



PROCEDURAL MANUAL

2024

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IDENTIFICATION AND REFERRAL

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Introduction

The referral for special education assessment is the first step taken when it is suspected that a student will require special education supports and services to be successful in the educational system. Parents, guardians, teachers, agencies, appropriate professionals, and other members of the public can make referrals. Once submitted, the referral initiates timelines that are specified in the California Education Code. The purpose of the referral process is to afford the assessment team the opportunity to review the referring party's identified areas of concern, previous attempts in program modification, relevant educational history, and other pertinent student information to determine areas in need of assessment.

The governing board of the West End Special Education Local Plan Area (SELPA) assure an ongoing effort to identify all individuals with disabilities including infants, children for whom English is not a primary language, students with low incidence disabilities, students attending private schools, children from families that are highly mobile, and children who are suspected of having a disability and in need of special education even though they are advancing from grade to grade.

The West End SELPA works closely with public agencies such as Inland Regional Center, Head Start, California Children's Services, Behavioral Health, and others as appropriate in the identification of individuals with disabilities. Materials are distributed to pediatricians, health care professionals, and other agencies within the SELPA.

Each local education agency within the West End SELPA has established procedures for the identification, location, and evaluation of students who may require special education services. Information regarding child find activities is included in the annual notice that is distributed to parents of all children.

Responsibilities of the SELPA Governing Board—Superintendents Council (SC)

The SELPA Governing Board members, under the direction of their respective elected Governing Boards, act to establish operational procedures and make decisions on any matters regarding the development, implementation, administration and operation of special education programs in accordance with the intent of the Local Plan. The SELPA Governing Board performs the following functions:

- Review and approve needed modification of this agreement on behalf of all districts in the SELPA and adopt amendments to the permanent portion of the Local Plan on an “interim basis”, not to exceed one year. Amendments approved in this manner shall become permanent upon subsequent approval by LEA Governing Boards during the annual service and budget plan process and upon subsequent approval by the State Board of Education.
- Adopt SELPA policies and procedures on behalf of their respective LEA Governing Boards to ensure compliance with the Local Plan and state and federal laws and regulations.
- Assure equal access to programs and services for all individuals with exceptional needs within the SELPA regardless of their district of residence.
- Approve the annual services plan and annual budget plan.
- Adopt policies for the distribution of federal, state and local funds received for special education programs.
- Adopt agreements including, but not limited to, interagency agreements with Behavioral Health, California Children’s Services, Inland Regional Center and other public agencies that provide services to students with exceptional needs.
- Establish and promote the Community Advisory Committee. Encourage parental involvement through members of the CAC and consider requests and recommendations from the CAC and other parent groups.
- Provide assistance in the selection, direction, discipline and evaluation of the SELPA Chief Administrative Officer.

Section A – Child Find

Each special education local plan area submitting a local plan to the Superintendent under this part shall ensure that it has in effect policies, procedures, and programs that are consistent with state laws, regulations, and policies governing “child find and referral” (CA Education Code Section [§] 56205(a)(3)).

Having a coordinated system of identification and referral provides for meeting the legal requirements of each local educational agency (LEA) to actively and systematically seek out all individuals with exceptional needs, from birth to 21 years of age, inclusive, including children not enrolled in public school programs, who reside in a school district or are under the jurisdiction of a special education local plan area or a county office of education (CA Education Code § 56300).



Child find activities are the responsibility of each district and occur prior to a referral for special education services. Under both federal and state statutes and regulations, school districts are required to locate, identify, and assess all children with disabilities who reside within the district. This requirement is commonly known as “child find” mandate applies to all children who reside within a State, including children who attend private schools and public schools, highly mobile children, migrant children, homeless children, and children who are wards of the state. (20 United States Code [U.S.C.] § 1412(a)(3)).

This includes all children who are suspected of having a disability including children who receive passing grades and are “advancing from grade to grade.” (34 Code of Federal Regulations [C.F.R.] § 300.111(c)) California specifically, obligates a district to actively and systematically to seeks out “all individuals with exceptional needs.” (Education Code § 56300 et. seq.)

Examples of child-find activities include:

- Media announcements regarding availability of special education services, as well as feature articles and stories regarding special education programs and opportunities;
- Development of Interagency Agreements that clearly define child find responsibilities of participating agencies (e.g., Inland Regional Center, Head Start, and California Children's Services);
- Annual orientation/review for general education staff, provided by special education staff, regarding the referral procedures for special education, the eligibility criteria, and the continuum of special education programs and services available;
- Disability/Ability Awareness activities provided to both general education staff and students that include simulation activities, speakers, literature review, and instructional videos; and
- Information regarding the referral process for special education included in the annual notice of procedural safeguards.

Infants, birth to three years, are referred directly by the district, parent, doctor, or agency to the Early Start Program at Inland Regional Center. Intake information precedes the assignment of staff for assessment and the coordination with other agencies. If an infant has a solely low incidence disability, such as hearing loss, vision loss, or orthopedic handicap, the infant should be referred directly to the San Bernardino County operated Early Start program. An Early Start Program Referral Form is completed, which begins the assessment process timeline.

SEARCH AND SERVE PROCEDURES

School Responsibilities

All schools are required to have procedures in place for identifying children who have or are suspected of having a disability and needing special education and related services. These procedures are commonly referred to as “search and serve” or “child find.”

The school’s responsibilities for search and serve apply to the families and students attending and enrolling in the school. There are three (3) search and serve responsibilities that each school must implement:

1. Students with disabilities, requiring special services, enrolling in the school are identified and promptly provided the appropriate services.
2. There is a process in place, understood by all staff members, for referring students who may require special services.
3. There is coordination with school site procedures, including referrals from the school site student intervention teams (e.g. Student Success Teams, etc.).

Note: A child shall be referred for special education and related services only after the resources of the regular education program have been considered and, where appropriate, utilized. (CA Education Code § 56303)

NOTIFICATION PROCEDURES FOR SPECIAL EDUCATION INFORMATION AND RELATED SERVICES

Federal and State policy requires the District to annually notify all students and their parents about the availability of and information on special education and related services.

In addition, the following form must be maintained in the school office and made available to parents and staff upon request:

Parents’ Rights and Procedural Safeguards

District staff should be prepared to assist parents in completing forms and answering questions they may have.

Definition of Parent

The definition of “Parent,” pursuant to *CA Education Code* § 56028, reads:

(a) "Parent" means any of the following:

- (1) A biological or adoptive parent of a child.
- (2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the *Code of Federal Regulations*.
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Sections 361 and 726 of the *Welfare and Institutions Code*.
- (4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare.
- (5) A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the *Government Code*, and in accordance with Section 300.519 of Title 34 of the *Code of Federal Regulations* and Section 1439(a)(5) of Title 20 of the *United States Code*.

(b)

- (1) Except as provided in paragraph (2), the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under subdivision (a) to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
- (2) If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4), inclusive, of subdivision (a) to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent" for purposes of this part, Article 1 (commencing with Section 48200) of Chapter 2 of Part 27 of Division 4 of Title 2, and Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the *Government Code*, and Sections 361 and 726 of the *Welfare and Institutions Code*.

(c) "Parent" does not include the state or any political subdivision of government.

(d) "Parent" does not include a nonpublic, nonsectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child.”

IDENTIFYING AND SERVING STUDENTS ENROLLING IN SCHOOL

All schools are responsible for having procedures in place to identify and promptly serve students who require or may need special services when they enroll in the school. The mechanism for implementing the procedures in the District's Student Enrollment Form should be completed by parents at the time they are enrolling their child. The following four questions should be asked:

1. Did the student receive special education services at his/her previous school?
2. Did the student have an Individualized Education Program (IEP) at his/her previous school?
3. Did the student have a Section 504 Plan at his/her previous school?
4. Does the student have difficulties that interfere with his/her ability to go to school or learn?

It is important that office personnel and administrator/designees familiarize themselves with the form and their duties to ensure that students who require special services are identified and promptly provided appropriate school programs and services. In so doing be sure to:

- Print out the student's active IEP from the IEP system when the student has an IEP from a previous school. Make every effort to obtain a copy of the student's IEP from the parent(s) or the previous school district if the student has an IEP from another school district.
- Review the IEP and provide the student the programs and services specified. Note: If the current IEP is out of date or no longer appropriate, continue implementation, but hold an IEP meeting within thirty days.
- If the student enrolled with an IEP from another school district, review the IEP and provide the student the programs and services specified. Hold an IEP review meeting within thirty days.
- If available, implement a student's existing 504 plan, or hold a meeting to develop a 504 plan.
- Take the specified actions when the parents have indicated that the student has difficulties that interfere with his/her ability to go to school or learn.
- Enter all appropriate information into IEP system for students who have an existing IEP.

Section B – Parent Referrals

EC 56301(d)(1) Each special education local plan area shall establish written policies and procedures pursuant to Section 56205 for use by its constituent local agencies for a continuous child find system that addresses the relationships among identification, screening, referral, assessment, planning, implementation, review and the triennial assessment. The policies and procedures shall include, but need not be limited to, written notification of all parents of their rights under this chapter, and the procedure for initiating a referral for assessment to identify individuals with exceptional needs.

All referrals for special education and related services shall initiate the process to determine if an assessment is warranted and shall be documented. When a verbal referral is made, staff of the local education agency shall offer assistance to the parent or any other individual to make a request in writing. Parents, whose primary language is not English, shall be informed both verbally and in writing in their primary language, unless to do so is clearly not feasible. Written referrals in languages other than English will be accepted.

The West End SELPA shall annually distribute information regarding child find activities to private schools for dissemination to parents.

If a parent requests, in writing, an assessment for possible special education services, the assessment team will develop an assessment plan and present it to the parent within 15 days. A copy of the Parental Rights and Procedural Safeguards are reviewed and given to the parents at the time the assessment plan is presented. The parent has 15 days from receipt of the assessment plan to provide permission to complete the assessment process. Assessments may begin immediately upon receipt of the signed plan.

Under Education Code Section 56344(a), an individualized education program required as a result of an assessment of a pupil shall be developed within a total time not to exceed 60 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension. However, an individualized education program required as a result of an assessment of a pupil shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each local educational agency's school calendar for each pupil for whom a referral has been made 30 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 60-day time shall recommence on the date that pupil schooldays reconvene. A meeting to develop an initial individualized education program for the pupil shall be conducted within 30 days of a determination that the pupil needs special education and related services pursuant to Section 300.323(c)(1) of Title 34 of the Code of Federal Regulations.

Infant: Birth to Three Years

If a parent refers an infant, birth to three years, to a district for possible special education services, they are referred directly to the Early Start Program at Inland Regional Center. If it is clearly evident that the infant has a solely low incidence disability, such as hearing loss, vision loss, or orthopedic disability, the parent is referred directly to San Bernardino County operated Early Start program. At this time, an Early Start Program Referral Form is completed, and the timelines for the referral process begin.

Section 504

Students may be referred for assessment under Section 504 of the Rehabilitation Act of 1973 by parents, guardians, school staff, or agency. Each district has defined written Section 504 procedures to assess and meet the educational needs of general education students who are otherwise disabled due to a physical or mental impairment which substantially limits one or more major life activities.

