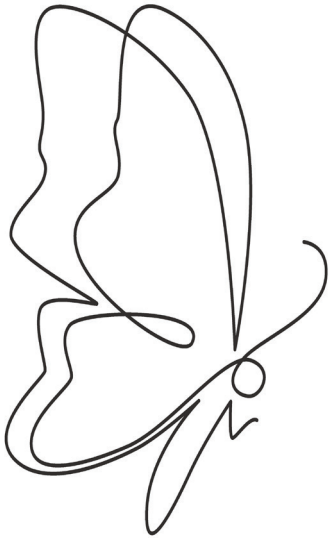


# Educational Advocacy for Unaccompanied Immigrant Youth in California

TOOLS TO ADVOCATE FOR UNACCOMPANIED IMMIGRANT  
YOUTH IN FEDERAL IMMIGRATION CUSTODY AND YOUTH  
RECENTLY RELEASED FROM CUSTODY



# About Us

The National Center for Youth Law (NCYL) is a non-profit law firm that has fought to protect the rights of children and youth for more than fifty years. Headquartered in Oakland, California, NCYL leads high impact campaigns that weave together litigation, research, policy development, and technical assistance.

NCYL and its co-counsel represent the class of thousands of immigrant children in federal custody and are responsible for monitoring the government's compliance with the *Flores* Settlement Agreement. The *Flores* Settlement guarantees basic protections for all children in federal immigration custody and authorizes *Flores* attorneys to visit and interview detained immigrant children.

NCYL and its co-counsel also represent five national classes of unaccompanied immigrant children in *Lucas R. v. Azar*, a case which seeks to deepen and expand protections for children in ORR custody, including: children with disabilities, children that get stepped up to more restrictive facilities, children who are not promptly released to sponsors, children who are administered psychotropic medications, and children whose lawyers are obstructed from comprehensive representation.

NCYL also collaborates with public agencies to develop policies and practices to better support immigrant children and families.

## Authors

Melissa Adamson, JD, Mishan Wroe, JD, & Neha Desai, JD.

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For further information on the full range of NCYL's campaigns and initiatives, please visit [www.youthlaw.org](http://www.youthlaw.org) or contact us at [immigration@youthlaw.org](mailto:immigration@youthlaw.org).

# Acknowledgments

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This Toolkit also incorporates insight and direct quotes from children in federal immigration custody who we have interviewed over the years. We are immensely grateful to these children for sharing their experiences with us.

## Data

Data provided in this briefing was drawn from the monthly *Flores* HHS Data Reports provided to the National Center for Youth Law by the U.S. Department of Justice, as well as publicly available sources of data from the Office of Refugee Resettlement and U.S. Customs and Border Protection.

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*Please note while this resource provides some legal information, it does not provide legal advice or create an attorney-client relationship. Information is current as of May 2024.*

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# Executive Summary

Access to a meaningful education is a fundamental right that has profound and lifelong implications. Education reduces inequality and promotes upward mobility across generations. Ultimately, a quality education is critical to a child's ability to thrive.

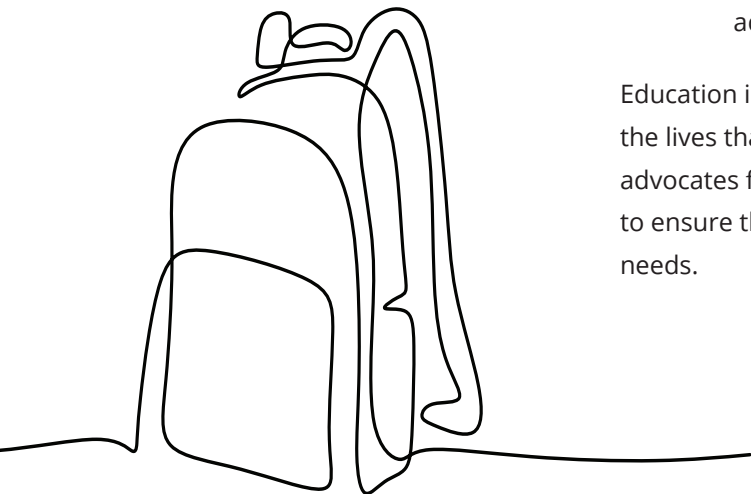
*Quotes featured throughout the Toolkit are from interviews with detained unaccompanied children conducted by NCYL attorneys representing children in federal custody. These children's words and experiences fundamentally shaped the scope and direction of this resource.*

Unfortunately, many unaccompanied immigrant children face obstacles to accessing quality education. This is particularly true for unaccompanied children in federal immigration custody, who are often prohibited from leaving the facilities in which they are detained. Even unaccompanied children who are living in the community encounter barriers including difficulty enrolling in school, accessing English learner programs, and obtaining disability-related services.

This Toolkit provides advocates for unaccompanied children with a summary of the laws and policies available to advocate for these children's meaningful access to education. To that end, this Toolkit includes:

- An overview of the population of unaccompanied children in federal immigration custody, as well as the different placements in federal custody in which unaccompanied children live.
- Information about unaccompanied children in federal immigration custody in California.
- A summary of the federal and state legal requirements related to unaccompanied children's educational rights.
- An outline of unaccompanied children's challenges accessing education and accompanying opportunities for advocates to address these challenges.

Education is the necessary foundation upon which children can build the lives that they envision for themselves. It is therefore critical that advocates for unaccompanied children have the resources required to ensure that these children can access education that meets their needs.





# **Section 1: Unaccompanied Children & The Office of Refugee Resettlement**

*Unaccompanied Children & The Office of Refugee Resettlement*

Over the past decade, immigrant children have continued to arrive at the southern border of the United States, despite changes in presidential administrations and increasingly punitive policies intended to deter migration. Many of these children are fleeing violence and extreme poverty in their countries of origin and endure perilous migration journeys that often include danger and exploitation. In addition to longstanding socio-political and economic forces driving migration, recent factors including the COVID-19 pandemic, natural disasters, and international and U.S. federal immigration policies have also substantially impacted migration patterns.

All arriving immigrant children are initially detained in Customs and Border Protection (CBP) holding facilities. Immigrant children who come to the United States without a parent or legal guardian are classified as “unaccompanied”<sup>1</sup> and transferred to the custody of the Office of Refugee Resettlement (ORR).

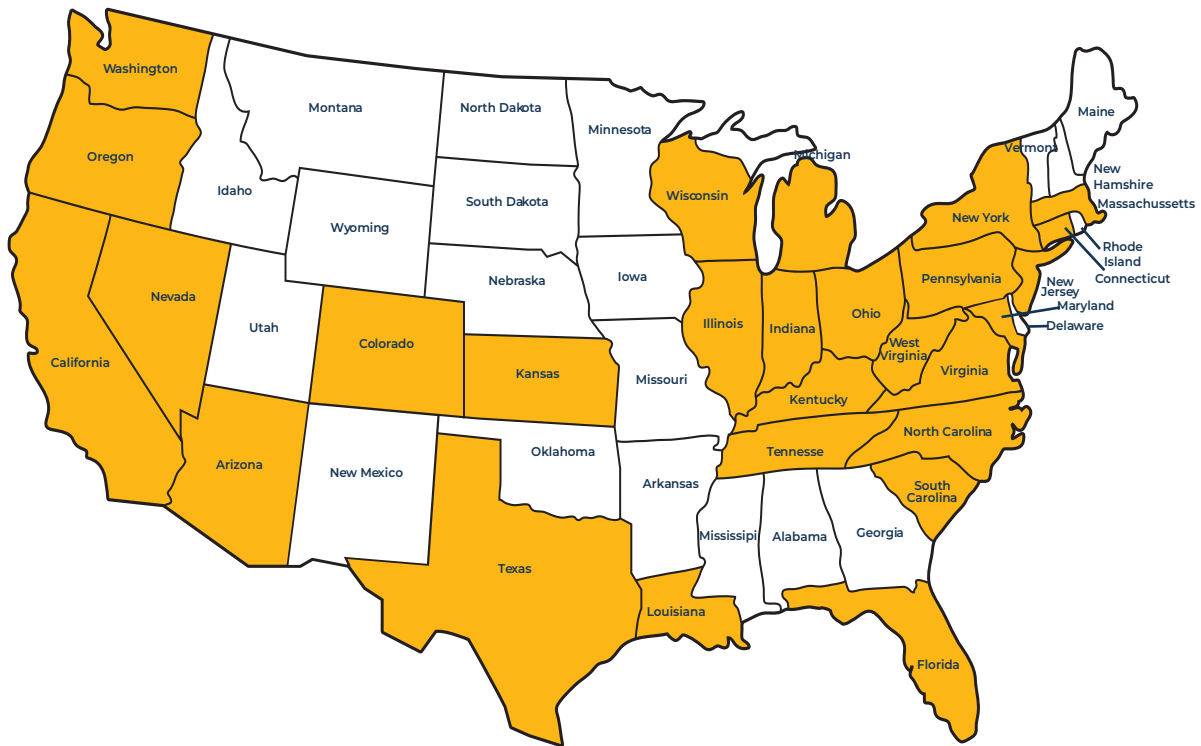
ORR is responsible for the care and custody of unaccompanied children in federal immigration custody.<sup>2</sup> Once an unaccompanied child is transferred from CBP to ORR custody, ORR is required to “promptly place” the child “in the least restrictive setting that is in the best interest of the child.”<sup>3</sup> With limited exceptions, ORR must place unaccompanied children in non-secure facilities that are licensed to care for dependent children.<sup>4</sup> These facilities, also known as “care providers,” must comply “with all applicable state child welfare laws and regulations.”<sup>5</sup>

ORR is required to promptly release unaccompanied children to appropriate sponsors, which may be a parent, sibling, cousin, or other family member. The majority of unaccompanied children coming to the United States have a parent, sibling, cousin, or other family member that can serve as their sponsor.<sup>6</sup> Care provider facilities are required to provide case management services to facilitate each child’s safe and timely release.<sup>7</sup> After a child is placed at an ORR facility, the child’s case manager works to identify a family member to whom the child can be released. However, some children do not have any potential sponsors to whom they could be released. While some children, generally those with sponsors, may spend only a short time in ORR custody, others, often those without sponsors, may be detained for months or even years while they wait to be released.<sup>8</sup>

As of March 2024, ORR’s network included a total of 289 facilities and programs located in 29 states.<sup>9</sup> These contracted care providers are required to provide basic educational, recreational, counseling, and medical services to the unaccompanied children in their custody.<sup>10</sup>



## States with ORR Contracts



**Data Source:** U.S. Department of Justice, Monthly HHS Flores Data Reports

Over the past several years, the number of children in ORR custody has fluctuated dramatically. As of February 2024, there were 8,277 children in ORR custody.<sup>11</sup> Of those children, approximately 83% were over the age of 12, and 64% were male.

While approximately 67% were from Guatemala, Honduras, or Mexico, children from 60 countries were represented, including Afghanistan, Haiti, India, Angola, Venezuela, Guinea, and Turkey. Unaccompanied children's most common countries of origin have shifted over the years, reflecting the impact of complex political, social, economic, and climate factors on migration patterns.<sup>12</sup>

## Education is Especially Important for Unaccompanied Children

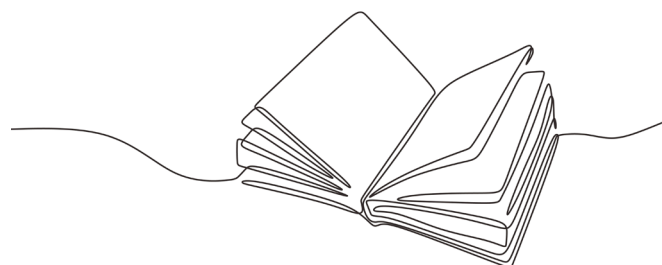
The importance of education for children cannot be overstated. Education is critical for children's cognitive, behavioral, and emotional development. Depriving children of an adequate education inflicts academic, psychological, and economic harm and undermines children's ability to gain the skills needed for adulthood.<sup>13</sup>

For young children, the lack of access to an educational environment impedes their cognitive, behavioral, and social-emotional development.<sup>14</sup> For older youth, the lack of access to appropriate learning environments negatively impacts adolescent brain development.<sup>15</sup> Learning environments and experiences shape teens' abilities to remember key information, perform complex mental tasks, engage in higher order thinking, and regulate their emotions.<sup>16</sup> Research shows that interrupting children's education for even a short period of time hinders their long-term academic success.<sup>17</sup>

Unaccompanied children detained in ORR facilities have routinely reported that receiving an education, particularly one that will help them achieve their career goals, is one of their top priorities.

Children's experiences in the Fort Bliss Emergency Intake Site during the summer of 2021 exemplify the importance of education for children in ORR facilities. These children had only brief periods of recreation and were generally offered just one to two hours of optional English lessons each day.<sup>18</sup> Dr. Ryan Matlow, a Stanford University child clinical psychologist who visited Fort Bliss with the National Center for Youth Law, explained that without adequate activities and recreational opportunities, "many children experience extreme boredom, lethargy, low motivation, hopelessness, and helplessness, all of which are the symptoms and contributors to depression and psychological stress."<sup>19</sup> The lack of activity and education at Fort Bliss led to children's "developmental arrest" and "they began to languish in a state of increasing sadness, inactivity, agitation, anxiety, and adjustment difficulty."<sup>20</sup>

A systematic review of studies that investigated the impact of immigration detention on mental health found that "children regularly reported... anxiety regarding delays in educational progress."<sup>21</sup> Educational services that are engaging and challenging can help children cope with the fatigue they experience in detention and can be a healthy escape from revisiting and dealing with the trauma they experienced and are experiencing.







## **Section 2: Unaccompanied Children in California**

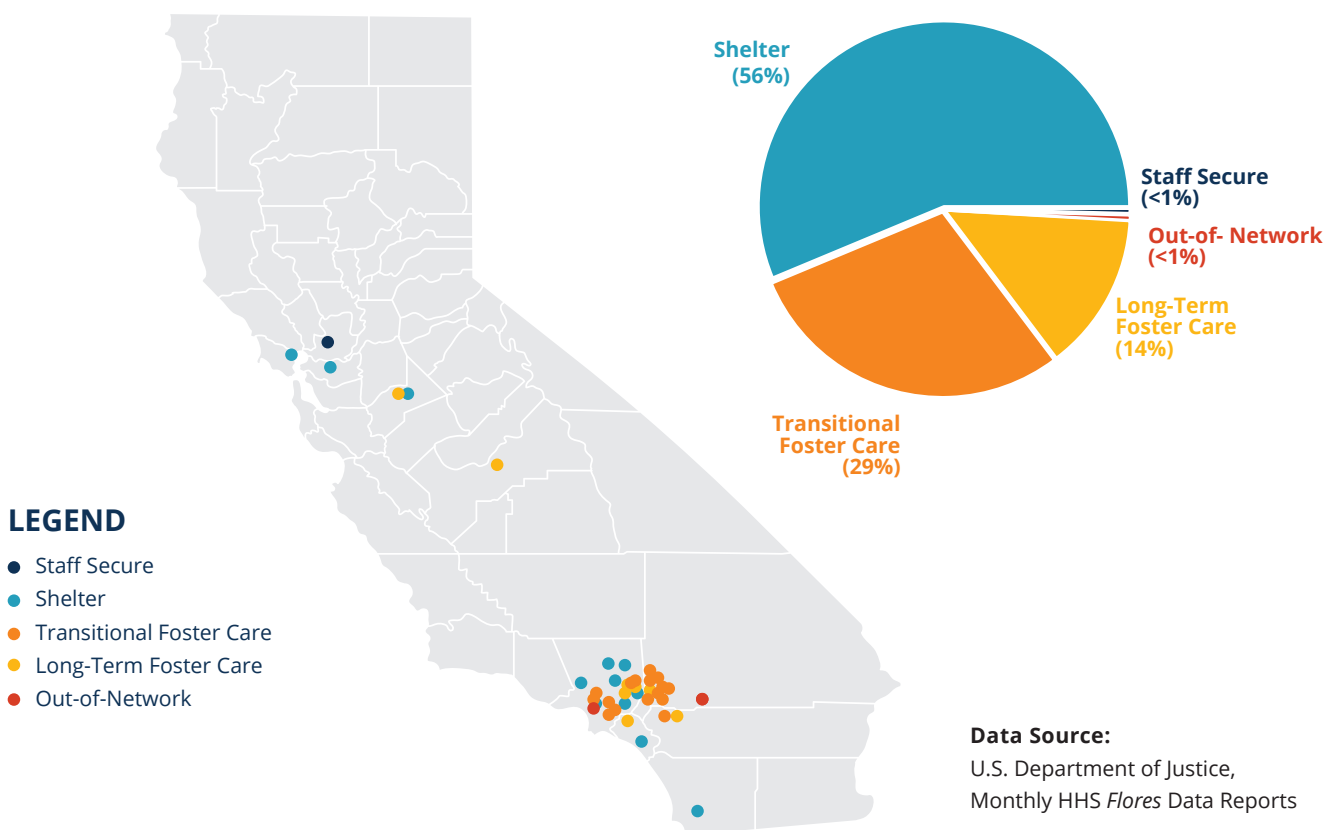
# Unaccompanied Children in ORR Custody in California

ORR contracts with care provider facilities in approximately 29 states, including California.<sup>22</sup> ORR-contracted facilities in California are licensed through the Community Care Licensing Division (CCL) of the California Department of Social Services (CDSS). CCL is “responsible for all aspects of licensing and the enforcement of Title 22 licensing regulations and interim licensing standards.”<sup>23</sup>

ORR may place unaccompanied children in different types of placements within the ORR network of care providers. These different types of placements include: shelters, influx facilities, residential treatment centers, therapeutic group homes, staff-secure and secure facilities, out-of-network facilities, Unaccompanied Refugee Minor programs, and transitional foster care and long-term foster care programs. These placement types vary in terms of program structure and services provided to youth, including educational services.

Within California, ORR contracts with shelter, staff-secure, transitional foster care, long-term foster care, and Unaccompanied Refugee Minor programs. ORR also maintains arrangements with out-of-network residential treatment centers that are used on an as-needed basis.

## Unaccompanied Children in ORR Custody in California (as of February 6, 2024)



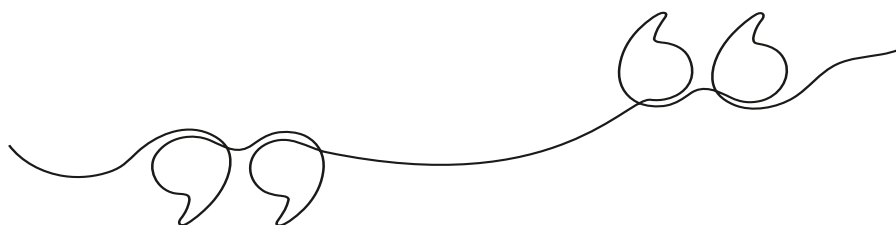
## Shelter Programs

A “shelter” is defined as a residential care provider facility “in which all of the programmatic components are administered on-site...”<sup>24</sup>

Each of the ORR-contracted shelters in California is licensed as a “Group Home” or “Short Term Residential Therapeutic Program” (STRTP) within the CCL Children’s Residential Program.<sup>25</sup> CCL defines a “Group Home” as providing “24-hour non-medical care and supervision to children and nonminor dependents up to age 19, in a structured environment, with services provided by persons employed by the licensee.”<sup>26</sup> A STRTP is defined as providing “an integrated program of specialized and intensive care and supervision, services and supports, treatment, and short-term 24-hour care and supervision.”<sup>27</sup>

As of February 2024, ORR had placed unaccompanied children in 12 shelters in California.<sup>28</sup> These 12 shelters ranged in structure and size, with the smallest shelter’s licensed capacity at 12 youth, and the largest shelter’s licensed capacity at 109 youth. Children placed in ORR-contracted shelters in California do not attend public school. Instead, they attend classes provided by the shelter facility.

As of February 2024, approximately 370 unaccompanied children were placed in shelters throughout California.<sup>29</sup> These children ranged in age from 0-17 years old and had been in ORR custody for between 1 and 435 days.



We have school here but it is not very good. **They just bring us things to color or draw but we want to learn English and English grammar...** I came to the United States in hopes of making my life better but I feel like I have wasted so much time here and it is time for me to go to real school.

*13-year-old boy, Shelter, California, April 2022*

In my classroom they give us art lessons and math lessons, but we don’t get any English lessons. I’m learning English from living here but I’ve asked several times for them to give us English lessons and they refuse.

**Most of the time school feels like a waste of time.**

*16-year-old boy, Shelter, California, October 2023*



## Unaccompanied Children in California

### Staff-Secure Programs

A “staff secure” facility is defined as a facility “that maintains stricter security measures, such as higher staff to unaccompanied children ratio for supervision, than a shelter in order to control disruptive behavior and to prevent escape.”<sup>30</sup> Children who are stepped-up to more restrictive placements such as staff-secure facilities experience a substantial loss of liberty and remain in ORR custody much longer on average than children in shelter settings.<sup>31</sup>

Children placed in staff-secure programs do not attend public school. Instead, they attend classes that are provided within the facility.

As of February 2024, ORR had placed three children in one staff-secure facility in California.<sup>32</sup> These three children ranged in age from 15-17 years old and had been in ORR custody for between 86 and 229 days.

### Transitional Foster Care Programs

Transitional Foster Care (TFC) is a temporary community-based placement option for certain categories of unaccompanied children, including children “under 13 years of age, sibling groups with one sibling under 13 years of age, pregnant/parenting teens, or unaccompanied children with special needs.”<sup>33</sup> As of January 2024, ORR contracted with 16 TFC programs in California to provide services to unaccompanied children.

Children placed in transitional foster care programs in California live with licensed foster families (known as “resource families”<sup>34</sup>) in the community. However, they do not attend public school. Instead, they attend classes at a central TFC care provider facility site.

As of February 2024, ORR had placed approximately 190 unaccompanied children in 16 TFC programs throughout California.<sup>35</sup> These children ranged in age from 0-17 years old and had been in ORR custody for between 1 and 1,769 days.

### Long-Term Foster Care Programs

As of March 2020, approximately one-third of all children in ORR custody did not have any viable sponsors to whom they could be released.<sup>36</sup> Without the option of a community-based foster care placement, these children remain in ORR facilities until they turn 18 years old.

Long-Term Foster Care (LTFC) is a community-based foster care placement for unaccompanied children who are determined likely to be in ORR custody for an extended period of time.<sup>37</sup> Children are eligible for LTFC placement if they are 1) expected to be detained for four or more months due to lack of a viable sponsor or likely to be detained for a prolonged time for other reasons; and 2) under the age of 17 and 6 months at the time of placement (unless waived by the referring and receiving Federal Field Staff (FFS)).<sup>38</sup>

Children placed in long-term foster care placements in California live with licensed resource families, attend public school or other state-licensed educational programs in the local school district, and receive community-based services.<sup>39</sup>

As of February 2024, ORR had placed 90 unaccompanied children in eight LTFC programs in California.<sup>40</sup> These children ranged in age from 0-17 years old and had been in ORR custody for between 38 and 840 days.

## Out-of-Network Residential Treatment Center Programs

A Residential Treatment Center (RTC) is a “sub-acute” setting that has increased staff ratios and provides higher levels of therapeutic services as compared to a shelter program.<sup>41</sup> ORR programs may request that a child be stepped up to an RTC if they believe that the child has needs that cannot be met in an outpatient setting. A child may only be placed in an RTC if a licensed psychiatrist or psychologist has determined that the child presents a danger to self or others.<sup>42</sup>

As of February 2024, ORR contracted with two RTC programs within its national network of providers. ORR may place children at “Out-of-Network” (OON) RTC programs if the child’s needs cannot be met by one of the in-network RTC programs, or if the in-network RTC programs do not have bed capacity. Children placed in OON RTC programs may attend classes that are provided within the facility or attend public school, depending on the facility and the state in which it is located. The environment, conditions, and services provided at OON programs vary significantly.

As of February 2024, ORR contracted with two OON RTC programs in California. The OON RTC programs in California are licensed as a “Short Term Residential Therapeutic Program” (STRTP) within the CCL Children’s Residential Program.<sup>43</sup> A STRTP is defined as providing “an integrated program of specialized and intensive care and supervision, services and supports, treatment, and short-term 24-hour care and supervision.”<sup>44</sup>

As of February 2024, ORR had placed three unaccompanied children in two OON RTC programs in California. These children ranged in age from 15-16 years old and had been in ORR custody for between 158 and 825 days. These two OON RTC programs permit youth to attend public school in the community.



I have much more freedom here than I did at [prior shelter placement]. I attend the community school and so I leave the shelter to go to school every day. I’m mainly learning English. **I like being able to attend normal school**, the classes are good and I think I’m learning a lot.

*16-year-old boy, Out-of-Network Facility, California, April 2022*

# Unaccompanied Children in URM Programs in California

The Unaccompanied Refugee Minors Program (URM), administered through ORR, is a foster care services program that “establishes legal responsibility, under State law, to ensure that unaccompanied minor refugees and other eligible children . . . receive the full range of assistance, care, and services that are available to all foster children in the State.”<sup>45</sup> Some children eligible for this program are identified abroad by the Department of State for U.S. resettlement, while other children are already present in the U.S. when found to be eligible.<sup>46</sup>

An unaccompanied refugee minor is defined as a child who is under the age of 18, and “who entered the United States unaccompanied by and not destined to (a) a parent or (b) a close nonparental adult relative who is willing and able to care for the child or (c) an adult with a clear and court verifiable claim to custody of the minor; and who has no parent(s) in the United States.”<sup>47</sup> To be placed in the URM program, children must also meet the eligibility criteria for one of the following categories of immigration relief:<sup>48</sup>

- Refugees
- Asylees
- Cuban and Haitian entrants
- Victims of human trafficking
- Special Immigrant Juveniles
- U-Visa recipients
- Unaccompanied Afghan Minors<sup>49</sup>

ORR works with two resettlement agencies, Global Refuge (formerly Lutheran Immigration and Refugee Services) and the United States Conference of Catholic Bishops (USCCB), to identify eligible children and find appropriate placements in URM programs throughout the United States. URM programs, which are affiliated with either Global Refuge or USCCB, contract with individual states.<sup>50</sup>

States are required to provide unaccompanied refugee minors in URM programs with the same “child welfare services and benefits” that are provided to foster youth under the State’s Title IV-B plan.<sup>51</sup> In addition, states must provide child welfare services to youth in URM programs “according to the State’s child welfare standards, practices, and procedures.”<sup>52</sup> Youth in URM programs live with licensed resource families, in group homes, or in independent housing. These youth attend public school and receive community-based services.<sup>53</sup>

In California, the California Department of Social Services (CDSS) has administered the URM program since 2004, contracting with three URM services providers:

- Catholic Charities of Santa Clara County (USCCB affiliate)
- Crittenton Services for Children and Families, Fullerton, Orange County (Global Refuge affiliate)
- International Christian Adoptions, Citrus Heights, Sacramento County (Global Refuge affiliate)<sup>54</sup>

# Unaccompanied Children Released to Sponsors in California

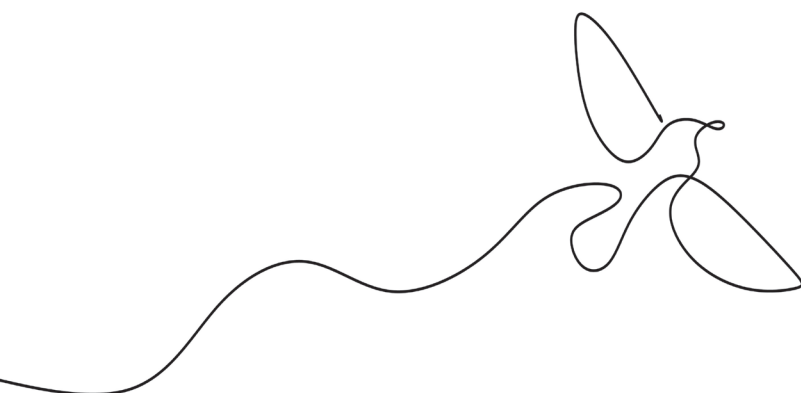
Most unaccompanied children remain in the custody of ORR until their release to a suitable sponsor in the United States, with whom they live while they await their immigration proceeding. ORR is required to release children “without unnecessary delay” to a sponsor, which may be the child’s parent, relative, designate of the parent, or responsible adult, depending on the individual circumstances of each child’s case.<sup>55</sup> Once unaccompanied children are released to their sponsors, they live with them in the community, attend public school, and await their immigration proceedings.

