contact with the juvenile justice system must be immediately enrolled in a public school and cannot be denied enrollment on the basis that he or she has had contact with the juvenile justice system.

- ▶ **LR 28** Upon receiving a transfer request, Local Education Agencies must transfer the pupil out of school and deliver records within two (2) business days.
 - **BP 17** LEAs should assign these duties to a person competent to handle the transfer procedure and coordinate with multiple agencies.
 - **BP 18** Too often, the default choice is to enroll students in a continuation school or alternative school after their exit from custody. The transition team – including the student and family – should decide on the most appropriate educational path for the student after release, based on the student's unique goals and needs.

Introduction

Having unmet educational needs is often the top predictor of juvenile recidivism.³ Students in the juvenile justice system face obstacles accessing appropriate education-related services while confined in juvenile facilities, but also face a host of challenges in returning to their home schools and graduating on time. They experience re-enrollment delays and lost records, fail to receive credit for coursework they completed prior to or during their detention, and often lack access to school-based advisors who can adequately support their transition. In addition, they face the stigma of reentry and can be viewed by school staff, teachers, and peers as outsiders to the school community. When this happens, these young people drop out or return to custody, or both.

Why Education?

Education is one of the most powerful means of youth transformation and empowerment. For too long, high quality education services have been largely neglected for our most vulnerable youth – those involved with juvenile court systems and placed in detention facilities. Many of these youth have historically been subject to frequent removals from school, housing and family instability, and learning and mental health disabilities that were insufficiently addressed prior to incarceration. Detained youth are also affected by disproportionately high rates of exposure to childhood trauma, including witnessing

³ Enrollment in school and educational attainment are regularly associated with lower rates of reoffending and better outcomes into adulthood. Elizabeth Seigle, Nastassia Walsh & John Weber, *Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System*, THE COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER 30 (2014), <https://csgjusticecenter.org/wp-content/uploads/2015/11/Juvenile-Justice-White-Paper-with-Appendices-.pdf>. See also Peter Leone & Lois Weinberg, *Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems*, GEORGETOWN PUB. POLICY INST., CTR. FOR JUVENILE JUSTICE REFORM, (2012), http://www.ipjj.org/fileadmin/data/documents/reports_monitoring_evaluation/CJR_AddressinEducationalNeedYouthJuvenileJustice_2012_EN.pdf.

or being a victim of community violence or experiencing the death of a loved one, domestic violence, sexual abuse, or medical trauma.⁴

While the consequences for an *individual* youth – on which the bulk of this report will focus – are significant, failing to provide appropriate educational supports to students in the juvenile justice system also carries an immense cost to communities as a whole. These potential failures place us at risk for losing the future skill, talent, and civic participation of tens of thousands of youth across California each year.

In the U.S., educational attainment correlates directly with levels of civic engagement, i.e., voting, volunteering, attending community meetings, and expressing political views, among other activities. In recent years, voting among adults without a high school diploma has dropped to just half the rate among adults who have graduated from college.⁵ Moreover, individuals with more education are more likely to feel empowered within the political system, and thus, more likely to engage.⁶

As education increases, so does the health of the population. Compared with individuals who have graduated from college, adults who have not completed high school experience far worse health outcomes, with 72% of college graduates reporting very good or excellent health, compared to just 18% of non-high school graduates.⁷

⁴ Patricia K. Kerig, *New Directions in Interventions for Trauma and Juvenile Delinquency*, 5(3) JOURNAL OF CHILD AND ADOLESCENT TRAUMA 187-90 (2012); OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *Meeting the Educational Needs of System-Involved Youth* 1, 3 (2014), <http://www.ojjdp.gov/programs/commitment120814.pdf> (citing one study that indicated 73 to 95 percent of system-involved youth exhibited trauma symptoms due to violence exposure).

⁵ NAT'L CONFERENCE ON CITIZENSHIP, *Broken Engagement: America's Civic Health Index* 11 (2006), http://www.civicerprises.net/MediaLibrary/Docs/national_conference_on_citizenship_2006.pdf.

⁶ NAT'L CONFERENCE ON CITIZENSHIP, *Civic Health in Hard Times: America's Civic Health Index* 21 (2009), www.civicerprises.net/MediaLibrary/Docs/national_conference_on_citizenship_2009.pdf

⁷ Commission to Build a Healthier America, Robert Wood Johnson Foundation, *Gaps in Adult Health Status by Level of Education: How Do States Compare?* http://www.commissiononhealth.org/PDF/tab5a_a.pdf (last visited June 26, 2018).

ECONOMIC COST

Individuals without a high school diploma make substantially lower wages than their counterparts who have graduated from high school – approximately \$10,000 less per year.

In terms of the economy, an adult without a high school diploma in the U.S. can expect to make just \$20,241 per year in annual income, a full \$10,386 less than a typical high school graduate.⁸ In California specifically, the loss of just one high school diploma results in \$168,880 in fiscal losses to federal, state, and local governments, but \$391,110 in total economic losses to the larger economy.⁹ Statewide, this means approximately \$1.9 billion in fiscal impact (i.e., the economic impact on local, state, and federal taxpayers) and \$ 6.2 billion in social impact (i.e., the economic impact on society as a whole from diminished productivity and higher expenditures on health care due to poorer health, among other factors).¹⁰

Educational attainment also means lower rates of contact with the criminal system.¹¹

Continuous engagement in education can serve as a buffer against the negative effects of involvement in the juvenile system,¹² even while recognizing that the relationships between academic achievement, literacy, and delinquency are complex. Nine out of the 10 states with the highest percentage of residents who had earned a high school diploma or above were found to have *lower* violent crime rates

⁸ Jason M. Breslow, *By the Numbers: Dropping Out of High School*, FRONTLINE (Sept. 21, 2012), <http://www.pbs.org/wgbh/frontline/article/by-the-numbers-dropping-out-of-high-school/>.

⁹ Russell Rumberger & Daniel Losen, *The High Cost of Harsh Discipline and Its Disparate Impact*, THE CTR. FOR CIVIL RIGHTS REMEDIES, THE CIVIL RIGHTS PROJECT 7 (June 2, 2016), <https://files.eric.ed.gov/fulltext/ED566130.pdf>.

¹⁰ *Id.* at 19-21.

¹¹ LOIS M. DAVIS, ROBERT BOZICK, JENNIFER L. STEELE, JESSICA SAUNDERS & JEREMY N.V. MILES, EVALUATING THE EFFECTIVENESS OF CORRECTIONAL EDUCATION (2013); Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*, 94 AM. ECON. REV. 1 (2004); LANCE LOCHNER, *Nonproduction Benefits of Education: Crime, Health, and Good Citizenship*, 4 HANDBOOK OF THE ECONOMICS OF EDUCATION 183–282 (2011); LANCE LOCHNER, *Education Policy and Crime*, CONTROLLING CRIME: STRATEGIES AND TRADEOFFS 465-520 (2011).

¹² Research indicates that each change of school placement results in the loss of up to six months of educational progress. See Judy A. Temple & Arthur J. Reynolds, *School Mobility and Achievement: Longitudinal Results from an Urban Cohort*, 37.4 JOURNAL OF SCHOOL PSYCHOLOGY 355 (1999).

than the national average.¹³ Higher levels of education can raise wages, reduce the pressure to engage in illegal activity, and alter the social networks of individuals.¹⁴

For individual youth, the likelihood of recidivism also becomes greater when youth cannot reenroll immediately in school after release from custody. In 2013-2014, only 67 percent of the 38,805 served youth in juvenile detention youth had enrolled in their local district school within 90 calendar days after exit from the facility.¹⁵ In 2014-2015, the percent of youth enrolled after 90 days dropped to 35 percent,¹⁶ with a similar rate for the 2015-2016 year: just 34 percent.¹⁷ In each year, youth of color were still the most impacted by this disruption in education.

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| <p>WHY FOCUS ON EDUCATION?</p> <p>#1 Current systems place detained youth at risk for performing under grade level and dropping out</p> <p>#2 Engagement in education and educational attainment serves as a buffer to the negative effects of being system-involved</p> <p>#3 Schools can be a stable source of support for youth as they reenter their communities</p> |
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Legal Requirements and Best Practices

In California, education is a constitutional fundamental right.¹⁸ All youth involved in the juvenile justice system, including those residing in juvenile detention facilities and residential placements, and

¹³ See Lochner & Moretti, *supra* note 11.