Section C – The Student Study Team (Or as Designated by the District)

EC 56303 A pupil shall be referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized.

Procedures have been developed in the individual districts for the receipt and processing of referrals for special education assessment. In all districts, the school site Student Study Team (SST) meets regarding students for whom there are concerns. The team addresses the implementation and level of success of the general education classroom program interventions and available general education resources and programs, including categorical programs. When the Student Study Team determines that general education interventions and resources have been exhausted, or the interventions, accommodations and/or modifications available are not appropriate, the Student Study Team or classroom teacher refers the student for an assessment for special education services. The parent is informed and encouraged to be a part of the Student Study Team process. Parents are notified if a referral for a special education assessment is made by the team.

The Student Study Team, or as designated by the district, is a regularly scheduled, structured meeting of general educators, supported by special education and other staff as appropriate. Their purpose is to provide an effective support system in general education that will generate effective interventions for students who are experiencing challenges in learning or behavior difficulties at school. The Student Study Team process is designed to meet the needs of all students and result in a team action plan to ensure student success. The structure of the Student Study Team may be designed to fit the needs of individual school sites. Team membership varies according to the needs of the student, but should include the people that can best support the student and the classroom teacher. The majority of the team membership must be composed of general education teachers and should include the following team members: the student's classroom teacher(s), an administrator, the parent(s), the student, and in the case of an elementary school student, an upper grade teacher, and a lower grade teacher. When appropriate, specialists and any others potentially providing support to the student, should be included.

The Intervention process begins with a request from a teacher, counselor, parent, agency representative, or student that a concern has been identified. Once the request is made, the school's first-level intervention plan is implemented. It is important to note that a request does not automatically initiate a SST meeting. If the concerns can be resolved without a SST meeting, then the student is monitored for successful progress. If the concerns are not resolved, SST meeting preparation is started. For the team to have optimum information to consider, the student's teacher should provide essential information about the student to the SST team. During the meeting, a group memory format is an effective practice to utilize to assist the team in efficient documentation of ideas generated during the meeting. The team will develop an action plan that shall include a follow-up meeting to review the progress of the student for whom there are concerns. The action plan should be evaluated at this meeting and a determination made if any further follow-up is necessary. See forms located at the end of this chapter.

Section D – Interim Placement

EC 56325(a)(1) As required by subclause (I) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from district to district within the state. In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved individualized education program or shall develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(2) In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district operating programs under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(3) As required by subclause (II) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from an educational agency located outside the State of California to a district within California. In the case of an individual with exceptional needs who transfers from district to district within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, until the local educational agency conducts an assessment pursuant to paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code, if determined to be necessary by the local educational agency, and develops a new individualized education program, if appropriate, that is consistent with federal and state law.

EC 56325(b)(1) To facilitate the transition for an individual with exceptional needs described in subdivision (a), the new school in which the individual with exceptional needs enrolls shall take reasonable steps to promptly obtain the pupil's records, including the individualized education program and supporting documents and any other records relating to the provision of special education and related services to the pupil, from the previous school in which the pupil was enrolled, pursuant to paragraph (2) of subsection (a) of Section 99.31 of Title 34 of the Code of Federal Regulations.

(2) The previous school in which the individual with exceptional needs was enrolled shall take reasonable steps to promptly respond to the request from the new school. (c) If whenever a pupil described in subdivision (a) was placed and residing in a residential nonpublic, nonsectarian school, prior to transferring to a district in another special education local plan area, and this placement is not eligible for funding pursuant to Section 56836.16, the special education local

plan area that contains the district that made the residential nonpublic, nonsectarian school placement is responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends.

Due to changes in IDEA 2004 the procedures for placing students who transfer from one district to another have changed. Districts now must look at whether the student is coming from within the same SELPA or outside the SELPA, and at whether they are coming from within the state or outside the state.

Students moving from one district within the West End SELPA to another district within the West End SELPA, within the same academic school year, shall be placed without delay in a comparable program based on the current, existing IEP. There is no requirement to hold a new IEP meeting unless the district and parent determine there is a need to develop a new IEP.

Students moving from a district outside the SELPA, but within the State, within the same academic year, with an existing IEP shall be placed in a comparable program for a timeline not to exceed thirty days. The student's program shall be based on the sending district's current goals and objectives with the appropriate supports and services. Within thirty days, the receiving district must adopt the previous IEP, or develop and implement a new IEP.

Students moving from a district outside the state within the same academic year with an existing IEP shall be provided services comparable to those described in the previous IEP, until the district, if necessary, conducts an evaluation to determine if the student meets eligibility and identifies their educational needs, and develops a new IEP. If the district determines the need to conduct an evaluation, it is considered to be an initial evaluation.

In order to facilitate the transfer of a student transferring from another district, the new district must take steps to obtain the records relating to the provision of special education from the district where the student was previously enrolled. If the district is unable to obtain the IEP from the previous district or the parent, the district must place the student in a regular education program and conduct an evaluation to determine eligibility and special education services.

At the interim IEP review meeting, all aspects of the IEP need to be reviewed. New goals and objectives can be developed or the previous ones continued if those goals continue to be in accordance with the student's needs. If the previous goals and objectives are accepted, the next annual review date must align with the previous goal review date.

APPENDIX A: Special Education Timelines



ELIGIBILITY CRITERIA – INDIVIDUALS WITH EXCEPTIONAL NEEDS

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Introduction

Eligibility for special education is determined by the IEP team based upon a variety of sources of information. The student must be identified as meeting the criteria for one of the 13 handicapping conditions identified in CFR 300.8. and the student's disability must adversely affect the student's educational performance, such that the student is in need of special education services in order to benefit from his/her education. If a student only requires a related service and not special education, then the student is not a student with a disability, unless the related service is considered special education under state standards. In addition, a student may not be considered as having a disability if the reason for his difficulties is due to a lack of appropriate instruction or limited proficiency in English.

The IEP team shall take into account all assessment information and use no single score or product of scores as the sole criterion for making a decision regarding the student's eligibility for special education. Once the IEP team has made a determination that both of these areas are satisfied, a student may be identified as a student with exceptional needs. Processes and procedures for assessment are outlined in Chapter Two of this Procedural Manual.

A student remains eligible for special education and related services for as long as the student continues to have a disability and requires special education services. The IEP team must determine if a student is a student with a disability at least every three years. This entitlement remains in effect until the student reaches the maximum age for services, or when he/she graduates from high school with a regular high school diploma.

Education Code 56026 (c)(4)(A) (C) states any person who becomes twenty-two (22) years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including any extended school year program. A special education student shall not be allowed to begin a new fiscal year in a program if he or she becomes twenty-two (22) years of age in July, August, or September of that new fiscal year. However, if a student is in a year-round school program and is completing his or her IEP in a term that extends into the new fiscal year, then the person may complete that term. Any person who becomes twenty-two (22) years of age during the months of October, November, or December while participating in a program under this act shall be terminated from the program on December 31 of the current fiscal year, unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year.

This chapter describes each of the disabling conditions as identified in CFR 300.8 and the criteria for meeting eligibility for special education services.

Section A – State Eligibility Criteria

CCR 3030

(a) A child shall qualify as an individual with exceptional needs, pursuant to Education Code section 56026, if the results of the assessment as required by Education Code section 56320 demonstrate that the degree of the child's impairment as described in subdivisions (b)(1) through (b)(13) requires special education in one or more of the program options authorized by Education Code section 56361. The decision as to whether or not the assessment results demonstrate that the degree of the child's impairment requires special education shall be made by the IEP team, including personnel in accordance with Education Code section 56341(b). The IEP team shall take into account all the relevant material which is available on the child. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the child's eligibility for special education.

(b) The disability terms used in defining an individual with exceptional needs are as follows:

(1) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(A) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability, as defined in subdivision (b)(4) of this section.

(B) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in subdivision (b)(1) of this section are satisfied.

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(4) Emotional disability means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(F) Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability under subdivision (b)(4) of this section.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(7) Multiple disabilities means concomitant impairments, such as intellectual disability-blindness or intellectual disability-orthopedic impairment, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. "Multiple disabilities" does not include deaf-blindness.

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that:

(A) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, fetal alcohol spectrum disorder, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(B) Adversely affects a child's educational performance.

(10) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may have manifested itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The basic psychological processes include attention, visual processing, auditory processing, phonological processing, sensory-motor skills, cognitive abilities including association, conceptualization and expression.

(A) Specific learning disabilities do not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disability, or of environmental, cultural, or economic disadvantage.

(B) In determining whether a pupil has a specific learning disability, the public agency may consider whether a pupil has a severe discrepancy between intellectual ability and achievement in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. The decision as to whether or not a severe discrepancy exists shall take into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the IEP

team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the IEP team shall use the following procedures:

1. When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the intellectual ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate.
2. When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.
3. If the standardized tests do not reveal a severe discrepancy as defined in subdivisions 1. or 2. above, the IEP team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:
 - (i) Data obtained from standardized assessment instruments;
 - (ii) Information provided by the parent;
 - (iii) Information provided by the pupil's present teacher;
 - (iv) Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;
 - (v) Consideration of the pupil's age, particularly for young children; and
 - (vi) Any additional relevant information.
4. A severe discrepancy shall not be primarily the result of limited school experience or poor school attendance.
 - (C) Whether or not a pupil exhibits a severe discrepancy as described in subdivision (b)(10)(B) above, a pupil may be determined to have a specific learning disability if:
 1. The pupil does not achieve adequately for the pupil's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the pupil's age or State-approved grade-level standards:
 - (i) Oral expression.
 - (ii) Listening comprehension.
 - (iii) Written expression.
 - (iv) Basic reading skill.
 - (v) Reading fluency skills.
 - (vi) Reading comprehension.

- (vii) Mathematics calculation.
- (viii) Mathematics problem solving, and

2.(i) The pupil does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in subdivision (b)(10)(C)(1) of this section when using a process based on the pupil's response to scientific, research-based intervention; or

(ii) The pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 C.F.R. sections [300.304](#) and [300.305](#); and

3. The findings under subdivisions (b)(10)(C)(1) and (2) of this section are not primarily the result of:

- (i) A visual, hearing, or motor disability;
- (ii) Intellectual disability;
- (iii) Emotional disability;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or (vi) Limited English proficiency.

4. To ensure that underachievement in a pupil suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group making the decision must consider:

- (i) Data that demonstrate that prior to, or as a part of, the referral process, the pupil was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- (ii) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the pupil's parents.

5. In determining whether a pupil has a specific learning disability, the public agency must ensure that the pupil is observed in the pupil's learning environment in accordance with 34 C.F.R. section [300.310](#). In the case of a child of less than school age or out of school, a qualified professional must observe the child in an environment appropriate for a child of that age. The eligibility determination must be documented in accordance with 34 C.F.R. section [300.311](#).

(11) A pupil has a language or speech disorder as defined in Education Code section 56333, and it is determined that the pupil's disorder meets one or more of the following criteria:

(A) Articulation disorder.

