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DISCLAIMER:

The contents of this Toolkit are not all inclusive; the information contained within is meant to provide an overview of the California laws affecting foster youth in the public school system.

The information cited is from published laws and regulations, program policies and guidelines, etc., in effect at the time of publication. Federal and state laws can change at any time. Where possible, primary sources (and weblinks) are provided.

This publication provides general information related to the law and designed to help users cope with the educational needs of the foster youth they may work with. This publication is not for the purpose of providing legal advice. While we go to great lengths to make sure that our information is accurate and useful, we recommend that you consult a lawyer if you want legal advice with respect to any particular issue or problem.



FOSTERING EDUCATIONAL SUCCESS THROUGH SCHOOL STABILITY

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FOSTERING EDUCATIONAL SUCCESS THROUGH SCHOOL STABILITY

School is one of the few places where children whose lives are in crisis may maintain a sense of normality and predictability. We have known for many years that children in foster care struggle academically when compared to the general student population. Maintaining school stability is one of the simplest ways to reduce this disparity. By allowing children in foster care to attend their school of origin, we enable them to remain connected to consistent and supportive adults who already know them, their learning styles and needs. They are able to remain connected to their peers, friends, and community and are provided a true opportunity to succeed academically.¹

Yet, the unfortunate reality is that **California children in foster care attend an average of nine different schools by age 18.**² As a result, we see a negative impact on academic achievement and dropout rates for foster youth. Highly mobile children often miss large portions of the school year due to inefficient transfers; lose academic credit due to moves mid-semester; and have incomplete education records due to missing transcripts, assessments, and attendance data.³ Such systemic problems often disrupt or undermine a foster youth student's ability and motivation to achieve. Every time a child is moved to a new school, he or she loses four to six months of educational attainment.⁴

California law provides protection for children and youth in foster care to reduce the harmful impact of school changes. This guide is intended to offer tools to social workers, lawyers and caregivers to protect foster youth rights and to ensure school stability for students living in foster care.

¹See CA Foster Youth Education Task Force, School Stability Special Topic Group White Paper on School Stability, Sept. 28, 2012 available at <http://fosteredconnect.org/resource/3366>.

²Kathleen Kelly, The Education Crisis for Children in the California Juvenile Court System, 27 Hastings Const. L.Q. 757, 757—73 (2000).

³Lois Weingberg et al. (May 2002) citing J. Eckenrode, M. Land, and J. Brathwaite, Mobility as a Mediator of the Effects of Child Maltreatment on Academic Performance, 66 Child Development, 1130, 1130-42 (1995).

⁴Homes for the Homeless and the The Institute for Children and Poverty, Homeless in America: A Children's Story- Part One (New York NY: 1999).

Providing School Stability when the Child Welfare or Probation Department is contemplating a home change that may cause a school change:

1 When a youth in foster care changes home placements, does the youth also have to change schools?

No. At the initial detention or placement, or any subsequent change in placement of a foster child, the local educational agency serving the foster child shall allow the foster child to continue his or her education in the school of origin for the duration of the jurisdiction of the court. EC § 48853.5(e)(1).

2 Who is a “foster child” for the purposes of the school of origin right?

These school rules apply to a “foster child.” California law broadly defines a “foster child” to mean any child who is the subject of a petition filed in juvenile dependency or delinquency court, regardless of whether the child has been removed from his or her home. (A foster child is “a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.”) EC § 48853.5(a).

A FOSTER YOUTH IS UNDER COURT SUPERVISION AND HAS BEEN PLACED IN VARIOUS SETTINGS INCLUDING, BUT NOT LIMITED TO:

- County Shelter/Receiving home
- Court Specified Home
- Foster Family Agency Certified Home
- Foster Family Home
- Group Home
- Guardian with Dependency
- Non-Foster Care placement
- Relative/NREFM HOME
- Living with parent(s) and under court supervision
- Out-of-State Special Education Placements

3 Does the definition of child include children subject to the jurisdiction of delinquency court?

Yes. The definition of a child in foster care includes children subject to a petition filed under Section 602 of the Welfare and Institutions Code, which is the Code section for students involved with juvenile delinquency proceedings. Please note, this definition of foster child, however, is under review by the Legislature and may be subject to change in the near future.

