



STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
KAMALA D. HARRIS  
ATTORNEY GENERAL

February 12, 2015

Re: Oversight and Enforcement of Laws Related to Foster Youth

Dear Colleagues:

As elected and appointed leaders in your county with responsibility for our child welfare and juvenile justice systems, I write to inform you of the creation of the Bureau of Children's Justice (Bureau) at the California Department of Justice. The Bureau's mission is to protect the rights of children and focus the attention and resources of law enforcement and policymakers on the importance of safeguarding every child so that they can meet their full potential.

Staffed with both civil rights and criminal prosecutors, the Bureau will focus its enforcement and advocacy efforts on several areas, including California's foster care, adoption and juvenile justice systems; discrimination and inequity in education; elementary school truancy; human trafficking of vulnerable youth; and childhood trauma. The Bureau of Children's Justice will use the criminal and civil law enforcement powers of the California Department of Justice to identify and pursue much-needed improvements to policies impacting children, and work with local, state, and national stakeholders to enhance supports available for children in need and to hold those who prey on children accountable.

As the chief law officer of the State of California, I share your interest in seeing that laws and regulations enacted to protect our children are consistently and effectively enforced.<sup>1</sup> Within my office, sections across our civil, criminal and public rights divisions pursue a variety of cases to ensure all of California's children are given full protection under the law. These efforts have included investigations of alleged self-dealing or other improprieties by nonprofit charities; litigation involving foster care licensure or adoption; maintenance of the Child Abuse Central Index; and participation in the Commercial Sexual Exploitation of Children (CSEC) statewide taskforce, to name a few. The new Bureau will organize, focus, and expand on expertise within the Department of Justice on

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<sup>1</sup> Cal. Const., art. V, §13.



issues impacting children, as well as engage a spectrum of stakeholders – policymakers, elected officials, child welfare agencies, local education agencies, mental health officials, and law enforcement agencies – in order to fulfill its mission to protect the rights of all children.

The engagement process begins with you as leaders in California who have the vital responsibility of protecting some of our most vulnerable children – our foster youth.

Despite extensive legal protections and public agencies' legal obligations to foster youth, a 2011 audit of California child welfare services found that throughout the State, county agencies could be more vigilant and responsive to child abuse and neglect, and that they must more consistently inform oversight or licensing entities of child abuse and neglect.<sup>2</sup> Similarly, a review of the educational, employment, health, and criminal justice outcomes for foster youth in California makes clear that we can and must do better. Generally, students in foster care are older for their grade level than other student groups; drop out at a higher rate than other at-risk student groups; only 50% pass the California high school exit exam in grade 10; about 33% change schools at least once during the school year (at four times the rate of the low-socioeconomic status or general populations); and 20% are classified with a disability. Among students with disabilities, foster youth have a higher rate of emotional disturbance.<sup>3</sup> Emancipated foster youth are also more likely to become homeless and to become involved in the criminal justice system.<sup>4</sup>

As officials and employees in positions of public trust, we all have a duty to care for and protect the children placed into foster care in California.<sup>5</sup> The failure to protect California's foster children cannot be attributed solely to one official or agency. As part of our shared commitment to improving outcomes for our children, I urge you to evaluate your current enforcement and oversight policies and practices in this area, and to contact our office with concerns and ideas for potential collaboration.

California law, as you are aware, provides foster children with a variety of rights, including but not limited to:

*Rights Relating to Home Environment*

- live in a safe, healthy, and comfortable home where they are treated with respect;<sup>6</sup>
- be free of corporal punishment or physical, sexual, emotional or other abuse;<sup>7</sup>

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<sup>2</sup> Cal. State Auditor, *Child Welfare Services: California Can and Must Provide Better Protection and Support for Abused and Neglected Children* (2011) pp. 29, 31.

<sup>3</sup> Barrat, *The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California's Public Schools* (2013) pp. 10, 12, 14, 17, 36-37.

<sup>4</sup> Danielson, *Foster Care in California: Achievements and Challenges* (2010) p. 14.