1. The pupil displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the pupil's production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level, and which adversely affects educational performance.

2. A pupil does not meet the criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern.

(B) Abnormal Voice. A pupil has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness.

(C) Fluency Disorders. A pupil has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener.

(D) Language Disorder. The pupil has an expressive or receptive language disorder when he or she meets one of the following criteria:

1. The pupil scores at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified on the assessment plan, or

2. The pupil scores at least 1.5 standard deviations below the mean or the score is below the 7th percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed in subdivision (A) and displays inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of 50 utterances. The language sample must be recorded or transcribed and analyzed, and the results included in the assessment report. If the pupil is unable to produce this sample, the language, speech, and hearing specialist shall document why a fifty utterance sample was not obtainable and the contexts in which attempts were made to elicit the sample. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified in the assessment plan.

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

(A) Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Note: Authority cited: Section 56100, Education Code. Reference: Sections 56026, 56320, 56333 and 56337, Education Code; 20 U.S.C. Sections 1401(3)(A) and 1414(a) and (b); and 34 C.F.R. Sections 300.8, 300.300, 300.301, 300.304, 300.305, 300.306, 300.307, 300.308, 300.309 and 300.311.

Eligibility Requirements for Preschool Children

EC 6441.11

- (a) Notwithstanding any other provision of law or regulation, the special education eligibility criteria in subdivision (b) shall apply to preschool children, between the ages of three and five years.
- (b) A preschool child, between the ages of three and five years, qualifies as a child who needs early childhood special education services if the child meets the following criteria:
 - (1) Is identified as having one of the following disabling conditions, as defined in Section 300.7 of Title 34 of the Code of Federal Regulations, or an established medical disability, as defined in subdivision (d):
 - (A) Autism
 - (B) Deaf-blindness
 - (C) Deafness
 - (D) Hearing impairment
 - (E) Mental retardation
 - (F) Multiple disabilities
 - (G) Orthopedic impairment
 - (H) Other health impairment
 - (I) Emotional disability
 - (J) Specific learning disability
 - (K) Speech or language impairment in one or more of voice, fluency, language and articulation
 - (L) Traumatic brain injury
 - (M) Visual impairment
 - (N) Established medical disability
 - (2) Needs specially designed instruction or services as defined in Sections 56441.2 and 56441.3.
 - (3) Has needs that cannot be met with modification of a regular environment in the home or school, or both, without ongoing monitoring or support as determined by an individualized education program team pursuant to Section 56431.
 - (4) Meets eligibility criteria specified in Section 3030 of Title 5 of the California Code of Regulations.
- (c) A child is not eligible for special education and services if the child does not otherwise meet the eligibility criteria and his or her educational needs are due primarily to:
 - (1) Unfamiliarity with English language
 - (2) Temporary physical disabilities
 - (3) Social maladjustment
 - (4) Environmental, cultural, or economic factors

- (d) For purposes of this section, "established medical disability" is defined as a disabling medical condition or congenital syndrome that the individualized education program team determines has a high predictability of requiring special education and services.
- (e) When standardized tests are considered invalid for children between the ages of three and five years, alternative means, for example, scales, instruments, observations, and interviews shall be used as specified in the assessment plan.

Section B – State Definition of Special Education

EC 56031 (a) "Special education," in accordance with Section 1401 (29) of Title 20 of the United States Code, means specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs, including instruction conducted in the classroom, in the home, in hospitals and institutions, and other settings, and instruction in physical education.

(b) In accordance with Section 300.39 of Title 34 of the Code of Federal Regulations, special education includes each of the following, if the services otherwise meet the requirements of subdivision (a):

(1) Speech-language pathology services, or any other designated instruction and service or related service, pursuant to Section 56363, if the service is considered special education rather than a designated instruction and service or related service under state standards.

(2) Travel training

(3) Vocational education

(c) Transition services for individuals with exceptional needs may be special education, in accordance with Section 300.43(b) of Title 34 of the Code of Federal Regulations, if provided as specially designed instruction, or a related service, if required to assist an individual with exceptional needs to benefit from special education.

(d) Individuals with exceptional needs shall be grouped for instructional purposes according to their instructional needs.

Section C – IEP Team Considerations

Specific Learning Disabilities

IDEA 2004 made significant changes to the process for determining whether a student has a specific learning disability, by removing the requirement for a discrepancy between intellectual ability and achievement and allowing the use of a process that looks at whether the student responds to research based intervention. IDEA 2004 also specified additional procedures that are required when making the determination of a specific learning disability.

Determination of a specific learning disabilities is now a three-prong inquiry. First, it must be determined that when provided with learning experiences and instruction appropriate for the child's age or grade level, the student does not achieve adequately for their age, or meet state grade level standards in one or more of the following areas:

1. Oral expression
2. Listening comprehension

3. Written expression
4. Basic reading skill
5. Reading fluency skill
6. Reading comprehension
7. Mathematics calculation
8. Mathematics problem solving

Second, one of the following must be true:-

1. The student does not make adequate progress to meet age or grade level standards in one of the areas above, when using a process based on the child's response to research based intervention. This process is commonly referred to as response to intervention (RTI)...or
2. The student demonstrates a pattern of strengths and weaknesses in performance, achievement, or both relative to their age grade level standards or intellectual development which is considered to be characteristic of a specific learning disability.

Third the student's difficulty may not be the result of any of the following factors:

1. a visual, hearing or motor disability
2. intellectual disability
3. emotional disability
4. cultural factors
5. environmental or economic disadvantage
6. limited English proficiency

When making a determination of a specific learning disability, there are additional procedures that are required in addition to the evaluation requirements outlined in Chapter 3. The team making the eligibility determination must analyze data regarding the student's instruction, conduct an observation of the student in the regular classroom and document their determination.

In order to ensure that the performance deficits of a student are not due to lack of appropriate instruction, the team is now required to consider data that demonstrates that the student was provided appropriate instruction by qualified personnel. They must also review the results of repeated, formal assessment of the student's instructional progress.

An evaluation of a student suspected of having a specific learning disability must also include an observation of the student in their learning environment, including the regular education classroom. This observation must document the student's academic performance and behavior in their areas of difficulty. This observation must be made by a member of the IEP team which determines eligibility. If a student is not school age or out of school, the observation must take place in an environment that is age appropriate.

The IEP team determining that a student is eligible as a student with a specific learning disability must also document that decision in writing. The form for that documentation is found in the SEIS computerized IEP used by the districts in the West End SELPA, and is included in Appendix B of this chapter. Each member of the IEP team must certify their agreement with the determination; if any member does not agree they must submit a separate statement documenting their conclusions.

Emotional Disability

Emotional disability means a condition exhibiting one or more of the following characteristics over a long period of time

and to a marked degree that adversely affects a child's educational performance:

- a) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- c) Inappropriate types of behavior or feelings under normal circumstances.
- d) A general pervasive mood of unhappiness or depression.
- e) A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability

A student is eligible under emotional disability if she exhibits one or more of the following characteristics, over a long period of time and to a marked degree, which adversely affects educational performance:

An inability to learn which cannot be explained by intellectual, sensory, or health factors;

An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations;

A general pervasive mood of unhappiness or depression; and

A tendency to develop physical symptoms or fears associated with personal or school problems.

[34 C.F.R. Sec. 300.8(c)(4); 5 C.C.R. Sec. 3030(b)(4).]

Section D – Dismissal from Special Education

20 U.S.C. Section 1414(c)(5)

(A) In general

Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(B) Exception

(i) In general

The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this subchapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

(ii) Summary of performance

For a child whose eligibility under this subchapter terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

A student may be dismissed from special education when, based on an evaluation of the student, the IEP team determines the needs which were originally identified when the student was initially found eligible for special education have been addressed to the extent that the student can access and progress in the general education curriculum without special education services. When a student is transitioning from special education to general education classes the IEP team must provide a description of the process that includes activities/supports necessary to support the transition of the student.

A student's eligibility for special education also terminates when a student graduates from high school with a regular diploma, or reaches the maximum age for services. The LEA is not required to conduct an evaluation in these cases, but must provide prior written notice of the change in placement and must provide the student with a summary of their academic and functional performance. Sample letters to use when a student is graduating or has reached the maximum age for service, and the Summary of Performance are included in Appendix A.

References: 34CFR 300.8; CCR 3030; EC 56026, 56031, 56337, 56345, 56381; and 20 U.S.C. §1414 (c)(5).

SECTION 504 – REHABILITATION ACT OF 1973

Purpose

The purpose of this guideline is to provide information regarding students who may meet the eligibility criteria under Section 504 of the Rehabilitation Act of 1973.

Background

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a Federal civil rights statute which prohibits discrimination/harassment on the basis of a disability in any program or activity receiving federal financial assistance. Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

A student with a disability under Section 504 means any student who:

- Has a mental or physical disability, which substantially limits one or more of the student's major life activities;
- Has a record of such a disability; or
- Is regarded as having such a disability.

In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE).

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any

physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. Congress has provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity

Section 504 sets forth evaluation procedures to determine eligibility. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

Section 504 also sets forth procedures to develop an accommodations plan. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP, a separate Section 504 plan is not required.

Section 504 also provides procedural protections for students and parents. For example, OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. Section 504 also requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

It also protects individuals with disabilities from harassment. Harassment is unwelcome physical, verbal/non-verbal, or visual conduct that is severe or pervasive, that unreasonably disrupts an individual's educational or work environment, or that creates a hostile educational or work environment.

The Office of Civil Rights (OCR) and the U.S Department of Education enforce Section 504. Compliance with Section 504 is the responsibility of all school personnel and the operational responsibility of the general education program.

West End SELPA

The West End SELPA is committed to providing a working and learning environment that is free of discrimination and/or harassment. The District affirms that no qualified student with a disability shall, on the basis of that disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination/ harassment under any District program or activity. Disability-based harassment is a form of discrimination under both Federal and State law that may result in a denial of Free Appropriate Public Education (FAPE) to the student or the denial of an equal opportunity to an education.

As printed on the Parent/Guardian Procedural Safeguards Under Section 504 of the Rehabilitation Act of 1973, "Under Section 504 of the Rehabilitation Act of 1973, students with disabilities have the right to receive free appropriate public education, which includes the right to be educated with students without disabilities to the maximum extent appropriate. Furthermore students with disabilities have the right to take part in, and receive benefits from, public education programs without discrimination or harassment based on those disabilities."