The total number of unaccompanied children released to sponsors in the United States has fluctuated considerably in response to both federal policy changes and external factors. For example, in Fiscal Year 2020 (October 2019 – September 2020), which included the Trump administration’s introduction of the Title 42 policy that prohibited unaccompanied children from entering the United States, 16,837 unaccompanied children were released to sponsors.<sup>56</sup> In Fiscal Year 2021 (October 2020 – September 2021), during which the Title 42 policy as applied to unaccompanied children was blocked by a federal court, 107,686 unaccompanied children were released to sponsors.<sup>57</sup>

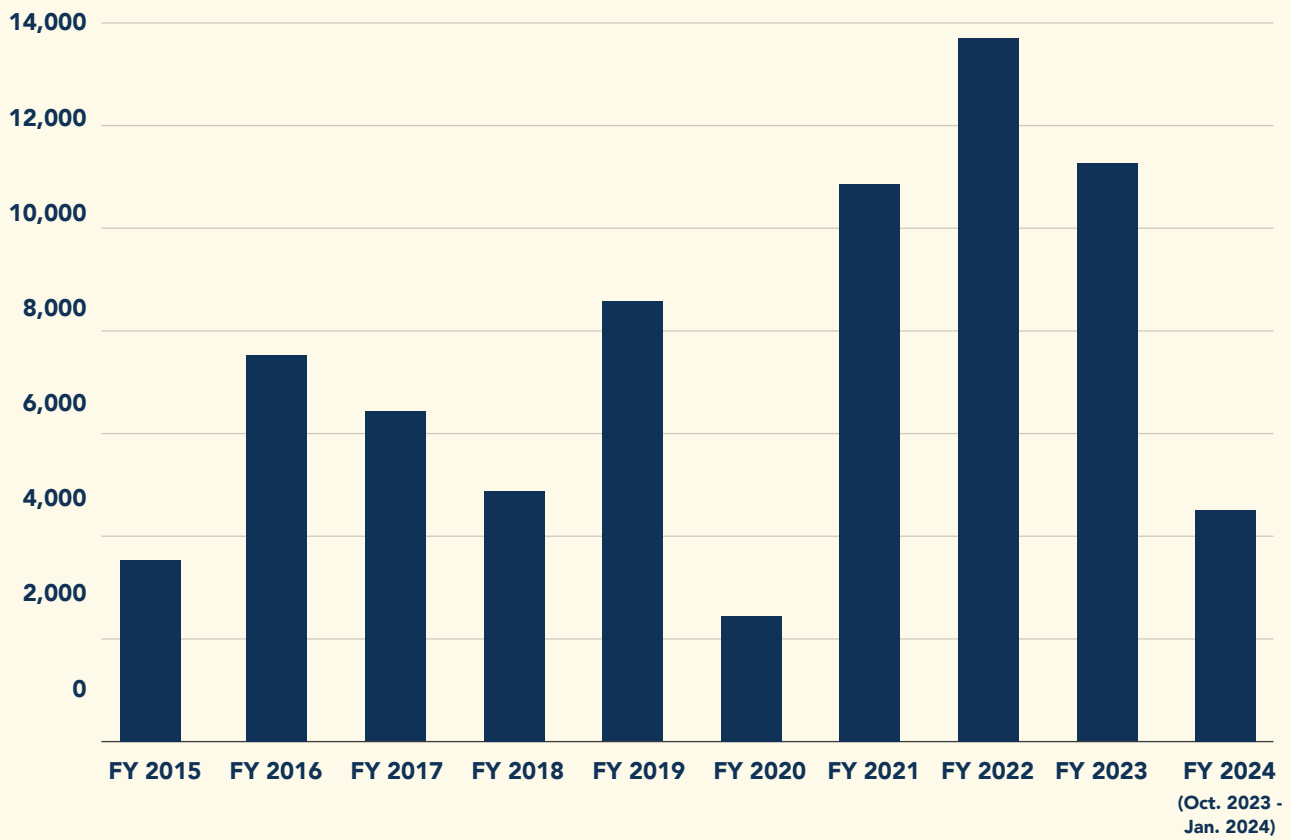
While unaccompanied children are released to sponsors located all over the United States, there are certain states that have historically received more children than others, such as California, New York, Texas, and Florida. California is consistently one of the top three states to which unaccompanied children are released.

- Between October 2014 and November 2023, California received approximately 70,200 unaccompanied immigrant children.<sup>58</sup>
- In Fiscal Year 2023, the Office of Refugee Resettlement released 11,121 unaccompanied children – 9.8% of all children released – to sponsors in California.
- In Fiscal Year 2023, unaccompanied children were placed with sponsors in at least 21 of California’s 58 counties, with the most children being placed in the Bay Area and Los Angeles.

Recently released unaccompanied children and their families are highly vulnerable to economic instability, which – coupled with school systems that fail to meet the needs of these youth – can lead to labor exploitation and school dropout. Research shows that newcomer immigrant students drop out of school at an alarmingly high rate.<sup>59</sup> Many of these children struggle with financial pressures and decide to leave school to work instead.<sup>60</sup>



## Number of Unaccompanied Children Released to Sponsors in California



Data Source: ORR, <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>



# SUMMARY

Location of Unaccompanied Child		Location of Education
ORR Custody in California	Shelter	ORR Facility
	Staff-Secure	ORR Facility
	Out-of-Network Residential Treatment Center (OON)	In some instances, California Public School <sup>61</sup>
	Transitional Foster Care (TFC)	ORR Facility
	Long-term Foster Care (LTFC)	California Public School, or other state-licensed educational program in the school district <sup>62</sup>
Unaccompanied Refugee Minor (URM) Program		California Public School or college, university, career, or technical school
Released to Sponsor in California		California Public School



## **Section 3: Legal Requirements & Educational Rights**

An unaccompanied child's educational rights while in ORR custody are grounded in (1) federal education laws, (2) settlement agreements, (3) ORR policies and procedures, and (4) the state educational laws of the state where the facility holding the child is licensed.

Children's educational rights vary depending on the type of placement in which the child is held. This combination of sources of authority can create confusion about the educational rights and services to which unaccompanied children are entitled and how advocates can best support their clients.



# Federal Law

## All Children

Undocumented students have the same right to public education as United States citizen students.<sup>63</sup> In 1982, the U.S. Supreme Court held in *Plyler v. Doe* that states cannot deny a free public education to students based on their immigration status.<sup>64</sup>

To avoid prohibiting or discouraging enrollment based on immigration status, schools cannot require students and families to provide certain categories of information in the enrollment process.<sup>65</sup> For example, while school districts may request proof that a student lives within the boundaries of a school district, they may not ask about the student or caregiver's citizenship or immigration status to establish residency within the district.<sup>66</sup> Similarly, while school districts may request documentation to prove that a student falls within the district's age requirements, they cannot prevent or discourage a student from enrolling in school because they lack a birth certificate or have a birth certificate from a country other than the United States.<sup>67</sup> Additionally, while school districts may request a student's social security number, they may not prevent a student from enrolling in school if the student chooses not to provide a social security number.<sup>68</sup>

All students, regardless of immigration status, have constitutional due process rights related to their education. In *Goss v. Lopez*, the Supreme Court held that students have a property interest in their public education.<sup>69</sup> Accordingly, "due process is required for short-term suspensions, long-term suspensions, and expulsions."<sup>70</sup>

Courts have also recognized a variety of students' liberty interests while in school. For example, students have successfully argued that they possess liberty interests in being free from unreasonable searches and seizures, in their choice of appearance while at school, in graduating with a diploma upon meeting all school requirements, and "in bodily integrity and not being sexually abused or harassed."<sup>71</sup>

Students have also successfully argued that their liberty interests have been violated by physical control in schools, including through schools' administration of psychotropic medication.<sup>72</sup> Although the Supreme Court rejected a Fourteenth Amendment challenge to corporal punishment as a violation of students' procedural due process rights, lower courts have reached varying conclusions about whether corporal punishment is a violation of substantive due process rights.<sup>73</sup>

## Children with Disabilities

Congress has passed three federal laws that protect students with disabilities: Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA). Section 504 prohibits discrimination against people with disabilities in programs or activities that receive federal funds.<sup>74</sup> The ADA extends Section 504's antidiscrimination protections to the private sector as well as state and local government entities.<sup>75</sup> The IDEA requires states to provide students with disabilities with a free appropriate public education (FAPE), including substantive and procedural rights, in exchange for federal funding.<sup>76</sup>

As noted previously, undocumented students have the same right to public education as United States citizen students.<sup>77</sup> This right includes an entitlement to appropriate educational services, including special education services, which are defined in federal law: "Special education means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability...."<sup>78</sup>

### Section 504 of the Rehabilitation Act & the Americans with Disabilities Act

Congress passed Section 504 of the Rehabilitation Act (Section 504) in 1973.<sup>79</sup> Section 504 prohibits discrimination against people with disabilities in programs or activities that receive federal funds.<sup>80</sup> Programs and activities, public or private, that receive federal funding may not discriminate based on disability in any of their academic programs, nonacademic programs, or extracurricular programs.<sup>81</sup>

As ORR is a federally funded program, Section 504's requirements apply to children in ORR custody.

Section 504 and the Americans with Disabilities Act (ADA) both define a person with a disability as someone who has "a physical or mental impairment that substantially limits one or more major life activities" or who has "a record of such an impairment" or is "regarded as having such an impairment."<sup>82</sup> Courts interpret these two federal laws to provide the same general protections against discrimination based on disability.<sup>83</sup>

Federal agencies such as the Department of Health and Human Services (HHS) and the U.S. Department of Education (ED) have different implementing regulations for Section 504 and the ADA. These various implementing regulations provide more specific guidance on prohibited discrimination under each law.<sup>84</sup>

The HHS regulations implementing Section 504 require that "aids, benefits, and services" provided under a federal program "afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement [as nonhandicapped persons], in the most integrated setting appropriate to the person's needs."<sup>85</sup> An integrated setting is one that "enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible."<sup>86</sup> The ED regulations implementing Section 504 and the U.S. Department of Justice's regulations implementing the ADA include the same requirements.<sup>87</sup>

*Legal Requirements & Educational Rights*

In addition to its non-discrimination mandate, ED's Section 504 regulations also require that school districts identify students with disabilities, provide a FAPE, and conduct evaluations before changing a student's educational placement. These regulations, which apply to California public schools and all schools that receive federal funds, require that "a recipient that operates a public elementary or secondary education program or activity . . ."

- ". . . **shall annually: (a) Undertake to identify and locate** every qualified [person with a disability] residing in the recipient's jurisdiction who is not receiving a public education."<sup>88</sup>
- ". . . **shall provide a free appropriate public education** to each qualified [person with a disability] who is in the recipient's jurisdiction, regardless of the nature or severity of the person's [disability]. . . For the purpose of this section, the provision of a free education is the provision of educational and related services"<sup>89</sup>
- ". . . **shall conduct an evaluation** in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement."<sup>90</sup>

The ED implementing regulations outline procedures for such an evaluation, including that the "[t]ests and other evaluation materials have been validated for the specific purpose for which they are used" and are "tailored to assess specific areas of educational need."<sup>91</sup>

ORR's responsibilities under Section 504 and a public school's responsibilities under Section 504 and the ADA also include an obligation to provide reasonable accommodations to ensure students have "meaningful access" to their educational programs.<sup>92</sup>

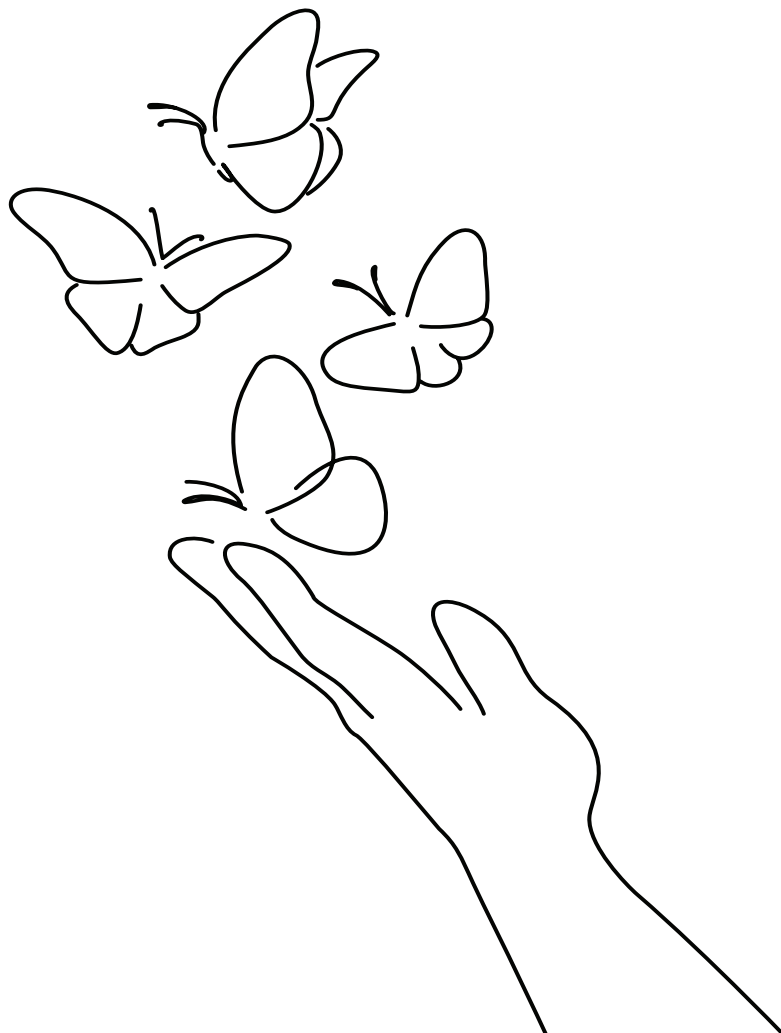
"Reasonable accommodations" are "modifications or adjustments to the tasks, environment or to the way things are usually done that enable individuals with disabilities to have an equal opportunity to participate in an academic program."<sup>93</sup> Depending on the needs of the child, reasonable accommodations could include schedule changes, note-taking assistance, audiotaped class sessions, alternative materials format (Braille, large print, verbal, etc.), extended testing time, or designated classroom seating.<sup>94</sup>

Section 504 does not require federally funded entities to create entirely new programs or to "fundamentally alter" existing programs for children with disabilities.<sup>95</sup> Entities are, however, required to make reasonable accommodations unless they can demonstrate that a modification would fundamentally alter the program or impose an undue administrative or financial burden.<sup>96</sup> The burden is on the entity to prove fundamental alteration or undue burden as an affirmative defense.<sup>97</sup> However, the ED has made clear that "neither the fundamental alteration nor undue burden defense is available in the context of a school district's obligation to provide a FAPE under the IDEA or Section 504."<sup>98</sup>

## 504 Plans

Section 504 requires all recipients of federal funding, including ORR and school districts, to ensure that children with disabilities have the equal opportunity to access all programs, activities, and services.<sup>99</sup> If a child is determined to meet the Section 504 definition of disability, the federally funded entity must provide reasonable accommodations. A team of teachers, parents, and specialists determine what accommodations a student receives.<sup>100</sup>

A “504 plan” is a document that schools typically use to identify a child’s disability and the accommodations the child requires.<sup>101</sup> In general, the purpose of a 504 plan is to ensure equal access for all students in schools and accommodate students with disabilities in general education classrooms. Examples of reasonable accommodations include extended testing time, specialized devices, assistive technology, materials in alternative formats, and permission to use trained service animals.<sup>102</sup>



## SUMMARY

# Section 504 & the Americans with Disabilities Act (ADA)

## Assessment

### Public Schools:

- Must annually identify and locate every individual with a disability who is in their jurisdiction and is qualified to receive a public education but is not currently enrolled.
- Must evaluate any person who may need special education or related services due to a disability prior to making an initial placement in either regular or special education and prior to making any subsequent, significant changes in placement.

## Services & Accommodations

### Public Schools:

- Must provide a “free appropriate public education” to all qualified people with disabilities who are within the school’s jurisdiction, “regardless of the nature or severity of the person’s disability.”
- Must provide an education in the most integrated setting appropriate.
- Must provide reasonable accommodations to children with disabilities.

### ORR

- Any “aids, benefits, and services” that ORR provides must be equally accessible to children with disabilities such that they have equal opportunity to receive the same benefit or attain the same result as children without disabilities.
- Must provide an education in the most integrated setting appropriate.
- Must provide reasonable accommodations to children with disabilities.

## Individuals with Disabilities Education Act

Congress passed the Individuals with Disabilities Education Act (IDEA) in 1975.<sup>103</sup> The IDEA requires states to provide students with disabilities with a free appropriate public education including substantive and procedural rights in exchange for federal funding.<sup>104</sup> As the U.S. Department of Education explains, the IDEA “makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children.”<sup>105</sup>

While the IDEA’s provisions have similarities with the Department of Education’s Section 504 regulations, the IDEA has different criteria for identification and evaluation, as well as more specific compliance requirements.<sup>106</sup>

The IDEA defines a “child with a disability” as a child who has: “an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance..., an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.”<sup>107</sup> Depending on the case, trauma and stressor-related disorders (such as posttraumatic stress disorder (PTSD)), may be considered disabilities.

In addition to specially designed instruction, children with disabilities are entitled to “related services” which are those services that are necessary for the student to benefit from special education.<sup>108</sup> This has generally been interpreted to mean services that allow a student to make “meaningful progress toward meeting [Individual Education Plan] goals and objectives.”<sup>109</sup> Examples of these related services found in federal regulations include, but are not limited to, speech-language pathology and audiology, psychological services, and physical and occupational therapy.<sup>110</sup>

Local educational agencies (LEAs) must comply with the IDEA and the State Education Agency (SEA) is required to monitor the LEAs’ compliance.<sup>111</sup> LEAs are the public boards of education or other public authorities that control or direct public schools in a city, county, township, school district, or other public subdivision of a state.<sup>112</sup> There are 977 LEAs in California.<sup>113</sup> The SEA is the state board of education or other public agency with primary responsibility for the state’s public elementary and secondary schools.<sup>114</sup> In California, the SEA is the California Department of Education.

### Child-Find Requirement

The IDEA includes specific requirements around the identification of children with disabilities. The IDEA’s “child find” provision requires states receiving federal funding to ensure that:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, **are identified, located, and evaluated** and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.<sup>115</sup>

## *Legal Requirements & Educational Rights*

The “child find” requirement is a critical protection because it puts the burden on the state to identify children with disabilities – even if the child is not attending public school.

### **Individualized Education Program (IEP) Requirement**

The IDEA sets out more specific procedures and requirements than Section 504, particularly around the creation and content of an individualized education program (IEP).<sup>116</sup> The IEP is a written statement for each child with a disability that describes the child’s current levels of academic and functional performance, “measurable annual academic and functional goals, special education and related services, and school placement.”<sup>117</sup> The IEP must be developed by an IEP team, which includes the child’s parents, teachers, representatives of the local educational agency, the child whenever appropriate, and other individuals with knowledge or expertise regarding the child.<sup>118</sup>

If a school district is on notice, or should be aware, that a child likely has a disability, they “must conduct a full and individual initial evaluation . . . within 60 days of receiving parental consent for the evaluation” or within the timeframe established by the State.<sup>119</sup> This evaluation must determine “if the child is a child with a disability” and delineate “the educational needs of the child.”<sup>120</sup> The evaluation also must consider language and cultural factors to ensure that only children who are in need of special education services receive them.<sup>121</sup> If the child’s parent cannot be located or if their parental rights have been terminated, federal regulations include procedures for a public agency to appoint a surrogate parent.<sup>122</sup>

The Supreme Court has held that an IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>123</sup> Mere de minimis progress from year to year is insufficient.<sup>124</sup> While considering the student’s unique circumstances, functioning, and special educational needs, an IEP must empower the child to meet “challenging objectives” and “ambitious” goals.<sup>125</sup>

*For more information on IEP requirements and timelines, see [Appendix C \(Resources\)](#).*

### **Disciplinary Procedures Requirement**

The IDEA also includes certain provisions addressing issues related to a child’s disability-related behavior and disciplinary consequences.

If a child with a disability has been suspended for 10 days in a row, has been suspended for more than 10 days in the school year, or is being considered for expulsion, the school must conduct a “manifestation determination” meeting within 10 school days.<sup>126</sup>

During the meeting, the IEP team members review relevant information about the child to determine whether the child’s conduct in question “was caused by, or had a direct and substantial relationship to, the child’s disability” or “was the direct result of the local educational agency’s failure to implement the IEP.”<sup>127</sup>

If the conduct is determined to be a manifestation of the child’s disability, the child cannot be expelled, and the IEP team is required to conduct a functional behavioral assessment and implement a behavior intervention plan for the child. If the school already had a behavior intervention plan in place before the child was removed for more than 10 days, the team is required to review the plan, and modify it, as necessary to

## Legal Requirements & Educational Rights

address the behavior.<sup>128</sup> Except for certain limited circumstances, the child has the right to return to their original placement when their conduct is found to be a manifestation of their disability.<sup>129</sup>

If the child's conduct is determined not to be a manifestation of their disability, the child can be referred for expulsion. The child must continue to receive educational services that support meeting the goals set out in their IEP and may receive a functional behavioral assessment and "behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur."<sup>130</sup>

### Least Restrictive Environment (LRE) Requirement

The IDEA requires that children with disabilities must be educated in the "least restrictive environment" (LRE), meaning that they should be educated with children who are not disabled "[t]o the maximum extent appropriate."<sup>131</sup> This is true for children in public and private institutions as well as for children in "other care facilities."<sup>132</sup> The fact that a child needs some type of modification to the general curriculum is not a sufficient reason to remove that child from the regular classroom.<sup>133</sup> Federal court decisions have primarily encouraged inclusive education.<sup>134</sup>

Schools should only separate a child with a disability from other non-disabled students if the child's disability prevents them from achieving a satisfactory education in the regular classroom, even "with the use of supplementary aids and services."<sup>135</sup> Examples of these aids and services include, but are not limited to: "a structured learning environment, repeating and simplifying instructions..., supplementing verbal instructions with visual instructions, using behavioral management techniques, adjusting class schedules, [and] modifying test delivery..."<sup>136</sup>

Schools must also ensure that "a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services."<sup>137</sup> This includes instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, where necessary.<sup>138</sup> Schools must also provide supplementary services like a resource room or itinerant instruction "in conjunction with regular class placement."<sup>139</sup>

The decision of where to place a student who has a disability must be made by a group that includes the child's parents and other people who are knowledgeable about the child.<sup>140</sup> The group must discuss the meaning of relevant evaluation data and placement options.<sup>141</sup>

The student's placement must be determined at least annually, based on the student's IEP, and must be as close as possible to the child's home.<sup>142</sup> Unless their IEP states otherwise, a student with a disability "is educated in the school that he or she would attend if nondisabled."<sup>143</sup>

Schools must also ensure that children with disabilities participate in extracurricular activities and services alongside students without disabilities "to the maximum extent appropriate to the needs of that child."<sup>144</sup> This includes, but is not limited to: meals, recess periods, counseling services, athletics, transportation, health services, and other recreational activities.<sup>145</sup> The child's participation in such activities and services must be facilitated through supplementary aids and services as necessary.<sup>146</sup>

The SEA must ensure that teachers and administrators "[a]re fully informed about their responsibilities for implementing" LRE requirements, including through technical assistance and training as necessary.<sup>147</sup> The



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SEA must also monitor schools to ensure compliance with the LRE requirements. Upon discovering a school's noncompliance, the SEA must review any justifications and "[a]ssist in planning and implementing any necessary corrective action."<sup>148</sup>

### **Free Appropriate Public Education (FAPE) Requirement**

The IDEA requires states to ensure that they have policies and procedures to ensure a "free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school."<sup>149</sup>

Exceptions to the FAPE requirement exist where it is contrary to state law for children between the ages of 3 and 5 and 18 and 21 to receive a FAPE, as well as for children who have already graduated from high school with a regular high school diploma.<sup>150</sup>

### **Language Access Requirements**

Children and families for whom English is not their native language have the right to participate fully in special education proceedings. Under the IDEA, LEAs are required to ensure that "assessments and other evaluation materials used to assess a child" are "administered so as not to be discriminatory on a racial or cultural basis"<sup>151</sup> and "provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer."<sup>152</sup>

LEAs are required to take "whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting," including arranging for an interpreter for parents whose native language is not English.<sup>153</sup>

In addition, parents have the right to be informed, in their native language, of all information relevant to an action for which their consent is being requested,<sup>154</sup> and to written notice (or other mode of communication), in their native language, a reasonable time before the school district either proposes or refuses to initiate the child's identification, evaluation, or educational placement, or anything about the way a free and appropriate education is provided.<sup>155</sup>

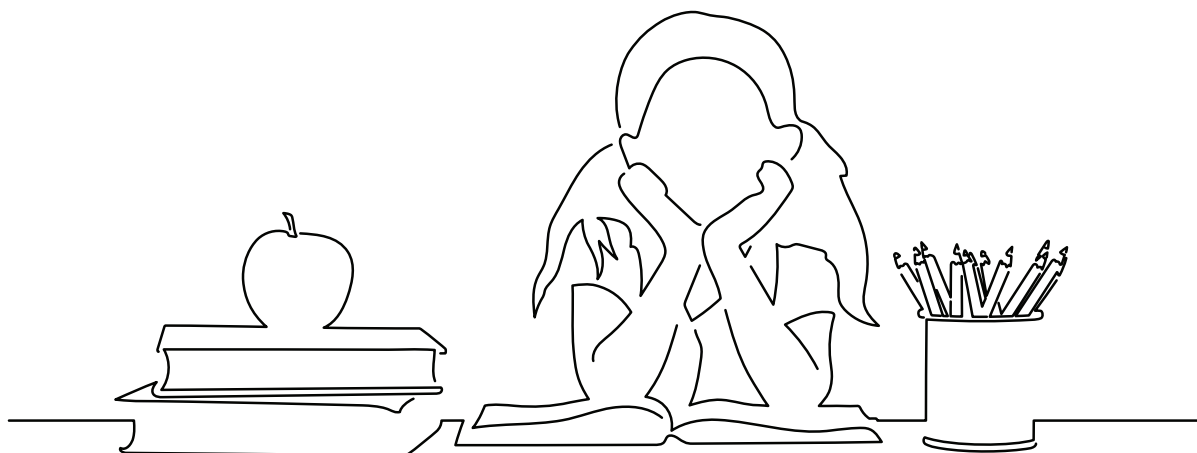
### **Additional IDEA Requirements**

Subsequent amendments to the IDEA have broadened its impact by focusing on access to the general education curriculum and transition planning for students as they age out of services, among other requirements.<sup>156</sup>

Transition planning includes activities that are designed to assist children with disabilities as they transition to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation.<sup>157</sup> Transition services can include instruction, community experiences, developing post-school adult living objectives, and acquiring daily living skills.<sup>158</sup>

## Judicially Created Remedies: Tuition Reimbursement and Compensatory Education

Courts have established significant remedies for IDEA violations. First, the Supreme Court held that IDEA's guarantee that children receive a FAPE permits courts to grant parents a tuition reimbursement for having placed their children in private schools in certain instances.<sup>159</sup> In doing so, the Court pointed to IDEA language permitting private school placement at public expense if a FAPE is not possible in public schools, such as when public schools refuse to provide special education and related services to meet the needs of children with disabilities.<sup>160</sup> Second, upon determining that a school has denied a child's FAPE, courts have crafted various tests for determining the type and quantity of compensatory education to which the child is entitled. The prevailing test has "a 'qualitative' rather than a quantitative focus."<sup>161</sup> As the D.C. Circuit explained, this test relies on individualized assessments of children's needs and the measures necessary to remedy any deficits that resulted from the FAPE denial.<sup>162</sup> This test also allows consideration of equitable factors, including parties' conduct.<sup>163</sup> Other circuits take a more quantitative approach by basing compensation primarily on the hours that the student was deprived a FAPE.<sup>164</sup>



## SUMMARY

# The Individuals with Disabilities Education Act (IDEA)

### Assessment

- “Child find” requires schools to identify, locate, and evaluate children with disabilities.