¹⁴ *Education Policy and Crime*, *supra* note 11.

¹⁵ See U.S DEP'T OF EDUC., *Consolidated State Performance Report: Parts I and II: For reporting on School Year 2013-14*, 44-45 (2015).

¹⁶ See U.S DEP'T OF EDUC., *Consolidated State Performance Report: Parts I and II: For reporting on School Year 2014-15*, 44-45 (2016).

¹⁷ See U.S DEP'T OF EDUC., *Consolidated State Performance Report: Parts I and II: For reporting on School Year 2015-16*, 44-45 (2017).

¹⁸ While education is not a fundamental right guaranteed by the U.S. Constitution (see *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29-37 (1973)), it is under the California Constitution (see Cal. Const. art. IX, §§ 1, 7; *Serrano v. Priest*, 5 Cal.3d 584, 589 (1971) (*Serrano I*); *Serrano v. Priest*, 18 Cal.3d 728, 776 (1976) (*Serrano II*)).

youth with disabilities, are entitled to a quality education.¹⁹ However, many juvenile detention facilities struggle to provide appropriate educational services to youth.

Delivering high quality education services for incarcerated youth requires collaboration among agencies and partnerships with families and communities. Often, it starts with culture change. Agency cultures that value a youth's right to a quality education as an essential component of their overall success stand a better chance of producing positive outcomes. Publicly affirming the importance of education for young people in detention facilities is an important first step in this process.

What are the legal standards and best practices that support quality education and strong reentry supports for youth in juvenile detention facilities? Outlined below are the major federal and state laws and regulations governing these legal requirements, as well as best practices gathered from PYJI grantees in the spring of 2016 for how to meet them. We hope the following serves as a substantive primer for wider systems change.

Role of Juvenile Court

Court systems, Public Defenders and other defense attorneys, District Attorneys, Probation, and Child Welfare Services all have significant influence regarding the decision as to whether a young person must be incarcerated in a detention facility or whether their educational needs require placement in an alternative setting. The court has a wide range of discretion in determining disposition in a young person's juvenile case and generally must consider whether the youth's educational needs will be met in custody.

LR 1 The California Rules of Court, which are adopted by the Judicial Council of California, require juvenile court judges to consider if a youth is at risk of removal from or is no longer attending

¹⁹ Cal. Code Regs., tit. 15, § 1370(b); Katherine Twomey, *The Right To Education In Juvenile Detention Under State Constitutions*, 94(3) VA.L.REV. 765 (2008).

the youth's school of origin,²⁰ and whether that removal is in the youth's best interests.²¹ LR 2 At disposition and all other hearings, the court must also consider and determine whether a young person's educational, physical, mental health, and developmental needs, including any need for special education and related services, are being met.²²

The Standards of Judicial Administration, which are appended to the Rules and also developed by the Judicial Council, point out that a significant number of children involved in the juvenile court process

CALIFORNIA RULES OF COURT STANDARD 5.40:

“Provide oversight of the social service and probation agencies to ensure that a child's educational rights are investigated, reported, and monitored.

Ensure that special education, related services, and accommodations to which the child is entitled are provided whenever the child's school placement changes.”

have exceptional needs that, if properly identified and assessed, would qualify such children to receive special education and related services under the Individuals with Disabilities Education Act (IDEA), or qualify such children to receive educational accommodations under Section 504 of the Rehabilitation Act of 1973.²³ Further, the Standards note that unidentified and un-remediated exceptional needs and unaccommodated disabilities have been found to correlate strongly with juvenile delinquency, substance abuse, mental health issues, teenage pregnancy, school failure and dropout, and adult unemployment and crime, and that the cost of incarcerating children is substantially greater than the cost of providing special education and related services to exceptional needs children and providing educational accommodations to children with disabilities.²⁴ In other words, local entities are encouraged to invest in the kinds of academic, behavioral, and psychological supports that enable a

²⁰ The “school of origin” generally means the school that the student last attended when permanently housed or the school in which the student was last enrolled. See CAL. EDUC. CODE § 48853.5(g).

²¹ Cal. Rules of Court, rule 5.651.

²² *Id.*

²³ Cal. Stds. Jud. Admin., § 5.40(g).

²⁴ *Id.*

student to learn and stay in school as a more effective means of addressing underlying issues that incarceration may not ever resolve.

In light of these guiding principles, the Judicial Council directs juvenile courts to take responsibility, with the other juvenile court participants at every stage of a child’s case, to ensure that the child’s educational needs are met, and that each child under the jurisdiction of the juvenile court with exceptional needs has the right to receive a free, appropriate public education, specially designed to meet the child’s unique special education needs.²⁵

School Intake and Operations

LR 3 Education staff in schools located within juvenile facilities and probation staff must develop and implement written policies to ensure communication and coordination between the agencies.²⁶ **BP**

1 This process should start at intake. Some facilities have developed a “welcome center” for new students aimed at helping acculturate youth who may have been out of school for some time prior to their incarceration, and to orient them to the specific expectations of the school program. These kinds of welcome centers can be places where intake activities take place and where students have the opportunity to meet with teachers and a school counselor.

JOINT RESPONSIBILITY

With regard to students detained in juvenile facilities, the California Code of Regulations sets forth specific standards to ensure that schools in juvenile detention facilities are providing quality education. **LR 4** The regulations describe the overall framework for the governance of these juvenile court schools, and indicate that the juvenile court school is not solely the responsibility of the County

²⁵ *Id.* at (h)(1). See also 20 U.S.C. § 1401(9) (defining “free appropriate special education”); CAL. EDUC. CODE § 56031.

²⁶ Cal. Code Regs. tit. 15, § 1370(a).

Office of Education (COE), but must be a joint partnership of the Probation Department and the County Office of Education.²⁷ Since students arriving in local juvenile detention facilities are, for the most part, automatically transferring between local school districts and the County Office of Education, **LR 5** districts and COEs are strongly encouraged to enter into Memoranda of Understanding (MOUs) and to create joint policies and systems that enable efficient and timely data sharing and jointly operated transition centers that prepare youth for successful reentry and therefore increase their chances of staying in school.²⁸

ENROLLMENT AND TRANSFER OF RECORDS

LR 6 California law requires that students be enrolled in school within three (3) school days after admission to a juvenile detention facility²⁹ and that COE immediately request the student's records from his or her prior school(s), including transcripts, Individual Education Program (IEP), 504 Plan, California English Language Development Test scores, California High School Exit Examination (CAHSEE) results, immunization records, and exit grades.³⁰ **BP 2** At a minimum, COE's and districts should have a tracking system that allows each entity to see when a request for records was made, when it was received, and if there are any outstanding documents. These actions are essential to a student's continuing academic progress, and to ensure that despite the change in a student's circumstances, his or her time in a juvenile facility is spent accessing education that is individualized and appropriate, rather than simply a break from traditional school requiring credit recovery later.

²⁷ *See Id.*

²⁸ *Id.*; CAL. EDUC. CODE § 48647.

²⁹ Cal. Code Regs. tit. 15, § 1370(e)(2).

³⁰ *Id.* at (e)(4). As of January 1, 2016, the California High School Exit Examination (CAHSEE) was suspended and is no longer a graduation requirement for students in California public schools.

EDUCATIONAL HISTORY, ASSESSMENT, AND PRELIMINARY EDUCATION PLAN

LR 7 At intake, staff in a juvenile detention facility must interview the youth and make a written record of the youth's educational history, including school progress and school history, English proficiency, special needs, special education eligibility, and discipline history.³¹ **LR 8** Also at intake, educational staff must conduct an assessment to determine each student's general academic functioning levels to enable placement in core curriculum courses.³² **LR 9** Within five (5) school days, utilizing this initial information, staff must develop a preliminary education plan for each youth.³³ Upon receipt of transcripts, the youth's educational plan shall be reviewed and modified as needed.³⁴ **BP 3** In some counties, like Los Angeles, probation officers are responsible for screening students during the intake process for developmental disabilities, notifying education staff of suspected disabilities, and coordinating with local Regional Centers to request assessment for the student.³⁵

CREDIT CALCULATIONS AND ADAPTING CURRICULUM

California law recognizes that students involved in the justice system arrive at juvenile court schools at very different places in their learning and with significant differences in educational experience and background. **LR 10** As a result, the regulations require that juvenile court school educational programs must be designed to respond to the different learning styles and abilities of students.³⁶

³¹ *Id.* at (e)(1).