A child in the juvenile justice system is a foster child if the child has been made a ward of the court under WIC § 602 and the court has ordered that he/she be placed in one of the following:

- 1) the approved home of a relative;
- 2) the approved home of a non-relative, extended family member, which is defined as “any adult caregiver who has an established familial or mentoring relationship” with the child, which “may include relatives of the child, teachers, medical professionals, clergy, neighbors, and family friends”;
- 3) a suitable licensed community care facility (frequently referred to as a “group home”); or
- 4) a suitable licensed foster family home or certified family home (frequently referred to as a “foster home”).

The court order placing a child into one of these options is commonly referred to as a “suitable placement order”. Cal. Welf. & Inst. Code § 927.

4 What is a school of origin?

A foster child’s school of origin can either be the school that the foster child attended when s/he was permanently housed or the school in which the foster child was last enrolled while in foster care. If there is another school that the foster child is connected to and attended in the last 15 months, that school may also be deemed the school of origin. EC § 48853.5(e). The youth, the educational rights holder, and the foster youth liaison of the school of origin district determine whether a school qualifies as a “school of origin” and whether it’s in the youth’s best interest to attend.

5 Does the youth’s social worker or probation officer decide whether the student remains in the school of origin?

No. The educational rights holder, the foster youth, in consultation with the foster youth liaison make the decision whether it is in the child’s best interest to waive the child’s right to continue attending the school of origin. EC § 48853(e)(6).

AB 490 does not define the child welfare agency’s or probation department’s role in determining whether a child should continue in her school of origin. The child welfare agency or probation department, however, has control over where the child lives, which often determines whether the youth may attend his/her school of origin. When a placing agency decides the most appropriate place for a child to live, the law requires it to consider the placement’s proximity to the child’s present school and the impact that the placement would have on the child’s educational stability. WIC § 16501.1(c).

6 May the youth have more than one school of origin?

Yes. So long as the school meets one or more of the definitions of a school of origin, it may be considered a school of origin. For example, if the student attended school C ten months ago (and still feels connected to this school), recently left school B two months ago, and now attends school A, both school C and school B could be considered a school of origin.

7 May a youth who still lives with his/her parents have a right to remain in a school of origin?

Yes, so long as that youth is subject to a 300 or 602 petition of the Welfare and Institutions Code. Children who have switched schools due to a placement change but who have been returned to a parent's home while under the Juvenile Court's jurisdiction are entitled to these protections. For example, if a child was removed from his or her parents' care, placed in foster care for six months, and then returned to the care of his or her parents, that child still has a right to attend his/her school of origin (either the school attended while in foster care or the one attended while permanently housed with the parents).

8 Must the placing agency consider the new home's proximity to the school of origin?

Yes. When considering whether to place a youth in a new home, the placing agency must consider a new home's proximity to the school of origin. WIC § 16501.1(c).

In making out-of-home placement decisions, the placing agency must also consider the number of school transfers the child has previously experienced and the child's school matriculation schedule. WIC § 16501.1(c)(4). The case plan must include assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement. WIC § 16501.1(c). In addition, EC § 48850(a) requires placing agencies to collaborate with other parties in order to maintain stable school placements, and opportunity to be educated in the least restrictive educational environment necessary to achieve academic progress. EC § 48850(a).

9 What if the proposed home change comes near the end of the school year?

The placing agency must make a diligent effort to avoid, delay, or postpone transfers that would likely result in the pupil transferring schools during the academic school year, semester, or term.

10 Does the child still have the right to attend his/her school of origin after the court case is dismissed?

Yes. If the foster child's case is closed prior to the end of an academic year, the foster child must be allowed to continue to attend the school of origin through the "duration of the academic school year." EC § 48853.5(e)(2). If the student is in high school, s/he may attend the school of origin until graduation. EC § 48853.5(e)(3)(A).

11 Must the social worker notify the educational rights holder and child's attorney if the child will probably change schools?

Yes, the social worker or probation officer must notify the court, the child's attorney, and the educational rights holder or surrogate parent, of the proposed placement decision, no more than one court day after making the placement decision. CRC 5.651(e)(1)(A).