SECTION 504 PROCEDURES AND RESOURCES

Procedures and forms for implementing Section 504 in schools can be found in each individual LEA through either the Student Services Department or the Superintendent's Office. Standard forms for a 504 Procedural Resource Guide include:

- Protocol for Convening a Section 504 Committee Meeting
- Section 504 Forms
 - Health Evaluation Referral
 - Parent Consent to Release of Medical Information
 - Health Evaluation Report
 - Section 504 Referral Form
 - Parent/Guardian Notification of Section 504 Evaluation
 - Parent/Guardian Procedural Safeguards Under Section 504 of the Rehabilitation Act of 1973
 - Response to Request for Section 504 Evaluation
 - Section 504 Teacher Observation Form
 - Section 504 Evaluation Documentation
 - Section 504 Plan
 - Section 504 Behavior Support Plan (Addendum Page to be used as applicable)
 - Section 504 Committee Decision

- Section 504 Manifestation Determination Meeting
- Section 504 Plan Distribution Notice
- Section 504 Complaint Form

APPENDIX A: FORM LETTERS FOR USE WHEN STUDENTS EXIT SPECIAL EDUCATION

[SCHOOL DISTRICT LETTERHEAD]

[Date]

Dear Parent/Guardian,

We are pleased to inform you that your child, [Student's Name], is currently on track to meet all the requirements for graduation with a regular high school diploma. It is anticipated that [Student's Name] will graduate on [Graduation Date].

In accordance with federal law, we are notifying you of this upcoming change in your child's educational placement. Graduation with a regular education diploma reflects [Student's Name]'s successful completion of both California and [District Name] School District's graduation requirements. As your child is expected to fulfill these criteria, graduation with a regular education diploma is the appropriate course of action. After graduation, [Student's Name] will no longer be eligible for special education services. The district has determined that alternative options, such as retention or a non-regular education diploma, are not suitable for [Student's Name] at this time. This decision will be reviewed at the upcoming IEP team meeting scheduled for [Month, Year].

The following evaluation procedures, tests, records, and/or reports were used to assess your student's status:

[List of Procedures/Tests/Records/Reports]

Please be aware that you have the right to procedural safeguards provided to parents and students eligible for special education services. If you have any questions or if you disagree with the information in this notification, please contact [Name and Contact Information]. Additionally, if you need assistance understanding any part of this notice, we are here to provide further resources.

Sincerely,

[Your Name]

[Your Title]

[School District Name]

[Contact Information]

APPENDIX B
NOTE: THE FOLLOW FORMS ARE
LOCATED IN THE
SEIS LIBRARY

- Specific Learning Disability Team Determination - Discrepancy
- Specific Learning Disability Documentation Report -IEP
- Specific Learning Disability Team Determination – Patterns of Strengths & Weaknesses
- Specific Learning Disability Team Determination of Eligibility

APPENDIX C

Prior Written Notice Due to Parent Revocation of Consent for Special Education

Revised 9/30/09

Prior Written Notice
Due to Parent Revocation of Consent for Special Education
(Date)
(Address)

Dear

This letter is in response to your written request revoking consent for special education placement and related services provided to the (Name) District on (Date). The District agrees to your revocation and will cease providing the following special education services on (Date):

1. List IEP services, including special transportation, ESY

Upon this date your child will be considered a general education student and will be assigned to (School/Grade/Teacher or schedule of classes). By revoking your consent for special education and related services, your child will no longer be eligible under the Individuals with Disabilities Act (IDEA) for a free and appropriate public education, triennial evaluations, or an annual IEP. Your child's general education teacher is not required to provide the accommodations and modifications previously identified in the IEP, this includes state and district testing. The school district will not be deemed to have knowledge that your child is a child with a disability; your child may be disciplined as a general education student and is not entitled to IDEA's discipline protections. You do retain the right to subsequently request an evaluation for special education, your request will be treated as a request for an initial evaluation and subject to the provisions and timelines in state and federal law.

The District is directed by the IDEA and its regulations to agree to your written revocation in a timely manner. The District is taking this action after review of your written request to revoke consent for special education and related services. The District is not provided with other options to consider.

Parents of a child with a disability have protections under the procedural safeguards of IDEA. A copy of these procedural safeguards is enclosed with this notice. If you need assistance in understanding the provisions of your rights and safeguards you may contact, Royal Lord, Program Manager, West End SELPA at 909 476-6135

Sincerely,

(Name)



EVALUATION AND ASSESSMENT

SECTION A	<u>AREAS OF SUSPECTED DISABILITY</u>	
SECTION B	<u>TYPES OF ASSESSMENTS</u>	
SECTION C	<u>ENGLISH LEARNERS</u>	
SECTION D	<u>EVALUATION OF AFRICAN-AMERICAN STUDENTS</u>	
SECTION E	<u>SUSPENSION OR EXPULSION OF PUPILS WITH EXCEPTIONAL NEEDS</u>	
SECTION F	<u>ELIGIBILITY EVALUATION</u>	
SECTION G	<u>INDEPENDENT EDUCATIONAL EVALUATION</u>	
APPENDIX A	<u>CDE MEMORANDUM: ADMINISTERING I.Q. TEST TO AFRICAN-AMERICAN STUDENTS</u>	

Introduction

This section contains the requirements for evaluation and assessment of students who are not progressing in the general education program, even though modifications and accommodations have been provided. Parents receive information about the assessment process and instruments. Following a signed parent consent, the evaluation and assessment process begins. The initial evaluation and reevaluation are broad terms that apply to all individual testing, which includes observation and all other data-gathering activities that result in decisions about a student's educational needs. Generally, evaluation may be defined as the process to make an informed choice about a child's eligibility for special education. Assessment is a process through which the child's abilities, present levels of performance and need for service are established. It provides information that can be used by teachers and other specialists to determine how to teach a student with a disability in a way that he/she is most capable of learning.

Each local education agency shall conduct, on at least an annual basis, reviews of all IEPs. Procedures shall provide for the review of the child's progress and the appropriateness of placement and services, and the making of any necessary revisions. Assessments may be conducted annually, as necessary, to provide the IEP team sufficient information to review the child's progress and the appropriateness of placement and services. Formal assessments require written parent consent.

Evaluation for Determination of Eligibility for Special Education Services

EC 56320 Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs shall be conducted, by qualified persons, in accordance with requirements including, but not limited to, all of the requirements summarized in EC 56320).

The requirements in state and federal statutes and regulations that are related to special education programs include: Part 30 of the Education Code, Chapter 3 of the California Code of Regulations, and Title 5 Education Code. These document sections serve as a guide to the entire process of individualized evaluation and assessment and the individualized education program (IEP) team's determination of eligibility.

The tests and materials used are validated for the specific purpose of evaluation and assessment and are free from racial, cultural, or sexual bias. They are administered in the child's primary mode of communication unless otherwise specified. Tests are administered by trained personnel. The tests selected ensure that results for students with impaired sensory, manual, or speaking skills reflect the pupil's aptitude, achievement level, or other factors that the test purports to measure.

Section A – Areas of Suspected Disability

SPECIAL EDUCATION ASSESSMENT

NOTE: On September 23, 2010 the House of Representatives unanimously approved a bill paving the way for the term —mental retardation to be replaced with —intellectual disability in areas of federal law. The legislation also known as Rosa’s Law has been applied to the language herein.

In July, of 2024 Governor Newsom signed AB 2173 into law. The law states that the term emotional disability can be used in place of the term emotional disability (The term “emotional disability,” as defined in Section 300.8(c)(4) of Title 34 of the Code of Federal Regulations, and used throughout this code and the California Code of Regulations, as it relates to the provision of special education services, may also be known as “emotional disability” under state law).

ASSESSMENT PROCEDURES

Initiation of the Special Education Assessment Process

All referrals for special education and related services shall initiate the assessment process and shall be documented. When a verbal referral is made, educational staff shall offer assistance to the individual in making a request in writing, and shall assist the individual if the individual requests such assistance. All school staff referrals shall be written and include a brief reason for the referral and documentation of the resources of the regular education program that have been considered, modified, and when appropriate, the results of intervention. This documentation shall not delay the timelines for completing the assessment plan or assessment (California Code of Regulations [CCR] Title 5, §3021).

A pupil shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized.

(Education Code [EC] §56303)

What are the Procedures to Appropriately Identify the Referral Concern(s)?

To ensure that all areas related to the suspected disability are addressed, review students’ records, interview, and observe, instead of solely focusing on the learner through testing. The first step in the process is to use a combination of record reviews and interviewing of key individuals to produce a clear and concise referral question. The question should be more specific than, “The purpose of this assessment is to determine if the student is eligible for special education services.” An example of a more specific referral question is: “The purpose of this assessment is to determine areas of strengths and weaknesses related to literacy and to determine whether the student responds adequately to a research based literacy intervention. This information will be used to determine if the student is best served in general or special education or a combination of the programs.”

If the referral question is clear, then it will be fairly straightforward to judge whether a report is truly comprehensive. If the referral question is ambiguous and broad, then judging the degree to which all aspects of the concern have been addressed becomes significantly more difficult. It is also important to clearly understand the referral concern, before an assessment plan is created. This will entail using the appropriate processes with a specific focus on interviewing the student, teachers and parents using either an unstructured or structured interview process designed to identify the primary problem and lead to intervention ideas.

For example, discussion with teachers or parents may suggest that the academic problem is accompanied by a concern about a student's emotional status or behaviors that appear related to the academic area of concern. The information gathered as part of developing the referral question should be included in the report in the background or assessment results section and addressed in the evaluation, even though the data was collected before the assessment plan was signed.

What Are the Procedures When a Parent Makes a Referral for Special Education Assessment?

If a parent makes an oral request for a special education assessment for their child, it is the responsibility of the District to inform the parents this request must be in writing and assist the parents with writing the request if needed (Education Code [EC] §56029; CCR §3021). This request starts the assessment process and should follow the same procedure as listed above.

When the/District receives a written request for special education assessment from a parent, the LEA has 15 days to respond to the request with either a proposed assessment plan (see below for requirements) or a Prior Written Notice (see below) with the reason why the assessment is being denied (EC §56321, §56500.4).

What Other Assessment Guidelines Need To Be Considered During the Process?

1. A multidisciplinary team, including at least one teacher or specialist knowledgeable in the area of suspected disability, conducts assessments.
2. An assessment shall be administered by qualified personnel who are appropriately trained to administer and interpret test results. Qualified personnel should be competent in both oral and written skills in the student's primary language or mode of communication, as well as have knowledge and understanding of the student's cultural and ethnic background. If an interpreter must be used the assessment report must document this condition (Title 5, CCR §3023).
3. No single score or product of scores or test procedures shall be used as the sole criterion for the decision of the IEP Team as the student's eligibility for special education.
4. For pupils with suspected learning disabilities, a regular education teacher shall participate in the assessment, and at least one team member, other than the pupil's regular

teacher, shall observe the pupil's academic performance in the regular classroom setting. In the case of a child who is less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age (CCR §3030 j (C 3-4), EC §56341 (7) (c)).

5. IQ test scores are not contained in files of African-American pupils. Please refer to the Guidelines on Assessing African American Students and purging IQ scores received from out-of-state LEAs or non-educational agencies (Guidelines for Assessing African-American Students).
6. Assessment results are documented and contain all required information (See Written Report Section).
7. Each individual is reassessed/reviewed for determination of needed evaluation data at least every three years to determine eligibility or more frequently when requested by parent or teacher (EC §56381(a)(2)).
8. Written consent by parent/guardian/adult student is necessary anytime an individual student is screened or assessed. If a group of students are being screened or assessed at the same time, then written consent is not required.
9. Written consent by parent/guardian/adult student is required prior to observing an individual student if the data is being collected due to suspicion of a disability or a disability-related need. If the observation is conducted solely to provide feedback to the teacher regarding service delivery, then written consent will not be needed.