³² *Id.* at (e)(2).

³³ *Id.* at (e)(3).

³⁴ *Id.* at (e)(4).

³⁵ See County of Los Angeles Probation Department Directives D-1379 (Jun. 9, 2015) & D-1382 (Jun. 10, 2015).

³⁶ Cal. Code Regs. tit. 15, § 1370(b).

LR 11 When reviewing and updating a young person's transcript, COE must accept coursework satisfactorily completed while attending another school, even if the student did not complete the entire course, and shall issue that pupil full or partial credit for the coursework completed.³⁷ The credits must be

Practice Tip:

County Offices of Education and local school districts can utilize California's Partial Credit Model Policy to coordinate the calculation of partial credits or use the model policy as a starting point for an agreed upon system articulated in an MOU that is distributed to all relevant staff. The Model Policy can be found on the [website](#) of the Alliance for Children's Rights.

applied to the same or equivalent course, if applicable, as the coursework completed in the prior public school, juvenile court school, or nonpublic, nonsectarian school or agency.³⁸ If the pupil did not complete the entire course, the educational agency (whether COE or a local district) cannot require the student to retake the completed portion unless the agency finds that he or she can retake such portions and still graduate on time from high school.³⁹ **BP 4** Since many students in juvenile detention are credit deficient, educational staff should be creative in adapting course plans to accommodate differences in what the student has already learned in a specific course and what they can learn during their time in detention. As a result, a student can earn credits for a complete course, rather than being told by their home district upon reentry that they have to repeat an entire course for failure to cover all of the requisite material.

PARENT ENGAGEMENT

For decades, research has shown that parent and family engagement correlates with better grades and lower incidence of violent behavior while youth are in custody, as well as better outcomes

³⁷ CAL. EDUC. CODE § 51225.2(b).

³⁸ *Id.* at (c).

³⁹ *Id.* at (d).

for youth on probation and parole and lower recidivism over time.⁴⁰ These benefits hold true regardless of how strong the parent-adolescent relationship is, and as youth deal with the stressors of a restrictive setting and disruption from their ordinary social ties, family engagement can be a “protective buffer” against negative outside influences and their effects.⁴¹

PYJI grantee counties found that intake was the best time to engage parents or guardians in transition planning. Many parents have little knowledge of their rights related to their children’s education and are struggling with the overwhelming challenges of having a child involved in the juvenile justice system. **BP 5** By pairing parents with a community-based organization or education advocate who can help shepherd them through the process, counties can gain the support of parents in developing and reinforcing an educational plan for their student and can engage the parent or guardian in a plan for transitioning the student back to school in their home district. Furthermore, parents will engage and stay engaged in this process when Probation, the County Office of Education, and other stakeholders inform parents of their rights while their child is incarcerated because all too often, parents mistakenly take the detention of their child to mean a *loss* of such rights.⁴²

BP 6 Elements of strong parent engagement include family meetings that are fully accommodated by the facility’s operational practices (e.g., having a welcoming space available after school hours that allows for private family meetings and ensuring sufficient staff time for long meetings), education and other school staff who identify and consistently communicate with families throughout the student’s detention in a juvenile facility, and education staff and probation staff who are trained in how to coordinate and facilitate family meetings. Tools to help staff do this include a

⁴⁰ Ryan Shanahan & Margaret diZerega, *Identifying, Engaging, and Empowering Families: A Charge for Juvenile Justice Agencies*, VERA INSTITUTE OF JUSTICE 3 (Feb. 2016), archive.vera.org/sites/default/files/resources/downloads/family-engagement-for-juvenile-justice-agencies.pdf.

⁴¹ *Id.*

⁴² *Id.* at 9.

relational survey⁴³ that can help identify the strengths and the gaps in young people’s support systems and communication technology like video conferencing that can engage parents or guardians when they are not physically able to attend.

Moreover, bringing in family at this early stage can also help multidisciplinary teams determine which supports are most needed immediately and which will help the student once they return to their family in the community. **BP 7** In some counties, community based organizations begin providing group therapy, cognitive behavioral therapy, social emotional learning curriculum, case management, family counseling, and social work services to students as soon as they become involved in the delinquency system. Then, once the young person transitions back to his or her home community, the same service providers can maintain these services, but also serve as mediators on campus in local school districts and provide young people with culturally connected, positive adult mentors.

At the same time, these organizations can help parents navigate the educational system to ensure their children remain in school and avoid going back to custody. The relationship between service providers based in impacted communities and county probation and education staff at this early stage of reentry can also lead to improved cultural competence of education and probation staff working with youth in custody. With each of these elements in place, COE, Probation, and their partners can build trust among stakeholders, improve family functioning, and ultimately improve student outcomes.

RIGOROUS CURRICULUM AND POSTSECONDARY PROGRAMS

In 2014, the U.S. Department of Education and U.S. Department of Justice created joint guidance recognizing that high-quality education in juvenile detention facilities requires both rigorous

⁴³ *Id.* at 5.

curricula aligned with state academic standards and postsecondary training programs.⁴⁴ When the appropriate supports are in place, rigorous instruction encourages higher levels of student engagement and ensures that credits may be more easily transferrable between districts, especially when those courses have been certified as meeting the “A-G” requirements for admission, which are still rare in detention facilities.⁴⁵ **BP 8** With regard to postsecondary education, several County Offices of Education around the state have begun to partner with local community colleges to offer online and in-person classes and to assist students with applying for federal Pell Grants that can pay for books, tuition, and other materials for college.⁴⁶

Special Education, Section 504, and Related Services

While a majority of youth in the juvenile justice system have disabilities that affect their education, up to half of all detained youth have disabilities that are significant enough to qualify them for special education⁴⁷ and between 50 and 75 percent of those in juvenile detention facilities have diagnosable mental disorders.⁴⁸ Often, these needs have gone unmet for their entire educational

⁴⁴ Arne Duncan & Eric H. Holder, *Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings*, DEPARTMENT OF EDUCATION (2014), <http://www2.ed.gov/policy/gen/guid/correctional-education/guiding-principles.pdf>.

⁴⁵ Few County Offices of Education offer any A-G approved courses in the schools serving their juvenile detention facilities, but Fresno and Stanislaus Counties are among those that do. Approved courses can be searched within the University of California’s A-G Course List, at <https://hs-articulation.ucop.edu/agcourselist#/list/search/institution>.

⁴⁶ For more information on using federal aid in the juvenile detention setting, as well as examples of postsecondary partnerships around the state, see Youth Law Center, *Educational Injustice: Barriers to Achievement and Higher Education for Youth in California Juvenile Court Schools* 24, 26 (2016), <http://www.ylc.org/wp-content/uploads/EDUCATIONAL%20INJUSTICE.pdf>. (Alameda COE and Merritt College have partnered to provide online college courses to young people in Juvenile Hall, while COE’s in Marin and San Mateo work with local colleges to provide in-person instruction).

⁴⁷ Robert B. Rutherford et al., *Youth with Disabilities in the Correctional System: Prevalence Rates and Identification Issues* 7 (2002), <http://cecp.air.org/juvenilejustice/docs/Youth%20with%20Disabilities.pdf> (between 30 and 50 percent of youth in juvenile detention have special education needs and disabilities).

⁴⁸ Edward Cohen & Jane Pfeifer, *Costs of Incarcerating Youth with Mental Illness: Final Report Prepared for the Chief Probation Officers of California and the California Mental Health Directors Association* 3 (2008), http://www.cdcr.ca.gov/comio/docs/costs_of_incarcerating_youth_with_mental_illness.pdf.

careers. In many cases, these unidentified disabilities contribute to the precipitating offenses that land many youth in juvenile court, with little to no consideration of these exceptional needs during adjudication or disposition. Rather, the behaviors of these young people are attributed to simply being “defiant” or “disruptive” without investigating what need underlies the conduct.

