

May 3, 2023

Children's Residential Program, Policy Unit
California Department of Social Services
RE: Comments on STRTP ILS Version 5
Sent Via Email: CRPOPolicy@dss.ca.gov

Youth and Education Law Project

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To Whom it May Concern:

Thank you for the opportunity to comment on proposed interim regulations. The Youth and Education Law Project, in collaboration with the Youth Law Center, proposes amendments and modifications to the Short-Term Residential Treatment Program ("STRTP") Licensing Standards that reflect foster youths' educational rights and ensure facility compliance with those rights. Attached are proposed amendments in the recommended feedback template. We have included below the legal support for the proposed changes.

The Youth and Education Law Project (YELP) is part of the Mills Legal Clinic at Stanford Law School. YELP represents students and families in education cases in addition to engaging in policy advocacy, research, litigation and other educational equity efforts. In collaboration with the Youth Law Center, we have been researching educational access for students in STRTPs.

Educational Rights Afforded to California Foster Youth

All children in California are afforded educational rights that must be followed, irrespective of their residential placement. A STRTP must facilitate a child's placement in the appropriate educational setting when a child enters the facility. Upon a child's admission to a STRTP, the child is entitled to remain in their school of origin.¹ However, the child's attendance at that school of origin may not be in their best interest. If that is the case, the child's right to attend the school of origin can be waived by a parent, guardian, or another person holding the right to make educational decisions for the child.² If the school of origin right is waived, the child is then entitled to attend the public school in the attendance area in which the facility resides (i.e. "local educational agency or LEA").³ The right to attend the local school can only be waived if both the child and the educational decision maker for the child explicitly agree in writing to an alternative to classroom instruction.⁴ Then, and only then, can a STRTP provide an alternative educational program, such as online school or independent study. No child can be required to participate in independent study if they do not waive their right to attend their school of origin or local school.⁵

¹ Ed. Code § 48853.5(d)(1)-(3).

² Ed. Code § 48853.5(d)(5).

³ Ed. Code § 48853.5(d)(5).

⁴ Ed. Code § 51747(c)(8)(A).

⁵ Ed. Code § 51747(c)(7).

In the case of foster youth, these educational guarantees and any subsequent waivers of them are sometimes weakened by their changing home environments and placements. The transition from one school or school district to another makes these youth particularly susceptible to violations of their educational rights. Despite the delivery of education services largely falling within the jurisdiction and oversight of county and school district education authorities, STRTPs have a duty to ensure the children and youth in their programs have access to these services without burden. Children and youth in the care of an STRTP are afforded the same school of origin and “local school” rights no matter their geographic location. STRTPs are at the center of this educational decision making for foster youth—the facility is the entity enrolling a child in school. Once a foster youth is moved to a STRTP, the resulting steps taken by the facility to deliver educational opportunities are critical not only for child wellbeing, but also legal compliance. A school district cannot honor a foster youth’s rights to an appropriate education if a STRTP fails to enroll the children and youth in their care and to transport them accordingly.

STRTPs face a unique choice in the provision of youth education: they can either enhance a resident’s access to their educational rights and services or undermine it. The STRTP licensing standards, as currently drafted, offer far too many opportunities for these facilities to undermine the legal rights to which the children and youth in their care are entitled. We recommend changes to the interim regulations to strengthen and support the educational rights of young people in foster care while placed at STRTPs.

Violations of School Choice in the STRTP Environment

A. The Educational and Social Harm to Foster Youth

Our comments are derived from legal research and research related to the education that youth are offered at various STRTPs. We want to provide an example of the challenges youth face in having their educational rights protected and the harm that can result.

During a Stanford Youth and Education Law Project investigation of Koinonia, a STRTP in Placer County, YELP found multiple violations of students’ rights under the California Education Code and those of special education students with Individualized Educational Programs (“IEPs”). The Koinonia program in Placer County unilaterally places all of its residents in an online charter school at their administrative offices. Public records requests of Koinonia’s approved program plan, in addition to the program’s own website, show that all residents are required to participate in an online independent study program at the STRTP’s administrative office. The use of this online educational placement without the consultation of key stakeholders and rights holders raises serious questions about quality and legality. Koinonia wrongly assumes that all students in their facility have waived the educational rights owed to them and consent to online independent study. On its face, this unfettered decisionmaking by STRTP facility managers and employees violates the California Education Code, the Welfare and Institutions Code, and federal and state protections for

students eligible for special education. Nevertheless, Koinonia’s Program Plan was approved despite failing to comply with state and federal law. Improvements to the Licensing Standards will ensure that facilities do not secure approval unless and until they show compliance with the laws that protect students’ educational rights.

In addition to a deprivation of their legal rights, this deprivation of school choice and access to public education is devastating to the social development of foster youth. Studies show that for foster youth, “certain social environments, often schools, also serve as a place where particular talents or competencies [are] encouraged.”⁶ For foster youth, in-person schooling often serves as a pivotal environment to escape the variety of stressors they confront on a daily basis. This compulsory-like online education, found in STRTPs like Koinonia, only exacerbates the lack of social connection and isolation facing foster youth.

B. The Factors Perpetuating the Harm

Currently, the proposed regulations do not provide robust educational protections within the STRTP licensing application and approval process. Without internal guidance and specific licensing requirements for these facilities, counties cannot create adequate mechanisms to ensure compliance with federal and state education law.