What Are the Assessment Timelines?

All referrals for assessment must come through a Child Find and/or the problem solving team process. If a parent requests an assessment in writing, it is recommended that a meeting be held with the parent and problem solving team within 15 calendar days to ensure that *“all resources of the general education program have been considered and, where appropriate, utilized”* (EC §56303).

- If parent/guardian is unable to attend the meeting, the LEA must provide a written response to their request for evaluation within 15 days (EC §56043(a)).
- If an assessment is indicated, the parent/guardian shall be provided a copy of the Parents’ Rights and Procedural Safeguards, Prior Written Notice, and a proposed Assessment Plan.
- If an assessment is not indicated, the parent/guardian shall be provided a copy of the Parents’ Rights and Procedural Safeguards and Prior Written Notice.

All assessments must be completed and an Individualized Education Program (IEP) developed within 60 calendar days after receipt of the signed assessment plan (EC 56043(c)).

Vacations or off track days longer than 5 consecutive school days are not counted as part of the 60 calendar days. The number of days prior to the off school time is added to the

days starting upon the student's return to total the 60 calendar days (EC §56043(f)(1)). The evaluation process is not completed until the IEP team meeting is held and the appropriate IEP pages written.

If a referral is received with 10 days or fewer left in the school year, than an assessment plan is due within the first 10 days of the following school year. When a referral is received 10 days or less prior to the end of the regular school year, the days between the pupil's regular school sessions or terms or days of school vacation in excess of five schooldays are not counted as part of the 60-days. However, the assessment plan shall be developed within 10 days after the commencement of the subsequent regular school year or the pupil's regular school term as determined by the District school calendar.

In the case of pupil school vacations, the 15-day time shall commence on the date that the pupil's regular schooldays reconvene. (EC §Section 56321a)

When Do I Provide the Parent(s) with the Parents' Rights and Procedural Safeguards?

The Parents' Rights and Procedural Safeguards must be given to the parent/guardian at multiple times throughout the Individualized Education Program (IEP) process (EC §56301(d)(2)):

- Upon initial referral for assessment;
- Upon notice of an IEP meeting; and,
- Upon reassessment.

It is critical that someone on the team explains the content to the parent/guardian to ensure that he/she understands their rights and the processes involved.

When Do I Complete a Prior Written Notice?

Prior Written Notice shall be given by the District to the parent(s) or guardian(s) of an individual with exceptional needs, or a child upon initial referral for assessment, whenever the District proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (EC §56500.4)

For guidance on completing the Prior Written Notice form, please see the IEP Manual.(What is this???)

A compliant notice will be individualized for each student and must include the following components:

- A description of the action proposed or refused by the agency;
- An explanation of why the agency proposes or refuses to take action;
- A description of any other options that the agency considered and the reasons why those options were rejected;

- A description of each assessment procedure, test, record, or report the agency used as a basis for the proposed or refused action;
- A description of any other factors that are relevant to the agency’s proposal or refusal; and,
- A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation; and, the means by which a copy of a description of the procedural safeguards can be obtained. (34 CFR §300.503)

A legal opinion pertaining to Prior Written Notice suggests a separate form be sent out after the IEP team has made a decision for the change/rejection on the following actions:

- Evaluation/Re-evaluation – intention of refusal (EC §56500.4);
- Educational Placement – (change of placement);
- Change of placement due to graduation;
- Exiting student from special education; and,

When the LEA is refusing to take an action requested by the parent in writing.

The notice must be:

- Written in language understandable to the parent/guardian;
- Provided in the native language of the parent/guardian or other mode of communication used by the parent/guardian, unless it is clearly not feasible to do so;
- That the parent/guardian understand the content of the notice and this is documented; and,
- A copy of the Parents’ Rights and Procedural Safeguards should be attached to the Prior Written Notice

When is an Assessment Plan Developed?

An assessment plan must be developed before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction. An Assessment Plan must also be developed for all formal three-year reevaluations or any time an individualized assessment is being conducted. When the school site receives a written request for assessment from the parent/guardian, or school staff member has a question regarding eligibility or services, an assessment plan should be developed.

Who Should Participate in Developing the Assessment Plan?

Although only one person needs to complete the initial Assessment Plan form, it is ideally developed in consultation with school staff with knowledge of the student, and is based on current classroom assessment and observation by teachers and/or related service providers, utilizing findings and recommendations from the school site’s problem solving team (e.g. Student Success Team (SST)). The parent/guardian should be included in developing the Assessment Plan to ensure that their areas of concerns are addressed and they have the opportunity to share any information available from assessments completed by other

agencies/professionals, such as independent assessments, which should be documented on the Assessment Plan. A member of the multidisciplinary team should explain the proposed Assessment Plan to the parent/guardian in the parent/guardian's native language to ensure that "informed" consent is obtained.

What Should Be Included in the Assessment Plan?

The proposed assessment plan given to parents or guardian shall meet all the following requirements (EC §56321b):

1. Be in language easily understood by the general public.
2. Be provided in the primary language of the parent, guardian, or other mode of communication used by the parent or guardian, unless to do so is clearly not feasible.
3. Explain the types of assessments to be conducted.
4. State that no individualized education program will result from the assessment without the consent of the parent.

Please see the "IEP Manual" section in this Procedural Handbook for specifics on how to complete the Assessment Plan.

Is Consent Required Prior to Starting the Assessment Process for an initial assessment? Yes

No initial assessment shall be conducted unless the written consent of the parent or guardian is obtained prior to the assessment. The parent or guardian shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of the consent. (EC §56321(c)(4))

Parental consent is not required before reviewing existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parents of all the children. (EC §56321(e) and 34 Code of Federal Regulations [CFR] §300.300(3)(a))

What if a Parent Does Not Provide Consent for an Initial Assessment?

If the parent of the child does not provide consent for an initial assessment, or the parent fails to respond to a request to provide the consent, the local educational agency may, but is not required to, pursue the initial assessment utilizing the procedural safeguards procedures, including mediation and due process procedures. (EC §56501(a)(3), 56506(e) and 34 CFR §300.300(a))

The local educational agency does not violate its obligation for child find, evaluation and eligibility determination if it declines to pursue the assessment. (34 CFR §300.300(a)(3)(ii) and EC §56321(2)(3))

Who Provides Consent if the Student Is a Ward of the State?

If the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial to determine whether the child is a child with a disability if—

- i. Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- ii. The rights of the parents of the child have been terminated in accordance with State law; or
- iii. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. (34 CFR §300.300(a)(2))
- iv. The court may also appoint a Court Appointed Special Advocate (CASA).

In the cases when the courts have not appointed an individual or CASA, the District/SELPA will need to appoint a surrogate parent.

What if a Parent Does Not Provide Consent for a Triennial Assessment?

If the parent refuses to consent to the reassessment, the local educational agency may, but is not required to, pursue the reassessment by using the consent override procedures by showing the public agency has made reasonable efforts to obtain the informed consent from the parent for the reassessment to determine whether the child is a child with a disability. 34 CFR §300.300(c).

When Do I Need to Use Authorization for Use and/or Disclosure of Information?

Confidentiality means the restriction of access to verbal and written communications, including clinical, medical and educational records to appropriate parties. (EC §49076) "Pupil record" means any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a LEA or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm or other means. "Pupil record" does not include informal notes related to a pupil compiled by a school officer or employee, which remain in the sole possession of the maker and are not accessible or revealed to any other person. (EC §49061(b)) "Access" means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record. (EC § 49061(e)) The District may permit access to pupil records to any person for whom a parent of the pupil has executed written consent specifying the records to be released and identifying the party or class of parties to whom the records may be released. The recipient must be notified that the transmission of the information to others without the written consent of the parent is prohibited. The consent notice shall be permanently kept with the record file (EC §49075(a)).

What Procedures Are Considered for Cultural Factors and Limited English Proficiency?

Students should not be identified as eligible for special education when the cause for their academic difficulties is Limited English Proficiency or other cultural factors. Federal laws indicate that a determination of primary home language must be made for all students.

Additionally, if the primary home language is other than English, the student's proficiency in English (listening, speaking, reading, and writing) must be assessed by school personnel. Research (Cummins, 1979; Collier, 1987; Klesmer, 1994; Cummins, 1984) indicates that it takes approximately two years to acquire Basic Interpersonal Communication Skills (BICS) and between five and seven years to acquire the Cognitive Academic Language Proficiency (CALP) required to function effectively in content subjects. Failure to account for language development will lead to discriminatory outcomes in assessments, over-representation in referrals, and disproportionate placement in special education programs.

Students who are in the process of learning English may often display academic behaviors and skill sets that are misinterpreted as learning disabilities. It should not be assumed that English Learners who are not acquiring academic skills according to the age and grade expectations of their English-speaking peers are displaying evidence of any handicapping condition. Before referring for a special education assessment, an analysis of the student's background and progress in one of the California state adopted English Language Development (ELD) curriculum programs should be conducted. This analysis should analyze prior education history which includes the student's response to interventions, and comparison of the student's educational progress in the school's ELD curriculum with similar peers also in the ELD program.

The impact of cultural factors on student's academic performance represents a component of the exclusionary picture that should be considered. For immigrant students, the impact of acculturation should not be overlooked in examining effects on academic progress. Also, some students may exhibit low proficiency in Standard English Language (SEL), which may also negatively impact academic achievement.

Thus, multi-disciplinary evaluation teams in examining cultural and language factors as exclusionary need to carefully review (a) the student's prior educational history, (b) progress in the ELD curriculum, (c) SEL difficulties, and (d) acculturation factors as part of the process to determine if those factors are the primary reason for the students' academic difficulties. This analysis should provide the basis for any individual assessment that may be conducted. The assessment should be conducted, if feasible, by bilingual assessors fluent in the student's primary language (Education Code citation) and will weigh the relative impact of language acquisition, cultural factors and indicators of a SLD on student's academic progress, which includes their response to interventions.

What Procedures Are Considered for Environmental or Economic Disadvantage?

The evaluation team must also assess whether issues of environment or economic factors may be the primary source of a child's academic problems rather than a handicapping condition.

Indicators of economic status are found by reviewing the student's or school's receipt of a federally subsidized meal program. Interviews with the family and developmental histories are also useful tools that provide further environmental information that may impact student achievement, such as illnesses, patterns of school attendance, availability of early intervention, etc. In addition, chronic health conditions,, medications, or other significant areas of difficulty for a child should be considered. Whether these factors are impacting the student's academic skills should be documented in assessment reports, and may serve to rule out SLD.

What Instruments Should Be Used?

A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities) (34 CFR §300.304(b)(2)).