<sup>5</sup> Welf. & Inst. Code, § 16000.1, subd. (a)(1).

<sup>6</sup> Welf. & Inst. Code, § 16001.9, subd. (a)(1).

<sup>7</sup> Welf. & Inst. Code, § 16001.9., subd. (a)(2).

- receive adequate and healthy food, clothing, and for youth in group homes, an allowance;<sup>8</sup>
- receive medical, dental, vision, and mental health services;<sup>9</sup>
- be free of medication or chemical substances, unless authorized by a physician;<sup>10</sup>
- not be discriminated against on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status;<sup>11</sup>
- have caregivers and child welfare personnel who are trained in cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care;<sup>12</sup> and
- contact family members, unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, and, unless prohibited by court order, to make and receive confidential telephone calls and send and receive unopened mail.<sup>13</sup>

*Rights Relating to Education*

- attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with their age and developmental level, with minimal disruptions to school attendance and educational stability;<sup>14</sup>
- access the same academic resources, services, and enrichment activities as other students;<sup>15</sup>
- at 16 years of age or older, have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education;<sup>16</sup>
- remain enrolled in and attend their school of origin pending resolution of any school placement dispute,<sup>17</sup> and be immediately enrolled in school even if all typically required school records, immunizations, or school uniforms are not available;<sup>18</sup> and
- be protected from being penalized for school absences due to placement changes, court appearances, or related court ordered activities.<sup>19</sup>

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<sup>8</sup> Welf. & Inst. Code, § 16001.9, subd. (a)(3).

<sup>9</sup> Welf. & Inst. Code, § 16001.9, subd. (a)(4).

<sup>10</sup> Welf. & Inst. Code, § 16001.9, subd. (a)(5).

<sup>11</sup> Welf. & Inst. Code, § 16001.9, subd. (a)(23).

<sup>12</sup> Welf. & Inst. Code, § 16001.9, subd. (a)(24).

<sup>13</sup> Welf. & Inst. Code, § 16001.9, subds. (a)(6), (9).

<sup>14</sup> Welf. & Inst. Code, § 16001.9, subd. (a)(13).

<sup>15</sup> Ed. Code, §§ 48850, subd. (a)(1); 48853, subd. (h).

<sup>16</sup> Welf. & Inst. Code, § 16001.9, subd. (a)(25).

<sup>17</sup> Ed. Code, §§ 48853, subd. (d); 48853.5, subd. (e)(1).

<sup>18</sup> Ed. Code, § 48853.5, subd. (e)(8)(B).

<sup>19</sup> Ed. Code, § 49069.5, subds. (g), (h).

Each of the above-described rights in the Education Code applies to youth in both the dependency and juvenile justice systems.<sup>20</sup> Foster youth also have the right to make complaints related to any violations of these rights.<sup>21</sup>

It is paramount that state, county and local agencies throughout the State guarantee these rights by fulfilling their legal obligations, including but not limited to:

- **Meeting licensing requirements.** Under current California law, foster care facilities must meet respective health and safety standards in order to be licensed or approved.<sup>22</sup>
- **Ensuring quality of care.** Licensed facilities providing care for children must be inspected at least annually. Such inspections should take place without advance notice and as often as necessary to ensure the quality of care provided.<sup>23</sup>
- **Reporting child abuse.** A “mandated reporter” includes a licensing worker or evaluator; an administrator or employee of a licensed care facility; a social worker, probation officer, or parole officer; and a district attorney investigator, inspector, or local child support agency caseworker.<sup>24</sup> If a mandated reporter, in his or her professional capacity or within the scope of his or her employment, knows or reasonably suspects a foster youth has been the victim of child abuse or neglect, he or she must call a designated agency immediately or as soon as is practicably possible, and submit a written follow up report within 36 hours of receiving the information concerning the incident.<sup>25</sup>
- **Investigating suspected child abuse cases.** Any police or sheriff’s department, county welfare department, or other agency designated by the county to receive mandated reports must accept reports of suspected child abuse or neglect from a mandated reporter, or from any other person or referring agency.<sup>26</sup> The agency must then investigate the report of child abuse or neglect, and forward substantiated reports in writing to the California Department of Justice.<sup>27</sup>