Public Records Act requests to CDSS demonstrate that the Community Care Licensing Division has neither internal guidance regarding STRTP compliance with Ed. Code § 48853 nor guidance on best practices for providing educational services in the STRTP environment. Currently, all that is required of STRTPs is a brief statement on educational services and remediation in the Program Statement required upon application. There is no requirement for additional information on how the facility plans to protect the fundamental right to a high-quality education as guaranteed by the California Constitution.

The interim licensing standards for STRTPs fail to adequately address the educational needs of foster youth. Without a detailed set of obligations required to obtain licensing and renewal, these facilities are operating in the dark—and often hindering access to legally-guaranteed educational pathways.

Reforming the STRTP Interim Licensing Standards Is the Necessary Step Forward

A. Ensuring the Educational Rights of Youth in Foster Care Placed in STRTPs

Without clear licensing standards on educational rights in STRTPs, foster youth are vulnerable to rights deprivation. The Foster Youth Bill of Rights included in the Welfare and Institutions Code enumerates the right “[t]o attend school, to remain in the child’s school of origin, to immediate enrollment upon a change of school, to partial credits for any coursework completed, and to priority enrollment in preschool, afterschool programs, a

⁶ Michael Hass et al. *Turning Points and Resilience of Academically Successful Foster Youth*, 44 Children and Youth Services Review, 387 (2014).

California State University, and each community college district, and to receive all other necessary educational supports and benefits, as described in the Education Code.”⁷ This explicit declaration will not be realized for young people when the facilities responsible for ensuring foster youth’s access to these rights are unaware of these protections, unclear on how to fulfill them, and not held accountable for non-compliance.

B. Proposals to Protect Foster Youth’s Educational Rights and Ensure STRTP Compliance

Our proposed amendments to Version 5 of the Short-Term Short-Term Residential Therapeutic Program Interim Licensing Standards have three objectives: 1) to outline the federal and state education law and protections applicable to foster youth, 2) to better educate licensing authorities on the facility provisions and behaviors necessary to ensure those rights/protections, and 3) to inform facilities of their duties to support foster youth in their educational journeys.

a. An Expanded Personal Rights Section: Proposed Subsections 35 and 35.1

The anchor to many of our proposed amendments is an expansion to Section 87072 on Personal Rights, which clearly outlines the layers of school choice rights and disability protections afforded to foster youth. It is difficult to accurately summarize this sequence of rights without an explicit multi-step discussion of when certain rights attach and how they can be waived. These rights are nested within multiple sections of the California Education Code and relevant federal statutes like the Individuals with Disabilities Education Act (IDEA); our proposed amendment outlines them in a digestible format for all STRTP stakeholders. Many of the actors involved in the licensing of STRTPs are likely unfamiliar with the complex network of legal rights in education, making this amendment that much more necessary. There is a stark difference between recognizing that federal and state education laws apply to foster youth and understanding what this means in practice and for effective oversight and accountability.

As such, we ask CDSS to incorporate the entirety of our proposed amendment to Section 87072 to best inform our additional changes to other licensing standard sections.

b. Other Amendments Impacting a Child’s Education

Our other proposed amendments rely on the Personal Rights section discussed above to outline the responsibilities of the STRTP facilities. If the STRTP unilaterally decides to place any or all children and youth in their care in in-facility online school, those children are denied their educational rights and, further, the local school district does not have the ability to serve the student as the law requires. These changes are outlined below and described in detail in the attached feedback chart:

⁷ California Foster Care Ombudsperson, The Foster Youth Bill of Rights (2020).

1. **87001 Definitions:** Inclusion of an educational rights definition to clarify the duties of STRTPs in foster youth education.
2. **87022.1 Program Statements:** Requirement for program statements to include plans for the immediate enrollment of foster youth in an appropriate school to ensure compliance with state and federal law.
3. **87037 Closure Plans:** Upon closure of a facility, a requirement to provide information on the state of educational placement, education waivers, and IEPs and assessments, if applicable.
4. **87065 Personnel Requirements:** Designation of an educational liaison to protect the educational rights of residents.
5. **87065.1 Supervision, Evaluation, and Training Requirements:** Addition of training on compliance with state and federal law governing a child's educational placement and related services, including any applicable disability protections.
6. **87065.2 Personnel Duties:** Outline of the responsibilities delegated to the facility's educational liaison.
7. **87068.2 Needs and Services Plan:** Requirement that the needs and services plan include the child's educational needs, which include related services and any applicable disability protections.
8. **87070 Children's Records:** Outline of what a child's facility records should include pertaining to educational services and placements.

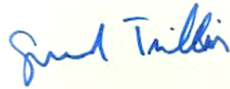
Not only will these additions and changes help licensing authorities easily recognize when foster youths' rights are susceptible to violation, they will deliver clarity to the facility managers and staff tasked with caring for foster youth and ensuring that they receive a high quality education while at an STRTP and do not fall behind or have their education disrupted.

C. Additional Offers of Support/Suggestion for Compliance Checklist

We understand that implementation is critical to making good policies work for children and youth. To that end, we offer our assistance in creating sample forms that STRTP facilities could use to support the educational rights of young people. Facility documentation should include compliance checklists to ensure that children's educational rights are being respected. For example, a form should exist that requires the educational liaison to indicate whether the child is attending the school of origin, and if not, why. The form should then prompt the liaison to indicate whether the child is attending the local school, and if not, why and whether a waiver has been completed by the child and their educational decision maker. We offer our services to draft such form language.

We appreciate the opportunity to comment and look forward to working with you in the future.

Sincerely,



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