Assessments or measures are administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments to insure validity and reliability. Assessments or other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. Assessment tools should be selected and administered to a child with impaired sensory, manual or speaking skills in a manner in which the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual or speaking skills (unless those skills are the factors that the test purports to measure). (34 CFR §300.304(c)). Any deviation from the standardized procedures identified in the instruction manual should be discussed in the body of the assessment report. In addition, the provider should consider how the assessment results were impacted by the deviation from the standardized protocol. When standardized tests are considered to be invalid for the specific pupil an alternative assessment must be utilized and specified on the assessment plan. (CCR §3030(c)(4)(B) and §3030(j)(4)(B))

What Are Legal Requirements of Individualized Assessment for Suspected Disability?

An individual assessment of the pupil's educational needs shall include, but not limited to, all the following: (EC §56320)

- a. Testing and assessment materials and procedures used for the purposes of assessment and placement of individuals with exceptional needs are selected and administered so as not to be racially, culturally, or sexually discriminatory.
- b. Tests and other assessment materials are provided and administered in the pupil's primary language or other mode of communication(unless the assessment plan indicates reasons why this provision and administration are not clearly feasible), have been validated for the specific purpose for which they are used, and are administered by trained personnel in conformance with the instructions provided by the producer of the tests and other assessment

materials, except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist.

- c. Tests and other assessment materials include those tailored to assess specific areas of educational need and not merely those, which are designed to provide a single general intelligence quotient.
- d. Tests are selected and administered to best ensure that when a test administered to a pupil with impaired sensory, manual, or speaking skills produces test results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure.
- e. No single assessment is used as the sole criterion for determining whether a pupil is an individual with exceptional needs and for determining an appropriate educational program for the pupil.
- f. The pupil is assessed in all areas related to the suspected disability including, if appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. A developmental history is obtained, when appropriate. For pupils with residual vision, a low vision assessment shall be provided.
- g. The assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment.
- h. As part of an initial assessment, and if appropriate, as part of any reassessment, the group shall include members of the individualized education program team, and other qualified professionals, as appropriate. The group may conduct its review without a meeting.

COMPREHENSIVE EVALUATION REPORT

A comprehensive evaluation report provides the documentation that all legal and best practice aspects of an assessment have been completed, and should be viewed as a resource for teachers and other staff members as intervention options are considered. There is not one way to complete a comprehensive evaluation and the concept of a —comprehensive evaluation is somewhat of a subjective conclusion. That being said, there are a set of general principles promulgated in the Test Standards that apply to all types of individualized assessments and evaluation that should be followed for every case. In addition, most author(s) who write about psycho-educational evaluation practices suggest it is critical to use a conceptual model to help organize and present results. At a minimum, providers are encouraged to include a Review of Records, Interviews with parents/caregivers, student and staff (as well as outside providers when appropriate), Observations and standardized testing/assessments in order to assure all the components of a comprehensive assessment are included in the report (R.I.O.T; Hosp, 2008).

What Are the Legal Requirements for the Written Comprehensive Evaluation Report?

The personnel who assess the pupil shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all the following: (EC §56327)

- Whether the pupil may need special education and related services;
- The basis for making the determination;
- The relevant behavior noted during the observation of the pupil in an appropriate setting;
- The relationship of that behavior to the pupil's academic and social functioning;
- The educationally relevant health and development, and medical findings, if any;
- For pupils with learning disabilities, The methodology used to determine the presence or absence of a learning disability; for example, if utilizing the discrepancy model, the report should state whether or not there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; For PSW, the report should indicate the model used, as well as the following:
 - 1. Student exhibits a pattern of cognitive or processing strengths, indicated by a pattern of abilities in the average or above ranges
 2. Students exhibits both significant cognitive and academic weakness(es)
 3. A research-based link exists between the cognitive and academic weakness(es)
 4. The student requires special education to access the core curriculum
- A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and,
- The need for specialized services, materials, and equipment for pupils with low incidence disabilities

A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent or guardian. (EC §56329 (a))

What Should a Comprehensive Evaluation Report Include?

The evaluation report must also include information about:

- The student's demographic data;
- The reason for the referral;
- Documented interventions;
- Results of tests;
- Statements regarding validity of the assessments and whether test results are valid; and,
- Consideration of independent assessments.

What Components Should Be Included in the Comprehensive Evaluation Report?

- The reason for the referral to special education, including the effects of the modifications attempted in the regular education setting and any previous assessment results.
 - The child's developmental and health history, social and family dynamics including any socio-cultural factors and school history.
 - Document that the assessment was administered in student's primary language (EC 56320)
 - Include the child's performance in school and the classroom, adaptive behavior functioning, academic achievement levels, cognitive abilities, psychological processing areas, emotional behavioral functioning, language/communication skills and care/vocational (as appropriate).
 - Documentation from the observation of the child in their natural environment that are under 5 years old and in the classroom for school age, as well as observation of the child during the assessment process. Include observations in structured and unstructured settings whenever possible.
 - A statement regarding the validity of the assessment.
 - The effects of the environmental, cultural, or economic disadvantage status of the child in relation to the test results.
 - A summary and conclusion of the test results along with recommendations regarding eligibility and placement for special education services.
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- If an assessment is not considered under standards conditions, a description of the extent to which it varied from standard conditions (e.g., the e.g., the qualifications of the person administering the test, or the method of test administration, use of the interpreter), including the affects to validity (EC §56320(b)).
 - Indicate the name(s) and title/position of the multidisciplinary team members who assisted in compiling the evaluation report.
 - Include strategies, accommodations and/or modifications of the child who may need to progress and be involved in the general education curriculum and/or setting based on the evaluation results.

Pursuant to EC § 56327, Personnel who assess the pupil shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all the following:

- a. Whether the pupil may need special education and related services.
- b. The basis for making the determination.
- c. The relevant behavior noted during the observation of the pupil in an appropriate setting.
- d. The relationship of that behavior to the pupil's academic and social functioning.
- e. The educationally relevant health and development, and medical findings, if any.
- f. For pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.

- g. A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.
- h. The need for specialized services, materials, and equipment for pupils with low incidence disabilities, consistent with guidelines established pursuant to Section 56136.

(Amended by Stats. 1982, Ch. 1334, Sec. 4.)

Are There Any Exclusionary Factors That Must Be Considered?

There are factors that the evaluation team and IEP team will need to consider to determine if they preclude the student from being identified with a disability. The multidisciplinary evaluation team must consider current legal requirements that describe exclusionary factors and how they are manifested. Some of the factors that apply to students who may be considered for having any disability are lack of appropriate instruction in reading, including phonemic awareness, phonics, vocabulary, fluency, text comprehension, lack of instruction in mathematics, and limited-English Proficiency. To make a determination that any of these factors are not the primary reason for the student achievement difficulties, evaluation teams need to document, in the evaluation report, evidence that each of these factors has been considered and ruled out as primary determining factors. If necessary, more data may need to be gathered to eliminate specified exclusionary factors from consideration.

What are the Components of a Comprehensive Evaluation Report?

This section provides best practices related to what is considered to be appropriate and necessary to include in a comprehensive evaluation. There may be some situations where additional information is needed and other times that not all the information listed here is required.

General Testing Guidelines

- All test scores used for decision-making or recommendations have a reliability above 0.90.
- Confidence intervals are reported for all scores.
- The purposes of specific assessment tools are clearly specified.
- Tools used have validity evidence for the purpose indicated.
- For English Learners, evidence exists that test scores are reliable and valid.

Referral Questions

- Referral question is specific and designed to address more than eligibility determination.
- All the assessment tools selected address the referral question.

Instructional Factors

- Core skills for the primary academic concern (e.g., literacy) are assessed.
- An intervention that embraces instructional match in the academic area of concern is described.
- Information about the degree to which the interventions was implemented is included.

- A statement about the degree of match between the student’s skill and the intervention is included.
- Empirically evaluated progress monitoring tools are used and clearly described.
- Goal setting process is thoroughly described.
- A decision about the impact of the interventions is included.

Exclusionary Factors

Statements with supporting data indicating the following factors are not the cause of the student’s low academic performance are included:

- Visual Impairment;
- Hearing Impairment;
- Orthopedic Disability;
- Intellectual Disability;
- Emotional Disability;
- Cultural factors and limited English proficiency; and,
- Environmental or economic disadvantage.

Defining Characteristics of the Disability

- A statement about the student’s *need* for special education and a description of the sources of data used to make that conclusion is included.
- A statement about the existence of a specific learning disability and a description of the sources of data used to make that conclusion is included.
- A statement about the model selected for eligibility is included.
- Only one model for eligibility determination is used.

IDEA Guidelines

- A statement or information regarding assessment of all areas that may be related to the area of disability.
- A statement or information about the need for any services not commonly linked to the identified disability
- Recommendations for instruction/intervention based on assessment information.
- The use of multiple measures in determining eligibility.

What Is the Requirement to Translate Written Reports in the Primary Language of Assessments Prior to an IEP?

The District must provide written translation of the IEP document, upon request,. Providing an interpreter at the IEP to translate the assessment document and assessor information is appropriate.

What Is the Requirement to Translate Written Independent Educational Evaluation (IEE) Reports in the Primary Language of Assessments?

The rules are the same whether or not it is a District completed assessment or an IEE funded by the District. In looking at this requirement, whether or not we need to provide a **written** translation of an IEE, the answer is probably **no**. First, it is assumed the document is a true IEE (i.e., an independent evaluation that the District funded). If it were a parent-funded evaluation, any argument for **written** interpretation of the document would be even more tenuous.

The District will also have to look at the **context**. For example, if the LEA **attached** the IEE as part of the IEP document itself (i.e., making the IEE a numbered page of the IEP), the District would arguably have to translate the document based upon Title 5 CCR §3040(b), which, again, requires us to provide a **written** translation of the "IEP program."

If, for example, the IEE was in the student's file, and the parent requested all of the pupil's record, the LEA would have to provide either an **oral** or **written** interpretation of "the record" for parent pursuant to Title 5 CCR §431.

If this is the normal situation, in which the IEE report itself is discussed at the IEP (and not made a part of the IEP document itself), then an **oral** translation is sufficient. That is the SELPA/District needs only be sure that the parent "understands" the IEP meeting, which can be done through oral interpretation (See EC §56341.5 and 34 CFR §300.322(e)). Remember, too, that OAH will simply examine the situation from a parental participation standpoint - i.e., whether or not the parent understood the IEP proceedings. Of course, oral translation is a sufficient method of providing that understanding.

In the context of an IEP, the SELPA/District can provide an oral (line for line if need be) translation of assessment reports at an IEP, which will be sufficient to meet our translation obligation. Other documents (such as parents' rights) have more specific requirements that apply to them.