### Services

- Children with disabilities must be educated in the “least restrictive environment,” meaning they should be included in the regular classroom to the maximum extent appropriate.
- Children with disabilities between the ages of 3 and 21 must receive a “free appropriate public education” (FAPE), subject to state-specific exceptions.

### Accommodations

- Children with disabilities are entitled to “individualized education programs” (IEPs), which outline their educational needs, required accommodations, and are created in collaboration with parents and educators.
- Children with disabilities are entitled to additional due process procedures (“manifestation determinations”) if the LEA considers a change of placement due to misconduct.

### Language Access

- Children for whom English is not their native language are generally entitled to assessments and evaluation materials administered in their native language.
- LEAs are required to take “whatever action is necessary” to ensure that children’s parents or guardians understand IEP meetings, including arranging for an interpreter.
- Parents for whom English is not their native language are entitled to written (or verbal) notice in their native language before the LEA makes decisions or changes regarding their child’s placement or provision of FAPE.

# Children Experiencing Homelessness

## The McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act (McKinney-Vento Act) is a federal law that provides certain rights and services to people experiencing homelessness, including children.<sup>165</sup> Passed in 1987, subsequent amendments expanded the scope and strengthened the provisions of the original legislation, especially in the areas regarding the rights and access of homeless children and youth to public education.<sup>166</sup> The rights afforded by the McKinney-Vento Act apply to all children and youth in the United States that meet the statutory definition of “homeless children and youth,” regardless of immigration status.

Under the McKinney-Vento Act, the term “homeless children and youth” –

(A) means individuals who lack a fixed, regular, and adequate nighttime residence . . . ; and

(B) includes –

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings . . . ;

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children . . . who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).<sup>167</sup>

Under Title VII of the McKinney-Vento Act, the Education of Homeless Children and Youth Program (EHCY) describes certain services that must be provided to homeless children and youth via state departments of education and local educational agencies. These rights and services include:

- The right to be enrolled in school and begin attending immediately, even if the child does not have the documentation typically required for enrollment (such as proof of residency, prior school records, or other health or vaccination records) or has missed enrollment deadlines during any period of homelessness.<sup>168</sup>
- The right to continue attending the same school (“school of origin”), even if the child is temporarily living in another school district, and to be provided transportation to that school (if requested).<sup>169</sup>
- The right to receive support from the school district McKinney-Vento homeless liaison, who is required to assist homeless youth and families with school enrollment, inform them of transportation services and educational opportunities, and provide referrals to health care, housing, and other appropriate services, among other things.<sup>170</sup>

### *Legal Requirements & Educational Rights*

As ORR care provider facilities “are considered fixed, regular, and adequate housing,” unaccompanied children in ORR custody are not eligible for McKinney-Vento services.<sup>171</sup>

However, once unaccompanied children are released from ORR custody to their sponsors, some may qualify. For example, if a sponsor loses their housing and the sponsor’s family unit becomes homeless under the definition of the statute, the unaccompanied child and any other children living in that family unit would be eligible for McKinney-Vento services.<sup>172</sup> Similarly, if a sponsor loses their housing and the child and sponsor end up sharing a living space with multiple families, the child could be eligible for McKinney-Vento services.

*For more information on the McKinney-Vento Act, see [Appendix C \(Resources\)](#).*

## SUMMARY

# The McKinney-Vento Homeless Assistance Act

## Services

- **Enrollment:** The right to be enrolled in school and begin attending immediately.
- **School:** The right to continue attending the same school (“school of origin”), even if the child is temporarily living in another school district (if requested).
- **Transportation:** The right to be provided transportation to the school of origin.
- **Support:** The right to receive support from the school district McKinney-Vento homeless liaison.

# Children Whose Primary Language is Not English

## Title VI of the Civil Rights Act and the Equal Education Opportunities Act

Title VI, enacted as part of the Civil Rights Act of 1964, is a federal law that prohibits all programs and activities receiving federal financial assistance from discriminating on the basis of “race, color, or national origin.”<sup>173</sup> In 1974, the Supreme Court held that in order for public schools to comply with their Title VI obligations, they are required to take “affirmative steps” to ensure that students with limited English proficiency can meaningfully participate in educational programs and services.<sup>174</sup> The Equal Educational Opportunities Act (EEOA) of 1974 confirmed that state and local educational agencies are required to take “appropriate action to overcome language barriers that impede equal participation” by students in their instructional programs.<sup>175</sup>

In determining whether a language assistance program for English learner (EL) students adequately complies with Title VI and the EEOA, the ED and U.S. Department of Justice (DOJ) Civil Rights Division have used the standard established by the U.S. Court of Appeals for the Fifth Circuit in *Castañeda v. Pickard*.<sup>176</sup> The *Castañeda* standard requires that 1) the educational theory underlying the program is sound; 2) the program is reasonably calculated to be effectively implemented with sufficient resources and personnel; and 3) the program is proven effective at overcoming language barriers within a reasonable period.<sup>177</sup>

### Language Assessment Requirement

First, school districts must have procedures in place to “accurately and timely identify” EL students in need of language assistance services.<sup>178</sup> Within 30 days of the beginning of the school year, school districts are required to send notices to the parents of EL students either identified for participation or already participating in a language assistance program.<sup>179</sup>

In order to meet this requirement, most school districts use a “Home Language Survey” (HLS) at the time of enrollment to gather information about a student’s language background.<sup>180</sup> Based on the HLS result, students may be referred for an English language proficiency (ELP) assessment to determine whether they should be classified as EL students and thereby entitled to language assistance services.<sup>181</sup> Schools are required to administer a valid and reliable ELP assessment in a timely manner.<sup>182</sup>

### Language Assistance Programs Requirement

Once EL students based on a valid ELP assessment, school districts are required to provide them with language assistance services. Under *Castañeda*, language assistance programs must be based in sound educational theory. Examples of language assistance programs that are considered “educationally sound in theory” include English as a Second Language (ESL), Structured English Immersion (SEI), Transitional Bilingual Education (TBE), and a Dual Language Program.<sup>183</sup> School districts are required to provide the resources and staffing necessary to implement their chosen language assistance program. This requirement includes “having highly qualified teachers to provide language assistance services, trained administrators who can evaluate these teachers, and adequate and appropriate materials for the EL programs.”<sup>184</sup>

### *Legal Requirements & Educational Rights*

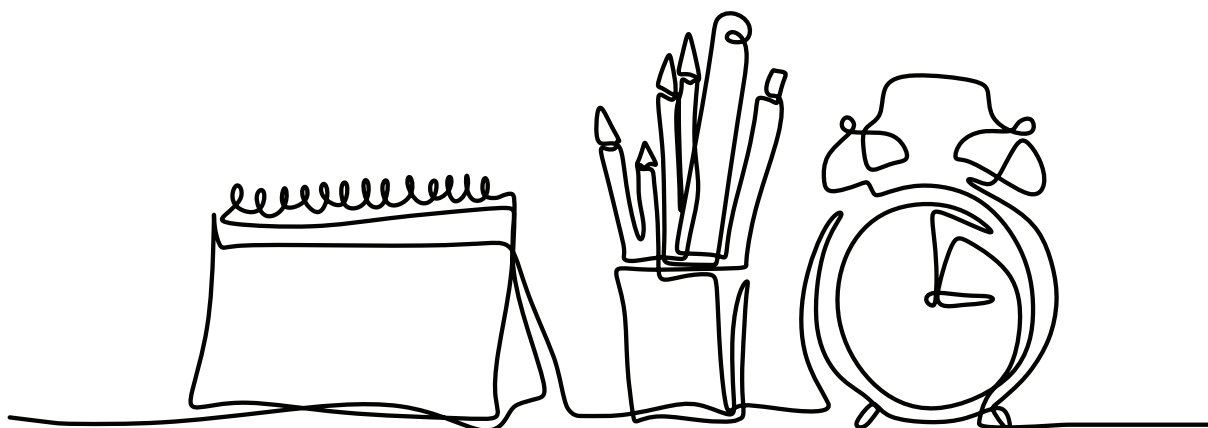
School districts are required to provide EL students with language assistance services until they are “proficient in English and can participate meaningfully in the district’s educational programs without language assistance services.”<sup>185</sup> School districts are also required to provide EL students with meaningful access to all programs and activities, including curriculars and extracurriculars. Examples of such programs and activities include career and technical education programs, counseling services, gifted and talented programs, performing and visual arts, athletic teams, clubs, and honor societies.<sup>186</sup>

School districts are also required to “ensure meaningful communication with Limited English Proficient (LEP) parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of a school district or SEA that is called to the attention of non-LEP parents.”<sup>187</sup>

### **English Learner Students with Disabilities**

Educational agencies receiving federal funding are required to ensure that all EL students who may have a disability are identified and evaluated for special education in a timely manner.<sup>188</sup> When conducting disability-related evaluations, school districts are required to consider the student’s English language proficiency in determining the evaluation materials to be used.

Joint ED and DOJ guidance makes clear that any district policies “of allowing students to receive either EL services or special education services, but not both . . . [or] of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status . . . are impermissible under the IDEA and Federal civil rights laws.”<sup>189</sup>



## SUMMARY

# Title VI of the Civil Rights Act (Title VI) and the Equal Education Opportunities Act (EEOA)

## Assessment

- School districts must identify potential EL students in a timely manner.
- School districts must assess students' English language proficiency through a valid and reliable test.

## Services

- School districts must provide EL students with appropriate language assistance services until they are proficient in English and can participate meaningfully in programs without language assistance.
- School districts must provide language assistance programs that are educationally sound, sufficiently staffed and resourced, and proven successful in practice.
- School districts must ensure that EL students have an equal opportunity to participate in all programming (including curriculars and extracurriculars).
- School districts must ensure that EL students with disabilities under the IDEA or Section 504 are evaluated appropriately and are not denied services due to either their language or disability needs.
- LEP parents are entitled to meaningful communication from the school district in a language they understand, whether through written materials or verbal communication.



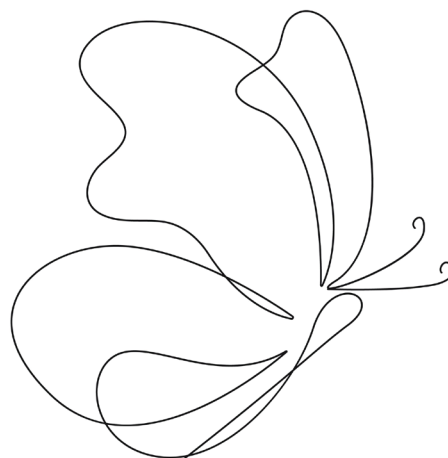
*Legal Requirements & Educational Rights*

Additionally, pursuant to HHS Title VI regulations, all recipients of federal financial assistance from HHS are required to provide meaningful access to limited English proficient (LEP) persons.<sup>190</sup> As a recipient of federal funding through HHS, ORR and ORR-contracted care providers are subject to HHS regulations and Title VI guidance.<sup>191</sup>

Such regulations and guidance require ORR to “take reasonable steps” to ensure “meaningful access” to its programs and activities.<sup>192</sup> ORR’s Unaccompanied Children Program services include “Classroom education; Health care; Socialization/Recreation; Vocational training; Mental health services; Family reunification; Access to legal services; and Case management.”<sup>193</sup>

Legal services providers and child advocates working with unaccompanied children have raised concerns regarding ORR’s lack of Title VI language access guidance for care provider facilities.<sup>194</sup>

*For more information on Title IV of the Civil Rights Act and the EEOA, see [Appendix C \(Resources\)](#).*



# Settlement Agreements

Over the years, federal litigation has resulted in the development of case law and settlement agreements regarding the rights and treatment of children in federal immigration custody. Two such cases – *Flores v. Reno* and *Lucas v. Azar* – provide educational and disability-related protections to unaccompanied children in ORR custody.

## The *Flores* Settlement Agreement

In 1985, the National Center for Youth Law and co-counsel filed *Flores v. Reno* to address the egregious mistreatment of immigrant children in federal custody. The case settled in 1997 and remains under the supervision of U.S. District Judge Dolly M. Gee in the Central District of California.<sup>195</sup> Plaintiffs have filed multiple successful motions to enforce the Settlement against the government’s violations of its terms.<sup>196</sup>

The *Flores* Settlement Agreement (FSA) establishes basic standards governing the custody, detention, and release of all children in federal immigration custody. The FSA initially applied to the Immigration and Naturalization Service (INS), a federal agency whose duties have since been re-distributed between the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS).<sup>197</sup>

The FSA imposes a floor—not a ceiling—for the services and protections that must be provided to these children. Most of the protections within the FSA are not found in federal law. Exhibit 1 of the FSA includes a list of minimum standards for licensed programs holding children in immigration custody. This list includes requirements regarding education, living accommodations, medical care, and recreation, among others.



## SUMMARY

# The *Flores* Settlement Agreement

## Assessment

- Each child is required to receive an “individualized needs assessment,” which includes “identification of the minors’ special needs,” and “an educational assessment and plan.”<sup>198</sup>

## Services

- Each child is required to receive “educational services appropriate to the minor’s level of development and communication skills in a structured classroom setting.”<sup>199</sup>
- Educational services are required to be provided Monday – Friday, and to focus “primarily on the development of basic academic competencies and secondarily on English Language Training.”<sup>200</sup>
- Suggested academic areas include: “Science, Social Studies, Math, Reading, Writing and Physical Education.”<sup>201</sup>

## Language Access

- Educational services are required to “include instruction and educational and other reading materials in such languages as needed.”<sup>202</sup>
- Children are required to be provided with appropriate reading materials in languages other than English for use during the minor’s leisure time.”<sup>203</sup>

## The *Lucas R.* Disability Settlement Agreement

In 2018, NCYL and co-counsel filed *Lucas R. v. Azar*, a national class action lawsuit challenging the federal government's treatment of unaccompanied immigrant children in ORR custody. *Lucas R.* addresses the constitutional and statutory rights of five certified classes of children, including: (1) children who are or will be placed in restrictive facilities because of their behavioral, mental health, intellectual, and/or developmental disability; (2) children that get stepped up to more restrictive facilities; (3) children who are not promptly released to sponsors; (4) children who are administered psychotropic medications; and (5) children whose lawyers are obstructed from comprehensive representation.<sup>204</sup>

In November 2022, the Court entered a preliminary injunction that protects the due process rights of two of the *Lucas R.* classes: children placed in restrictive facilities and children denied release to their sponsors.<sup>205</sup> In January 2024, the Court preliminarily approved three settlement agreements, which address the remaining three classes.<sup>206</sup> The settlement agreements' final approval hearing is currently scheduled for May 2024.

The information below reflects the preliminarily-approved settlement regarding children with disabilities (Disability Settlement). The Disability Settlement applies to all unaccompanied children in ORR custody placed in shelter, group, foster care, staff-secure, secure, therapeutic, or residential treatment placements, as well as influx or out-of-network facilities.<sup>207</sup>

The Disability Settlement will require ORR, for the first time, to:

- Identify and track children with disabilities in its custody, including new requirements for conducting disability evaluations.
- Create and implement service plans to enable a child's participation in the ORR program in the most integrated and least restrictive setting and plan for release from custody without unnecessary delay due to disability.
- Consider and document reasonable modifications to enable less restrictive placement for children with disabilities placed in restrictive settings.
- Consider benefits of community placement in making release decisions.

Additionally, ORR will be required to engage in system-wide assessment and planning.

### Disability Evaluation Requirements

Consistent with Section 504 and the ADA, the Disability Settlement defines "disability" as a "physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment."<sup>208</sup>

When children first enter ORR custody, they are required to receive a comprehensive initial medical exam (IME) within two business days.<sup>209</sup> The Disability Settlement provides that a child's disability may be

## Legal Requirements & Educational Rights

identified during a child's initial medical examination or a later evaluation. After the IME, certain events will trigger a disability evaluation, including if a child: is psychiatrically hospitalized or evaluated for psychiatric hospitalization; is considered for a secure or residential treatment center placement based on danger to self or others; or requests an evaluation (including a request through a parent, child advocate, or attorney).<sup>210</sup>

Evaluations must be conducted as "promptly as possible," and ORR is required to make "best efforts" to initiate the evaluation within 30 days of the triggering event and completed within 60 days of ORR identifying the need for evaluation.<sup>211</sup> The purpose of the evaluation is to "identify qualified children with disabilities for the purpose of developing a Section 504 Service Plan... to ensure they receive services in the most integrated setting appropriate to their needs... and to ensure to the best extent practicable that they are released to a suitable sponsor from ORR's custody without unnecessary delay due to their disability."<sup>212</sup>

Disability evaluations must be conducted by "one or more individuals qualified to assess children in the area(s) of suspected disability or presenting symptoms," and the evaluator(s) will provide documentation of the evaluation findings and any recommendations to the child's parent and the child's attorney or child advocate if they have one.<sup>213</sup>

## Service Plan Requirements

When a child is identified as having a disability, ORR is required to assess the child's "potential need for reasonable accommodations, modifications, services, and/or supports to meet the child's disability-related needs" and if needed, develop and implement an individualized Section 504 Service Plan for the child.<sup>214</sup>

If a Service Plan is needed, it "will be developed and implemented as soon as possible, and within 60 days of identification of the child having a disability."<sup>215</sup> The Service Plan should be developed and implemented before any transfer to a more restrictive setting – and if not, ORR must document why this was not feasible and complete development and begin implementation within 30 days of the transfer.<sup>216</sup>

The child and child advocate (if any), must be consulted in developing the Service Plan. With the child's consent, their parent/legal guardian and/or attorney may also be consulted. The Service Plan must be tailored to the individual child, and must identify the child's disability-related needs, including (a) any specific triggers of disability-based behavior, (b) proactively identify needed modifications, services, and supports, and (c) include a transition plan to enable safe release.<sup>217</sup>

The Service Plan – or a decision that no Service Plan is necessary – must be reviewed and revised (as necessary) by ORR:

- Every six months;
- Within 30 days after transfer to a more restrictive placement;
- Within 30 days of a psychiatric hospitalization; or
- Within 30 days of the recommendation of a licensed medical or mental health provider.<sup>218</sup>

## Legal Requirements & Educational Rights

This review must assess whether the services and accommodations set out in the Service Plan have been and are currently being provided to the child, revisit the identification of the child's needs, and determine whether the Service Plan appropriately meets the child's identified needs and maintains the child in the least restrictive and most integrated setting appropriate to those needs, among other things.<sup>219</sup>

### Integrated Placement Requirements

The Disability Settlement requires ORR to place children with disabilities "in the least restrictive setting that is in the best interest of the child and also the most integrated setting appropriate to their needs unless ORR can demonstrate that this would fundamentally alter the nature of its Unaccompanied Children Program."<sup>220</sup>

ORR has committed to engaging in "best efforts to support the inclusion of children with disabilities in integrated settings" by offering direct assistance to care providers as needed, connecting providers with and coordinating delivery of available community-based and telehealth services, and providing training and technical assistance.<sup>221</sup>

If a child with a disability is transferred to a more restrictive placement, ORR must:

- Document why the child's needs cannot be met in a more integrated and less restrictive setting with additional services and supports (upon initial placement and every 30 days); and
- Describe and document the services or care to be provided at the restrictive placement and why those services cannot be provided in a less restrictive placement.<sup>222</sup>

### Release from Custody Requirements

When ORR identifies a child as having a disability, the Trafficking Victims and Protection Reauthorization Act (TVPRA) requires that the child's potential sponsor undergo a home study. The Disability Settlement requires that if ORR determines that the TVPRA mandates a home study, ORR must obtain the home study "as expeditiously as possible, with the goal of avoiding any unnecessary delay in release" and should be conducted concurrently with background checks.<sup>223</sup>

When ORR identifies a viable potential sponsor for a child with an identified disability, the Disability Settlement requires ORR to "affirmatively support and assist that sponsor in accessing and coordinating post-release community-based services and supports, to the extent they are available."<sup>224</sup> Importantly, ORR may not categorically delay a child's release if post-release services are not in place before the child's release.<sup>225</sup> The Disability Settlement requires ORR's evaluation of a potential sponsor to explicitly consider the "benefits to the child of release to a community-based setting" as well as the sponsor's ability to meet a child's disability-related needs.<sup>226</sup>

## SUMMARY

# Lucas R. Disability Settlement

## Assessment

- Children may be identified as having a disability either during the initial medical exam or by an evaluation triggered by specific events.
- Evaluations should be initiated within 30 days of a triggering event and completed within 60 days of ORR identifying the need of the evaluation.

## Services

- Children with disabilities must be placed in the “least restrictive setting” that is in their best interest and the “most integrated setting” appropriate to their needs.
- Children with disabilities may be entitled to an individualized “Service Plan,” which (1) outlines their specific needs, (2) is created in collaboration with the child, and (3) is required to be reviewed and revised based on specific timelines.
- If a Service Plan is needed, it is required to be developed and implemented as soon as possible, and within 60 days of identification of child’s disability.

## Accommodations

- Service Plans must proactively identify the services, supports, and reasonable accommodations and modifications that meet the child’s identified disability-based needs.
- If a child with a disability is transferred to a more restrictive placement, ORR must document why the child’s needs cannot be met in a more integrated and less restrictive placement with additional services and supports.

## Documentation

- ORR facilities are required to include Service Plans and related documentation in children’s ORR case files.



## ORR Policies & Procedures

The Office of Refugee Resettlement (ORR) recognizes the *Flores* Settlement requirements to provide education services and assessments in the ORR Policy Guide (Policy Guide) and the ORR Unaccompanied Child Manual of Procedures (UC MAP).<sup>227</sup>

The Policy Guide is an online set of policies that ORR requires its contracted facilities to follow, and it provides more detail than the general *Flores* Settlement requirements. Significantly, these online policies do not hold the same weight as law or regulation, and do not have a clear enforcement mechanism. ORR may update the online Policy Guide at any time. ORR includes a date below each Policy Guide section to reflect the last time the section was updated.<sup>228</sup>

The UC MAP is a policy document that ORR relies on to administer its programs for unaccompanied children.<sup>229</sup> The UC MAP echoes the ORR Policy Guide, includes more detailed requirements for care providers, and instructs care providers in how to document children's information in the UC Portal system, which tracks a child's time in ORR custody from placement to release.

### Assessment Requirements

The Policy Guide and UC MAP require ORR facilities to conduct an educational assessment within 72 hours of the child's admission into the ORR facility. This educational assessment must "determine the academic level of the child and any particular needs he or she may have" and must be documented in the child's case file and in the UC Portal.<sup>230</sup>

### Services Requirements

The Policy Guide and UC MAP require ORR facilities to provide a minimum of six hours of structured education in basic academic areas, Monday through Friday, throughout the year.<sup>231</sup> The Policy Guide lists "Science, Social Studies, Math, Reading, Writing, Physical Education, and English as a Second Language (ESL), if applicable" as basic academic areas.<sup>232</sup> Educational field trips may count towards the required six hours, if approved by the ORR Program Officer.<sup>233</sup>

ORR facilities must provide educational services "based on the individual academic development, literacy level, and linguistic ability" of each child,<sup>234</sup> and children "may be separated into class groups according to their academic development, level of literacy, and linguistic ability rather than by chronological age."<sup>235</sup> The Policy Guide states that facilities "adapt or modify local educational standards to develop curricula and assessments, based on the average length of stay for UAC at the care provider facility, and provide remedial education and after school tutoring as needed."<sup>236</sup>

The ORR Program Officer plays a role in supervising facilities' educational services. Care providers are required to submit their educational curriculum, as well as any proposed academic breaks, to their Program Officer for approval.<sup>237</sup> Academic breaks more than two weeks long are not permitted,<sup>238</sup> and breaks for federal holidays do not require Program Officer approval.<sup>239</sup>

## Legal Requirements & Educational Rights

The UC MAP provides additional detail for unaccompanied children in Long-Term Foster Care (LTFC) programs and parenting youth.

As children placed in LTFC programs “attend state-regulated public school or other state-licensed educational programs in the local school district of the foster and/or group home during the academic year,” LTFC providers are required to work with their Program Officers to develop a summer learning schedule.<sup>240</sup> The UC MAP states that the LTFC program and foster parent “participate in the selection of and arrangements for educational programs” for the child, “collaborate with school personnel”, and “advocate as needed when there are any problems with children in the school setting.”<sup>241</sup> In addition, the child’s case manager, in addition to the foster parent, is expected to take “an active role in attending school conferences, individual education plan (IEP) meetings, and similar activities, whenever possible.”<sup>242</sup>

For youth who recently had a baby, they “should follow the doctor’s orders regarding when they may return to a full school day” and the facility must email the Program Officer and Federal Field Specialist both when the youth “will be out of school for an extended period of time and when the UC returns to the classroom setting.”<sup>243</sup> For youth with toddlers, the facility is required to care for the toddler so that the youth may attend school.<sup>244</sup>

The Policy Guide and UC MAP include some requirements regarding facilities’ provision of additional learning opportunities. The Policy Guide states that “as needed,” children “must be provided an opportunity for learning advancement, such as independent study, special projects, pre-GED classes and college preparatory tutorials, among others.”<sup>245</sup> The UC MAP adds that “[v]ocational programs may not replace academic education or substitute for basic subject areas, nor the required six hours of academic instruction” and the facility “must obtain prior authorization from their assigned PO before implementing a vocational program.”<sup>246</sup>

## Language Access Requirements

The Policy Guide and UC MAP require ORR facilities to provide “instruction and educational and other reading materials in such languages as needed”<sup>247</sup> and “linguistically appropriate educational materials.”<sup>248</sup> Learning materials “must reflect cultural diversity and sensitivity.”<sup>249</sup>

Facilities are also required to provide children with “appropriate reading materials in languages other than English for use during leisure time.”<sup>250</sup> Facilities “must make every effort possible to provide comprehensive services and literature in the native language of each [child]; provide on-site staff or interpreters as needed” and allows children “to communicate in their preferred language when they choose.”<sup>251</sup> In addition, all ORR-required documents “must be translated in the [child’s] preferred language, either written or verbally. Translation services should be used when no written translation (assuming the child is literate) or on-site staff or interpreters are available.”<sup>252</sup>

## Documentation Requirements

ORR facilities are required to document children’s daily class attendance, progress notes, and academic reporting including transcripts, grades, or other assessments in the child’s case file and in the UC Portal.<sup>253</sup> If the child is transferred to another facility, the child’s case file must be sent to that facility.<sup>254</sup> If the child is released to a sponsor, the facility is required to include the child’s “educational assessments and records” in the case file that is given to the sponsor.<sup>255</sup> If the child’s case file is not complete upon release, the child’s sponsor may request the missing documents by filling out an Authorization for Release of Records (Form A-5) or calling the ORR National Call Center Hotline at 1-800-203-7001.<sup>256</sup>



## SUMMARY

# The ORR Policy Guide & UC MAP

## Assessment

- ORR facilities must conduct an educational assessment within 72 hours of a child's admission into the facility.

## Services

- ORR facilities must provide a minimum of six hours of structured education in basic academic areas (Science, Social Studies, Math, Reading, Writing, Physical Education, and English as a Second Language (ESL), if applicable), Monday through Friday, throughout the year.
- Educational services must be based on each child's individual academic development, literacy level, and linguistic ability.
- Generally, educational curricula and breaks in instruction must be approved by the ORR Program Officer.
- As needed, ORR facilities must provide children with an opportunity for learning advancement, such as independent study, special projects, pre-GED classes, and college preparatory tutorials.

## Language Access

- ORR facilities are required to provide linguistically appropriate educational materials.
- ORR facilities are required to make "every effort possible" to provide comprehensive services and literature in the native language of each child.
- ORR facilities are required to provide children with appropriate reading materials in languages other than English for use during leisure time.

## Documentation

- ORR facilities are required to document daily class attendance, progress notes, transcripts, grade, and other academic assessments in each child's case file.