LANDSCAPE OF LAWS RELATED TO STUDENTS WITH DISABILITIES

- ▶ Federal:
 - ▶ Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq.
 - ▶ Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq.
 - ▶ Americans with Disabilities Act (ADA), 42 U.S.C. § 12132
 - ▶ Title 34 of Code of Federal Regulations § 300.000 et seq.
- ▶ State:
 - ▶ California Education Code, Cal. Educ. Code § 56000 et seq.
 - ▶ Title 5 of California Code of Regulations § 3000 et seq.

For these reasons, each juvenile detention facility school should have a supervisor or administrator who is knowledgeable about special education regulations and practice and who can coordinate the many facets of records requests, screening and assessment, parent contact, and service delivery that will address a young person’s disabilities. **LR 12** In order to be compliant with federal and state regulations, County Offices of Education must ensure that a continuum of alternative placements is available to students

depending on their unique needs and disabilities.⁴⁹ For example, for some students, special education services should be delivered in general education classrooms consistent with students’ IEPs (individualized education programs). For other students in need of more intensive and individualized instruction or intensive social-emotional or mental health support, COE’s have the obligation to place that child in an educational setting that can meet those special education needs, including a non-public school or residential treatment center, if those supports do not exist in the juvenile court school setting.

⁴⁹ Code Fed. Regs., tit. 34, § 300.115.

A broad landscape of law governs special education, related services, and accommodations for youth with disabilities. As discussed below, the administration of juvenile court schools requires collaboration between Probation and COE, Probation staff should be trained in basic special education laws. This effort not only helps probation officers to assist in recognizing when a student may be in need of special education or may benefit from related services, but also helps by allowing Probation staff to reinforce specific supports and interventions utilized in the classroom for the student outside of the school day.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) of 1975 and 2004

In the mid-1970's, only one in five children with diagnosed disabilities was accommodated in U.S. public schools, and many states had laws that explicitly excluded children with certain types of disabilities from attending public school, including children who were physically or intellectually disabled, deaf, blind, or emotionally disturbed.⁵⁰ The federal Individuals with Disabilities Education Act (IDEA) opened public school doors for millions of children with disabilities and established a foundation for providing equal opportunity for children with disabilities to attain educational success.

LR 13 At its core, IDEA requires Local Education Agencies⁵¹ to provide all children who fall into any of thirteen specific disability eligibility categories⁵² “a free appropriate public education (FAPE) that

⁵⁰ For the history of the IDEA, see U.S. Dep’t of Educ., *Twenty-Five Years of Progress in Educating Children with Disabilities Through IDEA*, 2016, <http://www2.ed.gov/policy/speced/leg/idea/history.html>.

⁵¹ In general, Local Education Agencies (LEA’s) include school districts and charter schools. CAL. EDUC. CODE § 47640.

⁵² The eligibility categories for special education under IDEA are: Autism, deaf-blindness, developmental delay (for children ages 3 to 9), emotional disturbance, hearing impairment including deafness, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness. 34 C.F.R. § 300.8(a)(1).

emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]”⁵³

What constitutes an “appropriate” education was first outlined by the U.S. Supreme Court in the 1982 decision *Board of Education v. Rowley*.⁵⁴ While various court cases have provided additional guidance since then, **LR 14** in general, a determination of whether FAPE was provided must include:

(1) substantive considerations (i.e., whether the educational program is reasonably calculated to enable the child to receive educational benefit), and

(2) procedural considerations (whether school officials are complying with IDEA’s procedures in developing the IEP).⁵⁵

While procedural violations may be easier to detect, substantive considerations require careful consideration of each youth’s unique needs. This means providing the types of services and accommodations that will enable him or her to progress academically. For example, a young person identified for special education as a student with a specific learning disability might require both specialized academic instruction from the classroom teacher to assist him or her to access grade-level curriculum, as well as regular access to a mental health professional to address additional stressors in the classroom related to his or learning disability.

ASSESSMENT, RELATED SERVICES & BEHAVIORAL INTERVENTIONS

LR 15 Local Education Agencies have the duty to identify, locate, and evaluate all youth with disabilities who may be eligible for special education.⁵⁶ This obligation is called “child-find.” Moreover,

⁵³ 20 U.S.C. § 1400(d)(1)(A).

⁵⁴ 458 U.S. 176 (1982).

⁵⁵ *Id.* at 206-07.

⁵⁶ 34 C.F.R. § 300.111; CAL. EDUC. CODE §§ 56300, 56301.

anyone can request an assessment for the child, including a probation officer. Any written referral for a child to be assessed, whether by a parent, guardian, teacher, or other service provider with knowledge of the child, will automatically initiate the assessment process.⁵⁷

While special education and related services are the responsibility of COE, probation staff who interact with and observe students in different settings throughout the day can often assist in identifying young people who may be in need of special education services. **BP 9** For this reason, a best practice utilized in some jurisdictions is to offer special education training for probation staff to recognize the signs of suspected disabilities, provide relevant information to the student's IEP team, and help implement behavioral interventions during school and non-school hours.

EXAMPLES OF POTENTIAL RELATED SERVICES WITHIN SPECIAL EDUCATION

- ❖ Social work support
- ❖ Case management
- ❖ Reading specialists
- ❖ Art therapy
- ❖ Transportation
- ❖ Speech & language therapy
- ❖ Individual therapy
- ❖ Group therapy
- ❖ Behavior Intervention services
- ❖ Nursing services
- ❖ Assistive technology
- ❖ Physical therapy
- ❖ Occupational therapy

LR 16 If a child who receives special education has behaviors that impede his, her, or others' ability to learn, COE must provide a Behavior Intervention Plan as part of their IEP.⁵⁸ This plan is often informed by a Functional Behavior Assessment (FBA), which can determine trigger points for a student's behavior problems and suggest positive interventions which must be implemented at school.⁵⁹ **LR 17** Serious behavior problems or excessive suspensions require COE to conduct a functional behavior

⁵⁷ CAL. EDUC. CODE § 56029, 56301, 56302, 56321(a); Cal. Code Regs. tit. 5, § 3021.

⁵⁸ 20 U.S.C. § 1414; 34 C.F.R. §§ 300.34(c)(10)(vi) (positive behavior intervention strategies), 300.530 (Behavioral Intervention Plan).

⁵⁹ 34 C.F.R. § 300.530(f).

assessment and create a BIP if a child does not already have one, or requires modification of an existing BIP.⁶⁰

Although an IEP, and any behavioral goals or interventions described within it (including a BIP) is most often intended for use in the school setting, sharing a BIP with probation staff who supervise a young person on the living unit may enable those staff to consistently reinforce positive behavioral supports throughout the entire day, recognize triggers before they balloon into something larger, better de-escalate a situation involving a young person, and lastly, consider the nature of a youth’s disabilities before implementing any disciplinary actions for the young person for behavior on the living unit. While sharing this kind of educational and behavioral information between probation and COEs is best practice, it is critical for both agencies to comply with all laws and regulations protecting the privacy of student records in so doing.⁶¹ Because probation staff gain a significant amount of knowledge about young people based on their interactions on the living units – insight that may be different from that of teachers who only see students in the classroom during the school day – it may be beneficial to have them attend IEP meetings to offer feedback about which positive behavioral supports and interventions could help the student complete the school day. With knowledge of the kinds of related services that may exist through COE, probation staff can also be empowered to request that students be referred for assessment or to access these services.

Practice Tip:

Establish a Memorandum of Understanding between agencies with the help of the juvenile court to outline appropriate sharing and uses of confidential information regarding youth and youth populations as required by law, while also allowing agencies to have the information they need to properly collaborate.

⁶⁰ *Id.*

⁶¹ *See generally* Code Fed. Regs., tit. 34, §§ 99.30 and 303.401 et seq.

SECTION 504 OF REHABILITATION ACT OF 1973

Many students with exceptional needs may be eligible for modifications and accommodations under Section 504 of the Rehabilitation Act of 1973. The universe of students eligible for these types of accommodations is generally larger than the universe of students eligible for an IEP. Section 504 prohibits discrimination based on disability and requires reasonable accommodations for a student who has a physical or mental disability that substantially limits a major life activity – including learning.⁶² Section 504 Plans can and do include many of the same accommodations, modifications, and related services as IEP's, including positive reframing of directives, short breaks, scaffolding of educational material to make it more accessible to students, one-on-one assistance from an aide, and academic or behavioral therapy.