12 Must the foster youth liaison provide a written statement explaining why waiving the school of origin right is in the minor's best interest?

Yes. Before making any recommendation to move a foster child or youth from his or her school of origin, the educational liaison must provide the youth and the educational rights holder for youth with a written recommendation that explains how the recommendation serves the foster youth's best interest as provided in Education Code section 48853.5(e)(7). CRC 5.651(b)(1)(C)(ii).

13 What is a foster youth liaison?

Each local education agency must designate a staff person as the educational liaison for foster children. In school districts that operate a foster children services program, the educational liaison shall be affiliated with the local foster children services program. The liaison must help ensure the foster child is allowed to attend his/her school of origin, immediately enroll in school if the youth changes school, and ensure the proper transfer of records, credits, and grades. EC § 48853.5(b). A list of foster youth liaisons in California LEAs is available online: <http://www.cde.ca.gov/lsp/fy/ab490contacts.asp>.

14 If a dispute arises regarding whether the student should waive his/her right to attend the school of origin, does the student remain in the school of origin?

Yes. If a dispute arises, the child has the right to remain in her school of origin until the dispute is resolved. The dispute must be resolved "in accordance with the existing dispute resolution process available to any pupil served by the local educational agency." EC § 48853.5(e)(9). However, a child's attorney or educational rights holder may also request a hearing in the Juvenile Court to address the proposed school change. CRC 5.651(e)(2).

Providing School Stability When The Youth Remains In His/Her School Of Origin:

1 How long may the youth remain in a school of origin?

The youth has the right to remain in his/her school of origin for the duration of court's jurisdiction, or through graduation, if the youth is in high school when his/her case is dismissed. EC § 48853.5(e)(3)(A).

2 Which district is the youth a resident of, for the purposes of education, when s/he remains in a school of origin but lives outside the district?

The youth is a resident of the district in which the school of origin is located. EC § 48204(a)(1)(B)(2). AB 1573 (2013) clarified that the district in which a foster youth's school of origin is located is responsible for all aspects of that foster child's education, including special education services. EC § 48204(a)(1)(B)(2).

3 When is the youth entitled to transportation to a school of origin?

For some foster youth, transportation can be provided at a minimal cost or the responsibility to provide transportation is clearly allocated (e.g., a student who qualifies as "homeless" under the McKinney-Vento Act is entitled to transportation, youth who have transportation in their IEPs as a related service, youth whose foster parents are willing to drive them a reasonable distance to school and are eligible for Title IV-E reimbursement, and youth who live close to public transportation that can transport themselves to their school of origin).

If youth has transportation in his/her IEP as a related service, the school district of origin is responsible to provide it. EC §§ 48204(a)(1)(B)(2), 48853.5(e)(5). California's AB 490 and AB 1933, codified in Education Code Section 48853.5(e)(5)), states: "Paragraphs (2) and (3) of subdivision (d) shall not be construed to require a school district to provide transportation services to allow a child to attend a school or school district, unless otherwise required under federal law . . ." EC § 48853.5(e)(5). Pursuant to federal law, the responsible local education agency must provide or arrange for transportation when the need is documented in the student's Individual Education Plan (IEP) to provide a free appropriate public education (FAPE). Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq.; 34 CFR §§ 300.17, 300.34. The law does not restrict transportation service to a fixed geographic area; rather, it requires transportation when a student needs it to receive a free appropriate public education, a standard which is articulated by the state educational agency. 20 U.S.C. § 1401(9)(B). California law defines appropriate special education as instruction designed to meet the "unique needs" of individuals

with exceptional needs coupled with related services, which may include transportation if needed to enable the student to benefit from instruction. EC § 56031(a)-(b).

A recent California Department of Social Services All County Letter also squarely places the obligation to transport a foster youth with IEP transportation services to their school of origin on the educational agency: "The responsible educational agency must provide or arrange for transportation when that need is documented in the student's Individual Education Plan." All County Letter, CA Dept. of Soc. Svs., No. 11-51, Sept. 23, 2011, pg. 3.