ELIGIBILITY CRITERIA

A pupil shall qualify as an individual with exceptional needs(EC §56026)if the results of the assessment(EC §56320)demonstrate that the degree of the pupil's impairment as described in §3030 (a through j) requires special education in one or more of the program options authorized(EC §56361). The decision as to whether or not the assessment results demonstrate that the degree of the pupil's impairment requires special education shall be made by the IEP team, including assessment personnel (EC §56341(b) The IEP team shall take into account all the relevant material that is available on the pupil. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the pupil's eligibility for special education. (CCR Title 5 §3030)

The specific categories of eligibility under CCR Title 5 §3030 can be referenced in the California Special Education Programs Composite of Laws; and are delineated as follows:

- a. Autism
- b. Deaf-blindness
- c. Deafness

- d. Emotional Disability
- e. Hearing Impairment
- f. Intellectual Disability
- g. Multiple Disabilities
- h. Orthopedic Impairment
- i. Other Health Impairment
- j. Specific learning disabilities
- k. Speech or Language Impairment
- l. Traumatic Brain Injury
- m. Visual Impairment

During an initial or triennial IEP team meeting, the school psychologist should summarize the findings of the multidisciplinary team evaluation by indicating whether the pupil may need special education and related services, the basis for making the determination, the relevant behaviors and their relationship to the student's learning disabilities. The discussion should also cover whether there is a discrepancy between achievement and ability that cannot be corrected with general education interventions and is not the effects of environmental, cultural, or economic disadvantage, when appropriate. The team members usually reach consensus on eligibility but, when one or more members disagree, they should sign the IEP as being in attendance and attach a letter of dissent explaining why they disagree. It is important to note that eligibility and placement are two separate IEP team decisions.

What Criteria Do I Use for Determining Eligibility for Autism?

Must exhibit any combination of the following, to include but not limited to:

- An inability to use oral language for appropriate communication.
- A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.
- An obsession to maintain sameness.
- Extreme preoccupation with objects or inappropriate use of objects or both.
- Extreme resistance to controls.
- Displays peculiar motoric mannerisms and motility patterns.
- Self-stimulating, ritualistic behavior

FROM CASP and CDE- Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(A) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability, as defined in subdivision (b)(4) of this section.

(B) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in subdivision (b)(1) of this section are satisfied.

What Criteria Do I Use for Determining Eligibility for Deaf/Blind Impairment?

- Severe communication problems.
- Severe developmental problems.
- Severe educational problems.

Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. <https://www.cde.ca.gov/ta/tg/ca/disablecodes.asp>

What Criteria Do I Use for Determining Eligibility for Emotional Disability?

Because of a serious Emotional Disability, a student exhibits one or more of the characteristics described as follows:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- Inappropriate types of behavior or feelings under normal circumstances in several situations.
- A general pervasive mood of unhappiness or depression.
- A tendency to develop physical symptoms or fears associated with personal or school problems.

Characteristics identified from the list above must have been demonstrated over a long period of time to a marked degree, and have adversely affected educational performance.

The term emotionally disturbed does not include children:

- Who are socially maladjusted.
- Unless it is determined that they have Emotional Disability.

Emotional disability means a condition exhibiting one or more of the following characteristics, over a long period of time and to a marked degree, that adversely affects educational performance: (A) An inability to learn which cannot be explained by intellectual, sensory, or health factors; (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) Inappropriate types of behavior or feeling under normal circumstances; (D) A general pervasive mood of unhappiness or depression; or (E) A tendency to develop physical symptoms or fears associated with personal or school problems. *The term (ED) includes schizophrenia. The term does not apply to children who are socially*

maladjusted, unless it is determined that they have an emotional disability. (34 CFR Sec. 300.8(c)(4)).

What Criteria Do I Use for Determining Eligibility for Hearing Impairment ?

Must meet all conditions as follows:

- Student has a hearing impairment, whether permanent or fluctuating, that has been identified by an audiological specialist.
- Regardless of amplification, the hearing impairment reduces the processing of linguistic information, including reception and speech discrimination as identified by a speech and language specialist.

The hearing impairment results in either one or both of the following:

- The handicapping condition markedly reduces the ability of the student to learn academic material presented in a modified regular education setting.
- The handicapping condition markedly reduces the student's ability to function in the non-academic areas of modified regular education setting.

CDE- Hard of Hearing means hearing, impairment, whether permanent or fluctuating, that adversely affects a child's educational performance, but that is not included under the definition of deaf in this section.

What Criteria Do I Use for Determining Eligibility for Intellectual Disabilities/Limited Cognitive Functioning (Mild, Moderate, and Severe)?

Must meet all:

- Significantly below average general intellectual functioning.
- Concurrent deficits in behavior.
- Manifested during the developmental period of birth up to nine years.
- The intellectual disability results in one and/or both of the following:
 - The handicapping condition markedly reduces the pupil's ability to learn academic material presented in a modified general education setting.
 - The handicapping condition markedly reduces the pupil's ability to function in the non-academic areas of a modified general education setting.

CDE- Intellectual Disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period, that adversely affects a child's educational performance. (34 Code of Federal Regulations (CFR), Sec. 300.8(c)(6)).

What Criteria Do I Use for Determining Eligibility for Multiple Disabilities?

Federal Regulations (34 CFR 300.8) define multiple disabilities as: concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

Multiple disabilities do not include deaf-blindness (because it has its own disability category). Thus under the federal definition, SLD-SLI or ED-SLD would not be examples of a multiple disability since it is unlikely that the combination of these disabilities would result in such severe educational need that the education of the child would have to be conducted in a separate special education program that was uniquely designed to meet the needs of the student as a result of this combination of disabilities.

CDE- Multiple Disabilities means concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.,) the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children. (34 CFR Sec. 300.8(c)(7)).

What Criteria Do I Use for Determining Eligibility for Orthopedic Impairment?

Must meet both of the following criteria:

- Student has severe orthopedic impairment cause by congenital abnormality, disease, or other causes, as determined by medical evaluation.
- The orthopedic impairment results in either one or both of the following:
 - The handicapping condition markedly reduces the ability of the pupil to learn academic material presented in a modified general education setting.
 - The handicapping condition markedly reduces the ability of the pupil to function in non-academic areas of a modified general education setting.

CDE- Orthopedic Impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures). (34 CFR Sec. 300.8(b)(6) Sec. 300.8(c)(8))

What Criteria Do I Use for Determining Eligibility for Other Health Impairment?

Demonstrated one or more of the following:

- Limited strength.
- Limited vitality.
- Limited alertness.

- Condition must be either one or both of the following:
 - Chronic
 - Acute
- Must be a non-temporary health problem.
- The problem must result in one or both of the following:
 - The handicapping condition adversely affects the pupil's educational performance in listening comprehension, oral expression, basic reading skills, reading comprehension, written expression, math calculations, or math reading.
 - The handicapping condition markedly reduces the pupil's ability to function in the non-academic areas of a modified general education setting.

Other Health Impairment means having limited strength, vitality or alertness, due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome, which adversely affects a child's educational performance. (5 CCR Section 3030)

What Criteria Do I Use for Determining Eligibility for Speech/Language Impairment?

Must meet any of the following criteria:

- **Articulation** – The student displays reduced intelligibility or an inability to use the speech mechanism, which significantly interferes with communication and attracts adverse attention.
- **Abnormal Voice** – A student is eligible for voice therapy by a speech and language specialist when there is a persistent defective voice quality, pitch or loudness.
- **Fluency Disorder** – A pupil has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the student and listener.
- **Language Disorder** – The student has an expressive language disorder when he or she meets one of the following criteria:
 - The student scores at least 1.5 standard deviations below the mean or below the 7th percentile for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics.
 - The student scores at least 1.5 standard deviations below the mean or below the 7th percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed above and displays inappropriate or inadequate usage or expressive and receptive language as measured by a representative spontaneous or elicited language sample of a minimum of fifty utterances.

Speech or Language Impairment means a communication disorder such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance. (34 CFR Sec. 300.8(c)(11))

What Criteria Do I Use for Determining Eligibility for Traumatic Brain Injury?

- The child has acquired an injury to the brain by an external force.
- Resulting in total or partial disability and/or psychological impairment.
- Causes impairment in one or more areas:
 - Cognition
 - Memory
 - Attention
 - Reasoning
 - Abstract thinking
 - Judgment
 - Problem Solving
 - Language & Speech
 - Sensory
 - Perceptual
 - Motor abilities
 - Psychosocial behavior
 - Physical

Does not apply to brain injuries that are congenital, degenerative, or induced by birth trauma.

Traumatic Brain Injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, which adversely affects educational performance. The term applies to both open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, nor brain injuries induced by birth trauma. (34 CFR Sec. 300.8(c)(12)).

What Criteria Do I Use for Determining Eligibility for Visual Impairment?

Must meet all of the following criteria:

- Student has a visual impairment, as determined by an eye specialist and educators.
- Even with correction, conditions results in either one or both of the following:
 - The handicapping condition markedly reduced the ability of the student to learn academic material presented in a modified general education setting.
 - The handicapping condition markedly reduces the student's ability to function in the non-academic areas of a modified general education setting.
- Visually Impaired, including blindness means impairment in vision that, even with correction, adversely affects a child's educational performance.

The term includes both partially seeing and blind children. (34 CFR Sec. 300.8(c)(13)).

What Criteria Do I Use For Determining Eligibility for a Student Suspected of Having, or Diagnosed with, Attention Deficit Disorder (ADD) or Attention Deficit Hyperactive Disorder (ADHD)?

If the pupil has been diagnosed by a medical doctor as having ADD or ADHD, or if a pupil has not been diagnosed by a medical doctor but demonstrates characteristics and behavior consistent with a diagnosis of ADD or ADHD, and through assessment it has been determined special education services and/or related services are required to access the general education curriculum and environment, the assessment team may consider the eligibility requirements listed above under **Other Health Impairment**. The assessment team may also consider eligibility requirements listed above under Emotional Disability and/or Specific Learning Disability.

Under both of the conditions listed above, the student suspected or diagnosed with ADD or ADHD must still meet the eligibility requirements listed in Title 5, CCR §3030 to qualify for special education services (EC §56339).

Other Health Impairment means having limited strength, vitality or alertness, due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome, which adversely affects a child's educational performance. (5 CCR Section 3030).

OTHER TYPES OF ASSESSMENTS

The West End SELPA has guidelines and/or procedures to support the LEA with addressing the following assessment areas:

- Preschool Guidelines for information on Preschool to Kindergarten or 1st assessment.
- Behavior Guidelines for behavioral assessments and intervention plans.
- Guidelines for English Language Learners
- Guidelines for assessing African American students.
- Related services for independence assistance from instructional aides.
- Assistive technology.
- Determination of the Need for Triennial Review Evaluation.
- Community Resources for information regarding:
 - Inland Regional Center
 - California Children Services (CCS)
 - Department of Rehabilitation (DOR)
 - State Schools

EC 56320 (f) The pupil is assessed in all areas related to the suspected disability including, if appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social emotional

status. A developmental history shall be obtained, when appropriate. For pupils with residual vision, a low vision assessment shall be provided in accordance with guidelines established pursuant to Section 56136. In assessing each pupil under this article, the assessment shall be conducted in accordance with Sections 300.304 and 300.305 of Title 34 of the Code of Federal Regulations.

EC 56322. The assessment shall be conducted by persons competent to perform the assessment, as determined by the local educational agency.