EMERGENCY INTERVENTIONS

Because Probation staff handle the majority of significant behavioral issues that come up in juvenile court schools within a detention facility, it is important for both COE and Probation to understand that, **LR 18** under the California Education Code, emergency interventions can only be used against a student with exceptional needs to control unpredictable, spontaneous behavior that poses a clear and present danger of serious physical harm to the student or others, and that cannot be immediately prevented by a less restrictive response.⁶³ In all circumstances, causing pain, releasing noxious sprays, denying physical comfort, depriving of one or more senses, verbal abuse, and any action expected to cause excessive emotional trauma are prohibited.⁶⁴ **LR 19** Where emergency interventions are used, the educational team must, within two (2) days, schedule an IEP meeting to determine whether to conduct a functional behavior assessment and create an interim behavior intervention plan,

⁶² 29 U.S.C. § 794 et seq.; 34 C.F.R. § 104.1 et seq.

⁶³ CAL. EDUC. CODE §§ 56521.1, 56521.2.

⁶⁴ CAL. EDUC. CODE § 56521.2.

or document the reasons for not doing so.⁶⁵ For students who already have a behavior intervention plan, the IEP team must decide whether to modify the plan to ensure that the right supports are in place to address disability-related behavior and avoid the use of emergency interventions in the future.⁶⁶

Behavior Management

Behavior management is a key area for collaboration for Probation and COE; if the two agencies operate separate systems for managing behavior with varying incentives and sanctions, neither system will be effective. **LR 20** California requires the educational program in a juvenile detention facility, including disciplinary measures, to be integrated into the facility's overall behavioral management plan and security system.⁶⁷ Probation must also advise school staff of any administrative decisions that affect the youth's educational programming.⁶⁸ Probation officers can play a larger role, as discussed above, in reinforcing positive strategies for behavioral change for young people with exceptional needs, de-escalating conflict, and otherwise preventing behavior that may cause harm to students or others.

POSITIVE BEHAVIORAL SUPPORTS AND INTERVENTIONS (PBIS)

School-Wide Positive Behavior Interventions and Supports (SWPBIS) are based on the principle that actively teaching and rewarding expected behavior can change students' own expectations of appropriate behavior from themselves.⁶⁹ For example, the Los Angeles County Probation Department and the County Office of Education began to jointly implement PBIS at its juvenile detention facilities in 2011. The agencies trained staff who worked in or near the school areas, created PBIS teams, designated a school psychologist as the lead for implementing PBIS, and instituted a system in which students

⁶⁵ CAL. EDUC. CODE § 56521.1(g).

⁶⁶ CAL. EDUC. CODE § 56521.1(h).

⁶⁷ Cal. Code Regs. tit. 15, § 1370.

⁶⁸ *Id.*

⁶⁹ Jeffrey R. Sprague & Robert H. Horner, *Schoolwide Positive Behavioral Supports*, HANDBOOK OF SCHOOL VIOLENCE AND SCHOOL SAFETY: FROM RESEARCH TO PRACTICE 413 (Shane R. Jimerson & Michael J. Furlong eds. 2007).

earned daily points and were awarded “tickets” that praised supportive behavior.⁷⁰ As a result, full day suspensions dropped from 398 in 2012-2013 to just 34 in 2014-2015 at the Munz and Mendenhall Schools, both schools within juvenile detention facilities.⁷¹ While many teachers have embraced PBIS in their classrooms, the PBIS team continually works to identify and provide targeted support to staff who have not yet fully adopted these positive practices.⁷²

Positive interventions have routinely proven more effective than traditional punitive discipline measures that remove the student from the educational setting without addressing the underlying causes of behavior.⁷³ Schools that have implemented PBIS also report reductions in problem behavior, a more positive school climate, greater safety, and improvements in academic achievement and attendance.⁷⁴ As of 2016, approximately 24,000 schools across the country were implementing PBIS,⁷⁵ including many juvenile court schools.

⁷⁰ Casey A. v. Delgado, *Three-Year Report of the Technical, Consulting, and Advisor (TCA) Team at the Challenger Memorial Youth Center (CMYC)*, 8-9 (2014), http://www.lacoe.edu/Portals/0/LACOE/JCS/20130619_TCA's_LACOE_3-year_Report_5.27.14_w_Appendices_R2_Redacted.pdf.

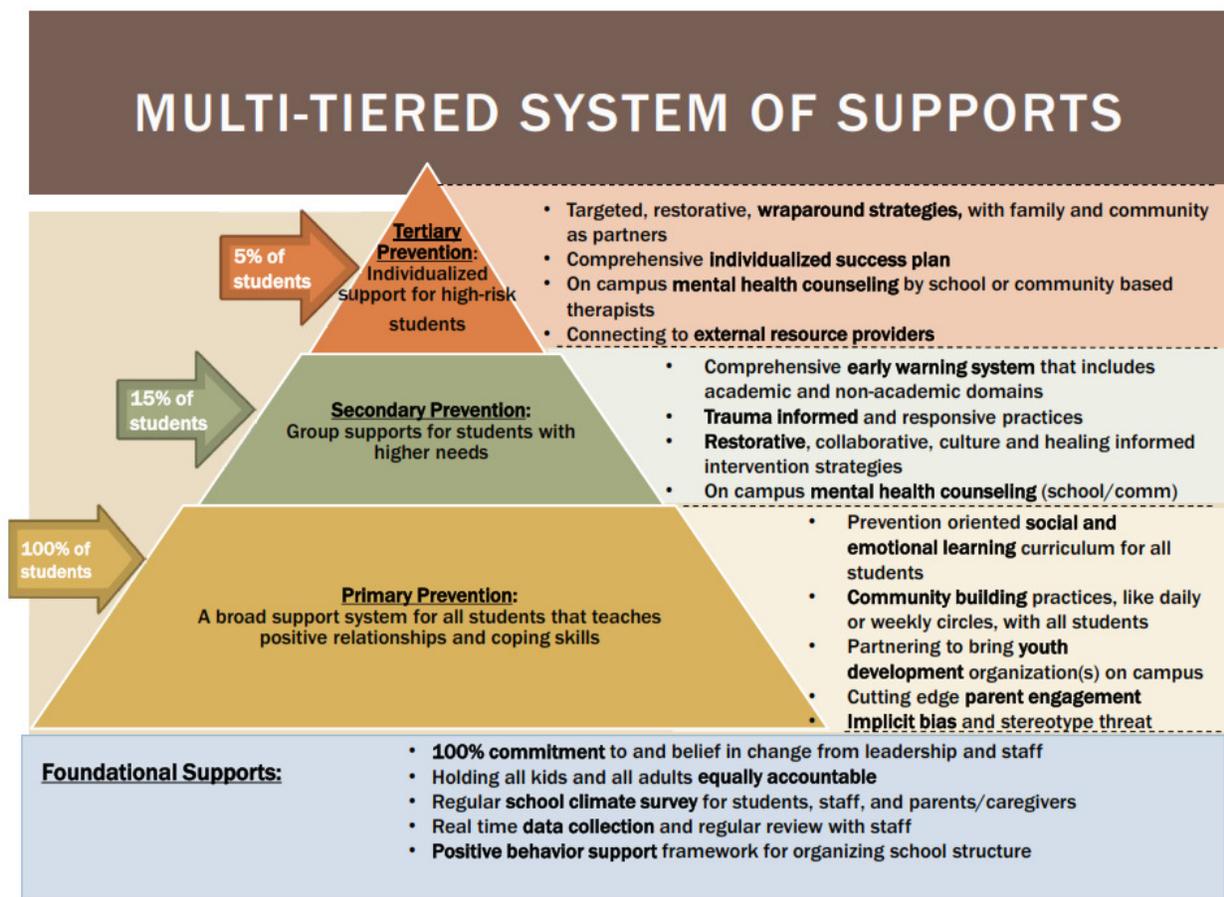
⁷¹ Peter Leone, *PBIS and Project-based Learning, Munz/Mendenhall High Schools Full Day Suspension 4-Year Trend* (Mar. 17, 2016). Powerpoint presentation *Going Above and Beyond*, slide 56.

⁷² *Id.* at 9, n. 7.

⁷³ For multiple examples of SWPBIS in implementation, see PUBLIC COUNSEL, *FIX SCHOOL DISCIPLINE: HOW WE CAN FIX SCHOOL DISCIPLINE FOR COMMUNITY MEMBERS* 7 et seq. (2015), <http://fixschooldiscipline.org/community-toolkit>.