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<sup>20</sup> Specifically, they apply to a “foster child,” defined as: a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code. (Ed. Code, §§ 48853.5, subd. (a), 49069.5, subd. (i)(3).) A child is the subject of a petition filed under section 602 of the Welfare and Institutions Code when he or she has violated any law of this State or of the U.S., other than murder in certain circumstances and certain sex offenses, or any ordinance of any city or county of this State defining crime other than an ordinance establishing a curfew based solely on age, and are within the jurisdiction of the juvenile court and may be adjudged a ward of the court. (Welf. & Inst. Code, § 602, subd. (a).)

<sup>21</sup> Welf. & Inst. Code, § 16001.9, subd. (a)(8).

<sup>22</sup> Welf. & Inst. Code, § 16519, subd. (b).

<sup>23</sup> Health & Saf. Code, § 1522.4, subd. (a)(4); Cal. Code. Regs., tit. 22, § 84044.

<sup>24</sup> Pen. Code, § 11165.7.

<sup>25</sup> Pen. Code, § 11166, subd. (a).

<sup>26</sup> Pen. Code, § 11165.9.

<sup>27</sup> Pen. Code, § 11169, subd. (a).

- **Protecting foster youth against discrimination.** Under federal law, states receiving federal foster care funds cannot delay or deny placement of a child for adoption on the basis of the child’s or prospective parent’s race.<sup>28</sup> Additionally, LGBTQ foster children, foster parents, and service providers have a right to equal access to all services, placement, care, treatment and benefits of the foster care system, without discrimination or harassment.<sup>29</sup> Lastly, in 2010, California enacted AB 1325 to better serve Native American children in the child welfare system. The statute added “tribal customary adoption” as a less disruptive placement option, through which termination of parental rights is not required and Native children maintain the option of later returning to their tribal community.
- **Ensuring equal access to education for youth in the dependency and juvenile justice systems.** Educators, county probation and child welfare agencies, care providers, advocates, and the juvenile courts must work together to maintain stable school placements and to ensure that each student is placed in the least restrictive educational programs with access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils.<sup>30</sup> Both the local educational agency and the county placing agency are therefore responsible for the proper and timely transfer between schools of pupils in foster care.<sup>31</sup> And each local educational agency must designate a staff person as the educational liaison for foster youth who is responsible for ensuring and facilitating the proper educational placement and enrollment of foster youth, and assisting them when transferring from one school to another or from one school district to another, including ensuring the proper transfer of credits, records, and grades.<sup>32</sup> The educational liaison must also ensure that a child is immediately enrolled in a new school, and within two business days must request all academic and other records for the child to be transferred from the old school to the new school.<sup>33</sup>

Through my office’s new Bureau of Children’s Justice, I look forward to working with you to uphold these and other obligations to children across our State.

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<sup>28</sup> Section 422(b)(7) of the Social Security Act (Title IV-B); Section 471(a)(18) of the Social Security Act (Title IV-E).

<sup>29</sup> Welf. & Inst. Code, §§ 16001.9, subd. (a)(23); 16013, subd. (a).

<sup>30</sup> Ed. Code, § 48850, subd. (a)(1).


<sup>31</sup> Ed. Code, § 49069.5, subd. (b).

<sup>32</sup> Ed. Code, § 48853.5, subd. (b).

<sup>33</sup> Ed. Code, §§ 48853.5, subd. (e)(8); 49069.5, subds. (d)-(f).

As the Bureau begins its work, I welcome your ideas, feedback, and suggestions for ways we can work together on this endeavor. I encourage you to contact Deputy Attorney General Michael Newman at [Michael.Newman@doj.ca.gov](mailto:Michael.Newman@doj.ca.gov). Thank you for all that you do for Californians.

Sincerely



KAMALA D. HARRIS  
Attorney General

cc:

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