# California State Law

## All Children

All 50 state constitutions in the United States require the provision of public education to children.<sup>257</sup> In California, this requirement is found in Article IX of the California Constitution, which establishes “a system of common schools” to provide free education.<sup>258</sup> The California Constitution further affirms that “[a] general diffusion of knowledge and intelligence” is “essential to the preservation of the rights and liberties of the people.”<sup>259</sup>

## School Enrollment

California law requires everyone between the ages of 6 and 18 years of age to attend school full-time, except for students who have graduated high school or passed the California High School Proficiency Exam and obtained parental permission.<sup>260</sup>

Generally, unaccompanied children do not enroll in California public schools while in ORR custody.<sup>261</sup> However, once unaccompanied children are either released from ORR custody to a sponsor or are permitted to enroll in public school or other state-licensed educational program while in ORR custody, they are entitled to the same educational rights as all other children residing in California.<sup>262</sup>

Children can go to public schools that are in their school district.<sup>263</sup> A child’s school district depends on their residency, which is determined by where the primary residence of their parent/guardian or caregiving adult is located.<sup>264</sup> The California Education Code also states that children in hospitals, licensed children’s institutions, and foster homes are residents of the school districts where the facilities are located.<sup>265</sup>

California has an online [School Directory](#) where school districts can be found by searching a zip code. Some school districts automatically assign a “resident school” to each child based on their home address.<sup>266</sup>

Children should be enrolled in school as soon as possible. While registration for the next school year usually occurs in the spring, children can be enrolled in school at any time throughout the year. Depending on the school district, enrollment may need to be done in person either at the school or at the school district office.

School districts require families to provide certain information when enrolling a child in school, and these requirements vary across school districts.<sup>267</sup> Generally, schools will ask for documents that confirm residency (address), identity of the child, age of the child, and vaccination records. Schools may ask for information about the child’s past educational history but must permit children to enroll even if they do not have this information.<sup>268</sup>

Schools cannot discriminate based on the race, national origin,<sup>269</sup> or citizenship of the child or their family.<sup>269</sup> California schools may not ask an undocumented child’s sponsor for information that may reveal the child’s undocumented status or beyond what would ordinarily be requested of every enrolling child.<sup>270</sup>

*For more information on enrollment, including a list of documents that schools typically accept for enrollment and instructions on how sponsors can obtain records from ORR, see [Appendix B \(Fact Sheets\)](#).*

## The Caregiver Affidavit

The California Caregiver Affidavit (Caregiver Affidavit) is a useful tool for formerly detained unaccompanied immigrant children in California schools.

California developed the “Caregiver Affidavit” for adults who care for children for whom they do not have legal custody.<sup>271</sup> This includes some sponsors of unaccompanied immigrant children. Specifically with regards to education, the Caregiver Affidavit allows a child’s caregiver to enroll the child in school.<sup>272</sup>

In the years leading up to the creation of this Caregiver Affidavit, there was a significant increase in the number of children living with caregivers who were not their parents or legal guardians.<sup>273</sup> Lawmakers realized that these caregivers faced barriers obtaining health care for children and enrolling them in school. Therefore, the California legislature created the Caregiver Affidavit in 1994 to ensure that children living with non-parent caregivers could access public education and essential medical care.<sup>274</sup>

Both relative and non-relative caregivers can fill out the Caregiver Affidavit. The Caregiver Affidavit grants certain relatives greater power over medical decisions, but both relatives and non-relatives can use it for school enrollment and to consent to “school-related medical care.”<sup>275</sup> “School-related medical care” is defined as “medical care that is required by state or local governmental authority as a condition for school enrollment, including immunizations, physical examinations, and medical examinations conducted in school for pupils.”<sup>276</sup>

To obtain these rights, the caregiver must complete and sign the [Caregiver Affidavit form](#). California law does not require the caregiver to have immigration status to use the Caregiver Affidavit.<sup>277</sup> California law does not require the child’s parent or legal guardian to sign the Caregiver Affidavit.<sup>278</sup>

Caregivers hoping to use the Caregiver Affidavit as “relative caregivers” must list either their California driver’s license or identification number.<sup>279</sup> Note that California law allows people who are undocumented to obtain a driver’s license or identification card.<sup>280</sup> If the caregiver does not have either a driver’s license or identification number, they may list either their Medi-Cal or social security number.<sup>281</sup>

Caregivers who want to use the Caregiver Affidavit as “non-relative caregivers” are not required to provide any additional information aside from a completed Affidavit form.<sup>282</sup>

Typically, local educational agencies (LEAs) will not know whether a student is a former unaccompanied child because California law prohibits them from inquiring or collecting information about students’ immigration status.<sup>283</sup> Accordingly, an LEA should only become aware that a child is a former unaccompanied child if that child or their family volunteer this information. The LEA must provide the released unaccompanied child with the same educational services and opportunities as any other enrolled student.

*For more information on the Caregiver Affidavit, see [Appendix B \(Fact Sheets\)](#).*

## Children with Disabilities

California law, similar to federal law, prohibits disability-based discrimination and provides specific requirements regarding disability identification, assessment, and services.

### Prohibiting Disability-Based Discrimination

California state law prohibits discrimination based on disability by “any program or activity that... is funded directly by the state, or receives any financial assistance from the state.”<sup>284</sup> This requirement applies to all schools that receive any funding from the state, whether public or private.

Additionally, state law “prohibits discrimination in any program or activity conducted by an educational institution that receives or benefits from state funding.”<sup>285</sup> Courts have found that this prohibition only applies to “severe and pervasive” discrimination that results in students’ systemic exclusion from an educational program or activity.<sup>286</sup>

The Unruh Civil Rights Act prevents discrimination by “business establishments,” and courts previously interpreted this phrase to include both public and private schools.<sup>287</sup> However, the California Supreme Court recently held in *Brennon B.* that public school districts, “as governmental entities engaged in the provision of a free and public education, are not ‘business establishments’ within the meaning of the Act.”<sup>288</sup> Furthermore, the Court held that section (f) of the Unruh Act, which makes violations of the federal Americans with Disabilities Act actionable under the Unruh Act, is limited to violations by “business establishments.”<sup>289</sup> Accordingly, public schools can no longer be held liable under the Unruh Act. *Brennon B.* marked a significant departure from precedent and considerably limits advocates’ ability to curtail schools’ discriminatory conduct.

### Identification, Assessment, & Services

While federal law uses the term “child with a disability,” California law uses the term “individual with exceptional needs,” which is defined as a child who meets all of the following criteria:<sup>290</sup>

- The child must have one or more eligible disabilities, as determined by the IDEA definition of “disability”;
- The disability requires special instruction and services to ensure the child receives a free appropriate publication under the IDEA; and
- The child must fall within one of the specific age categories and meet certain eligibility criteria.<sup>291</sup>

Unless a child meets the above requirements, students “whose educational needs are due primarily to limited English proficiency; a lack of instruction in reading or mathematics; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors” are not considered to be “individuals with exceptional needs.”<sup>292</sup>

### *Legal Requirements & Educational Rights*

In accordance with federal law, California state law requires that school districts provide each student with a “free appropriate public education” (FAPE), and special education must be provided in the “least restrictive environment” (LRE), meaning that students must generally be educated with their nondisabled peers.<sup>293</sup> “Special education” is defined as “specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs.”<sup>294</sup>

If a school has not assessed a child’s need for special education, a request for assessment can be made by the child’s parent, guardian, teacher, other service provider, or “foster parent of the individual, consistent with the limitations contained in federal law.”<sup>295</sup> Upon receiving a request, the district is required to notify the child’s parent that their child will be tested for special education, and must obtain a signature and consent from the child’s parent in order to test the child.<sup>296</sup>

State law allows for LEAs to appoint “surrogate parents” in certain circumstances, including if “no parent for the child can be identified” or if, “after reasonable efforts,” the parent cannot be located.<sup>297</sup> When appointing a surrogate parent, the LEA “shall select a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals exists and is willing and able to serve.”<sup>298</sup>

Pursuant to federal law, California school districts are also required to provide free “related services” in addition to special education instruction.<sup>299</sup> The term “related services” means “transportation, and such developmental, corrective, and other supportive services...as may be required to assist an individual with exceptional needs to benefit from special education.”<sup>300</sup> California law provides examples of related services, including but not limited to: interpretive services, social worker services, parent counseling and training, recreation services, physical and occupational therapy, counseling and guidance, and instruction in the home or hospital.<sup>301</sup>

*For more information on California special education rights, see [Appendix C \(Resources\)](#).*

## **Medi-Cal Disability-Related Services**

Research has shown that health barriers to learning – such as uncorrected vision problems, unaddressed hearing loss, unidentified disabilities, and untreated mental health conditions – can “adversely affect children’s ability to see, hear and pay attention in the classroom, their ability and motivation to learn, their attendance, their academic performance, and even their chances of graduating from high school.”<sup>302</sup> Early intervention services structured to support healthy child development are critical to children’s educational success.

Medi-Cal, California’s Medicaid program, is a public health insurance program that provides free or low-cost medical services for children and adults with limited income and resources.<sup>303</sup> Medi-Cal eligibility depends on income, based on the current Federal Poverty Level.<sup>304</sup>

Children under 19 years old are eligible for full-scope Medi-Cal benefits – regardless of immigration status – if they meet the income requirements.<sup>305</sup> Medi-Cal benefits for children and teens include “medical care, vision exams, dental care, substance abuse treatment, and mental health services” as well as free disability “early and periodic screening, diagnostic, and treatment services” (EPSDT).<sup>306</sup> Medi-Cal covered services include, but are not limited to: physical health services; mental health services; drug/alcohol treatment; dental, vision,



*Legal Requirements & Educational Rights*

and hearing services; medical equipment and supplies; medication; lab tests; physical, occupational, and speech therapy; sexual and reproductive health services; home health services; and hospital and residential treatment.<sup>307</sup>

To enroll in Medi-Cal, individuals can apply in-person at their County Social Services Office, online at coveredca.com, or by mail.<sup>308</sup> Beginning in January 2024, a new law in California allows adults ages 26 through 49 to qualify for full-scope Medi-Cal, regardless of immigration status.<sup>309</sup> This initiative, combined with prior Medi-Cal expansions covering adults 19-25 and 50+, makes California the first state to offer health insurance to all state residents, regardless of immigration status.<sup>310</sup> This means that all unaccompanied children released to sponsors in California, as well as their sponsors (if undocumented), are eligible for Medi-Cal health insurance if they meet the income requirements.

*For more information on Medi-Cal eligibility and enrollment, see [Appendix C \(Resources\)](#).*



## Children Experiencing Homelessness

Recent data from the California Department of Education shows that the number of students experiencing homelessness in California is high and rising.<sup>311</sup> In the 2022-23 school year, at least 246,480 California students experienced homelessness.<sup>312</sup> Children of color are disproportionately impacted.<sup>313</sup> For example, while “Latino/a students represented around 55% of all students in grades k–12, nearly 70% of all California students experiencing homelessness were from Latino/a backgrounds.”<sup>314</sup> Furthermore, some school districts in California have recently noted an increasing number of newcomer immigrant families, many of whom struggle to find housing and seem to be “facing a higher homeless average.”<sup>315</sup>

California law does not provide additional benefits for homeless youth beyond what federal law requires. As detailed on page 32, the McKinney-Vento Act provides certain rights and services to children experiencing homelessness – including rights regarding school enrollment, school stability, transportation, and individualized support – and unaccompanied children released to their sponsors may qualify.

Under the requirements of the McKinney-Vento Act’s Education for Homeless Children and Youth (EHCY) program, every local educational agency in California and their homeless liaisons are required to ensure that children experiencing homelessness are “identified by school personnel through outreach and coordination activities with other entities and agencies.”<sup>316</sup> The California Department of Education has stated that examples of this outreach include posting notices of rights “where families and youth in homeless situations are likely to see them, including schools, shelters, public libraries, and soup kitchens,” and including a housing questionnaire as part of the enrollment packet to screen for eligibility.<sup>317</sup> Notice should be provided “in a manner and form understandable” to children and their families.<sup>318</sup>

However, a 2019 state audit of six California LEAs and the state Department of Education found alarming noncompliance with the McKinney-Vento Act requirements.<sup>319</sup> The audit found that none of the LEAs were sufficiently following federal law or best practices to identify youth experiencing homelessness, none of the LEAs were sufficiently training staff on McKinney-Vento Act requirements, and only one LEA disseminated the required information explaining the educational rights of youth experiencing homelessness in public places.<sup>320</sup> The audit determined that these issues were “in part a result of [the Department of] Education’s inadequate oversight and leadership of the State’s homeless education program.”<sup>321</sup>

In 2022, part of California’s “American Rescue Plan – Homeless Children and Youth” funds were granted to twenty local educational agencies to administer “Homeless Innovative Program” (HIP) grants.<sup>322</sup> The “purpose of the HIP grant is to identify innovative practices previously implemented and aligned with the provisions of the McKinney-Vento Homeless Assistance Act ... and to improve the educational stability, access, support, and academic achievement of children and youth experiencing homelessness.”<sup>323</sup> LEAs used HIP grants to explore a variety of innovative programming, including creating tiered approaches to services and resources, building identification and referral systems, constructing tiny home villages, and converting school gymnasiums into overnight housing for children and families.<sup>324</sup>

However, with the majority of ARP-HCY funds sunseting in 2024, it will require new budgetary investment from the state of California to continue and effectively implement the new services jumpstarted by this pandemic-era investment.<sup>325</sup>

*For more information on youth experiencing homelessness in California, see [Appendix C \(Resources\)](#).*

## Children Whose Primary Language Is Not English

California has the largest population of English language learners in the country – approximately 19% of California students are English learners.<sup>326</sup> Pursuant to federal law, California state law requires schools to identify English Language Learners and provide adequate English language acquisition programs to ensure that students have meaningful access to their education. These programs are described in greater detail below.

### Identification Requirements

In accordance with federal law, California law requires schools to identify English learners or students for whom English is not their first language upon enrollment.<sup>327</sup> This is done through a Home Language Survey (HLS), which asks four questions: (1) which language the child learned when they first began speaking, (2) which language the child most frequently speaks at home, (3) which language the parent and guardians most frequently use when speaking with the child, and (4) which language is most often spoken by adults in the home.<sup>328</sup>

While the HLS has a line for a parent/guardian signature, non-parent/guardian caregivers who have filled out the California Caregiver Affidavit are also permitted to sign.<sup>329</sup>

### Assessment Requirements

If the initial Home Language Survey (HLS) indicates that the student's primary language is not English, the student will take the English Language Proficiency Assessment for California (ELPAC) to confirm whether or not they need English language services.<sup>330</sup>

The ELPAC is a computer-based assessment that tests listening, speaking, reading, and writing.<sup>331</sup> Parents or guardians must be notified in writing before the test is administered.<sup>332</sup> Notice is available in Arabic, Chinese, Tagalog, Russian, Spanish, and Vietnamese, and individual school districts may offer notice in other languages.<sup>333</sup> If "15 percent or more of the pupils enrolled in a public school... speak a single primary language other than English" then the notice must be available in that language as well.<sup>334</sup>

When taking the ELPAC, students with disabilities must be provided appropriate accommodations and alternative assessments as indicated in their Individualized Education Program (IEP) or Section 504 plan.<sup>335</sup> They may be required to take only certain portions of the ELPAC, or may be provided with alternative response options, closed captioning, or a scribe as needed.<sup>336</sup> Some students may qualify to take the Alternative ELPAC, a modified assessment developed for students with significant cognitive disabilities.<sup>337</sup>

Students without an IEP or 504 plan may still benefit from accessibility resources while taking the ELPAC.<sup>338</sup> Universal tools are available to all students based on their preference and selection, including breaks, digital notepads, and oral clarification of test directions.<sup>339</sup> Designated supports are also available if a teacher has determined that a student needs them.<sup>340</sup> Such supports include translated test directions, alterations in color contrast or overlay, print copies, and alternative test settings with special lighting or adaptive furniture.<sup>341</sup>

## Legal Requirements & Educational Rights

If the ELPAC results indicate that the student needs an English language acquisition program, then they are placed in such a program until they are sufficiently proficient in English to meaningfully participate in the school's programs.<sup>342</sup> Schools must assess the progress and English proficiency of students in English language acquisition programs annually.<sup>343</sup> After a student gains sufficient English language proficiency to exit the program, state and federal law still require schools to monitor the students' academic progress for at least four years.<sup>344</sup>

### English Language Program Services Requirements

California requires schools to provide English learners with a structured immersion program.<sup>345</sup> This means that all instruction is conducted in English, but the curriculum has been designed for students who are still learning the language.<sup>346</sup>

Structured immersion programs are the minimum requirement under California state law, and the California Education Code mentions other types of language acquisition programs that schools may choose to implement.<sup>347</sup> This includes dual-language immersion programs, which integrate learning and academic instruction for native English speakers and native speakers of another language.<sup>348</sup> Another option is the use of transitional or developmental programs, which provide instruction in both English and the student's native language for literary and academic instruction.<sup>349</sup>

In accordance with federal law, state law requires that once schools identify a student as an English learner, they must provide an "initial parent notification," which alerts parents or legal guardians of this identification and of the available English language acquisition programs.<sup>350</sup> If a school offers more than one program, parents or legal guardians may choose among the available options.<sup>351</sup> The process to enroll students in language acquisition programs varies by school.<sup>352</sup> However, most schools provide a form listing the available programs, which parents or legal guardians can complete and return to the school.<sup>353</sup>

An updated notice must be sent annually to parents or legal guardians with information about any new program options and about the student's continued identification as an English learner.<sup>354</sup> This notification is available in Arabic, Cantonese, Chinese, Hmong, Korean, Tagalog, Punjabi, Russian, Spanish, and Vietnamese.<sup>355</sup> If "15 percent or more of the pupils enrolled in a public school... speak a single primary language other than English" then the updated notice must be available in this language as well.<sup>356</sup>

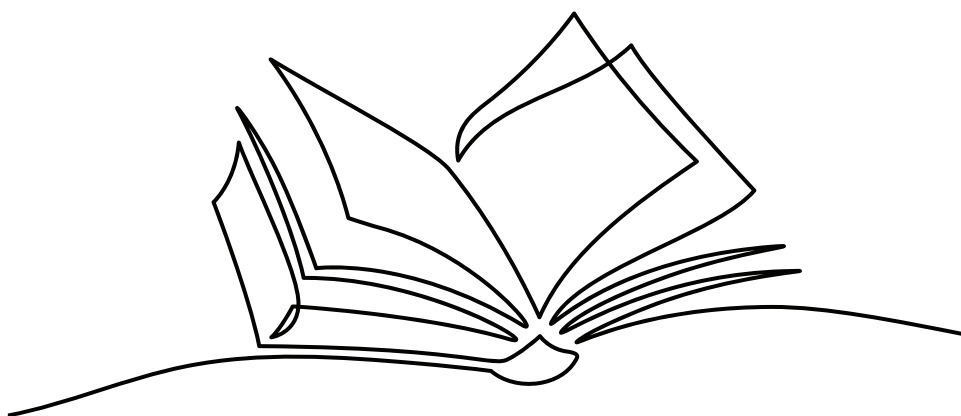
The California Education Code requires the school board to develop English Language Development standards to be used in the instruction of English learners.<sup>357</sup> These standards must be "comparable in rigor and specificity" to those used in the instruction of English language arts, math, and science.<sup>358</sup> Certain types of language acquisition programs must abide by specific requirements. For example, dual-language immersion programs must not replace English with another language but instead must give students the opportunity to acquire or further develop a second language.<sup>359</sup>

Guidance documents discourage certain types of services in English language acquisition programs that have been proven ineffective, including the use of translation and interpretation.<sup>360</sup> An exception may apply if a student has an IEP or a 504 Plan that requires the school to provide certain services.<sup>361</sup>

*Legal Requirements & Educational Rights*

If parents are not satisfied with the school's available language acquisition programs, they may request that the school implement a new program.<sup>362</sup> Each school determines a process for submitting these requests.<sup>363</sup> Schools are only required to respond where the parents or legal guardians "of 30 pupils or more per school, or 20 pupils or more in any grade in a school, request a new language acquisition program."<sup>364</sup> When this is the case, schools must respond within 10 days and must begin to analyze the cost and resources needed to implement the new program.<sup>365</sup> Schools then have 60 days to determine if it is possible to implement the requested program and provide notice either outlining the timeline for implementation or explaining why the program cannot be administered.<sup>366</sup>

Furthermore, parents and guardians are entitled to translation and interpretation in their communication with the school as needed.<sup>367</sup> California requires the translation of certain written materials in the parent or legal guardian's primary language if "15 percent or more of the pupils enrolled in a public school... speak a single primary language other than English."<sup>368</sup> Additionally, California law provides parents and guardian with the right to a copy of their child's IEP in their native language upon request, though does not provide a timeframe in which that translation must be provided.<sup>369</sup>



## Students Placed in the URM Program

The Unaccompanied Refugee Minors (URM) Program, “establishes legal responsibility, under State law, to ensure that unaccompanied children refugees and other eligible children . . . receive the full range of assistance, care, and services that are available to all foster children in the State.”<sup>370</sup>

States are required to provide children in URM programs with the same “child welfare services and benefits” that are provided to foster youth under the State’s Title IV-B plan.<sup>371</sup> Under the California Welfare and Institutions Code and Education Code, foster youth have additional educational rights as well as the rights afforded to all students.<sup>372</sup> These additional rights are aimed at mitigating the home and school instability that negatively affects foster youth’s ability to thrive in educational environments.<sup>373</sup>

For example, foster youth have the right to remain in their “school of origin” after being moved to a new foster care placement.<sup>374</sup> A child’s “school of origin” may be the school the child attended upon first entering foster care, the school the child most recently attended, or any school the child attended in the last 15 months that they feel connected to.<sup>375</sup> Foster youth also have the right to immediately enroll in school and start attending classes, even if they do not have the paperwork typically required for enrollment.<sup>376</sup>

Foster youth have special rights regarding partial credit for coursework and graduation requirements. If youth change schools during the year, they have the right to receive partial credit in all classes that they were passing at the time they transferred schools, even if the class was not completed.<sup>377</sup> While the Education Code sets minimum course requirements for high school graduation, it includes exemptions to local graduation requirements for certain students who move frequently, including foster youth. In 2018, the Education Code extended these exemptions to “migratory children” and students “participating in a newcomer program.”<sup>378</sup> In addition, foster youth have the right to priority enrollment in California State Universities and each community college district.<sup>379</sup>

URM education services include tutoring assistance and the Chafee grant, which provides vouchers up to \$5,000 for post-secondary education.<sup>380</sup> Children in the URM program are also able to receive career, college, and vocational counseling and training.<sup>381</sup>

The California Department of Social Services (CDSS), Office of Immigrant Youth is in the process of redrafting guidance on the education rights of children in the URM program. This new guidance is anticipated to articulate the education rights of URM program participants in greater detail and expected to be published by the end of 2024.

*For more information on foster youth educational rights, see [Appendix C \(Resources\)](#).*

## SUMMARY

# California Law

## Assessment

- School districts must identify, locate, and evaluate children with disabilities.
- School districts must identify children experiencing homelessness.
- School districts must identify English learners or students for whom English is not their first language upon enrollment.

## Services

- School districts must provide a “free appropriate public education” (FAPE) to each student, free “related services” in addition to special education instruction, and special education must be provided in the “least restrictive environment” (LRE).
- School districts must provide certain rights and services to children experiencing homelessness – including rights regarding school enrollment, school stability, transportation, and individualized support.
- Children under 19 years old are eligible for full-scope Medi-Cal benefits if they meet the income requirements, regardless of immigration status.
- Children in the URM program must be provided with the same services and rights available to foster youth, including tutoring assistance, post-secondary education vouchers, and career, college, and vocational counseling and training.

## Language Access

- School districts are required to provide English learners with a structured immersion program.
- School districts are required to provide translation and interpretation in their written or verbal communications with children’s families, as needed.
- School districts are required to provide a copy of a child’s IEP in the parent or guardian’s native language, upon request.

# Summary of Educational Rights for Unaccompanied Immigrant Children in and out of ORR custody

Location of Unaccompanied Child		Location of Education	What educational rights apply?									
			Section 504 of the Rehab. Act, ADA	IDEA	McKinney-Vento Act	Title VI of the Civil Rights Act	Flores Settlement Agreement	Lucas R. Disability Agreement	ORR Policy Guide & UC MAP Education Rights	CA State Law	CA Foster Youth Education Rights	
ORR Custody in California	Shelter	ORR Facility	Yes, if student meets the eligibility criteria	Open question	No	Yes	Yes	Yes	Yes, if student meets the eligibility criteria	Yes	Open question	No
	Staff-Secure	ORR Facility	Yes, if student meets the eligibility criteria	Open question	No	Yes	Yes	Yes	Yes, if student meets the eligibility criteria	Yes	Open question	No
	Out-of-Network Residential Treatment Center (OON)	In some instances, California Public School <sup>382</sup>	Yes, if student meets the eligibility criteria	Yes	No	Yes	Yes	Yes	Yes, if student meets the eligibility criteria	Yes	Yes	No
	Transitional Foster Care (TFC)	ORR Facility	Yes, if student meets the eligibility criteria	Open question	No	Yes	Yes	Yes	Yes, if student meets the eligibility criteria	Yes	Open question	No
	Long-term Foster Care (LTFC)	California Public School or other state-licensed educational program in the school district <sup>383</sup>	Yes, if student meets the eligibility criteria	Yes, if student meets the eligibility criteria	No	Yes	Yes	Yes	Yes, if student meets the eligibility criteria	Yes	Yes	No <sup>384</sup>
Unaccompanied Refugee Minor (URM) Program		California Public School or college, university, career, or technical school	Yes, if student meets the eligibility criteria	Yes, if student meets the eligibility criteria	No	Yes	No	No	No	No	Yes	Yes, with additional URM education rights (tutoring, Chafee, counseling/training)
Released to Sponsor in California		California Public School	Yes, if student meets the eligibility criteria	Yes, if student meets the eligibility criteria	Yes, if student meets the eligibility criteria	Yes	No	No	No	No	Yes	No, unless the sponsor arrangement falls apart and the youth enters foster care.





## **Section 4: Educational Advocacy Challenges & Opportunities**

For unaccompanied children in federal custody, as well as unaccompanied children released to their sponsors, access to appropriate educational services is essential. By understanding their client's educational rights, legal services providers and child advocates can provide critical advocacy to ensure that children receive the educational services and supports to which they are entitled.

This section summarizes common educational challenges faced by unaccompanied children, along with relevant legal citations and opportunities for short- and long-term advocacy.

# Unaccompanied Children in ORR Shelters, Staff-Secure, or Transitional Foster Care Programs

Unaccompanied children placed in ORR-contracted shelters, staff-secure, or transitional foster care (TFC) programs in California do not attend California public schools. Instead, they attend classes that are provided by the care provider program in which they are placed.

The quality and content of the education provided by ORR-contracted facilities varies widely. ORR does not require its facilities to use any particular curricula, but programs must meet the requirements described on page 44 of this Toolkit.

Children interviewed in ORR shelter, staff-secure, and foster care programs have identified some common issues regarding the educational services that they receive while in federal custody. Quotes from children in ORR facilities are included in this section to highlight these challenges, as well as the impact that these challenges have on youth while in custody. While some of these issues may be rectified by individual advocacy, others may require prolonged, systemic advocacy.

For youth who spend extended periods of time in ORR facilities, particularly youth who spend months or years in custody, ORR's educational services are lacking in many ways with potentially significant consequences. Youth who do not speak English or Spanish as primary languages have noted difficulty accessing educational materials and instruction in their native language. Other youth have voiced frustration with repetitive and rudimentary instruction. Advocates have found that youth are not routinely evaluated for educational disabilities and do not receive educational accommodations. Additionally, it is uncommon for local school districts to accept the classes children take while in ORR custody as transferable credit.

If a child is expected to be in ORR custody for a prolonged period and meets the criteria for LTFC or URM placement, advocates can play an essential role in pushing for the child's expeditious transfer. For children whom LTFC or URM placement is not an option, there are still many opportunities for advocates to enforce their educational rights while in shelter, staff-secure, or transitional foster care programs.

Common challenges faced by unaccompanied youth in ORR facilities are listed below, along with relevant legal citations and opportunities for short- and long-term advocacy.

**I wish I could go to school outside of the shelter. I go to English class but it is not very good. The teachers don't teach very well and I haven't learned very much at all.**

*15-year-old boy, Shelter, California, April 2022*

**Challenge:** Youth **do not receive sufficient hours of educational time** and only go to class for a few hours each day.