⁷⁴ See U.S. Dep’t of Educ. Office of Special Educ. Programs (OSEP) Technical Assistance Ctr., www.pbis.org.

⁷⁵ *Id.*



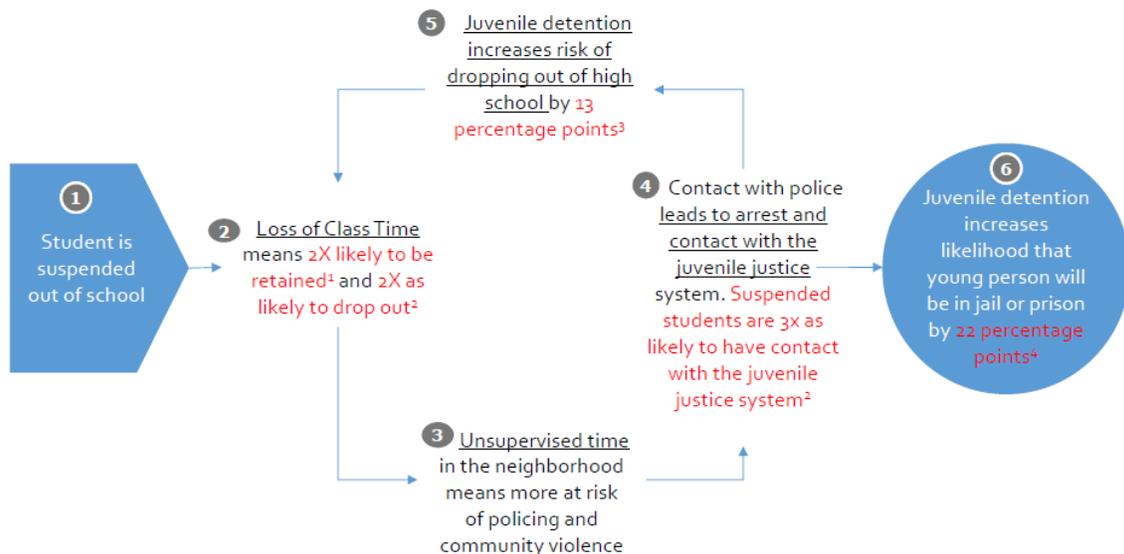
As illustrated in the diagram above, PBIS forms the basis of a range of supports that should ideally exist in a school setting, including those within juvenile detention facilities. For all students at a school site, social emotional learning and community building will strengthen teacher-student relationships and help teachers discern underlying issues before they surface into larger problems, preventing bullying and peer conflicts before they cause significant harm.

A smaller subset of students (approximately 15% of the school’s student population) may benefit from more intensive supports that can be delivered in a group setting, including mental health counseling, or restorative practices to repair harm created by peer conflict. For an even smaller minority of students (5%) in a school population who may be dealing with trauma, family instability, or violence at home or the community and who are in need of the most intensive supports, every school

site should be equipped to provide wraparound services, an individualized behavior plan, individual counseling, or referrals to community-based service providers who can provide the same.

For the vast majority of students, the kinds of behavioral interventions that will keep them in school will also keep them out of the juvenile system. This is especially important in light of the fact that many youth reentering schools in their communities are remanded to custody upon a subsequent suspension or failure to attend school. This cycle forms much of the School to Prison Pipeline, whereby disciplinary removals or disengagement from school lead to falling behind academically, more unsupervised time in the community, and more exposure to community violence and interaction with police – which eventually results in arrest and detention in the juvenile system.

SCHOOL TO PRISON PIPELINE



¹ Fabelo, T et al (2011). Breaking schools' rules: A statewide study of how school discipline relates to students' success and juvenile justice involvement, Council of State Govt
² Balfanz et al (2012), Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade, Everyone Graduates Center
³ Aizer, A & Doyle, J (2013) Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges, NBER Working Paper No. 19102
⁴ Western B & Pettit B (2010) Incarceration and Social Inequality, Daedalus

Receiving just one out-of-school suspension makes it twice as likely that a student will drop out of school before earning his or her high school diploma and three times as likely that he or she will end

up in the juvenile justice system. There are many entry points to the School to Prison Pipeline, from discriminatory or bullying behavior that makes a student not want to attend school, to citations and arrests that are made by police at school.

DISCIPLINE WITHIN DETENTION FACILITIES

Exclusionary discipline practices, whether in a comprehensive school in the community or a juvenile court school in a detention facility, can lead to disengagement with education and lower attendance, lower achievement, and lower graduation rates – not just for the students who are suspended, but for all students in that school community.⁷⁶ Because education is a fundamental right, California law and regulation provide strict standards for the issuance of discipline.

LR 21 California regulations require that facility administrators develop and implement written policies and procedures for the discipline of youth that promote acceptable behavior.⁷⁷ **LR 22** The facility administrator, in conjunction with education staff, must also address the rights of any student who has continuing difficulty completing a school day, and education must be provided on all units, high security or otherwise.⁷⁸

LR 23 Discipline must be imposed at the least restrictive level which promotes the desired behavior and shall not include corporal punishment, group punishment,

Practice Tip:

Probation departments can hire a Youth Advocate who can support young people in telling their side of a story when facility discipline is being considered, navigate the administrative process around discipline, and remind staff when disabilities and other extenuating circumstances should be considered.

⁷⁶ Daniel Losen et al., *Are We Closing the School Discipline Gap?*, THE CENTER FOR CIVIL RIGHTS REMEDIES 10 (Feb. 2015), https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap_FINAL221.pdf.

⁷⁷ Cal. Code Regs. tit. 15, § 1390.

⁷⁸ *Id.*

physical or psychological degradation.⁷⁹ Deprivation of the following is not permitted: contact with parent or attorney, medical services and counseling, and education, among other services.⁸⁰

LR 24 The facility administrator must document and implement written policies and procedures for discipline, including the definition of major and minor rule violations and their consequences. At a minimum the facility discipline process requires:

- ▶ written notice of violation prior to a hearing;
- ▶ hearing by a person who is not a party to the incident;
- ▶ opportunity for the youth to be heard, and to present evidence and testimony;
- ▶ provision for youth to be assisted by staff in the hearing process;
- ▶ provision for administrative review.⁸¹

LR 25 Laws regarding student removals from school apply to juvenile court schools just as they apply to local school districts. Suspension can only be imposed when all other means of correction fail to bring about proper conduct, or if the student has committed a “zero tolerance”⁸² or other

**REQUIREMENTS FOR STUDENTS IN SPECIAL EDUCATION
20 U.S.C. SECTION 1415(k)**

For special education students, suspension or other disciplinary removals from school for ten consecutive days or cumulative days (if the removals present in a pattern), constitute a change in placement. As a result, a Manifestation Determination Review must be held to determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or if the conduct in question was the direct result of the local educational agency’s failure to implement the IEP.

⁷⁹ Cal. Code Regs. tit. 15, § 1390.

⁸⁰ *Id.*

⁸¹ Cal. Code Regs. tit. 15, § 1391.

⁸² School districts must suspend students for the following five “zero tolerance” behaviors: possessing, selling, or otherwise furnishing a firearm; brandishing a knife at another person; selling a controlled substance; sexual assault or attempted sexual assault; and possessing an explosive. CAL. EDUC. CODE § 48915(c).

serious offense,⁸³ or presents a danger to themselves or others.⁸⁴ **BP 10** Other means of correction can include anything from warnings, space to re-focus and cool down, parent calls, parent-teacher-administrator conferences, restorative circles, referrals to the Student Success Team (SST), to counseling or other mental health interventions, behavior support plans, peer mediation, and referrals to community-based service providers or individual mentors.

Literacy and Special Activities

BP 11 Correctional education programs should have regularly scheduled literacy activities that promote reading, writing, and use of the printed word. For students who are emerging readers, intensive reading instruction provided by reading specialists should be a daily part of their school schedule. **BP 12** Some facilities have implemented daily fifteen-minute ‘drop everything and read’ (DEAR) periods to reinforce reading for pleasure as well as for personal development. Librarians, media specialists, or other staff can coordinate monthly literacy events such as essay and drawing contests as well as visits to the facility by local writers and artists. Finally, access to books and other reading material on living units is essential. **BP 13** Student librarians – trained by librarians or other staff – can help manage small book collections on the living units and alert staff when books need to be recycled or discarded.