Additionally, school districts, at their discretion, may provide transportation services themselves to allow the foster child to attend the school of origin. EC § 48853.5(e)(5). The school district and the Department of Children and Family Services are encouraged to collaborate to ensure maximum use of available federal money. EC § 48853.5(e)(10).

PRACTICE TIP:

The following is a checklist for advocates seeking to ensure a youth has transportation to attend his/her school of origin:

- Does the youth have transportation as a related service in his/her IEP? If so, the school of origin district should be contacted to provide transportation through special education.
- If transportation is not in the IEP, but the youth has an IEP, consider convening an IEP meeting to discuss whether the team believes it is appropriate to include transportation.
- If the youth does not have an IEP and is placed in a foster home, discuss with the foster parent whether he/she is able to transport the youth to the school of origin. Remind the foster parent that he/she will be reimbursed for reasonable travel expenses by the placing agency pursuant to All County Letter, CA Dept. of Social Services, No. 11-51, Sept. 23, 2011, pg. 3.
- If the foster parent is not able to transport the youth, determine whether the youth him/herself is able to safely take public transportation to attend the school of origin. The placing agency should reimburse the foster parent/youth for the reasonable cost of transportation.
- If the youth is placed in a group home, discuss transportation to the school of origin with the group home director. Typically, group homes have vehicles and staff capacity to provide transportation services.

4 Does the child welfare department have an obligation to reimburse foster parents for reasonable travel to a school of origin?

Yes. Under federal law, the cost of reasonable travel for the child to remain in the school of origin is an allowable foster care maintenance cost. 42 U.S.C. § 675(4)(A). The Department of Children and Family Services is therefore required to reimburse foster parents, caregivers, or otherwise provide funding for the reasonable costs of providing transportation to and from the school of origin. ACL No. 11-51; CRC 5.651(f)(1)(C).

5 Which school district must pay for transportation if a youth has transportation in his/her IEP?

The district in which a foster youth's school of origin is located is responsible for all aspects of that foster child's education, including special education services, unless some other arrangement is made between additional participating agencies. EC § 48204(a)(1)(B)(2).

6 Does the child have a right to matriculate with peers within the school of origin district?

Yes. To ensure that the foster child has the benefit of matriculating with his or her peers in accordance with the established feeder patterns of school districts, if the foster child is transitioning between school grade levels, the local educational agency shall allow the foster child to continue in the school district of origin in the same attendance area, or, if the foster child is transitioning to a middle school or high school, and the school designated for matriculation is in another school district, to the school designated for matriculation in that school district. EC § 48853.5(e)(4).

For example, if the child is transitioning to a middle school or high school and the school designated for matriculation is in another school district, the child is allowed to attend the school designated for matriculation in that school district. EC § 48853.5(e)(4). If the foster child's case is closed prior to the end of an academic year, the foster child must be allowed to continue to attend the school of origin through the "duration of the academic school year." EC § 48853.5(e)(2).

7 If a high school student's case is dismissed, may the child remain in the school of origin through graduation?

Yes, if the jurisdiction of the court is terminated while a foster child is in high school, the local educational agency shall allow the former foster child to continue his or her education in the school of origin through graduation. EC § 48853.5(e)(3)(a).

Providing School Stability when the youth changes school:

1 Who must provide notice to the school that the child is leaving?

Social workers are required to oversee the proper check out and enrollment of foster youth who transfer schools. EC § 49069.5. As soon as the county placing agency becomes aware of the need to transfer a pupil in foster care out of his or her current school, the county placing agency shall contact the appropriate person at the local educational agency of the pupil. The county placing agency shall notify the local educational agency of the date that the pupil will be leaving the school and request that the pupil be transferred out. EC § 49069.5(c).

2 Who must notify the new school that the child plans to attend/enroll?

Education Code Section 49069.5 requires social workers to oversee the proper check out and enrollment of foster youth who transfer schools. Further, the foster youth liaison must give written explanation to the youth and education rights holder on why it's in the youth's best interest to change schools. EC § 48853.5(e)(7).

3 How much notice must be given to the new school district if the youth has an IEP?

If the pupil has an IEP, the social worker from the placing agency must give the new and old school 10 days prior written notice of the expected school change. CRC 5.651(e)(1)(B).