### Relevant Citations:

- **Flores Settlement Agreement Exhibit 1(A)(4)**, which states that “[e]ducational services are required to be provided Monday – Friday, and to focus primarily on academic competency and secondarily on English Language learning” and notes that “[b]asic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education .”
- **ORR Policy Guide § 3.3.5**, which requires that each child “must receive a minimum of six hours of structured education, Monday through Friday, throughout the entire year in basic academic areas (Science, Social Studies, Math, Reading, Writing, Physical Education, and English as a Second Language (ESL), if applicable).”<sup>385</sup>
- **ORR UC MAP § 3.3.5**, which requires that care providers must “design a minimum of six hours of educational coursework to meet the unique competency levels of the UC in care . . . including linguistically appropriate educational materials and English language training, Monday through Friday, throughout the year,” and “submit the curriculum to the PO for approval.”<sup>386</sup>

**Challenge:** Youth who **do not speak English or Spanish often have difficulty accessing educational materials and instruction** in their native language.

### Relevant Citations:

- **Flores Settlement Agreement Exhibit 1(A)(4)**, which requires care providers to provide educational services that “include instruction and educational and other reading materials in such languages as needed.”
- **ORR Policy Guide §§ 3.3 and 3.3.7**, which require care providers to provide materials and instruction in other languages “as needed,”<sup>387</sup> and to “make every effort possible to provide comprehensive services and literature in the native language of each unaccompanied alien child; provide on-site staff or interpreters as needed; and allow unaccompanied alien children to communicate in their preferred language when they choose.”<sup>388</sup>
- **ORR UC MAP § 3.3.5**, which requires that care providers must “design a minimum of six hours of educational coursework to meet the unique competency levels of the UC in care . . . including linguistically appropriate educational materials.”<sup>389</sup>

**Challenge: Youth are not challenged by schoolwork** because it consists of repetitive worksheets, curricula that repeat every 4-8 weeks, and curricula that are not designed to become more challenging as the youth progresses.

### Relevant Citations:

- **Flores Settlement Agreement Exhibit 1(A)(3) and (4)**, which require care providers to provide each child with an individualized needs assessment, which includes identification of the child’s special needs as well as an educational assessment and plan, and provide “services appropriate to the minor’s level of development.”
- **ORR Policy Guide § 3.3.5**, which requires care providers to “adapt or modify local educational standards to develop curricula and assessments, based on the average length of stay for UAC at the care provider facility, and provide remedial education and after school tutoring as needed,”<sup>390</sup> and “as needed,” provide the opportunity for learning advancement “such as independent study, special projects, pre-GED classes and college preparatory tutorials....”<sup>391</sup>
- **ORR UC MAP § 3.3.6**, which contemplates the provision of vocational educational services and details the requirements of requesting authorization for such services from the ORR Program Officer.<sup>392</sup>

### Long-Term Advocacy Opportunities:

Title VI HHS regulations and guidance require ORR to “take reasonable steps” to ensure limited English proficient (LEP) persons have “meaningful access” to its programs and activities.<sup>393</sup> ORR has not created Title VI language access guidance for ORR facilities.

Legal services providers and child advocates working with unaccompanied children have raised concerns regarding ORR’s lack of language access guidance for ORR care providers and have asked ORR to gather best practices and create specific language access guidance and training for staff working with unaccompanied children.<sup>394</sup> Advocates can continue to raise this issue as a concern with ORR facilities and ORR more broadly.

It would also be helpful to create and/or expand relationships between ORR facilities and community organizations or vocational trade programs. Advocates could work with individual ORR facilities to build community partnerships and create opportunities for youth to engage in vocational programs.

**Challenge: Youth with disabilities are not identified** in ORR's current educational system and ORR does not routinely evaluate youth for educational disabilities.

**Relevant Citations:**

- **Section 504**, which requires all recipients of federal funding, including ORR, to ensure that children with disabilities have the equal opportunity to access all programs, activities, and services.<sup>395</sup>
- **Lucas R. Disability Settlement section II(A)(2)** (pending final approval), which requires ORR to identify and track children with disabilities in its custody. Once a child or the child's parent, child advocate, or attorney requests a disability evaluation, ORR is required to conduct the evaluation as "promptly as possible," and make "best efforts" to initiate the evaluation within 30 days and complete the evaluation within 60 days of the request.<sup>396</sup>

Disability evaluations must be conducted by "one or more individuals qualified to assess children in the area(s) of suspected disability or presenting symptoms," and the evaluator(s) will provide documentation of the evaluation findings and any recommendations.<sup>397</sup> The purpose of the evaluation is to "identify qualified children with disabilities for the purpose of developing a Section 504 Service Plan... to ensure they receive services in the most integrated setting appropriate to their needs... and to ensure to the best extent practicable that they are released to a suitable sponsor from ORR's custody without unnecessary delay due to their disability."<sup>398</sup>

**Challenge: Youth have difficulty accessing disability-related services.**

**Relevant Citations:**

- **Section 504**, which requires all recipients of federal funding, including ORR, to ensure that children with disabilities have the equal opportunity to access all programs, activities, and services.<sup>399</sup> Under Section 504, ORR is required to provide reasonable accommodations to ensure students have "meaningful access" to their educational programs unless they can demonstrate that a modification would fundamentally alter the program or impose an undue administrative or financial burden.<sup>400</sup>
- **Lucas R. Disability Settlement section II(B)** (pending final approval), which requires ORR – once it has identified a child as having a disability – to assess the child's "potential need for reasonable accommodations, modifications, services, and/or supports to meet the child's disability-related needs" and if needed, develop and implement an individualized Section 504 Service Plan for the child.<sup>401</sup>

## Educational Advocacy

The child and child advocate (if any), must be consulted in developing the Service Plan. With the child's consent, their parent/legal guardian and/or attorney may also be consulted. The Service Plan must be targeted to the individual child, and must identify the child's disability-related needs, including (a) any specific triggers of disability-based behavior, (b) proactively identify needed modifications, services, and supports, and (c) include a transition plan to enable safe release.<sup>402</sup>

### Long-Term Advocacy Opportunities:

Whether states are obligated to provide special education services under the IDEA to children in ORR custody who are not attending public school is an open question. NCYL is not aware of any children in such placements who have received services under the IDEA or any litigation regarding whether the IDEA applies to all children in ORR custody.

If advocates are interested in exploring this topic further, please reach out to us at [immigration@youthlaw.org](mailto:immigration@youthlaw.org).

**Challenge:** Youth are **stepped up to more restrictive settings** based on behavior that is a result of their disability.

### Relevant Citations:

- **Section 504 HHS regulations**, which require that "aids, benefits, and services" provided under a federal program "afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement [as nonhandicapped persons], in the most integrated setting appropriate to the person's needs."<sup>403</sup> Under Section 504, federally-funded entities are required to make reasonable accommodations unless they can demonstrate that a modification would fundamentally alter the program or impose an undue administrative or financial burden.<sup>404</sup>
- **Lucas R. Disability Settlement** (pending final approval), which requires ORR to place children with disabilities "in the least restrictive setting that is in the best interest of the child and also the most integrated setting appropriate to their needs unless ORR can demonstrate that this would fundamentally alter the nature of its Unaccompanied Children Program."<sup>405</sup>

Under **Section IV(C)**, if a child is transferred to a more restrictive placement, ORR must:

- Document why the child's needs cannot be met in a more integrated and less restrictive setting with additional services and supports (upon initial placement and every 30 days); and
- Describe and document the services or care to be provided at the restrictive placement and why they cannot be provided in a less restrictive placement.<sup>406</sup>



### Educational Advocacy

- **ORR Policy Guide § 1.4.7**, which permits children to seek reconsideration of their placement in more restrictive facilities via a Placement Review Panel (PRP) hearing.<sup>407</sup>
- **ORR UC MAP § 1.4.7**, which provides detailed information about the Placement Review Panel (PRP) hearing procedures and timeline.<sup>408</sup>

For more information on rights afforded to children in PRP hearings, see the [Lucas R. practice advisory](#). If advocates are interested in learning more about the PRP hearing process, or being connected with other advocates who have had clients undergo PRP hearings, please reach out to us at [immigration@youthlaw.org](mailto:immigration@youthlaw.org).

**Challenge:** Youth are **not permitted to leave the facility** to go to school in the community and therefore do not interact with peers other than youth who are also detained. These youth also do not have an opportunity to acclimate to what their lives will be like post-detention.

#### Relevant Citations:

- N/A

#### Long-Term Advocacy Opportunities:

This challenge will require long-term advocacy to change ORR agency policy and/or individual ORR facility educational services options.

To start, it would be helpful to expand the relationships between ORR and Local Education Agencies (LEAs) and community organizations.

It may be worth focusing advocacy efforts on youth with particularly long lengths of stay and encouraging ORR to make “exceptions” for youth who have been in custody for more than three months and do not have a viable sponsor to attend the local public school, for example. It may be helpful for LTFC and OON programs – which, in California, have generally enrolled unaccompanied youth in the local public school – to connect with shelter, staff-secure, and Transitional Foster Care programs and share about their educational approach and structure.

In addition, ORR UC MAP § 3.3.6 allows for the possibility of youth attending vocational educational services outside of the facility.<sup>409</sup> Advocates could work with individual ORR facilities to identify community partnerships and create opportunities for youth to engage in vocational programs.

**Challenge:** Youth have difficulty **accessing educational records post-release**, which impacts the youth's ability to transfer credits to their new school.

### Relevant Citations:

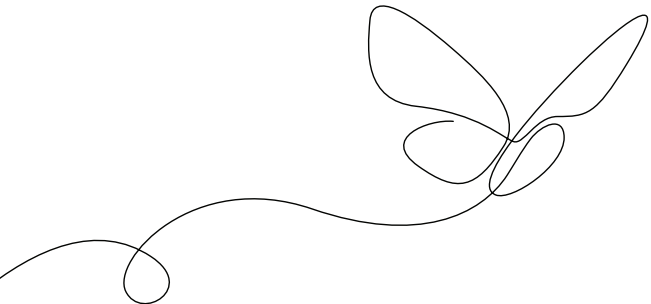
- **ORR Policy Guide §3.3.5**, which provides that “[a]cademic reports and progress notes are included and updated in the unaccompanied alien child’s case file which is either sent to another care provider in the event of a transfer or released to the unaccompanied alien child upon discharge.”<sup>410</sup>
- **ORR UC MAP § 3.3.5**, which requires that “[u]pon release to a sponsor, the care provider must include educational assessments and records,”<sup>411</sup> and § 2.8, which lists “educational assessments and records” as items that accompany children at release.<sup>412</sup>

### Short-Term Advocacy Opportunities:

Advocates can help youth by working with the ORR facility before the child’s release to their sponsor to ensure that all educational records are updated and included with the child’s case file upon discharge.

If, after the child is released, the sponsor is unable to locate the child’s case file or the case file is incomplete, advocates can help sponsors request children’s case files from ORR.<sup>413</sup>

For more information on how to fill out the ORR Authorization for Release of Records (Form A-5), visit [ORR’s Key Documents page](#).



**Sometimes it is hard for me to communicate** with staff and other people here because they don’t speak my language. I have to use Google Translate and there are four other kids here who speak Arabic but that doesn’t help much.

*16-year-old boy, Shelter, California, October 2023*

**There is a lot of repetition** because I’ve been here for a few months.

*15-year-old girl, Shelter, California, May 2023*



## Challenge: Youth do not qualify for **educational credit** post-release.

### Relevant Citations:

- N/A

### Long-Term Advocacy Opportunities:

Convincing school districts to accept ORR classes as transferable credit, persuading ORR to change its class offerings to include accredited classes, and/or ensuring that children in ORR shelter, staff-secure, and TFC programs can attend school in the community are all long-term goals that will require prolonged, systemic advocacy.

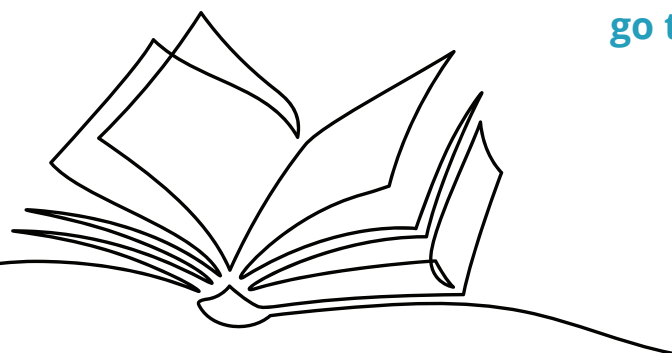
One approach could be bringing together California school district leadership and ORR care providers in California to explore options for providing accredited classes and/or accepting credit transfers. This type of advocacy could occur either on behalf of an individual child or within a particular district.

In addition, ORR-contracted programs could explore partnering with local community colleges to provide access to certain accredited coursework.

Another approach to ameliorate this challenge is to advocate that ORR require all care providers to provide GED programs to detained children who qualify. ORR Policy Guide § 3.3.5 states that “[a]s needed, unaccompanied alien children must be provided an opportunity for learning advancement, such as independent study, special projects, pre-GED classes and college preparatory tutorials, among others.” However, the provision of GED classes is widely variable among providers.

I have been here for 15 months, and school is too easy. . . I **would rather go to another school that would give me the opportunity to experience new things.** Every day here we do the same things ... I would like to go to a public school where I can get something at a higher level. The school here is not a school I can graduate from...**I need to go to a public school where I can graduate.**

*16-year-old boy, Shelter California, May 2023*



# Who to elevate issues with?

Entity	Contact Information
<b>Shelter, Staff-Secure, or Transitional Foster Care program staff</b> (varies by care provider)	For legal services providers – if you do not have contact information for these individuals, please contact your Senior Program Associate at Acacia Center for Justice to obtain contact information.
<b>ORR Federal Field Specialist</b> (varies by care provider)	For legal services providers – if you do not have contact information for these individuals, please contact your Senior Program Associate at Acacia Center for Justice to obtain contact information
<b>ORR Federal Field Specialist Supervisor, Western Region</b>	For legal services providers – if you do not have contact information for these individuals, please contact your Senior Program Associate at Acacia Center for Justice to obtain contact information
<b>ORR Juvenile Coordinator</b>	Aurora Miranda-Maese (Email: <a href="mailto:Aurora.Miranda-maese@acf.hhs.gov">Aurora.Miranda-maese@acf.hhs.gov</a> )
<b>Flores and Lucas R. counsel</b>	National Center for Youth Law (Email: <a href="mailto:immigration@youthlaw.org">immigration@youthlaw.org</a> )
<b>California Office of the Foster Care Ombudsperson</b>	<b>Website</b> Phone: 877-846-1602 (Open Monday-Friday, 9:00 am – 5:00 pm) Email: <a href="mailto:fosteryouthhelp@dss.ca.gov">fosteryouthhelp@dss.ca.gov</a> File a complaint <a href="#">here</a>
<b>California Community Care Licensing Division</b>	<b>Website</b> Phone: 844-538-8766 Email: <a href="mailto:cclwebmaster@dss.ca.gov">cclwebmaster@dss.ca.gov</a> File a complaint <a href="#">here</a>

# Unaccompanied Children in Long-Term Foster Care, Out-of-Network Residential Treatment Centers, or URM Programs

Children who are placed in Long-Term Foster Care (LTFC), Out-of-Network Residential Treatment Centers (OON), or released to an Unaccompanied Refugee Minors (URM) Program are generally permitted to enroll in their local school district. The California Department of Education grants unaccompanied children who have been placed in LTFC the same educational rights as all children residing in California.<sup>414</sup>

Children interviewed in OON programs have shared that their ability to attend public school has made a positive impact on their mental health while in ORR custody. Some youth in OON placements have obtained IEP assessments from the school districts in which they are placed.

In regions with large immigrant populations, school districts are generally better equipped to meet these students' needs. In other jurisdictions, however, school districts may not be familiar with LTFC, OON, or URM programs, and children may face challenges accessing resources. While some of these issues may be rectified by individual advocacy, others may require prolonged, systemic advocacy. Children in LTFC, OON, or URM programs that are enrolled in local public school may also face similar challenges as children released to their sponsors, which are discussed in the following section.

Common challenges faced by youth placed in LTFC, OON, or URM programs are listed below, along with relevant legal citations and opportunities for short- and long-term advocacy.



**Challenge:** Youth experience barriers to enrolling in local school districts, particularly for children in LTFC programs where the school district misunderstands that the LTFC family is not the child’s guardian.

### Relevant Citations:

- **California Department of Education**, *Unaccompanied Minors Frequently Asked Questions*, which states that unaccompanied minors “place[d] in long-term foster care under HHS custody . . . have the same educational rights as children residing in California.”<sup>415</sup>
- **ORR UC MAP § 3.6.1**, which states that “[c]hildren in a foster home attend state-regulated public school or other state-licensed educational programs in the local school district of the foster and/or group home during the academic year.
- **California Family Code § 6550**, which permits a child’s non-relative caregiver to enroll the child in school by filling out a Caregiver Affidavit.

### Short-Term Advocacy Opportunities:

Advocates can help youth by working with the LTFC family to fill out the Caregiver Affidavit, which permits the LTFC family to enroll the child in school. *For more information on the Caregiver Affidavit and school enrollment, see [Appendix B \(Fact Sheets\)](#).*

**Challenge:** Youth are not provided appropriate services and accommodations because they are **not evaluated for disabilities** and **have difficulty accessing disability-related services**.

### Relevant Citations:

- **Lucas R. Disability Settlement** (pending final approval), which applies to children in LTFC and OON placements.

Section II(A)(2) requires ORR to identify and track children with disabilities in its custody. Once a child or the child’s parent, child advocate, or attorney requests a disability evaluation, ORR is required to conduct the evaluation as “promptly as possible,” and make “best efforts” to initiate the evaluation within 30 days and complete the evaluation within 60 days of the request.<sup>416</sup>

Section II(B) requires ORR – once it has identified a child as having a disability – to assess the child’s “potential need for reasonable accommodations, modifications, services, and/or supports to meet

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the child’s disability-related needs” and if needed, develop and implement an individualized Section 504 Service Plan for the child.<sup>417</sup>

- **Section 504** and the **IDEA**, which apply to all children enrolled in public school, and require school districts to evaluate students with disabilities.<sup>418</sup>
- **California Education Code § 56029**, which allows a request for special education assessment to be made by the child’s parent, guardian, teacher, other service provider, or “foster parent of the individual, consistent with the limitations contained in federal law.”<sup>419</sup>

**Short-Term Advocacy Opportunities:**

Advocates can support youth by making a written referral for special education assessment. Challenges may arise after the assessment process has begun, as schools are required to notify the child’s parent that their child will be tested for special education and must obtain a signature and consent from the child’s parent in order to test the child.<sup>420</sup>

However, California law permits local educational agencies (LEAs) to appoint “surrogate parents” in certain circumstances.<sup>421</sup> When appointing a surrogate parent, the LEA “shall select a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals exists and is willing and able to serve.”<sup>422</sup> Advocates could consider serving as the surrogate, or, if appropriate, supporting another person in serving as the surrogate. Appointing a surrogate parent may be challenging if there is not a strong relationship between the LEA and the ORR program.

*For more information on the appointment of surrogate parents and sample written requests for special education assessment, see [Appendix C \(Resources\)](#).*



During the day, I go to school and do my homework.  
**Here, I am allowed to go to the middle school in the community.** I have six classes at school. I take English, Spanish, Science, and some other classes.

*14-year-old boy, Out-of-Network Facility  
California, April 2022*

# Who to elevate issues with?

## For children in LTFC or OON programs:

Entity	Contact Information
<b>School district (varies)</b>	Visit the <a href="#">California School Directory</a> , search by zip code, click the “District” tab, and then click the blue link to the district’s webpage to find the district phone number.
<b>LTFC or OON program staff (varies by care provider)</b>	For legal services providers – if you do not have contact information for these individuals, please contact your Senior Program Associate at Acacia Center for Justice to obtain contact information.
<b>ORR Federal Field Specialist (varies by care provider)</b>	For legal services providers – if you do not have contact information for these individuals, please contact your Senior Program Associate at Acacia Center for Justice to obtain contact information.
<b>ORR Federal Field Specialist Supervisor, Western Region</b>	For legal services providers – if you do not have contact information for these individuals, please contact your Senior Program Associate at Acacia Center for Justice to obtain contact information.
<b>ORR Juvenile Coordinator</b>	Aurora Miranda-Maese (Email: <a href="mailto:Aurora.Miranda-maese@acf.hhs.gov">Aurora.Miranda-maese@acf.hhs.gov</a> )
<b>Flores and Lucas R. counsel</b>	National Center for Youth Law (Email: <a href="mailto:immigration@youthlaw.org">immigration@youthlaw.org</a> )
<b>California Office of the Foster Care Ombudsperson</b>	<p><b>Website</b></p> <p>Phone: 877-846-1602 (Monday-Friday, 9:00 am – 5:00 pm)</p> <p>Email: <a href="mailto:fosteryouthhelp@dss.ca.gov">fosteryouthhelp@dss.ca.gov</a></p> <p>File a complaint <a href="#">here</a></p>

Entity	Contact Information
<b>California Community Care Licensing Division</b>	<p><a href="#">Website</a></p> <p>Phone: 844-538-8766</p> <p>Email: <a href="mailto:cclwebmaster@dss.ca.gov">cclwebmaster@dss.ca.gov</a></p> <p>File a complaint <a href="#">here</a></p>
<b>California Department of Education</b>	<p><a href="#">Website</a></p> <p>Phone: 916-319-0800</p> <p>English Learner Support Division</p> <ul style="list-style-type: none"> <li>• Phone: 916-319-0938</li> <li>• <a href="#">Contact Information</a></li> </ul> <p>Office of Special Education Programs, California Community Parent Resource Centers (for disability-related issues)</p> <ul style="list-style-type: none"> <li>• Contact information for each parent resource center <a href="#">here</a></li> </ul> <p>File a complaint <a href="#">here</a></p> <p>File a special education due process complaint <a href="#">here</a></p>
<b>Disability Rights California (for disability-related issues)</b>	<p><a href="#">Website</a></p> <p>Phone: 1-800-776-5746 (Monday, Tuesday, Thursday, Friday from 9:00 am – 3:00 pm)</p>
<b>U.S. Department of Education Office of Civil Rights, San Francisco, CA Office (for discrimination complaints)</b>	<p><a href="#">Website</a></p> <p>Phone: 415-486-5555</p> <p>Fax: 415-486-5570</p> <p>Email: <a href="mailto:OCR.SanFrancisco@ed.gov">OCR.SanFrancisco@ed.gov</a></p> <p>File a complaint <a href="#">here</a></p>
<b>U.S. Department of Justice Civil Rights Division (for civil rights complaints)</b>	<p><a href="#">Website</a></p> <p>File a report <a href="#">here</a></p>

## For children in URM programs:

Entity	Contact Information
<b>School district (varies)</b>	Visit the <a href="#">California School Directory</a> , search by zip code, click the "District" tab, and then click the blue link to the district's webpage to find the district phone number.
<b>California Office of Immigrant Youth</b>	<p><a href="#">Website</a></p> <p>Phone: 916-654-4356</p> <p>Email: <a href="mailto:OIY@dss.ca.gov">OIY@dss.ca.gov</a></p>
<b>California Office of the Foster Care Ombudsperson</b>	<p><a href="#">Website</a></p> <p>Phone: 877-846-1602 (Monday-Friday, 9:00 am – 5:00 pm)</p> <p>Email: <a href="mailto:fosteryouthhelp@dss.ca.gov">fosteryouthhelp@dss.ca.gov</a></p> <p>File a complaint <a href="#">here</a></p>
<b>California Community Care Licensing Division</b>	<p><a href="#">Website</a></p> <p>Phone: 844-538-8766</p> <p>Email: <a href="mailto:cclwebmaster@dss.ca.gov">cclwebmaster@dss.ca.gov</a></p> <p>File a complaint <a href="#">here</a></p>
<b>California Department of Education</b>	<p><a href="#">Website</a></p> <p>Phone: 916-319-0800</p> <p>English Learner Support Division</p> <ul style="list-style-type: none"> <li>• Phone: 916-319-0938</li> <li>• <a href="#">Contact Information</a></li> </ul> <p>Foster youth education rights can be enforced through each school district's <a href="#">uniform complaint procedures</a><sup>423</sup></p> <p>File a complaint <a href="#">here</a></p> <p>File a special education due process complaint <a href="#">here</a></p>
<b>Disability Rights California (for disability-related issues)</b>	<p><a href="#">Website</a></p> <p>Phone: 1-800-776-5746</p> <p>(Monday, Tuesday, Thursday, Friday from 9:00 am – 3:00 pm)</p>
<b>U.S. Department of Education Office of Civil Rights, San Francisco, CA Office (for discrimination complaints)</b>	<p><a href="#">Website</a></p> <p>Phone: 415-486-5555</p> <p>Email: <a href="mailto:OCR.SanFrancisco@ed.gov">OCR.SanFrancisco@ed.gov</a></p> <p>File a complaint <a href="#">here</a></p>
<b>U.S. Department of Justice Civil Rights Division (for civil rights complaints)</b>	<p><a href="#">Website</a></p> <p>File a report <a href="#">here</a></p>



# Unaccompanied Children Released to Sponsors in California

Unaccompanied immigrant children released to sponsors in California are entitled to the same educational rights as all Californian children. However, it is not uncommon for sponsors – especially non-parents – to experience difficulty enrolling unaccompanied children in school and obtaining evaluations for disability-related services.

Common challenges faced by recently released unaccompanied youth are listed below, along with relevant legal citations and opportunities for short- and long-term advocacy.

**Challenge:** Sponsors who are not the child's parent or legal guardian face difficulty enrolling the child in school.

## Relevant Citations:

- **California Department of Education**, *Unaccompanied Minors Frequently Asked Questions*, which states that “[u]naccompanied minors that have been released from ORR to a sponsor . . . have the same educational rights as children residing in California.”<sup>424</sup>
- **California Family Code § 6550**, which permits a child's non-relative caregiver to enroll the child in school by filling out a Caregiver Affidavit.
- **U.S. Department of Education & U.S. Department of Justice**, *Information on the Rights of Unaccompanied Children to Enroll in School and Participate Meaningfully and Equally in Educational Programs*, which states that if sponsors voluntarily present the ORR “Verification of Release” form to a school district, “schools are encouraged to accept the Verification of Release form as one appropriate means for establishing proof of residency and/or age for purposes of enrolling these children.”<sup>425</sup>

## Short-Term Advocacy Opportunities:

Advocates can assist the sponsor in completing the Caregiver Affidavit, which ensures the sponsor's ability to enroll the child in school and to consent to school-related medical care. While some legal service providers may be unable to assist with educational rights advocacy, helping a sponsor fill out a Caregiver Affidavit can greatly help that sponsors' ability to advocate for their child's educational rights.

*For more information on the Caregiver Affidavit and school enrollment, see [Appendix B \(Fact Sheets\)](#).*

Advocates can also help sponsors to request children's case files from ORR after release to obtain documents that will be helpful for enrollment.<sup>426</sup> The ORR UC MAP § 2.8 lists the documents that are

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required to accompany children at release, including the Verification of Release form, all health records (including immunization records), original documents (including birth certificates), and educational assessments and records.<sup>427</sup>

For more information on how to fill out the ORR Authorization for Release of Records (Form A-5), visit [ORR's Key Documents page](#).

### Long-Term Advocacy Opportunities:

This challenge could benefit from long-term advocacy to create county or state guidance for school districts on enrollment for unaccompanied children with non-parent sponsors. Such guidance could include information on how to submit requests for ORR case files, context on the paperwork that children may or may not have access to, and best practices on supporting expeditious enrollment.

If you are interested in exploring this advocacy strategy further, please contact us at [immigration@youthlaw.org](mailto:immigration@youthlaw.org).

**Challenge:** Sponsors face obstacles in their attempts to have the child **assessed for special education services**.

### Relevant Citations:

- **Section 504** and the **IDEA**, which apply to all children enrolled in public school, and require school districts to evaluate students with disabilities.<sup>428</sup>
- **California Education Code § 56029**, which allows a request for special education assessment to be made by the child's parent, guardian, teacher, other service provider, or "foster parent of the individual, consistent with the limitations contained in federal law."<sup>429</sup>
- **U.S. Department of Education & U.S. Department of Justice**, *Dear Colleague Letter: English Learner Students and Limited English Proficient Parents*, which states that any district policies "of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status . . . are impermissible under the IDEA and Federal civil rights laws."<sup>430</sup>
- **IDEA** and **California Education Code § 56320**, which requires that students with limited English proficiency who are being assessed for special education eligibility are given the assessment in their primary language.