Career and Technical Education

For youth in local detention facilities, Career and Technical Education (CTE) classes should allow youth to explore various occupations. Coursework can also enable youth to learn about and practice soft employment skills such as interviewing, developing positive work-place behavior, and collaborating with co-workers. **BP 14** In longer-term facilities, regularly scheduled courses in subjects such as building

⁸³ CAL. EDUC. CODE § 48900.5 (those offenses enumerated in subsections (a) through (e) of Section 48900).

⁸⁴ CAL. EDUC. CODE § 48900.5.

trades, culinary arts, landscaping, and office management should enable youth to earn industry standard certificates of completion. CTE coursework can also provide opportunities for skilled professionals and small business owners to visit classes, meet with students, and discuss opportunities in their industries.

Transition and Aftercare

Periodic, multidisciplinary team meetings well in advance of youths' release dates can promote adequate planning and identification of potential barriers to successful reentry. Active involvement of family members, community-based agencies and programs, and probation officers is also key to the success of reentry. Once a student returns to his or her school of origin or another school in the community, having the same supports in this new school placement as were provided previously will help the student maintain positive behaviors, stay engaged in education, and avoid situations in which repeated involvement in the justice system might occur.

LR 26 State law⁸⁵ requires COE and Probation to have a joint transition planning policy that includes collaboration with relevant educational agencies to:

- ▶ improve communication regarding dates of release and the educational needs of pupils;
- ▶ coordinate immediate school placement and enrollment; and
- ▶ ensure that probation officers in the community have the information they need to support the return of pupils.

⁸⁵ CAL. EDUC. CODE § 48647.

BP 15 From the day a student arrives in a juvenile detention facility, the transition team (or multidisciplinary team) should be anticipating and planning for the student’s reentry back into the community. The team should include Probation, the Office of Education, representatives of the school district the student is likely to return to, a social worker or case manager, the student’s attorney, mental health staff, the student, and parent/guardian/caregiver. **BP 16** In some jurisdictions, the court requests a copy of the student’s most recent transcript to be part of the records at the student’s release hearing.⁸⁶

In 2015, California Assembly Bill 2276 (Bocanegra) clarified legal requirements related to the transition of students in and out of the juvenile system, including the timeline for enrollment, transfer of records, calculation of credits, and prohibiting denial

of enrollment based on a student’s involvement in the juvenile justice system. **LR 27** The bill clarified

FOSTER YOUTH LIAISONS

CALIFORNIA EDUCATION CODE SECTION 48853.5

Every Local Education Agency must have a Foster Youth Liaison to ensure placement in the proper educational setting, ensure enrollment in school, assist students as they transfer from one school to another, and notify the child’s attorney or child welfare services if he or she is referred for expulsion. Under the California Education Code, the definition of “foster youth” includes more than children who are placed outside of their home by the local child welfare agency or probation and *encompasses all children who are subject to a dependency or delinquency petition.*

Practice tip:

Foster Youth Liaisons from both the COE and the district in which the student is reenrolling should be deeply engaged in and oversee the transition team process. Where the number of foster youth in a district is too high for a liaison to personally participate, other specially trained district staff should attend team meetings – and should include a school-based academic or guidance counselor who can serve as a single continuous point-of-contact for the youth throughout their transition.

⁸⁶ Delinquency youth who are subject to a foster care placement order or were dependents of the court at the time they were transferred to the delinquency system are entitled to certain documents at the hearing required before the Juvenile Court terminates jurisdiction. Cal. Welf. & Inst. Code §§ 607.2, 607.3. These documents include: the child’s school record; assurances that the child’s placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement; the number of school transfers the child has already experienced; the child’s educational progress, as demonstrated by factors, including, but not limited to, academic proficiency scores; credits earned toward graduation; and a record of the child’s immunizations and allergies. Cal. Welf. & Inst. Code §§ 607.3, 391.

that a student who has had contact with the juvenile justice system must be immediately enrolled in a public school⁸⁷ and cannot be denied enrollment or readmission to a public school solely on the basis that he or she has had contact with the juvenile justice system.⁸⁸

The same requirements that govern the request, records transfer, and calculation of credits discussed above apply to the process of a student leaving a juvenile court school.⁸⁹ **LR 28** Upon receiving a transfer request from COE, Local Education Agencies (e.g., school districts) must transfer the pupil out of school and deliver records to COE within two (2) business days.⁹⁰ The LEA must send complete educational records, including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and any IEP/504 documents.⁹¹ **BP 17** In order to fulfill these requirements, LEAs must assign these duties to a person competent to handle the transfer procedure and coordinate with multiple agencies (including some that may be out-of-county), and who is aware of the specific needs of homeless and foster children.

AB 2276 also created a statewide working group of County Office of Education and district superintendents, juvenile court school administrators, probation department administrators, community-based services providers, legal advocates, staff from the Attorney General's Office, and a Superior Court Judge to make recommendations to the legislature for further improvement of juvenile reentry outcomes. A few of the work group's *draft* recommendations include:⁹²

⁸⁷ CAL. EDUC. CODE § 48645.5(b).

⁸⁸ *Id.*

⁸⁹ *Id.* at (c).

⁹⁰ CAL. EDUC. CODE § 49069.5

⁹¹ *Id.*

⁹² Cal. Dep't of Educ., Juvenile Court Student Transition Statewide Work Group Report and Recommendations to the Legislature (July 2016), available at <https://www.cde.ca.gov/sp/eo/jc/documents/juvenilecourtlepreport.doc> .

- ▶ The student’s transition team should meet within five days of that student’s entry into the juvenile hall, camp, or any other juvenile detention site;
- ▶ The transition team should meet on a regular basis and as part of the student’s juvenile court exit process, and continue to meet after the student’s return home;
- ▶ The team should create a transition plan that ensures the student enjoys a continuity of services as he or she transitions back to the community; and
- ▶ A county transition specialist (or district foster youth liaison, school counselor, or other team member) should continue to engage the student to oversee his or her transition to the new school environment and troubleshoot where necessary.

BP 18 The transition team – including the student and family – should decide on the most appropriate educational path for the student after release, based on the student’s goals and needs, whether it is graduating and taking part in senior year activities at his or her school of origin, creating positive relationships at a new school, or credit recovery in an independent setting. Too often, the default choice is to enroll students in a continuation school or alternative school after their exit from custody. While a continuation or alternative education program may be appropriate for some students, for example those in need of intensive credit recovery, these types of alternatives are not the proper choice for all students exiting a juvenile detention facility. It is critical to ensure that the type of school program chosen closely matches the student’s individual needs, otherwise, students can lose motivation, leading them to drop out or wind back up in detention. Even where continuation or alternative school enrollment is the best for the student at the time they return to the community, it should not be his or her long-term educational destination.

Conclusion

While youth involved in the juvenile justice system face numerous barriers to accessing an education, county agencies have an opportunity to serve as a buffer against the negative outcomes that have for too long resulted from the loss of educational opportunity to this population. By working together across systems to ensure that juvenile justice-involved youth maintain a strong connection to school, county agencies can change this trajectory. This effort requires a willingness to come to the table not only with other county agencies and departments, but also with young people, their families, and the community agencies that support these youth, and to listen to their strengths and needs. Together, systems can leverage the knowledge and strengths of all of these partners to ensure that young people access appropriate educational services and entitlements, and develop strong connections with positive adults who will help them not only graduate from high school but continue their learning and growth well into adulthood.