4 May a caregiver who does not hold educational rights enroll the student?

Yes. If the foster parent does not have educational rights, s/he still retains caregiver rights that obligate the foster parent to oversee certain educationally-related functions, including:

- Enrolling a youth in a school selected by the educational rights holder
- Ensure the youth has appropriate transportation to and from school
- Ensure the youth is doing his/her homework
- Ensure contact information is on the emergency card

5 How long does the new school district have to enroll the youth?

The new school shall immediately enroll the pupil even if s/he lacks records normally required for enrollment. EC § 48853.5(e)(8)(B). Within 2 days, the new school must contact the previous school to request all the pupil's records. EC § 48853.5(e)(8)(C).

6 Must the new school enroll the child even if s/he has outstanding fees or other items owed to a previous school?

Yes. The new school must immediately enroll the youth, even if the youth has outstanding fees, fines, textbooks, or other items or moneys owed to the school last attended or if the youth is missing medical records or other records normally required for enrollment. EC § 48853.5(e)(8).

7 Must a school district still “immediately enroll” a foster child who has an IEP that requires that the student be placed in a specialized school program?

Yes. The law requires that a foster child be immediately enrolled, regardless of whether the child has an IEP or not. The district does not get more time to enroll a foster youth student who has an IEP or must be placed in a specialized school program. A school district who is receiving a new foster youth student with an IEP, however, is entitled to ten days advance notice that the child will be transferring into the district. CRC 5.651(e)(1)(B).

If a child who receives special education services transfers to a new school, services that are comparable to the ones required by the IEP must be immediately provided. EC § 56325(a). If the child’s new school is in a different Special Education Local Plan Area (SELPA) and the local education agency does not adopt the previous IEP, the SELPA/district must hold a meeting within 30 days of the child’s transfer to develop a new IEP. EC § 56325(a).

8 Does enrollment actually mean the youth is attending school?

Yes. “Immediately enrolled” means that s/he must be immediately registered AND begin classes.

9 If a student enters a new district with an IEP, in what school setting should the student be placed?

If the pupil has an IEP and changes districts, the new district must immediately provide comparable services and hold an IEP meeting within 30 days. EC § 56325(a).

10 If a student enters a new district with an IEP, is the student entitled to an IEP meeting to ensure the educational placement is appropriate?

If the child’s new school is in a different Special Education Local Plan Area (SELPA) the SELPA/district must hold an IEP meeting within 30 days of the child’s transfer to adopt the previous IEP or to develop a new IEP. EC § 56325(a).

11

Who should forward the educational records to the new school and when should this be done?

As soon as the foster youth's social worker or probation officer or the county office of education becomes aware of the need to transfer a student to a new school, he or she must notify the school of the last day of attendance, request calculation of student's educational information, and request that the student be transferred. EC § 49069.5(c).

Upon receiving a transfer request from a county placing agency or notification of enrollment from the new school district, the local educational agency shall, within two business days, transfer the pupil out of school and deliver the educational information and records of the pupil to the next educational placement. EC § 49069.5(d).

In addition, the local educational agency shall compile the complete educational record of the pupil including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and, if applicable, a copy of the pupil's plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) or individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) EC § 49069.5(e).

The social worker must also provide the new district/SELPA Director with a copy of the IEP and relevant records, contact information of previous school attended, and notice of who holds educational rights, when placing a child in licensed foster home or children's institution. 2 CCR § 60510 (Calif. Code of Regulations); EC § 56156.

12

Is the youth immediately eligible to participate in sports upon enrollment?

Yes. A foster child who changes homes is immediately deemed to meet all residency requirements to participate in interscholastic sports or other extracurricular activities. However, the youth may need to meet other academic requirements prior to participation in certain sports or activities. EC § 48850(a).

13

Are foster youth students who attend Non Public Schools eligible to participate in school district sports?

The law is unclear whether foster youth students may participate in their local school district's sports teams. The foster youth student who attends an NPS, however, has the right to participate in some type of sports activities. Assembly Bill 1858 (2004) requires that an NPS provide access to (among other things) extracurricular activities such as art, sports, music, and academic clubs. EC § 56366.10(b)(3).