*Educational Advocacy***Short-Term Advocacy Opportunities:**

Advocates can support youth by making a written referral for special education assessment, if needed. Challenges may arise after the assessment process has begun, as schools are required to notify the child's parent that their child will be tested for special education and must obtain a signature and consent from the child's parent in order to test the child.<sup>431</sup>

However, California law permits LEAs to appoint "surrogate parents" in certain circumstances.<sup>432</sup> When appointing a surrogate parent, the LEA "shall select a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals exists and is willing and able to serve."<sup>433</sup> Advocates can assist sponsors in advocating that the LEA appoint the sponsor as the child's surrogate parent for purposes of special education assessment and services.

Advocates can also support youth by sharing special education know-your-rights materials and information with sponsors, and by connecting sponsors with disability rights organizations, if needed.

*For more information on surrogate parent appointment, special education assessments, special education services, and know-your-rights materials, see [Appendix C \(Resources\)](#).*

**Long-Term Advocacy Opportunities:**

This challenge could benefit from long-term advocacy to create county or state guidance for school districts on special education assessment and services for unaccompanied children with non-parent sponsors. Such guidance could include information on how to appoint surrogate parents, context on the role of the sponsor and why an unaccompanied child may not have access to a parent to provide consent for assessment, and best practices on supporting timely assessment and services provision for this population of children.

If you are interested in exploring this advocacy strategy further, please contact us at [immigration@youthlaw.org](mailto:immigration@youthlaw.org).

**Challenge:** Youth have **difficulty accessing sufficient English language learner services.**

**Relevant Citations:**

- **Title VI** and the **EEOA**, which require school districts to provide students with English language assistance services until they are proficient in English and can participate meaningfully in programs without language assistance services.<sup>434</sup>
- **California Department of Education**, *The Correction of Classification Process: At A Glance*, which states that if students need English language services but have not been identified as English learners yet, parents or guardians may contact the school to see if there was an error in the Home Language Survey – and if so, request a change.<sup>435</sup>

**Short-Term Advocacy Opportunities:**

While some students may not face challenges in being assessed and deemed eligible for language assistance services, some students and families may not be satisfied with the school's available language acquisition programs.

If parents are not satisfied with the school's available language acquisition programs, they may request that the school implement a new program.<sup>436</sup> Each school determines a process for submitting these requests.<sup>437</sup> Advocates can support youth and sponsors by helping them fill out a request for a new program.

Advocates can also support youth by sharing English language services know-your-rights materials and information with sponsors.

*For more information on English language assessments, see [Appendix B \(Fact Sheets\)](#), and for more information on English language services, see [Appendix C \(Resources\)](#).*

**Challenge:** Children struggle with financial pressures and **drop out of school to work instead.**

**Relevant Citations:**

- N/A

**Short-Term Advocacy Opportunities:**

Advocates can support youth by sharing information on alternative education options. For example, advocates can help youth find and enroll in alternative education programming, vocational training programs, or schools or GED programs that offer flexible scheduling to accommodate working hours.

Advocates can also play a critical role in connecting children and families to existing community resources, ensuring children are receiving the public benefits to which they are entitled (for example, Medi-Cal), and are in the process of obtaining work authorization, if they do not already have it. Some school districts have newcomer resource centers that can assist children and families in getting connected to available supports and community resources. Community Justice Alliance, in partnership with youth, created a resource toolkit for recently-arrived unaccompanied youth in California, available [here](#).

Advocates can also connect youth with community-based organizations that can provide critical youth and family mentorship such as Soccer Without Borders ([SWB](#)), Mixteco Indígena Community Organizing Project ([MICOP](#)), and Ayudando Latinos a Soñar ([ALAS](#)).

# Who to elevate issues with?

Entity	Contact Information
<b>School district (varies)</b>	Visit the <a href="#">California School Directory</a> , search by zip code, click the “District” tab, and then click the blue link to the district’s webpage to find the district phone number.
<b>California Department of Education</b>	<p><a href="#">Website</a>            Phone: 916-319-0800            English Learner Support Division            Phone: 916-319-0938</p> <p><a href="#">Contact Information</a>            Office of Special Education Programs, California Community Parent Resource Centers (for disability-related issues)            Contact information for each parent resource center <a href="#">here</a>            File a complaint <a href="#">here</a>            File a special education due process complaint <a href="#">here</a></p>
<b>California Office of Immigrant Youth</b>	<p><a href="#">Website</a>            Phone: 916-654-4356            Email: <a href="mailto:OIY@dss.ca.gov">OIY@dss.ca.gov</a></p>
<b>Disability Rights California (for disability-related issues)</b>	<p><a href="#">Website</a>            Phone: 1-800-776-5746            (Monday, Tuesday, Thursday, Friday from 9:00 am – 3:00 pm)</p>
<b>U.S. Department of Education Office of Civil Rights, San Francisco, CA Office (for discrimination complaints)</b>	<p><a href="#">Website</a>            Phone: 415-486-5555            Email: <a href="mailto:OCR.SanFrancisco@ed.gov">OCR.SanFrancisco@ed.gov</a>            File a complaint <a href="#">here</a></p>
<b>U.S. Department of Justice Civil Rights Division (for civil rights complaints)</b>	<p><a href="#">Website</a>            File a report <a href="#">here</a></p>

# Conclusion

Investing in educational advocacy for unaccompanied children could transform a youth's future. Service providers and advocates that work with unaccompanied children and their families can play an essential role in identifying children's educational challenges, enforcing children's educational rights, and advocating for long-term systemic change.

If your clients face additional educational challenges not referenced in this Toolkit, we would be interested in learning more and working with you to address those challenges. For additional information or requests for assistance, please reach out to us at [immigration@youthlaw.org](mailto:immigration@youthlaw.org).





# Appendices

## **Appendix A: Definitions & Acronyms**



## Appendices

## Federal Agencies & Terms

Term	Definition
<b>Case Manager</b>	An ORR contractor who is responsible for identifying and vetting sponsors for unaccompanied children.
<b>Child Find</b>	A provision of IDEA which requires States to ensure that all children with disabilities who are within their jurisdiction are identified, located, and evaluated for their need for special education and related services.
<b>Department of Education (ED)</b>	The federal department responsible for establishing policies on federal financial aid for education, distributing and monitoring aid funds, collecting data on U.S. schools, disseminating research, focusing national attention on educational issues, prohibiting discrimination, and ensuring equal access to education.
<b>Department of Health and Human Services (HHS)</b>	The federal department responsible for protecting the health of all Americans and providing essential human services.
<b>Department of Homeland Security (DHS)</b>	The federal department charged with, among other things, enforcing and administering the nation's immigration laws, securing and managing the borders, and preventing terrorism. DHS is the umbrella organization for U.S. Customs and Border Protection (CBP, <a href="http://www.cbp.gov">www.cbp.gov</a> ), U.S. Citizenship and Immigration Services (USCIS, <a href="http://www.uscis.gov">www.uscis.gov</a> ), and U.S. Immigration & Customs Enforcement (ICE, <a href="http://www.ice.gov">www.ice.gov</a> ).
<b>Department of Justice (DOJ)</b>	
<b>The Equal Educational Opportunities Act</b>	A federal law that requires state and local educational agencies to take appropriate action to overcome language barriers that impede equal participation by students in their instructional programs.
<b>Federal Field Specialist (FFS)</b>	An ORR employee who acts as a liaison for ORR-contracted facilities and stakeholders within a determined region. The FFS is the regional approval authority for decisions about the transfer and release of unaccompanied children.
<b>Free Appropriate Public Education (FAPE)</b>	Under IDEA, all children between the ages of 3 and 21, including those with disabilities and those who have been suspended or expelled, are entitled to a free appropriate public education.
<b>Flores Settlement Agreement</b>	A settlement dating back to 1997 that establishes basic standards governing the custody, detention, and release of children in federal immigration custody.

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Term	Definition
<b>HHS Office for Civil Rights (OCR)</b>	The federal office responsible for enforcing federal civil rights laws, conscience and religious freedom laws, the Health Insurance Portability and Accountability Act (HIPAA), and the Patient Safety Act and rule.
<b>Immigration &amp; Customs Enforcement (ICE)</b>	The federal agency within DHS that is responsible for enforcement of immigration laws in the interior of the United States (as opposed to enforcement at the borders).
<b>The Individuals with Disabilities Education Act (IDEA)</b>	A federal law that makes a free appropriate public education available to children with disabilities in the U.S. and ensures these children receive special education and related services.
<b>Individualized Education Program (IEP)</b>	A requirement, established under the IDEA, that involves both a process and a written document. A child who is eligible for special education is entitled to an annual IEP meeting. At this meeting, a team develops an IEP document that describes the child's present levels of performance, school placement, needs, and the services that will be provided to meet those needs.
<b>Least Restrictive Environment (LRE)</b>	A requirement under IDEA that children with disabilities be educated with children who are not disabled "[t]o the maximum extent appropriate."
<b>Long Term Foster Care (LTFC)</b>	A type of placement where ORR may place an unaccompanied child. LTFC programs are community-based placements for unaccompanied children who are determined likely to be in ORR custody for an extended period. Children live with licensed foster families and receive community-based services.
<b>The McKinney-Vento Homeless Assistance Act (McKinney-Vento Act)</b>	A federal law that provides certain rights and services to people experiencing homelessness, including children's right to access public education. These children have the right to enroll in school regardless of their ability to provide documentation that schools would typically require.
<b>Office of Refugee Resettlement (ORR)</b>	<p>A department within the Department of Health and Human Services, Administration for Children &amp; Families. Among other things, ORR provides for the custody and placement of Unaccompanied Alien Children (UACs) (referred to as Unaccompanied Undocumented Minors [UUM] by the California Department of Social Services).</p> <p>While youth are in federal custody, ORR is charged with making and implementing placement decisions in the best interests of the child to ensure placement in the least restrictive setting possible. ORR's goal is to release children to appropriate family members or other adults willing to serve as the child's "sponsor." Sponsors care for the child's physical and mental well-being and assure the child's presence at their removal/deportation proceedings in immigration court. ORR also provides a limited amount of post-release services to certain unaccompanied children following their release from custody. In addition, ORR is responsible for the Unaccompanied Refugee Minor (URM) program.</p>

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Term	Definition
<b>ORR Policy Guide (Policy Guide)</b>	A set of policies that ORR requires its contracted facilities to follow. They do not have the same weight as law or regulation and do not have a clear enforcement mechanism.
<b>ORR Unaccompanied Child Manual of Procedures (UC MAP)</b>	A policy document that ORR relies on to administer its programs for unaccompanied children.
<b>Out-of-Network Residential Treatment Center Facility (OON)</b>	A type of facility where ORR may place an unaccompanied child if the child's needs cannot be met by one of the in-network RTC programs, or if the in-network RTC programs do not have bed capacity.
<b>Residential Treatment Center (RTC)</b>	A type of facility where ORR may place an unaccompanied child under specific, limited circumstances. RTCs have increased staff ratios, place varying degrees of restriction on children's movement, and provide different levels of therapeutic services.
<b>Section 504 of the Rehabilitation Act</b>	A federal law that prohibits discrimination against people with disabilities in programs or activities that receive federal funding. Also requires the provision of reasonable accommodations.
<b>Shelter</b>	A type of facility where ORR may place an unaccompanied child. Shelters are state-licensed residential care facilities in which all programmatic services are delivered on-site.
<b>Staff-Secure Facility</b>	A type of facility where ORR may place an unaccompanied child under specific, limited circumstances. Staff-secure facilities have increased staff ratios and place varying degrees of restriction on children's movement. A staff-secure facility is intended for children who may require close supervision but do not meet the requirements for placement in a secure facility.
<b>Secure Facility</b>	A type of facility where ORR may place an unaccompanied child under specific, limited circumstances. Secure facilities are state or county juvenile detention centers that are physically secure structures and licensed to hold children that have been adjudicated delinquent.
<b>Title VI of the Civil Rights Act</b>	A federal law that prohibits all programs and activities receiving federal financial assistance from discriminating on the basis of race, color, or national origin.
<b>Trafficking Victims Protection Reauthorization (TVPRA)</b>	A federal law that strengthened federal trafficking laws and created certain procedures for processing the cases of unaccompanied immigrant children arriving to the United States.

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Term	Definition
<b>Transitional Foster Care (TFC)</b>	<p>A type of placement where ORR may place an unaccompanied child. TFC programs are an initial placement option for certain categories of unaccompanied children, including children under 13 years of age, sibling groups with one sibling under 13 years of age, pregnant/parenting teens, or children with special needs. Children placed in TFC programs live with licensed foster families in the community but may attend school and receive services at the program site.</p>
<b>Unaccompanied Child (UC) or Unaccompanied Alien Child (UAC)</b>	<p>A child who (1) has no lawful immigration status in the United States; (2) has not attained 18 years of age; and (3) has no parent or legal guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody.</p> <p>In immigration law, the UAC designation confers certain benefits and triggers several child-friendly processes. The term “UAC” is to be distinguished from the child welfare designation of a child as “unaccompanied,” as “UAC” has a distinct meaning set forth in federal law.</p>
<b>Unaccompanied Refugee Minor Program (URM)</b>	<p>A foster care services program administered through ORR that is available to some unaccompanied children based on their potential sponsors and eligibility for certain immigration relief. Children placed into the URM program receive refugee foster care services and benefits.</p> <p>ORR also identifies certain minors who may become eligible for the URM program after they arrive in the United States and do not have a parent or a relative available to provide care. The majority of these minors identified by ORR within the U.S. originate as unaccompanied alien children (UACs) and are referred to the URM program once they meet all of the eligibility requirements.</p> <p>In California, the California Department of Social Services Office of Immigrant Youth administers the URM program.</p>

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## State Agencies & Terms

Term	Definition
<b>Alternative English Language Proficiency Assessment for California (Alternative ELPAC)</b>	A modified version of the English Language Proficiency Assessment for California (ELPAC) for students with the most significant cognitive disabilities.
<b>California Caregiver Affidavit</b>	An affidavit available in California for adults who care for children over whom they do not have legal custody. Adults who complete the affidavit can enroll the children in their care in school.
<b>California Department of Education (CDE)</b>	The state agency in California that oversees public education in the state.
<b>California Department of Social Services (CDSS)</b>	The department, within the California Health and Human Services Agency, that is responsible for many public service programs for children and adults in California.
<b>CDSS Community Care Licensing Division (CCL)</b>	The division within CDSS that is responsible for licensing and enforcing applicable regulations for ORR-contracted facilities that operate in California.
<b>CDSS Office of the Foster Care Ombudsperson (OFCO)</b>	<p>The office within CDSS that advocates on behalf of children in foster care in California regarding their care, placement, and services. The OFCO can investigate and informally resolve complaints.</p> <p>Although the OFCO is an office within CDSS, it acts as an independent forum to hold the state accountable.</p>
<b>CDSS Office of Immigrant Youth (OIY)</b>	<p>The office within CDSS that administers culturally responsive and social support programs for immigrant youth. OIY partners with school districts and community organizations to administer its programs.</p> <p>OIY's programs include the California Newcomer Education &amp; Well-Being (CalNEW) program, Opportunities for Youth (OFY) project, the Refugee School Impact (RSI) program, the Unaccompanied Refugee Minor (URM) program, and the Youth Mentoring (YM) program.</p>
<b>English Language Proficiency Assessment for California (ELPAC)</b>	An assessment that California schools use to determine whether a child needs English language services once that child has been identified as having a primary language other than English through the Home Language Survey (HLS).
<b>Group Home</b>	A facility, licensed by CDSS Community Care Licensing Division (CCL), that provides 24-hour non-medical care and supervision to children and nonminor dependents up to age 19.

## Appendices

Term	Definition
<b>Home Language Survey (HLS)</b>	The survey that California schools use to identify English learners and students for whom English is not their first language, as required by state law.
<b>Local Educational Agency (LEA)</b>	The public board of education or other public authority that controls or directs public schools in a city, county, township, school district, or other public subdivision of a State. There are 977 LEAs in California.
<b>Medi-Cal</b>	A public health insurance program in that provides free or low-cost medical services for children and adults in California with limited income and resources.
<b>State Educational Agency (SEA)</b>	The state board of education or other public agency that is primarily responsible for the supervision of public schools in the state.
<b>Short Term Residential Therapeutic Program (STRTP)</b>	A facility, licensed by CDSS Community Care Licensing Division (CCL), that provides an integrated program of specialized and intensive care and supervision, services and supports, treatment, and short-term 24-hour care and supervision.
<b>Unruh Civil Rights Act</b>	A state law that prohibits business establishments from discriminating against persons in California based on their sex, race, color, religion, ancestry, national origin, age, disability, medical condition, genetic information, martial status, or sexual orientation.

## **Appendix B: Fact Sheets**

## **Appendix C: Resources**



## Resources

# Unaccompanied Immigrant Children

### U.S. Department of Education:

- [Fact Sheet: Educational Services for Immigrant Children and Those Recently Arrived to the United States](#)
- [Fact Sheet: Information on the Rights of All Children to Enroll in School](#)
- [Fact Sheet II: Additional Questions & Answers on Enrolling New Immigrant Students](#)
- [Information on the Rights of Unaccompanied Children to Enroll in School and Participate Meaningfully and Equally in Educational Programs](#)
- [Fact Sheet: Protecting Access to Education for Unaccompanied Children: A Resource for Families and Educators](#)
- [Fact Sheet: Protecting Access to Education for Migratory Children](#)
- [Fact Sheet: Confronting Discrimination Based on National Origin and Immigration Status](#)

### Office of Refugee Resettlement:

- [Policy Guide](#)
- [Unaccompanied Child Manual of Procedures](#)
- [Key Documents](#)
- [Key State Contacts](#)
- [Sponsor Handbook](#)

### California Department of Education:

- [Unaccompanied Minors Frequently Asked Questions](#)

### Community Justice Alliance:

- [A Toolkit for Unaccompanied Youth](#)

### Court Settlement Agreements:

- [Flores Settlement Agreement](#)
- [Lucas R. Settlement Agreements](#) (pending final approval)

# Children with Disabilities and Special Education:

## U.S. Department of Education:

- [Center for Parent Information & Resources](#)
- [IDEA Policy Guidance](#)
- [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#)
- [Protecting Students with Disabilities](#)
- [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#)
- [Questions and Answers \(Q&A\) on U.S. Supreme Court Decision \*Endrew F. v. Douglas County School District Re-1\*](#)

## California Department of Education:

- [California Practitioner's Guide for Education English Learners with Disabilities](#)
- [Newcomer Students](#)
- [Special Education Complaint Process](#)
- [Special Education Director's Official Letters](#)
- [Special Education Reference](#)
- [Surrogate Parents in California Special Education: An Overview](#)

## Disability Rights California:

- [Special Education Rights & Responsibilities](#) (visit the [appendix](#) for extensive sample letters)
- [Special Education Basics Toolkit](#)

## Disability Rights Education & Defense Fund

- [Special Education Resources](#)

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*Appendices***EdSource**

- [Parents' guide to 504 plans and IEPs: What they are and how they're different](#)

**Judicial Council of California**

- [Special Education Rights for Children and Families](#)

**Lawyers' Committee for Civil Rights Under Law, Parental Readiness & Empowerment Program**

- [California Special Education Guide](#)

**PACER Center**

- [Manifestation Determination Meeting: Special Education Students](#)

# Children Experiencing Homelessness & the McKinney-Vento Homelessness Assistance Act:

## California Department of Education:

- [Educating Children and Youth Experiencing Homelessness](#)
- [Homeless Education Information](#)
- [Homeless Innovative Program Toolkits](#)

## Kids in Need of Defense & National Association for the Education of Homeless Children and Youth

- [Immigration and Schools: Supporting Success for Undocumented and Unaccompanied Homeless Youth](#)

## National Association for the Education of Homeless Children and Youth

- [The Most Frequently Asked Questions on the Educational Rights of Children & Youth in Homeless Situations](#)

## National Center for Homeless Education

- [Supporting the Education of Immigrant Students Experiencing Homelessness](#)

## San Mateo County Office of Education

- [Supporting Evacuee and Refugee Children and Youth Under McKinney-Vento](#)

## English Language Learners and Newcomer Education:

### U.S. Department of Education:

- [Dear Colleague Letter Dear: English Learner Students and Limited English Proficient Parents](#)
- [Fact Sheet: Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs](#)
- [Newcomer Toolkit](#)

### California Department of Education:

- [California Practitioner's Guide for Education English Learners with Disabilities](#)
- [English Learner Support Division Contact Information](#)
- [Facts about English Learners in California](#)
- [Newcomer Students](#)

### Policy Analysis for California Education (PACE)

- [Newcomer Education in California](#)

## Foster Youth Education Rights:

### California Department of Education:

- [Foster Youth Education Rights](#)
- [Assembly Bill 2121 Frequently Asked Questions](#)

### Alliance for Children's Rights

- [Foster Youth Education Toolkit](#)

### California Foster Youth Education Task Force

- [California Foster Care Education Law Fact Sheets](#)

## Medi-Cal Eligibility and Enrollment:

### California Department of Health Care Services

- [Medi-Cal for Kids & Teens](#)
- [Patient Materials](#) (includes Medi-Cal Rights guides in 25 languages)

### Covered California

- [Program Eligibility by Federal Poverty Level for 2024](#)

## Unaccompanied Refugee Minors Program:

### California Department of Social Services:

- [Unaccompanied Refugee Minors Program](#)
- [Fact Sheet: Unaccompanied Refugee Minors Program](#)
- [All County Letter 16-03, Foster Care and Medical Assistance to California's Unaccompanied Refugee Minors Program](#)

# Endnotes

- 1 Unaccompanied children are defined in federal statute as follows: “Children who arrive at the border who (A) [have] no lawful immigration status in the United States; (B) [have] not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.” 6 U.S.C. § 279(g)(2) (2011).
- 2 See Homeland Security Act of 2002, P.L. 107–296 (2002), [https://www.dhs.gov/sites/default/files/2023-11/23\\_0930\\_HSA-2002-updated.pdf](https://www.dhs.gov/sites/default/files/2023-11/23_0930_HSA-2002-updated.pdf); Office of Refugee Resettlement, *Unaccompanied Children: About the Program* (Jan. 22, 2024), <https://www.acf.hhs.gov/orr/programs/ucs/about>.
- 3 See 8 U.S.C. § 1232(c)(2).
- 4 See *Flores v. Reno*, No. CV 85-4544-RJK, ¶¶ 6, 19 (C.D. Cal. Jan. 17, 1997), [https://live-ncyl-ci.pantheonsite.io/sites/default/files/wp\\_attachments/Flores-Settlement-Agreement.pdf](https://live-ncyl-ci.pantheonsite.io/sites/default/files/wp_attachments/Flores-Settlement-Agreement.pdf) (“All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, e.g., cases in which a minor has drug or alcohol problems or is mentally ill.”) [hereinafter *Flores Settlement*].
- 5 See *Flores Settlement*, *supra* note 4, at Ex. 1.
- 6 See *Flores v. Barr*, No. 2:85-cv-04544-DMG, Doc. 746-1, Declaration of Jallyn Sualog, (C.D. Cal. April 3, 2020) (Numbers in Categories 1, 2, and 3 exceeding numbers in Category 4).
- 7 See *Flores Settlement*, *supra* note 4, at ¶ 18.
- 8 See Neha Desai, Melissa Adamson, Elizabeth Pirrotta, Lewis Cohen, Nancy Ewen Wang, *Child Welfare & Unaccompanied Children in Federal Immigration Custody: A Data and Research Based Guide for Federal Policy Makers* (Dec. 2019) <https://youthlaw.org/sites/default/files/attachments/2022-02/Briefing-Child-Welfare-Unaccompanied-Children-in-Federal-Immigration-Custody-A-Data-Research-Based-Guide-for-Federal-Policy-Makers.pdf>.
- 9 Office of Refugee Resettlement, *Fact Sheet: Unaccompanied Children (UC) Program* (last updated Mar. 1, 2024) <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.
- 10 See *Flores Settlement*, *supra* note 4, at Ex. 1.
- 11 U.S. Dep’t of Justice, *Monthly Flores HHS Data Report*, Feb. 6, 2024 (listing children in ORR custody on February 6, 2024) [hereinafter *Flores HHS Data Report February 2024*]. Monthly HHS Data Reports are provided to the National Center for Youth Law by the U.S. Department of Justice pursuant to the *Flores Settlement Agreement*.
- 12 U.S. Dep’t of Health & Human Servs., *Fact Sheets and Data*, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data#%3A-%3Atext%3D38%25-%2CCountry%20of%20>.
- 13 See Barry Holman & Jason Ziedenberg, *The Dangers of Detention; The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 2, 8-9, JUSTICE POLICY INSTITUTE (2006), [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf); National Research Council, *Reforming Juvenile Justice: A Developmental Approach*, THE NATIONAL ACADEMIES PRESS, 102 (2013).
- 14 See Dep’t of Health & Human Servs. & Dep’t of Ed., *Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings*, 3 (Dec. 10, 2014), <https://oese.ed.gov/files/2020/07/policy-statement-ece-expulsions-suspensions.pdf>.
- 15 See Alliance for Excellent Education, *Science of Adolescent Learning: How Body and Brain Development Affect Student Learning*, 1, 11, Aug. 2018, <https://all4ed.org/science-of-adolescent-learning-body-brain-development/>.
- 16 See *id.* at 1.
- 17 See, e.g., Dep’t of Health & Human Servs. & Dep’t of Ed., *Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings*, 3 (Dec. 10, 2014), <https://oese.ed.gov/files/2020/07/policy-statement-ece-expulsions-suspensions.pdf>; Amity L. Noltemeyer, Rose Marie Ward, Caven Mcloughlin, *Relationship Between School Suspension and Student Outcomes: A Meta-Analysis*, 44 SCHOOL PSYCH. REV. 224, 234-35 (2015), [https://edsources.org/wp-content/uploads/2018/09/Noltemeyer\\_Ward\\_2015\\_Meta-Analysis.pdf](https://edsources.org/wp-content/uploads/2018/09/Noltemeyer_Ward_2015_Meta-Analysis.pdf); Elizabeth M. Chu & Douglas D. Ready, *Exclusion and Urban Public High Schools: Short- and Long-Term Consequences of School Suspensions*, AM. J. ED. 124 (2018).