Appendix A: Notable Developments in California Law

AB 167/216/1806

Children involved in the delinquency and dependency systems are subject to frequent transfers between schools and school districts that can occur at any time during the year. Often, records are delayed or lost, limited credits are issued for coursework completed at the previous school, and students have difficulty transitioning to a new setting and fall behind academically. Because of these barriers, foster youth are the least likely of any subgroup of students in California to graduate from high school.⁹³

In 2009, Assembly Bill 167 (Adams), was enacted to expand the available options for foster youth to obtain a high school diploma. The legislation required school districts to exempt certain foster youth from local graduation requirements that exceed what is required by the state for a standard high school diploma, often referred to as a "state standard diploma." This law was further clarified by Assembly Bill 216 (Stone) in 2013⁹⁴ and replicated by Assembly Bill 1806 (Bloom) in 2014⁹⁵ to apply the same state standard diploma options for homeless students who are not delinquency or dependency involved. Today, the law requires foster, probation, and homeless youth to fulfill only the academic requirements as set forth under California Education Code section 51225.3⁹⁶ in order to obtain a high

⁹³ Laura Faer & Marjorie Cohen, *Fostering Educational Success: An Analysis of Investments in School Climate and Foster Youth Through the Local Control Accountability Plan*, PUBLIC COUNSEL 5 (2015), <http://fixschooldiscipline.org/wp-content/uploads/2015/02/Fostering-Educational-Success-Report-2-17-15-FINAL.pdf>.

⁹⁴ A.B. 216, CA 2013-2014 (Ca. 2013); CAL. EDUC. CODE §§ 51225.1, 51225.3.

⁹⁵ A.B. 1806, CA 2013-2014 (Ca. 2013); CAL. EDUC. CODE §§ 51225.1, 51225.2.

⁹⁶ In general, the California state standard high school diploma requires: three year-long courses of English, two courses in math, two courses in science (including biological and physical sciences), three courses in social studies (including United States history and geography; world history, culture, and geography; one semester in American government and civics; and one semester in economics), and one course in visual or performing arts, foreign language, or career technical education.

school diploma issued by the district they are currently attending, where the following specific conditions are met:

- 1) The student must be a “pupil in foster care,” which means any young person 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.⁹⁷

While the term “foster youth” has historically been applied to children who are subject to the dependency system governed by Section 300 et seq. in the Welfare and Institutions Code, it is important to note that the Education Code’s definition of foster youth for the purposes of this graduation option includes any child who is subject to a *delinquency* petition, whether or not they have been physically removed from their home and whether or not they continue to be subject to the petition at the time of their transfer between schools.

- 2) The student must have transferred schools any time after their second year of high school. To determine whether the student has completed their second year of high school, districts can use the number of credits the student had earned or how long the student had been enrolled in high school as of the date of his or her transfer. The law provides that districts should use whichever calculation will qualify the student for exemption. Please note that no minimum attendance is required by the law.
- 3) The student is not reasonably able to complete the school district's graduation requirements in time to graduate from high school by the end of the pupil's fourth year of high school.

⁹⁷ CAL. EDUC. CODE § 51225.2(a)(1). As of 2015, AB 167/216 also applies to homeless youth as defined under 42 U.S.C. § 11434a; see CAL. EDUC. CODE §§ 51225.1, 51225.2.

Within 30 calendar days of the date that a pupil in foster care who may qualify for the exemption from local graduation requirements pursuant to this section transfers into a school, the school district shall notify the pupil, the person holding the right to make educational decisions for the pupil, and the pupil's social worker or probation officer of the availability of the exemption and whether the pupil qualifies for an exemption.

It is important to keep in mind that AB 167/216 is an *additional* option, not the only way forward, for students who meet the requirements above. In other words, while the school district must offer any qualifying student the option of a state standard diploma, the student – or their education rights holder if the student is under the age of 18 – does not have to take advantage of this option, and can change their mind at any point before graduation. Furthermore, districts are obligated to determine whether the student is eligible for a state standard diploma under AB 167/216, but not whether it is in the student's best interests. This decision is for the student or his or her education rights holder.

Obtaining a state standard diploma under AB 167/216 is the right decision for many students, but not all, and should be considered carefully, for a variety of reasons including the considerations discussed here. Students who elect to earn the state standard diploma are not eligible to attend the University of California (UC) or California State University (CSU) systems immediately after graduating from high school. Students who earn the state standard diploma may still satisfy UC and CSU entrance requirements while attending community college, which typically takes one to two years.

Many career and technical certificate programs require a high level of proficiency and pre-requisite courses that may be difficult to satisfy at the post-secondary level as opposed to in high school, particularly if a student needs remedial education in one or more subjects. Remedial courses may be more accessible and more widely available to students at the high school level than in community college.

Students who qualify for special education under IDEA are entitled to specialized academic instruction and related services to access a free appropriate public education, which often includes intensive behavioral therapy, psychological and family counseling, and very specific academic supports based on the child's needs. Once a student earns his or her high school diploma, he or she is no longer entitled to education and related services under IDEA. While the vast majority of postsecondary institutions must provide accessible education to students with disabilities under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, the accommodations and modifications available at the college level are far narrower. For example, a student who received individualized in-class support from a resource specialist in high school may receive only an outline or teacher's notes to help guide them through the curriculum in college.

For students who are in custody at the time they complete high school, earning a diploma may leave the young person with no other educational option while incarcerated. Only a small minority of juvenile facilities allow students to earn community college credits, such that choosing the AB 167/216 graduation option before their release date may leave the young person with no meaningful educational programming for months or years. This is especially true for students who qualify for IEP's or 504 Plans that provide therapeutic or counseling services.

Lastly, if a young person is reasonably able to complete the local graduation requirements in his or her fifth year of high school and the young person is motivated to do so, the student is entitled by state law to take a fifth year.

Nota bene: New legislation, AB 2306 (Frazier) (effective January 1, 2017) expresses the legislature's intent that schools in local juvenile detention facilities have a rigorous curriculum that prepares students for graduation and career, and fulfills the admission requirements for California State University and the University of California. Beyond this, it simply clarifies pre-existing law that requires

juvenile court schools to *offer* a state standard diploma to any student who meets the criteria of AB 167/216, but *does not require* the student to accept the state standard diploma in lieu of a regular diploma. Moreover, a young person does not need to have actually attended or been enrolled in a juvenile court school to qualify for AB 167/216; as it did prior to the passage of AB 2306, the law applies to all students who have been subject to either a dependency or delinquency petition prior to their transfer.

SB 172

In 2015, California discontinued the California High School Exit Exam (CAHSEE), the passage of which was previously required of all high school students prior to issuance of a diploma. Senate Bill 172 (Liu) was passed to enable students who had completed 12th grade and all other graduation requirements (e.g., community service) in academic year 2003-2004 and onward to receive high school diplomas *without* passing the CAHSEE. Former students have a limited time to benefit from this law, which is only effective until July 31, 2018.

School districts are not currently required to contact students who did not pass the CAHSEE but did meet all of their other local graduation requirements, to tell them they are now eligible to receive a high school diploma, but all Districts are encouraged to do so. Brief, well designed communications to reach former students and designating a staff member who is knowledgeable about the law and can answer questions will help former system-involved youth finally obtain their high school diploma and access a multitude of career and educational opportunities. At the moment, it is incumbent upon former students to seek out this opportunity, which is why service providers can play a significant role in informing individuals who can take advantage of the change in law.

Eligible students should contact the school district, COE, or charter school where they completed 12th grade and have them verify that they met all graduation requirements except for the CAHSEE and request a diploma. The diploma will have 2016 issuance date.

AB 2276

In 2015, Assembly Bill 2276 (Bocanegra) was enacted to clarify existing protections for juvenile-system involved students, as well as encourage cross-agency collaboration to remove barriers for students transitioning from custody back to their communities. As of 2016, this law does the following:

- ▶ Requires county offices of education and probation departments to establish a joint transition planning policy to improve communication regarding dates of release, coordinate immediate school placement and enrollment, and ensure that probation officers in the community have the information they need to support the return of pupils to their communities;
- ▶ Strongly encourages local educational agencies (LEAs) to enter into memoranda of understanding (MOU) on specified issues impacting the transition of students from juvenile court facilities to a public school in their community;
- ▶ Clarifies that juvenile system-involved youth must be immediately enrolled in a public school following release from custody;
- ▶ Clarifies that these youth cannot be denied enrollment because of their contact with the juvenile justice system;
- ▶ Clarifies that their student records must be transferred within two school days of the request by the school at which the student is enrolling;
- ▶ Clarifies that LEA's must issue partial credits and proper application of partial credits to same or similar courses that lead to graduation, not to electives; and

- ▶ Convened a statewide group to examine and make recommendations addressing the challenges and barriers faced by juvenile court students returning to public community schools, which can be found on the California Department of Education's Juvenile Court Student Transition Work Group Site, at <https://www.cde.ca.gov/sp/eo/jc/juvcourtworkgroup.asp>.