14 If the child transfers mid-semester, is s/he eligible to receive partial credits?

Yes. California law requires school districts to calculate, award, and accept partial credits for foster youth. EC §§ 48645.5, 49069.5, 51225.2. Schools must award all students credit for full or partial coursework satisfactorily completed at another public school, a juvenile court school, or a non-public, non-sectarian school. EC § 48645.5.

15 If a foster youth student transfers into a school district with a partial credit in a class must s/he retake the entire course or transfer to a continuation school in order to receive credit?

No. A foster youth student with partial credits may take only the portion of the course he/she has not completed, rather than retake entire courses within a comprehensive public high school; he or she does not need to transfer to a continuation school. EC § 51225.2.

16 How are partial credits calculated?

There is no uniform statewide policy for determining seat time – it varies from district to district and school to school.

The California Child Welfare Council's model partial credit policy¹⁰ recommends:

7 CLASS PERIODS = 0.5 CREDITS PER SUBJECT

7-13 class periods = 0.5 credits	42-48 class periods = 3 credits
14-20 class periods = 1 credit	49-55 class periods = 3.5 credits
21-27 class periods = 1.5 credits	56-62 class periods = 4.0 credits
28-34 class periods = 2 credits	63-69 class periods = 4.5 credits
35-41 class periods = 2.5 credits	70+ class periods = 5 credits

Partial Credit Calculation Guidelines

Length of Class Period:

Class periods lasting 89 minutes or less count as 1 class period for purposes of calculating partial credits. Class periods lasting 90 minutes or more count as 2 class periods.

Credits Per Grading Period:

The calculation formula provides for the awarding of both 1 and 5 credits per

course for each grading period because most school districts statewide utilize these credit scales. A Calculation/Conversion Table is provided, which can be used when youth transfer between school districts using differing scales. The receiving school should convert the number of credits earned to match their own system and update the youth's official transcript accordingly.

Alternative Schools:

If a foster youth is enrolled in an alternative school setting (e.g., continuation school, independent study program, or adult school), that school must issue credits according to this partial credit model policy or its approved credit plan adopted pursuant to Education Code § 51225.3(b), if such plan provides for the awarding of partial credits.

¹⁰The California Child Welfare Council adopted a partial credit model policy in September 2013. This policy was developed by the California Department of Education (CDE), California Department of Social Services (CDSS), CSBA, County Welfare Directors Association (CWDA), several members of the California Legislature, school districts, child welfare agencies, and foster youth advocates.

17 If a youth must attend court or some other non-school activity that is court-ordered, such as court-ordered therapy or medical procedure, may the school mark the absence as unexcused or otherwise penalize the student?

No. A foster child's grades cannot be lowered due to absences caused by a change in her placement or her attendance at a court hearing or court-ordered activity. EC § 49069.5(g),(h).

18 What happens when a student transfers schools with an open IEP assessment?

If a student transfers schools when there is an open IEP assessment, the previous school's assessment team must coordinate with the team from the new school district to ensure the IEP assessment is completed as "expeditiously" as possible. 20 USC § 1414(b)(3)(D); EC § 56320(i).

19 What is a Foster Youth Education Passport and to whom should it be provided?

Each child's case plan must include a summary of the child's health and education records, often referred to as a health and education passport. WIC § 16010. The social worker should compile school records and education passport for new caregivers and provide it within 30 days of initial placement, and within 48 hours for each subsequent placement. WIC § 16010 (a),(c).

20 What if a youth on probation is court-ordered to a county community school?

The student has the right to re-enroll in his or her former school or another comprehensive school immediately after being readmitted from the court-ordered placement. EC § 1981.5(a).

ALPHABET SOUP: TABLE OF ABBREVIATIONS

AB	Assembly Bill
ACL	All County Letter
CFR	Code of Federal Regulations
CRC	California Rules of Court
EC	California Education Code
ERH	Educational Rights Holder
IEP	Individualized Education Plan
LEA	Local Education Agency
NPS	Non-Public School
SB	Senate Bill
USC	United States Code
WIC	California Welfare & Institutions Code