- 18 See *Flores v. Garland*, No. CV 85-4544-DMG-AGRx, Doc. 1161, Declaration of Dr. Ryan Matlow, (C.D. Cal. Aug. 9, 2024) [https://youthlaw.org/sites/default/files/wp\\_attachments/Flores-v.-Garland-Pls-Motion-to-Enforce-8.9.2021.pdf](https://youthlaw.org/sites/default/files/wp_attachments/Flores-v.-Garland-Pls-Motion-to-Enforce-8.9.2021.pdf).
- 19 *Id.*
- 20 *Id.*
- 21 See Katy Robjant, Rita Hassan, Cornelius Katona, *Mental health implications of detaining asylum seekers: systematic review*, CAMBRIDGE UNIVERSITY PRESS (Jan. 2, 2018), <https://www.cambridge.org/core/journals/the-british-journal-of-psychiatry/article/mental-health-implications-of-detaining-asylum-seekers-systematic-review/D5BE178EDE1219503F263C15BF5B57CE>.
- 22 See Office of Refugee Resettlement, *Fact Sheet: Unaccompanied Children (UC) Program* (last updated Mar. 1, 2024), <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.
- 23 See Cal. Dep't Soc. Servs., *Facility Types*, <https://www.cdss.ca.gov/inforesources/childrens-residential/resources-for-providers/facility-information>.
- 24 Office of Refugee Resettlement, *ORR Unaccompanied Children Program Policy Guide: Guide to Terms* (last updated Dec. 20, 2023), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-guide-terms> [hereinafter ORR Guide to Terms].
- 25 See Cal. Dep't Soc. Servs., *Facility Search Welcome*, <https://www.cdss.ca.gov/inforesources/community-care-licensing/facility-search-welcome>.
- 26 See Cal. Dep't Soc. Servs., *Facility Types*, <https://www.cdss.ca.gov/inforesources/childrens-residential/resources-for-providers/facility-information>.
- 27 Cal. Dep't Soc. Servs., *Short-Term Residential Therapeutic Program: Plan of Operation & Mission Statement* (Nov. 2, 2016), <https://www.cdss.ca.gov/cdssweb/entres/pdf/CCR/STRTPPlanOfOperationProgramStatement.pdf>.
- 28 *Flores* HHS Data Report February 2024, *supra* note 11.
- 29 *Flores* HHS Data Report February 2024, *supra* note 11.
- 30 ORR Guide to Terms, *supra* note 24.
- 31 See Neha Desai, Melissa Adamson, Elizabeth Pirrotta, Lewis Cohen, Nancy Ewen Wang, *Child Welfare & Unaccompanied Children in Federal Immigration Custody: A Data and Research Based Guide for Federal Policy Makers* (Dec. 2019) <https://youthlaw.org/sites/default/files/attachments/2022-02/Briefing-Child-Welfare-Unaccompanied-Children-in-Federal-Immigration-Custody-A-Data-Research-Based-Guide-for-Federal-Policy-Makers.pdf>.
- 32 *Flores* HHS Data Report February 2024, *supra* note 11.
- 33 ORR Guide to Terms, *supra* note 24.
- 34 Cal. Dep't Soc. Servs., *Resource Family Approval Program (RFA)*, <https://www.cdss.ca.gov/resource-families>.
- 35 *Flores* HHS Data Report February 2024, *supra* note 11.
- 36 See *Flores v. Barr*, No. 2:85-cv-04544-DMG, Declaration of Jallyn Sualog, (C.D. Cal. April 3, 2020) (Category 4 comprising approximately 29% of unaccompanied children's sponsor categories).
- 37 See Office of Refugee Resettlement, *ORR Policy Guide*, at § 1.2.6 (Long Term Foster Care), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1> [hereinafter ORR Policy Guide].
- 38 *Id.*
- 39 See Office of Refugee Resettlement, *The UC Manual of Procedures (UC MAP) For ORR Staff, Contractors, and Grantees, Section 3: Services*, p. 63, June 26, 2023, <https://immigrationlitigation.org/wp-content/uploads/2023/12/Section-3-Services.pdf> [hereinafter ORR UC MAP Section 3].
- 40 *Flores* HHS Data Report February 2024, *supra* note 11.
- 41 ORR Guide to Terms, *supra* note 24.
- 42 ORR Policy Guide, *supra* note 37, at § 1.4.6. (Residential Treatment Center and Out of Network Placements), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1>.
- 43 See Cal. Dep't Soc. Servs., *Facility Search Welcome*, <https://www.cdss.ca.gov/inforesources/community-care-licensing/facility-search-welcome>.
- 44 Cal. Dep't Soc. Servs., *Short-Term Residential Therapeutic Program: Plan of Operation & Mission Statement* (Nov. 2, 2016), <https://www.cdss.ca.gov/cdssweb/entres/pdf/CCR/STRTPPlanOfOperationProgramStatement.pdf>.
- 45 ORR Guide to Terms, *supra* note 24.
- 46 See U.S. Dep't of Health and Human Servs., Office of Planning, Research & Evaluation (OPRE), *Final Report from the Descriptive Study of the Unaccompanied Refugee Minors Program* (May 2021), <https://www.acf.hhs.gov/sites/default/files/documents/opre/descriptive-study-unaccompanied-refugee-minors-may-2021.pdf>.



- 47 45 C.F.R. §400.111.
- 48 See Office of Refugee Resettlement, *ORR Guide to Eligibility, Placement, and Services for Unaccompanied Refugee Minors (URM): Section 1 – Eligibility for the URM Program and the Application Process* (Oct. 17, 2016), <https://www.acf.hhs.gov/orr/policy-guidance/orr-guide-eligibility-placement-and-services-unaccompanied-refugee-minors-urm>.
- 49 See Office of Refugee Resettlement, *Unaccompanied Refugee Minors Program* (Aug. 23, 2022), <https://www.acf.hhs.gov/orr/programs/refugees/urm> (“An unaccompanied child as defined under 6 U.S.C. § 279(g)(2), who is a citizen or national of Afghanistan and was paroled into the United States between July 31, 2021 and September 30, 2022.”).
- 50 *Id.*
- 51 See 45 C.F.R. § 400.112(a) (“In providing child welfare services to refugee children in the State, a State must provide the same child welfare services and benefits to the same extent as are provided to other children of the same age in the State under a State’s title IV-B plan.”).
- 52 See 45 C.F.R. § 400.112(b) (“A State must provide child welfare services to refugee children according to the State’s child welfare standards, practices, and procedures.”).
- 53 See Cal. Foster Youth Ed. Task Force, *California Foster Care Education Law Fact Sheets* (Feb. 2014), [https://www.courts.ca.gov/documents/BTB\\_23\\_50\\_11.pdf](https://www.courts.ca.gov/documents/BTB_23_50_11.pdf); Cal. Dep’t Soc. Servs., *Fact Sheet: Unaccompanied Refugee Minors Program* (Aug. 2017), [https://www.cdss.ca.gov/Portals/9/Refugee/FactSheets/URM\\_Fact\\_Sheet.pdf?ver=2017-10-26-180009-490](https://www.cdss.ca.gov/Portals/9/Refugee/FactSheets/URM_Fact_Sheet.pdf?ver=2017-10-26-180009-490).
- 54 Cal. Dep’t Soc. Servs., *Fact Sheet: Unaccompanied Refugee Minors Program*, Aug. 2017, [https://www.cdss.ca.gov/Portals/9/Refugee/FactSheets/URM\\_Fact\\_Sheet.pdf?ver=2017-10-26-180009-490](https://www.cdss.ca.gov/Portals/9/Refugee/FactSheets/URM_Fact_Sheet.pdf?ver=2017-10-26-180009-490).
- 55 See *Flores Settlement*, *supra* note 4, at ¶ 14.
- 56 See Office of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State* (last updated Mar. 1, 2024), <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>.
- 57 *Id.*
- 58 *Id.*; see also Migration Policy Institute, *Unaccompanied Children Released to Sponsors by State and County, FY 2014-Present*, <https://www.migrationpolicy.org/programs/data-hub/charts/unaccompanied-children-released-sponsors-state-and-county>.
- 59 See Aída Walqui & Hawien Chu, *How can districts improve newcomer graduation outcomes? Policy Brief*, Ed. RES. INFO. CTR. at 3 (2015), <https://files.eric.ed.gov/fulltext/ED605499.pdf> (explaining that English Language Learners “are much more likely to drop out of school”).
- 60 See Zaidee Stavely, *Newcomer students face daunting obstacles to graduate. This California high school makes it possible*, THE WORLD (Feb. 25, 2019), <https://theworld.org/stories/2019-02-25/newcomer-students-face-daunting-obstacles-graduate-california-high-school-makes> (explaining that many teenage refugees in the U.S. “have to work to pay for their own rent or help with family expenses,” including a quote from one teacher stating that “students were having to chose [sic.] basically between work and school . . .”).
- 61 As of February 2024, the two Out-of-Network programs in California permit the unaccompanied children in their facilities to attend public school.
- 62 ORR UC MAP Section 3, *supra* note 39, at 63-4 (“Children in a foster home attend state-regulated public school or other state-licensed educational programs in the local school district of the foster and/or group home during the academic year.”).
- 63 See *Plyler v. Doe*, 457 U.S. 202 (1982).
- 64 *Id.*
- 65 U.S. Dep’t of Ed., *Factsheet: Information on the Rights of All Children to Enroll in School*, ED.GOV, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201101.html> (last updated June 2012).
- 66 *Id.*
- 67 *Id.*
- 68 *Id.*
- 69 See *Goss v. Lopez*, 419 U.S. 565 (1975); R. Schneider, *Education Law: First Amendment, Due Process and Discrimination Litigation: August 2023 Update*, §3:6 (Defining Property and Liberty Interests of Students – *Goss v. Lopez*).
- 70 See *Goss v. Lopez*, 419 U.S. 565; Schneider, *supra* note 69.
- 71 See *Goss v. Lopez*, 419 U.S. 565; Schneider, *supra* note 69, n.25-27 (listing cases).
- 72 See *Goss v. Lopez*, 419 U.S. 565; Schneider, *supra* note 69, n.32 (listing cases).
- 73 See *Goss v. Lopez*, 419 U.S. 565; Schneider, *supra* note 69.

- 74 See Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq. (2018).
- 75 See Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (2018).
- 76 See Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (2018). The IDEA was previously known as the Education for All Handicapped Children Act until it was reauthorized by Congress in 1990.
- 77 See *Plyler v. Doe*, 457 U.S. 202.
- 78 See 20 U.S.C. § 1401(29) (defining “special education”).
- 79 29 U.S.C. § 794(a).
- 80 See *id.*; 34 C.F.R. § 104.
- 81 See 34 C.F.R. Subpart D (Preschool, Elementary, and Secondary Education).
- 82 See 42 U.S.C. § 12102(1); see 29 U.S.C. § 794(a) (Section 504 of the Rehabilitation Act refers to the definition of disability at 29 U.S.C. § 705(20)); see 29 U.S.C. § 705(20)(B) (The definition of disability in this section states that for purposes of subchapter V, a person who has a disability is defined in 42 U.S.C. Sec. 12102).
- 83 See, e.g., *Sanchez v. Johnson*, 416 F.3d 1051, 1062 (9th Cir. 2005) (“Because of the nearly identical language of 42 U.S.C. § 12132 and § 504 of the Rehabilitation Act, and because the Sanchez appellants are qualified individual[s] with a disability within the meaning of both statutes, for the purposes of this case we construe the two provisions as co-extensive.”) (internal citations omitted); *Zukle v. Regents of Univ. of California*, 166 F.3d 1041, 1045 n.11 (9th Cir. 1999) (“There is no significant difference in analysis of the rights and obligations created by the ADA and the Rehabilitation Act.”).
- 84 See *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1099-1100 (9th Cir. 2013).
- 85 45 C.F.R. § 84.4(b)(2); see *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) (holding that the ADA requires placing patients with mental disabilities in “integrated settings” when they are medically cleared for such settings, they express a desire to be placed in such settings, and there are available resources for their transfer. The Court also explained that a state can take financial resources into account when determining whether patients are entitled to community resources).
- 86 See U.S. Dep’t of Justice Civil Rights Div., *Statement of the Department of Justice on enforcement of the integration mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C. Americans with Disabilities Act*, ADA.GOV, [https://www.ada.gov/olmstead/q&a\\_olmstead.htm](https://www.ada.gov/olmstead/q&a_olmstead.htm) (last updated Feb. 25, 2020) (citing 28 C.F.R. app. A – pt. 35 [2010]).
- 87 See 34 C.F.R. § 104.4(b)(2); 28 C.F.R. §§ 35.130(b)(1)(iii), (d).
- 88 34 C.F.R. § 104.32(a) (emphasis added); see also *id.* at § 104.3(f) (A recipient is defined as “any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient . . .”).
- 89 34 C.F.R. §§ 104.33(a), (c) (emphasis added); see also Disability Rights California, *Special Education Rights & Responsibilities, Chapter 16: Information on Section 504 and Disability-Based Discrimination, (16.14) Does Section 504 require provision of related services?*, DISABILITYRIGHTSCA.ORG, <https://serr.disabilityrightsca.org/serr-manual/chapter-16-information-on-section-504-and-disability-based-discrimination/16-14-does-section-504-require-provision-of-related-services/> (last visited Mar. 15, 2024) [hereinafter DRC Special Education Rights & Responsibilities].
- 90 34 C.F.R. § 104.35(a) (emphasis added).
- 91 *Id.* at § 104.35(b).
- 92 See, e.g., *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010) (“An organization that receives federal funds violates § 504 if it denies a qualified individual with a disability a reasonable accommodation that the individual needs in order to enjoy meaningful access to the benefits of public services.”); *K.M. ex rel. Bright*, 725 F.3d at 1102 (“...in determining whether K.M. and D.H. were denied meaningful access to the school’s benefits and services, we are guided by the specific standards of the Title II effective communications regulation. In other words, the “meaningful access” standard incorporates rather than supersedes applicable interpretive regulations, and so does not preclude K.M. and D.H. from litigating their claims under those regulations.”).
- 93 Amer. Psychol. Assoc., *Reasonable Accommodations Explained*, APA.ORG, <https://www.apa.org/pi/disability/dart/toolkit-three> (last visited Mar. 15, 2024).
- 94 *Id.*
- 95 See *Olmstead*, 527 U.S. at 603 n.14; see also *Townsend v. Quasim*, 328 F.3d 511, 518 (9th Cir. 2003) (“[P]ublic entities are not required to create new programs that provide heretofore unprovided services to assist disabled persons.”); *Roberts v. Khounphizay*, No. 18-746, 2020 WL 1154645, at \*3 (W.D. Wash. Mar. 10, 2020) (“[I]f Plaintiff had alleged that he could have received better or different treatment, his ADA and RA claims would necessary fail.”).

- 96 See 42 U.S.C. § 12182(b)(2)(a).
- 97 See *Lentini v. California Center for the Arts, Escondido*, 370 F.3d 837, 845 (9th Cir. 2004); *Steimel v. Wernert*, 823 F.3d 902, 916 (7th Cir. 2016); *Olmstead*, 527 U.S. at 607 (Stevens, J., concurring); *id.* at 615 (Thomas, J., dissenting).
- 98 See U.S. Dep't of Ed., *Dear Colleague Letter*, n.17 (Jan. 25, 2013), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html> (citing 20 U.S.C. § 1414(d)(1); 34 C.F.R. § 104.33).
- 99 See 34 C.F.R. Part 104, Subpart D.
- 100 See *id.* at § 104.35(c) (Evaluation and Placement).
- 101 See DRC Special Education Rights & Responsibilities, *supra* note 89, at 16.9 (<https://serr.disabilityrightsca.org/serr-manual/chapter-16-information-on-section-504-and-disability-based-discrimination/16-9-my-child-has-a-disability-under-section-504-what-is-her-schools-educational-obligation/>).
- 102 *Id.* at 16.5 (<https://serr.disabilityrightsca.org/serr-manual/chapter-16-information-on-section-504-and-disability-based-discrimination/16-5-what-are-some-examples-of-reasonable-accommodations-available-under-section-504-ada/>).
- 103 See Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (2018). The IDEA was previously known as the Education for All Handicapped Children Act until it was reauthorized by Congress in 1990.
- 104 See *id.*
- 105 U.S. Dep't of Ed., *About IDEA*, <https://sites.ed.gov/idea/about-idea/>.
- 106 See e.g., Council for Exceptional Children, *Understanding the Differences Between IDEA and Section 504*, Teaching Exceptional Children (2002), <http://www.ldonline.org/article/6086/>.
- 107 34 C.F.R. § 300.8.
- 108 See *id.* at § 300.34(a).
- 109 See *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458, 1467 (9th Cir. 1996).
- 110 See 34 C.F.R. § 300.34(a) (defining related services).
- 111 See *id.* at §§ 300.201, 300.600.
- 112 See *id.* at §300.28.
- 113 See Cal. Dep't of Ed., *List of School Districts*, <https://www.cde.ca.gov/re/lr/do/schooldistrictlist.asp>.
- 114 See 34 C.F.R. §§ 300.41.
- 115 See 20 U.S.C. § 1412(a)(3)(A).
- 116 See 20 U.S.C. § 1412(a)(4); 20 U.S.C. § 1414(d)(1)(A).
- 117 See 34 C.F.R. Sec. 300.320 (Definition of individualized education program).
- 118 See 20 U.S.C. § 1414(d)(1)(B).
- 119 See 34 C.F.R. § 300.301(a), (c).
- 120 See *id.* at § 300.301(c)(2).
- 121 See *id.* at § 300.304(c) ("Each public agency must ensure that— (1) Assessments and other evaluation materials used to assess a child under this part— (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer . . .").
- 122 See *id.* at § 300.300(a)(2) (parental consent for initial evaluation and options for public agency consent); *id.* at § 300.519 (appointment of a surrogate parent).
- 123 *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017); see also U.S. Dep't of Ed., *Questions and Answers (Q&A) on U.S. Supreme Court Decision Andrew F. v. Douglas County School District Re-1* (Dec. 7, 2017), <https://sites.ed.gov/idea/files/qa-andrewcase-12-07-2017.pdf>.
- 124 See *Andrew F. ex rel. Joseph F.*, 580 U.S. at 402-3.
- 125 See *id.* at 388.
- 126 See 20 U.S.C. § 1415(k)(1)(E)(i) (2004) (Manifestation Determinations); see also Pacer Center, *Manifestation Determination Meeting: Special Education Students* (2020), <https://www.pacer.org/parent/php/PHP-c285.pdf> [hereinafter Pacer Center Report].
- 127 See 20 U.S.C. § 1415(k)(1)(E)(i) (2004) (Manifestation Determinations); see also Pacer Center Report, *supra* note 126.
- 128 See 20 U.S.C. § 1415(k)(1)(F) (2004) (Determination that behavior was a manifestation).
- 129 See *id.* at § 1415(k)(1)(F)(iii) (2004).
- 130 See *id.* at § 1415(k)(1)(D) (2004).
- 131 See 34 C.F.R. § 300.114(a)(2)(i).

- 132 See *id.* at § 300.114(a)(2)(i).
- 133 See *id.* at § 300.116(e).
- 134 See DRC Special Education Rights & Responsibilities, *supra* note 89, at 7.3 (<https://serr.disabilityrightsca.org/serr-manual/chapter-7-information-on-least-restrictive-environment/7-3-what-are-the-major-legislative-provisions-of-law-underlying-the-least-restrictive-environment-requirement/>) (listing federal court decisions).
- 135 See 34 C.F.R. § 300.114(a)(2)(ii).
- 136 See DRC Special Education Rights & Responsibilities, *supra* note 89, at 7.8 (<https://serr.disabilityrightsca.org/serr-manual/chapter-7-information-on-least-restrictive-environment/7-8-what-sorts-of-things-may-i-ask-for-in-the-way-of-supplementary-aids-and-services-to-assist-my-child-in-the-regular-classroom/>); see also U.S. Dep't of Ed., Office of Special Education and Rehabilitative Services, *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions* (July 19, 2022), <https://sites.ed.gov/idea/files/qa-addressing-the-needs-of-children-with-disabilities-and-idea-discipline-provisions.pdf>.
- 137 34 C.F.R. § 300.115(a), (b).
- 138 See *id.*
- 139 See *id.*
- 140 See *id.* at § 300.116(a).
- 141 See *id.*
- 142 See 34 C.F.R. § 300.116(b). Note, however, that children are not guaranteed placement in the school closest to their homes.
- 143 *Id.* at § 300.116(c).
- 144 *Id.* at § 300.117.
- 145 See 34 C.F.R. §§ 300.107, 300.117.
- 146 See *id.* at § 300.117.
- 147 34 C.F.R. § 300.119.
- 148 *Id.* at § 300.120.
- 149 20 U.S.C. § 1412(a)(1)(A); see also 34 C.F.R. § 300.101.
- 150 See 34 C.F.R. § 300.102.
- 151 *Id.* at § 300.304(c)(1)(i); 20 U.S.C. § 1414(b)(3)(A)(i).
- 152 34 C.F.R. at § 300.304(c)(1)(ii); 20 U.S.C. § 1414(b)(3)(A)(ii).
- 153 *Id.* at § 300.322(e).
- 154 See *id.* at § 300.9.
- 155 See *id.* at § 300.503(c)(1).
- 156 See U.S. Dep't of Ed., *About IDEA*, <https://sites.ed.gov/idea/about-idea/>.
- 157 See U.S. Dep't of Ed., *Sec. 300.43 Transition Services*, <https://sites.ed.gov/idea/regs/b/a/300.43>.
- 158 See *id.*
- 159 See *Sch. Comm. of Town of Burlington, Mass v. Dep't of Ed. of Mass.*, 471 U.S. 359, 370 (1985); see also 34 C.F.R. § 300.148.
- 160 See *Sch. Comm. of Town of Burlington, Mass v. Dep't of Ed. of Mass.*, 471 U.S. at 369-70.
- 161 See Terry Jean Seligmann & Perry A. Zirkel, *Compensatory Education for Idea Violations: The Silly Putty of Remedies?*, 45 URB. LAW. 281, 305, n. 11 (2013).
- 162 *Id.*; *Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 523-24 (D.C. Cir. 2005).
- 163 See *Reid ex rel. Reid*, 401 F.3d at 523-24.
- 164 Seligmann, *supra* note 162, at 302.
- 165 See 42 U.S.C. §§11431-11435; see also National Association for the Education of Homeless Children and Youth, *The Most Frequently Asked Questions on the Educational Rights of Children & Youth in Homeless Situations* (Oct. 2017), [https://naehcy.org/wp-content/uploads/2018/02/2017-10-16\\_NAEHCY-FAQs.pdf](https://naehcy.org/wp-content/uploads/2018/02/2017-10-16_NAEHCY-FAQs.pdf).
- 166 See U.S. Dep't of Ed., *Education for Homeless Children and Youths Program Non-Regulatory Guidance: Title VII-B of the McKinney-Vento Homeless Assistance Act, as amended by the Every Student Succeeds Act*, 1-2 (last updated Mar. 2017), <https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716updated0317.pdf>.
- 167 See 42 U.S.C. § 11434a (2) (defining the term "homeless children and youth").
- 168 See *id.* at § 11432(g)(3)(C)(i).
- 169 See *id.* at §§ 11432(g)(1)(J)(iii), (g)(3)(A)-(B).
- 170 See *id.* at §§ 11432(g)(1)(J)(ii), (g)(6).
- 171 National Center for Homeless Education at SERVE, *Best Practices in Homeless Education Brief Series Supporting the Education of Immigrant Students Experiencing Homelessness* (Dec. 2017), <https://nche.ed.gov/wp-content/>



- [up-loads/2018/10/imm\\_lia.pdf](#).
- 172 *Id.*
- 173 See Pub. L. 88-352, § 601, 78 Stat. 252 (1964) (codified at 42 U.S.C. § 2000d) (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).
- 174 *Lau v. Nichols*, 414 U.S. 563, 566-67 (1974); see also U.S. Dep’t of Just. & U.S. Dep’t of Ed., *Dear Colleague Letter: English Learner Students and Limited English Proficient Parents*, 1 (Jan. 7, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf> [hereinafter DOJ & ED Dear Colleague Letter].
- 175 Pub. L. No. 93-380, § 204(f), 88 Stat. 484, 515 (1974) (codified at 20 U.S.C. § 1703(f)).
- 176 DOJ & ED Dear Colleague Letter, *supra* note 174, at 5-6 (citing *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981)).
- 177 See *Castañeda v. Pickard*, 648 F.2d at 1009-10.
- 178 U.S. Dep’t of Justice & U.S. Dep’t of Ed., *Factsheet: Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs*, p. 1, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>; 20 U.S.C. §§ 6312(g)(1) (Title I), 7012(a) (Title III).
- 179 *Id.*
- 180 DOJ & ED Dear Colleague Letter, *supra* note 174, at 10.
- 181 *Id.*
- 182 *Id.*
- 183 *Id.* at 12, n.35.
- 184 *Id.* at 14.
- 185 *Id.* at 12.
- 186 *Id.* at 18.
- 187 *Id.* at 37.
- 188 *Id.* at 23.
- 189 *Id.*; see also Cong. Hispanic Caucus Inst., *CHCI White Paper: The Over-and-Under-Identification of English Language Learners into Special Education*, April 2011, <https://chci.org/wp-content/uploads/2017/11/20114261234294536-TheOver-and-Under-IdentificationofEnglishLanguageLearnersintoSpecialEducation.pdf>.
- 190 HHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311, 47313 (Aug. 8, 2003) [hereinafter HHS Guidance]; see 45 C.F.R. § 80.3(b)(2).
- 191 HHS Guidance, *supra* note 190, at 47313.
- 192 *Id.* at 47313 n.2 (“The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.”).
- 193 Office of Refugee Resettlement, *Unaccompanied Children: About the Program* (Jan. 22, 2024), <https://www.acf.hhs.gov/orr/programs/ucs/about>.
- 194 See *Letter to ORR from Advocates Regarding Language Access for Children in ORR Custody* (Oct. 31, 2022), [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/advocacy\\_letter\\_access\\_to\\_language\\_orr.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/advocacy_letter_access_to_language_orr.pdf).
- 195 See *Flores Settlement*, *supra* note 4.
- 196 See e.g., *Flores v. Barr*, No. 2:85-cv-04544-DMG (C.D. Cal. April 3, 2020); Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites [Dkt. 1256-1] (Aug. 9, 2021), <https://youthlaw.org/sites/default/files/2022-10/1256-1%20Proposed%20Settlement.pdf>; Order re Plaintiffs’ Motion to Enforce Settlement as to “Title 42” Class Members [Dkt. 976] (Sept. 4, 2020), <https://youthlaw.org/sites/default/files/2022-03/976-Flores-Order-re-Hotel-MTE.pdf>; Order re Plaintiffs’ Motion to Enforce Class Action Settlement [Dkt. 470] (July 30, 2018), [https://youthlaw.org/sites/default/files/wp\\_attachments/Flores-MTE-order.pdf](https://youthlaw.org/sites/default/files/wp_attachments/Flores-MTE-order.pdf); see also National Center for Youth Law, *Flores v. Reno Case Page*, <https://youthlaw.org/cases/Flores-v-reno> (public *Flores* case docket).
- 197 See Homeland Security Act of 2002, P.L. 107-296 (2002), [https://www.dhs.gov/sites/default/files/2023-11/23\\_0930\\_HSA-2002-updated.pdf](https://www.dhs.gov/sites/default/files/2023-11/23_0930_HSA-2002-updated.pdf).
- 198 *Flores Settlement*, *supra* note 4, at Ex. 1(A)(3).

- 199 *Id.* at Ex. 1(A)(4).
- 200 *Id.*
- 201 *Id.*
- 202 *Id.*
- 203 *Id.*
- 204 See *Lucas R., et al. v. Alex Azar, et al.*, Case No. CV 18-5741-DMG, Order re Defendants’ Motion to Dismiss [101] and Plaintiffs’ Motion for Class Certification [97], [Dkt. 126] (C.D. Cal. Nov. 2, 2018), [https://youthlaw.org/sites/default/files/wp\\_attachments/Order-Granting-Class-Certification-Lucas-R.pdf](https://youthlaw.org/sites/default/files/wp_attachments/Order-Granting-Class-Certification-Lucas-R.pdf).
- 205 See *id.*, Preliminary Injunction [Dkt. 391] (C.D. Cal. Aug. 30, 2022), <https://youthlaw.org/sites/default/files/2022-08/Docket%20No%20391.pdf>; see also National Center for Youth Law, *Practice Advisory: Preliminary Injunction in Lucas R. v. Becerra* (Sept. 2022), <https://youthlaw.org/resources/practice-advisory-preliminary-injunction-lucas-r-v-becerra>.
- 206 See National Center for Youth Law, *Lucas R. v. Azar Settlement Notices*, <https://youthlaw.org/lucas-r-v-azar-settlement-notices> (listing notices for Settlements regarding the Psychotropic Medications, Disability, and Legal Representation Claims).
- 207 See *Lucas R.* Disability Settlement I(A) (defining “care provider”), <https://youthlaw.org/sites/default/files/2023-11/Disability%20Rights%20Settlement.pdf> [hereinafter *Lucas R.* Disability Settlement].
- 208 See *id.* at I(D) (defining “disability” and citing 29 U.S.C. § 705(9)(B) (citing 42 U.S.C. § 12102)).
- 209 ORR Policy Guide, *supra* note 37, at § 3.4.2 (Initial Medical and Dental Examinations), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3>.
- 210 See *Lucas R.* Disability Settlement, *supra* note 207, at II(A)(2).
- 211 See *id.* at II(A)(2)(c).
- 212 See *id.* at II(A)(2)(d).
- 213 See *id.* at II(A)(2)(e).
- 214 See *id.* at II(B)(2).
- 215 See *id.* at II(B)(5).
- 216 See *id.* at II(B)(6).
- 217 See *id.* at II(B)(7).
- 218 See *id.* at II(B)(11).
- 219 See *id.* at II(B)(12).
- 220 See *id.* at Preamble.
- 221 See *id.* at III(E).
- 222 See *id.* at IV(C).
- 223 See *id.* at V(A).
- 224 See *id.* at V(B)(1).
- 225 See *id.* at V(B)(1).
- 226 See *id.* at V(B).
- 227 See ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>; Office of Refugee Resettlement, *The UC Manual of Procedures (UC MAP) For ORR Staff, Contractors, and Grantees, Section 3: Services*, p. 32-34, June 26, 2023, <https://immigrationlitigation.org/wp-content/uploads/2023/12/Section-3-Services.pdf>.
- 228 See Office of Refugee Resettlement, *ORR Unaccompanied Children Program Policy Guide: Record of Posting and Revision Dates*, <https://www.acf.hhs.gov/orr/policy-guidance/cunaccompanied-children-program-policy-guide-record-posting-and-revision-dates>.
- 229 See American Immigration Lawyers Association, *HHS Release Unaccompanied Child Manual of Procedures due to FOIA Litigation* (Dec. 11, 2023), <https://www.aila.org/library/hhs-releases-unaccompanied-child-manual-of-procedures-due-to-foia-litigation>.
- 230 ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>; ORR UC MAP Section 3, *supra* note 39, at 32-4.
- 231 ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>; ORR UC MAP Section 3, *supra* note 39, at 32.
- 232 ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>.

- 233 ORR UC MAP Section 3, *supra* note 39, at 32.
- 234 ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>.
- 235 *Id.*
- 236 *Id.*
- 237 *Id.*; ORR UC MAP Section 3, *supra* note 39, at 32.
- 238 See ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>.
- 239 ORR UC MAP Section 3, *supra* note 39, at 32.
- 240 *Id.* at 33, 63-64.
- 241 *Id.* at 63-64.
- 242 *Id.*
- 243 *Id.* at 33.
- 244 *Id.*
- 245 ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>.
- 246 ORR UC MAP Section 3, *supra* note 39, at 33-4.
- 247 ORR Policy Guide, *supra* note 37, at § 3.3 (Care Provider Required Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3>.
- 248 ORR UC MAP Section 3, *supra* note 39, at 32.
- 249 ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>.
- 250 *Id.* at § 3.3 (Care Provider Required Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3>.
- 251 *Id.* at § 3.3.7 (Services Related to Culture, Language, and Religious Observation), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.7>.
- 252 *Id.*
- 253 See ORR UC MAP Section 3, *supra* note 39, at 32.
- 254 ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>.
- 255 *Id.*; *id.* at § 2.8 (Release from Office of Refugee Resettlement (ORR) Custody), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.8>; ORR UC MAP Section 3, *supra* note 39, at 33.
- 256 See Office of Refugee Resettlement, Unaccompanied Children, *Key Documents – Authorization for Release of Records (Form A-5)*, <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program> [hereinafter ORR Form A-5].
- 257 See Derek W. Black, Robert A. Garda Jr. et al., *Education Law: Equality, Fairness, and Reform* (2d ed. 2016), at 2.
- 258 See Cal. Const. art. IX, § 5; see also *Vergara v. State of California*, 209 Cal. Rptr. 3d 532, 538 (2016), as modified (May 3, 2016).
- 259 See Cal. Const. art. IX, § 1.
- 260 See Cal. Ed. Code § 48200; Cal. Dep't of Ed., *School Attendance Review Boards* (Mar. 10, 2023), <https://www.cde.ca.gov/ls/ai/sb/#:~:text=California%20compulsory%20education%20law%20requires,Exam%20and%20obtained%20parental%20permission>.
- 261 See Cal. Dep't of Ed., *Unaccompanied Minors Frequently Asked Questions* (Dec. 29, 2023), <https://www.cde.ca.gov/sp/el/er/unaccompaniedminorsfaq.asp> [hereinafter Cal. ED Unaccompanied Minors FAQ].
- 262 See *id.* ("Unaccompanied minors placed in long-term foster care under HHS custody have the same educational rights as children residing in California, but they are not considered to be foster youth by the California EC.").
- 263 See Cal. Ed. Code § 48200.
- 264 See *id.* at §§ 48200, 48204(a)(5); Cal. Gov. Code § 244.
- 265 See Cal. Ed. Code §§ 48207 (hospitals), 48204(a)(1) (licensed children's institutions or foster home).
- 266 See Cal. Dep't of Ed., *District Transfers*, <https://www.cde.ca.gov/re/di/fq/districttransfers.asp> (indicating that parents and children are not guaranteed enrollment in their school of choice, or even the school closest to them). School districts have various ways of identifying a child's assigned or "resident school". See e.g., Mt. Diablo Unified School District, *School Site Locator*, <https://www.mdusd.org/schoolfinder>.
- 267 See U.S. Dep't of Justice Civil Rights Div. & U.S. Dep't of Ed. & Office for Civil Rights, *Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents*, <https://www>.

- [justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerqa.pdf](https://justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerqa.pdf) [hereinafter DOJ & ED Enrollment Rights Information].
- 268 See Office of Refugee Resettlement, *Office of Refugee Resettlement Sponsor Handbook*, 13 (May 19, 2021), <https://www.acf.hhs.gov/sites/default/files/documents/orr/FRP-8-Sponsor-Handbook-2021-05-19.pdf>.
- 269 See DOJ & ED Enrollment Rights Information, *supra* note 267.
- 270 See *id.*
- 271 See Cal. Fam. Code § 6550; see also California Bill Analysis, S.B. 592, Sen. Report (May 20, 1994).
- 272 Cal. Fam. Code § 6550(a).
- 273 See California Bill Analysis, S.B. 592, Sen. Report (May 20, 1994).
- 274 *Id.*
- 275 Cal. Fam. Code § 6550(a).
- 276 *Id.* at § 6550(h)(3).
- 277 See *id.* at § 6550; see also Updated Caregiver Affidavit FAQ.
- 278 See Cal. Fam. Code § 6550.
- 279 See Caregiver’s Authorization Affidavit, <https://www.courts.ca.gov/documents/caregiver.pdf>.
- 280 Cal. Veh. Code § 12801.9.
- 281 Cal. Fam. Code § 6552.
- 282 *Id.* At § 6550; Caregiver’s Authorization Affidavit, <https://www.courts.ca.gov/documents/caregiver.pdf>.
- 283 See Cal. ED Unaccompanied Minors FAQ, *supra* note 261; Cal. Office of Attorney Gen., *Immigration-Enforcement Actions at California Schools: Guide for Students and Families* (Apr. 2018), <https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/student-family-checklist-3-28-18.pdf> (explaining that “[i]nformation about citizenship/immigration status is never needed for school enrollment” and that anyone enrolling a child in school is not required to share information about immigration status).
- 284 See *Brennon B. v. Superior Ct. of Contra Costa Cnty.*, 513 P.3d 971 (Cal. 2022); Cal. Gov’t Code § 11135.
- 285 Cal. Ed. Code § 220.
- 286 *Id.*
- 287 See DRC Special Education Rights & Responsibilities, *supra* note 89, at 16.2 (<https://serr.disabilityrightsca.org/serr-manual/chapter-16-information-on-section-504-and-disability-based-discrimination/16-2-what-federal-and-state-laws-protect-my-child-against-disability-based-discrimination/>).
- 288 See *Brennon B. v. Superior Ct.*, 13 Cal. 5th 662, 669 (2022), *reh’g denied* (Aug. 31, 2022) (“The statutory text of the Act, its purpose and history, and our prior case law all indicate that public schools, as governmental entities engaged in the provision of a free and public education, are not ‘business establishments’ within the meaning of the Act. (Civ. Code, § 51, subd. (b).) To the contrary, they make clear that the Act was not enacted to reach this type of state action. Accordingly, we conclude that the District was not a ‘business establishment’ for purposes of the Unruh Civil Rights Act under the circumstances alleged here.”).
- 289 See *id.*
- 290 See Cal. Ed. Code § 56026.
- 291 See *id.* at § 56026(c) (listing age requirements), §§ 56333-38 (listing eligibility criteria).
- 292 See *id.* at § 56026(e).
- 293 See *id.* at §§ 56040, 56040.1.
- 294 *Id.* at § 56031(a).
- 295 *Id.* at § 56029 (defining “Referral for assessment”).
- 296 See *id.* at § 56043(a), (b).
- 297 See Cal. Gov. Code § 7579.5; Cal. Ed. Code § 56050; see also 34 C.F.R. § 300.519 (defining “Surrogate parents”).
- 298 Cal. Gov. Code § 7579.5(b).
- 299 See Cal. Ed. Code §§ 56040, 56363.
- 300 See *id.* at § 56363.
- 301 See *id.* at § 56363(b).
- 302 Children’s Health Fund, *Health Barriers to Learning: The Prevalence and Educational Consequences in Disadvantaged Children – A Review of the Literature*, 5 (Jan. 2017), <https://www.childrenshealthfund.org/wp-content/uploads/2017/01/Health-Barriers-to-Learning.pdf>.
- 303 See Cal. Dep’t of Health Care Servs., *Medi-Cal Resources*, <https://www.dhcs.ca.gov/services/medi-cal/Pages/default.aspx>.
- 304 See Covered California, *Program Eligibility by Federal Poverty Level for 2024*, <https://www.coveredca.com/pdfs/FPL-chart.pdf>.
- 305 See Cal. Dep’t of Health Care Servs., *SB 75 – Medi-Cal for All Children*, <https://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/SB75Children.aspx#:~:text=Children%20under%2019%20years%20of,they%20>



- meet%20the%20income%20standards.
- 306 *Id.*, see also Cal. Dep't of Health Care Servs., *Provider Information*, <https://www.dhcs.ca.gov/services/Medi-Cal-For-Kids-and-Teens/Pages/Provider-Information.aspx>.
- 307 See Cal. Dep't of Health Care Servs., *Member Information*, <https://www.dhcs.ca.gov/services/Medi-Cal-For-Kids-and-Teens/Pages/Member-Information.aspx>.
- 308 See Cal. Dep't of Health Care Servs., *SB 75 – Medi-Cal for All Children*, <https://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/SB75Children.aspx#:~:text=Children%20under%2019%20years%20of,they%20meet%20the%20income%20standards>.
- 309 See Cal. Dep't of Health Care Servs., *Ages 26 Through 49 Adult Full-Scope Medi-Cal Expansion*, <https://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/Adult-Expansion.aspx>.
- 310 *Id.*; see also Mary Kekatos, *California becomes first state to offer health insurance to all undocumented immigrants*, ABC NEWS (Dec. 29, 2023), <https://abcnews.go.com/Health/california-1st-state-offer-health-insurance-undocumented-immigrants/story?id=105986377>.
- 311 See Dion Burns, Danny Espinoza, Naomi Ondrasek, Man Yang, *Students Experiencing Homelessness: The Conditions and Outcomes of Homelessness Among California Students*, LEARNING POLICY INSTITUTE, 11 (June 2021), [https://learningpolicyinstitute.org/media/546/download?inline&file=Students\\_Experiencing\\_Homelessness\\_REPORT.pdf](https://learningpolicyinstitute.org/media/546/download?inline&file=Students_Experiencing_Homelessness_REPORT.pdf).
- 312 See Brett Guinan & Julien Lafortune, *Student Homelessness Rises to Pre-Pandemic Levels*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Feb. 24, 2024), <https://www.pplic.org/blog/student-homelessness-rises-to-pre-pandemic-levels/>.
- 313 Burns et al., *supra* note 312, at 13.
- 314 *Id.*
- 315 See Annika Hom, *Newcomers on the block: Immigrant children flock to SF schools*, MISSION LOCAL (Nov. 22, 2023), <https://missionlocal.org/2023/11/newcomers-on-the-block-immigrant-children-flock-to-sf-schools/> (“Though the school district doesn’t report newcomer status, Mariel Sanchez, an employee at the Mission Education Center, said a number of family liaisons at other elementary schools have asked for her help, uncharacteristically, about newcomer resources. The liaisons seemed to think their schools have enrolled a higher newcomer student population — and many of those students are homeless. Even the Mission Education Center’s newcomer population seems to be facing a higher homeless average, said Sanchez, who, on a recent school morning, passed out flyers to parents about emergency shelter. Almost half the students at Mission Education Center are without stable housing, Sanchez estimated. They ‘come with nothing,’ she said”).
- 316 See Cal. Dep't of Ed., *Educating Children and Youth Experiencing Homelessness* (Jan. 2020), <https://www.cde.ca.gov/sp/hs/cy/ehcylettertfield.asp>.
- 317 See *id.*
- 318 See *id.*
- 319 See California State Auditor, *Youth Experiencing Homelessness: California's Education System for K-12 Inadequately Identifies and Supports These Youth*, Report 2019-104 (Nov. 2019), <https://www.auditor.ca.gov/pdfs/reports/2019-104.pdf>.
- 320 *Id.* at 25, 29, 32.
- 321 *Id.* at 3.
- 322 See Cal. Dep't of Ed., *Homeless Innovative Program Toolkits*, <https://www.cde.ca.gov/sp/hs/hiptoolkits.asp>.
- 323 See *id.*
- 324 See *id.*
- 325 See National Center for Youth Law, *As California grapples with homelessness, students need support* (Mar. 7, 2024), <https://youthlaw.org/news/california-grapples-homelessness-students-need-support>.
- 326 See Cal. Dep't of Ed., *English Learners in California Schools*, <https://www.cde.ca.gov/ds/sg/englishlearner.asp>.
- 327 See Cal. Ed. Code § 313(c)(3).
- 328 Cal. Dep't of Ed., *Home Language Survey* (July 2020), <https://www.cde.ca.gov/ta/cr/documents/hls2020.pdf>.
- 329 Based on conversations with the California Department of Education, English Learner Division, Assessment Development and Administration Division on March 5, 2024 (stating that caregivers can write “Parent not available, see Caregiver Affidavit” under signature line).
- 330 Cal. Dep't of Ed., *English Language Proficiency Assessments for California (ELPAC)* (Jan. 30, 2023), <https://www.cde.ca.gov/ta/tg/ep/>.
- 331 *Id.*
- 332 DOJ & ED Dear Colleague Letter, *supra* note 174; Cal. Dep't of Ed., *The Initial ELPAC Process At-a-Glance* (Jan. 2021), <https://www.cde.ca.gov/ta/tg/ep/documents/initialelpacatglance.pdf>.
- 333 See, e.g., *English Language Proficiency Assessments for California (ELPAC)*, *Parent/Guardian Notification*,

- <https://www.elpac.org/test-administration/parent-notification/>; Oakland Unified Sch. Dist., *Steps to Reclassification for English Language Learners*, <https://www.ousd.org/Page/15007> (offering a video overview of the ELPAC in Mam); Cal. Ed. Code § 48985(a).
- 334 Cal. Ed. Code § 48985(a).
- 335 *Id.* at § 56385(a).
- 336 See Cal. Dep't of Ed., *CA Assessment Accessibility Resources Matrix*, <https://www.cde.ca.gov/ta/tg/ca/accessibilityresources.asp>.
- 337 See Cal. Dep't of Ed., *Alternate ELPAC* (Dec. 16, 2022), <https://www.cde.ca.gov/ta/tg/ep/alternateelpac.asp>; Cal. Dep't of Ed., *ELPAC Administration Student Accessibility Checklist* (Nov. 2020), [https://www.cde.ca.gov/ta/tg/ep/documents/elpac\\_stdaccesslist.pdf](https://www.cde.ca.gov/ta/tg/ep/documents/elpac_stdaccesslist.pdf).
- 338 See Cal. Dep't of Ed., *CA Assessment Accessibility Resources Matrix*, <https://www.cde.ca.gov/ta/tg/ca/accessibilityresources.asp>.
- 339 *See id.*
- 340 *See id.*
- 341 *See id.*
- 342 See Cal. Ed. Code § 313(c); Cal. Dep't of Ed., *A Parent's Guide to Understanding English Language Proficiency Assessment for California (ELPAC)* (July 2021), <https://www.cde.ca.gov/ta/tg/ca/documents/elpacpgtu.pdf>.
- 343 See Cal. Dep't of Ed., *Summative ELPAC Assessment Fact Sheet*, (Aug. 2022) <https://www.cde.ca.gov/ta/tg/ep/documents/suelpacfactsheet.pdf>.
- 344 See 20 U.S.C. § 6841(a)(5) (requiring school to report the number and percentage of English learners meeting academic standards four years after exiting an English language program); Cal. Code Regs. tit. 5, § 11304 (requiring schools to monitor the progress of students “to ensure correct classification and placement”).
- 345 See Cal. Ed. Code § 305(a)(2).
- 346 *See id.* at § 306(c)(3).
- 347 *See id.* at § 306(c).
- 348 *See id.* at § 306 (c)(1).
- 349 *See id.* at § 306 (c)(2).
- 350 Cal. Dep't of Ed., *Identification & Parent Notification Requirements* (Nov. 4, 2022), <https://www.cde.ca.gov/sp/el/t3/elparentletters.asp>.
- 351 See Cal. Ed. Code § 310(a).
- 352 See, e.g., Los Angeles Unified Sch. Dist., *Initial Parent Notification of Language Test Results and Confirmation of Program Placement* (Aug. 17, 2018), <https://www.lausd.org/cms/lib/CA01000043/Centricity/domain/22/forms/REF%2043082%20Attch%20C%20Initial%20Parent%20Notification%20Test%20Results%20Program%20Placement%20English.pdf>; Panama-Buena Vista Union Sch. Dist., *Parent Request for Language Acquisition Program*, <https://4.files.edl.io/5636/05/18/20/182605-f33c2e08-5721-4c11-be90-ed7890357645.pdf>.
- 353 *See id.*
- 354 Cal. Dep't of Ed., *Clearinghouse for Multilingual Documents (CMD): Available Translations*, <https://inet2.cde.ca.gov/cmd/translatedparentaldoc.aspx?docid=10647-10656>.
- 355 *Id.*
- 356 See Cal. Ed. Code § 48985(a).
- 357 See Cal. Dep't of Ed., *English Language Development Standards* (Sept. 7, 2022), <https://www.cde.ca.gov/sp/el/er/eldstandards.asp>.
- 358 *See id.*
- 359 Cal. Dep't of Ed., *Multilingual FAQ* (May 23, 2022), <https://www.cde.ca.gov/sp/el/er/faq.asp>.
- 360 See Cal.org, *Classroom Instruction: Questions and Answers*, [https://www.cal.org/twi/toolkit/CI/QA/lang\\_a1.htm](https://www.cal.org/twi/toolkit/CI/QA/lang_a1.htm).
- 361 See Cal. Dep't of Ed., *California Practitioners' Guide for Educating English Learners with Disabilities* (2019), <https://www.cde.ca.gov/sp/se/ac/documents/ab2785guide.pdf> (explaining the importance of the IEP team developing “IEP goals that are linguistically appropriate to ensure that English learners’ language proficiency needs are integrated in their special education services”).
- 362 See Cal. Ed. Code § 48985(a).
- 363 *See id.* at § 48985(b).
- 364 *See id.* at §§ 305, 310(a); Cal. Dep't of Ed., *Parental Notice*, <https://www.cde.ca.gov/sp/el/er/edgefaq.asp>.
- 365 See Cal. Dep't of Ed., *Parental Notice*, <https://www.cde.ca.gov/sp/el/er/edgefaq.asp>.
- 366 *See id.*
- 367 See U.S. Dep't of Ed., *Information for Limited English Proficient Parents and Guardians and for Schools and School*

- Districts that Communicate with Them*, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>.
- 368 See Cal. Ed. Code § 48985(a).
- 369 See 5 C.C.R. § 3040(a).
- 370 Office of Refugee Resettlement, *ORR Unaccompanied Children Program Policy Guide: Guide to Terms* (Mar. 21, 2016), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-guide-terms>.
- 371 45 C.F.R. § 400.112(a) (“In providing child welfare services to refugee children in the State, a State must provide the same child welfare services and benefits to the same extent as are provided to other children of the same age in the State under a State’s title IV-B plan.”).
- 372 See Cal. Welf. & Inst. Code § 16001.9 (Foster Youth Bill of Rights); Cal. Dep’t of Ed., *Foster Youth Education Rights*, <https://www.cde.ca.gov/ls/pf/fy/fyedrights.asp>.
- 373 Burns et al., *supra* note 312, at 13; Alliance for Children’s Rights, *School Stability for California’s Youth in Foster Care: A Review of Laws and Promising Local Practices* (Dec. 2020), [https://co-invest.org/wp-content/uploads/ACR\\_SchoolStabilityReport.pdf](https://co-invest.org/wp-content/uploads/ACR_SchoolStabilityReport.pdf).
- 374 See Cal. Ed. Code § 48853; 48853.5.
- 375 See *id.* at § 48853.5(e).
- 376 See *id.* at § 49069.5; Cal. Welf. & Inst. Code § 16001.9(a)(27).
- 377 See Cal. Ed. Code § 48645.5; see also Alliance for Children, *California’s Partial Credit Model Policy: Improving the Educational Outcomes of Foster Youth*, [https://allianceforchildrensrights.org/wp-content/uploads/2013/12/PCM\\_WEB\\_April2014.pdf](https://allianceforchildrensrights.org/wp-content/uploads/2013/12/PCM_WEB_April2014.pdf).
- 378 See Cal. Ed. Code § 51225.1(a) (“migratory child” defined in Education Code § 54441, “participating in a newcomer program” defined in Education Code § 51225.2).
- 379 See *id.* at § 66025.9(a); Cal. Welf. & Inst. Code § 16001.9(a)(27).
- 380 California Foster Youth Education Task Force, *California Foster Care Education Law Fact Sheets* (Feb. 2014), [https://www.courts.ca.gov/documents/BTB\\_23\\_50\\_11.pdf](https://www.courts.ca.gov/documents/BTB_23_50_11.pdf).
- 381 U.S. Conf. of Cath. Bishops, *The United States Unaccompanied Refugee Minor Program: Guiding Principles and Promising Practices* (2013), <https://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/united-states-unaccompanied-refugee-minor-program-guiding-principles-and-promising-practices.pdf>.
- 382 As of February 2024, the two Out-of-Network programs in California permit the unaccompanied children in their facilities to attend public school. The analysis for “Out-of-Network RTC” in this chart is based on the assumption that children are attending public school. If children are not attending public school, then the information in the chart does not apply.
- 383 ORR UC MAP Section 3, *supra* note 39, at 63-4 (“Children in a foster home attend state-regulated public school or other state-licensed educational programs in the local school district of the foster and/or group home during the academic year.”).
- 384 Cal. ED Unaccompanied Minors FAQ, *supra* note 261 (“Unaccompanied minors placed in long-term foster care under HHS custody have the same educational rights as children residing in California, but they are not considered to be foster youth by the California EC.”).
- 385 ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>.
- 386 ORR UC MAP Section 3, *supra* note 39, at 32.
- 387 ORR Policy Guide, *supra* note 37, at § 3.3 (Care Provider Required Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3>.
- 388 *Id.* at § 3.3.7 (Services Related to Culture, Language, and Religious Observation), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.7>.
- 389 ORR UC MAP Section 3, *supra* note 39, at 32.
- 390 ORR Policy Guide, *supra* note 37, at § 3.3.7 (Services Related to Culture, Language, and Religious Observation), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.7>.
- 391 *Id.* at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>.
- 392 ORR UC MAP Section 3, *supra* note 39, at 33-4.
- 393 See HHS Guidance, *supra* note 190, at 47311, 473 n.2 (“The policy guidance guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients

- may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.”).
- 394 See *Letter to ORR from Advocates Regarding Language Access for Children in ORR Custody* (Oct. 31, 2022), [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/advocacy\\_letter\\_access\\_to\\_language\\_orr.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/advocacy_letter_access_to_language_orr.pdf).
- 395 See 34 C.F.R. Part 104; Subpart D.
- 396 See *Lucas R. Disability Settlement*, *supra* note 207, at II(A)(2).
- 397 See *id.* at II(A)(2)(e).
- 398 See *id.* at II(A)(2)(d).
- 399 See 34 C.F.R. Part 104; Subpart D.
- 400 See 42 U.S.C. § 12182(b)(2)(a).
- 401 See *Lucas R. Disability Settlement*, *supra* note 207, at II(B)(2).
- 402 See *id.* at II(B)(7).
- 403 45 C.F.R. § 84.4(b)(2); see *Olmstead*, 527 U.S. 581 (holding that the ADA requires placing patients with mental disabilities in “integrated settings” when they are medically cleared for such settings, they express a desire to be placed in such settings, and there are available resources for their transfer. The Court also explained that a state can take financial resources into account when determining whether patients are entitled to community resources).
- 404 See 42 U.S.C. Sec. 12182(b)(2)(a).
- 405 See *Lucas R. Disability Settlement*, *supra* note 207, at Preamble.
- 406 See *id.* at IV(C).
- 407 See ORR Policy Guide, *supra* note 37, at § 1.4.7 (Requesting Reconsideration of a Restrictive Placement), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.4.7>; see also National Center for Youth Law, *Practice Advisory: Preliminary Injunction in Lucas R. v. Becerra* (Sept. 2022), <https://youthlaw.org/resources/practice-advisory-preliminary-injunction-lucas-r-v-becerra>.
- 408 See Office of Refugee Resettlement, *The UC Manual of Procedures (UC MAP) For ORR Staff, Contractors, and Grantees, Section 1: Placement in ORR Care Provider Facilities*, 64-70 (June 21, 2023), <https://immigrationlitigation.org/wp-content/uploads/2023/12/Section-1-Placement-in-ORR-Care-Provider-Facilities.pdf>.
- 409 ORR UC MAP Section 3, *supra* note 39, at 33-4.
- 410 ORR Policy Guide, *supra* note 37, at § 3.3.5 (Academic Educational Services), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.5>.
- 411 ORR UC MAP Section 3, *supra* note 39, at 33.
- 412 Office of Refugee Resettlement, *The UC Manual of Procedures (UC MAP) For ORR Staff, Contractors, and Grantees, Section 2: Safe and Timely Release from ORR Care*, pp. 93-4 (July 21, 2023), <https://immigrationlitigation.org/wp-content/uploads/2023/12/Section-2-Safe-and-Timely-Release-from-ORR-Care.pdf> [hereinafter ORR UC MAP Section 2].
- 413 See ORR Form A-5, *supra* note 256.
- 414 Cal. ED Unaccompanied Minors FAQ, *supra* note 261 (“Unaccompanied minors placed in long-term foster care under HHS custody have the same educational rights as children residing in California, but they are not considered to be foster youth by the California EC.”).
- 415 See *id.*
- 416 See *Lucas R. Disability Settlement*, *supra* note 207, at II(A)(2).
- 417 See *id.* at II(B)(2).
- 418 See 34 C.F.R. § 104.35(a); 20 U.S.C. § 1412(a)(3)(A).
- 419 Cal. Ed. Code § 56029 (defining “Referral for assessment”).
- 420 See *id.* at § 56043(a), (b).
- 421 See Cal. Gov. Code § 7579.5; Cal. Ed. Code § 56050; see also 34 C.F.R. § 300.519 (defining “Surrogate parents”).
- 422 Cal. Gov. Code § 7579.5(b).
- 423 See Cal. Ed. Code § 33315(a)(1) (“The Uniform Complaint Procedures shall apply to all of the following: . . . Educational rights of foster youth pursuant to Sections 48853, 48853.5, and 49069.5, and graduation requirements for foster youth, homeless youth, and other youth pursuant to Section 51225.1.”).
- 424 See Cal. ED Unaccompanied Minors FAQ, *supra* note 261 (“Unaccompanied minors placed in long-term foster care under HHS custody have the same educational rights as children residing in California, but they are not considered to be foster youth by the California EC.”).
- 425 U.S. Dep’t of Justice, U.S. Dep’t of Ed., & U.S. Dep’t of Health & Human Servs., *Information on the Rights of Unaccompanied Children to Enroll in School and Participate Meaningfully and Equally in Educational Programs*, 2,

<https://www2.ed.gov/about/overview/focus/rights-unaccompanied-children-enroll-school.pdf>.

426 See ORR Form A-5, *supra* note 256.

427 See ORR UC MAP Section 2, *supra* note 412, at 93-4.

428 See 34 C.F.R. § 104.35(a); 20 U.S.C. § 1412(a)(3)(A).

429 Cal. Ed. Code § 56029 (defining “Referral for assessment”).

430 DOJ & ED Dear Colleague Letter, *supra* note 174, at 23.

431 See Cal. Ed. Code §§ 56043(a), (b).

432 See Cal. Gov. Code § 7579.5; Cal. Ed. Code § 56050; see also 34 C.F.R. § 300.519 (defining “Surrogate parents”).

433 Cal. Gov. Code § 7579.5(b).

434 DOJ & ED Dear Colleague Letter, *supra* note 174, at 12.

435 See e.g., Cal. Dep’t of Ed., *The Correction of Classification Process: At A Glance* (Apr. 2022), <https://www.cde.ca.gov/ta/tg/ep/documents/correctelpacatglance.pdf>.

436 See Cal. Ed. Code § 310.

437 See *id.*











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