EC 56327 *The personnel who assess the pupil shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to all of the following:*

- (a) Whether the pupil may need special education and related services.*
- (b) The basis for making the determination.*
- (c) The relevant behavior noted during the observation of the pupil in an appropriate setting.*
- (d) The relationship of that behavior to the pupil's academic and social functioning.*
- (e) The educationally relevant health and development, and medical findings, if any.*
- (f) For pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.*
- (g) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.*
- (h) The need for specialized services, materials, and equipment for pupils with low incidence disabilities, consistent with guidelines established pursuant to Section 56136.*

No single procedure for evaluation will be used as the sole criterion for determining an educational program for a student with exceptional needs. The assessment of the individual, including individuals with suspected low incidence disabilities, is conducted by appropriate personnel who are knowledgeable of that disability. Consideration is given to the need for specialized services, materials, and equipment consistent with students who experience a low incidence disability.

The statement of present levels is a summary that describes the student's current academic achievement and functional performance across a variety of educationally related domains. The statement of present levels creates a baseline for designing educational programming and measuring future progress. Based on this information, areas of need are determined. In addition, with regard to the student's involvement in the general education curriculum, the statement of present levels of academic achievement and functional performance is important because it provides the basis for determining what the individual student needs in order to meaningfully participate in the least restrictive environment (LRE).

Current, specific, measurable, objective, baseline information links evaluation results to expectations of the core curriculum or alternative curriculum. This information forms the basis for the development of goals for the student. If the student will be age 16 or older prior to their next Annual Review, the statement of present levels also addresses the student's transition needs in the areas of instruction, employment and post-school adult living, community, and related services.

If the purpose of the present level of educational performance is to identify a student's needs and establish a baseline from which to develop meaningful and measurable goals, then, the statement of present levels should:

- Be stated in terms that are specific, measurable, and objective;
- Describe current performance, but not past performance;
- Describe current performance in narrative terms versus relying on standardized scores and/or classification labels;
- Prioritize and identify needs that will be written as goals; and
- Provide baseline information for each identified goal to be developed.

Section B – Types of Assessment

Ongoing Assessments and Individualized Planning

Once a student is identified for special education services, ongoing assessments play a crucial role in guiding individualized planning. Each year, we review goals and benchmark objectives through the IEP process. The student's current performance levels are assessed using various tools such as classroom observations, checklists, student work, and norm-referenced assessments. Throughout the year, benchmark objectives are continuously reviewed to determine if they need to be completed, modified, or redeveloped. We rely on a combination of ecological and empirical data to create an appropriate learning environment tailored to each student receiving special services. The development of goals and objectives for the IEP is directly informed by this assessment data, which also supports the instructional plan for IEP implementation.

Norm-Referenced Tests

Norm-referenced assessments are standardized tests developed by publishers and normed for specific populations, developmental stages, or grade levels. These assessments are valuable when developing and evaluating a student's instructional program. Initially, results from these assessments help determine a student's eligibility for special education services.

Curriculum-Based Assessment

In addition to norm-referenced tests, curriculum-based assessments are used for ongoing monitoring of student progress toward educational goals and objectives. These assessments can include unit tests, portfolios, oral interviews, presentations, rubric scoring, informal inventories, written tests, checklists, and student-created products. These tools help teachers prepare future lessons and shape classroom instruction, providing insights into both individual and group progress.

Alternative Assessment

Alternative assessments are specialized techniques used for students with particular needs or disabilities who may not be adequately assessed through standardized methods. These students often follow a curriculum centered around functional life skills rather than the core curriculum. Examples of alternative assessments include portfolios, community-based observations, and modifications to standard assessments. As of July 1, 2000, federal regulations require that students following an alternative curriculum must have a specified plan for alternative assessment.

Multi-Tiered Systems of Support (MTSS) and Response to Intervention (RtI2)

MTSS is a comprehensive framework that integrates the Common Core State Standards (CCSS), core instruction, differentiated learning, and supports for student-centered and individualized needs. MTSS aims to create systemic change by aligning services and supports to quickly address and meet the needs of all students, including those who are gifted or high achievers.

Comparing MTSS and RtI2

RtI2 focuses on identifying struggling students and using teamwork and data-driven decision-making to improve their performance before problems escalate. MTSS, however, takes a broader approach by aligning all school initiatives, supports, and resources to systematically address the needs of all students. This includes promoting district-wide participation and supporting the alignment of resources across all levels. MTSS encourages a paradigm shift toward providing integrated services that raise expectations for all students through Universal Design for Learning (UDL) strategies.

While MTSS is not specifically designed for special education placement decisions, such as determining specific learning disabilities, it shares many components with RtI2, including:

- High-quality, research-based, culturally and linguistically relevant instruction for all students.
- An integrated data collection and assessment system for informed decision-making at each tier of service delivery.
- A problem-solving process to identify problems, develop interventions, and evaluate their effectiveness.
- Research-based interventions to improve student learning.
- School-wide positive behavioral supports to achieve social and learning outcomes.
- A collaborative approach to analyzing student data and working together in the intervention process.

Section C – English Learner

Assessment Requirements and Linguistic Considerations

EC 56320(b):

When conducting assessments, it is essential that the tests and materials used meet the following criteria:

1. They should be provided and administered in the language and format that is most likely to yield accurate information about what the student knows and can do academically, developmentally, and functionally. This should be done unless it's not feasible, as required by federal law (Title 20, U.S. Code, Section 1414(b)(3)(A)(ii)).

CCR 3022:

In addition to the requirements outlined in the Education Code Section 56321, the proposed written assessment plan must include:

- A description of any recent assessments conducted, including any independent assessments available.
- Consideration of any assessment information the parent requests.
- Details about the student's primary language and their proficiency in that language, as determined by Education Code Section 52164.1.

CCR 3023 - Assessment and Reassessment:

(a) All assessments and reassessments must be carried out by qualified personnel who are:

- Competent in both the oral/sign language and written skills of the student's primary language or mode of communication.
- Knowledgeable and understanding of the student's cultural and ethnic background.

If it is not feasible to provide a qualified assessor, an interpreter must be used, and the assessment report should document this. The report should also note that the validity of the assessment may have been affected due to the use of an interpreter.

(b) The normal process of acquiring a second language, as well as differences in dialect and sociolinguistic variations, should not be misidentified as a disability.

CCR 3001 - Definitions and Goals:

(q) "Primary Language":

The primary language refers to the language other than English (or another mode of communication) that the individual first learned, or the language used in the person's home.

(m) "Linguistically Appropriate Goals, Objectives, and Programs":

1. These include activities that help develop English language proficiency.
2. They also encompass instructional systems at both elementary and secondary levels that address the language development needs of students who are limited in English proficiency.

For students whose primary language is not English and who are identified by the IEP team as having a severely limited ability to learn a second language, the IEP team may determine that instruction should be provided through an alternative program. This decision is made through a waiver under Education Code Section 311. However, the IEP team must reconsider the student's ability to receive instruction in English at least once a year.

Section D – Evaluation of African-American Students

At the time of publication, no new definitive information is available regarding the evaluation and assessment of intelligence of African-American students referred for special education. Under the Larry P. v. Riles decision of 1979 there are no approved instruments. The decision identified only those tests that are prohibited. Additionally, there is no criterion or a process for selecting acceptable instruments. Consequently, according to the California Department of Education, Special Education Division, African-American students cannot be assured that decisions about their eligibility for special education will be based on technically or educationally adequate instruments. To provide equal treatment and effective educational decisions for African-American students in special education, according to a presentation to the Advisory Commission on Special Education, November 20, 1998:

The California Association of School Psychologists (CASP) in cooperation with the Special Education Division of the California Department of Education asks the Advisory Commission on Special Education to participate in establishing criteria and a committee to select acceptable tests or procedures.

Intelligence is assessed in education for identification and documentation of an educational disability as required for special education services. However, identification of all educational disabilities does not require the assessment of intelligence, and several of the educational disabilities include the term intellectual ability or a synonym of the concept. Terms of general or specific intellectual abilities are found as special education service requirements for specific learning disability, intellectual disability, emotional disability, and traumatic brain injury.

Implications for California Speech Language Pathologists – Toya Wyatt Article

Although the original ruling applies to the use of standardized IQ tests with African American children, many standardized speech and language tests also fall under the Larry P. mandate. This is because they directly or indirectly purport to measure IQ and their construct validity is partially or fully determined through correlations with other IQ tests.

See Appendix A for an opinion letter regarding the propriety of administering I.Q. tests to African-American students.

Section E–Suspension or Expulsion of Pupils with Exceptional Needs

California Education Code Section 48915.5

**Suspension or Expulsion of Pupils With Exceptional Needs;
Free Appropriate Public Education (FAPE);
Provision of Transportation**

48915.5. (a) An individual with exceptional needs, as defined in Section 56026, may be suspended or expelled from school in accordance with Section 1415(k) of Title 20 of the United States Code, the discipline provisions contained in Sections 300.530 to 300.537, inclusive, of Title 34 of the Code of Federal Regulations, and other provisions of this part that do not conflict with federal law and regulations.

(b) A free appropriate public education for individuals with exceptional needs suspended or expelled from school shall be in accordance with Section 1412(a)(1) of Title 20 of the United States Code and Section 300.530(d) of Title 34 of the Code of Federal Regulations.

(c) If an individual with exceptional needs is excluded from school bus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian provided that transportation is specified in the pupil's individualized education program.

(d) If the individual with exceptional needs is a foster child, as defined in Section 48853.5, and the local educational agency has proposed a change of placement due to an act for which a decision to recommend expulsion is at the discretion of the principal or the district superintendent of schools, the attorney for the individual with exceptional needs and an appropriate representative of the county child welfare agency shall be invited to participate in the individualized education program team meeting that makes a manifestation determination pursuant to Section 1415(k) of Title 20 of the United States Code. The invitation may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call.

(e) If the individual with exceptional needs is a homeless child or youth, as defined in Section 11434a(2) of Title 42 of the United States Code, and the local educational agency has proposed a change of placement due to an act for which a decision to recommend expulsion is at the discretion of the principal or the district superintendent of schools, the local educational agency liaison for homeless children and youth designated pursuant to Section 11432(g)(1)(J)(ii) of Title 42 of the United States Code shall be invited to participate in the individualized education program team meeting that makes a manifestation determination pursuant to Section 1415(k) of Title 20 of the United States Code. The invitation may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call.

(Amended by Stats. 2014, Ch. 767, Sec. 1. Effective January 1, 2015.)

Procedural Safeguards (in part)

20 United States Code (USC) Section 1415

(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT

Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING

(I) AUTHORITY OF SCHOOL PERSONNEL

(A) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) Additional authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

(D) Services

A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

- (i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination

(i) **In general** Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

- (I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

- (i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);
- (ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- (iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) Special circumstances

School personnel may remove a student to an **interim alternative educational setting** for not more than **45 school days** without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

- (i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
- (ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
- (iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) DETERMINATION OF SETTING

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) APPEAL

(A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local

educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

(I) return a child with a disability to the placement from which the child was removed; or

(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) PLACEMENT DURING APPEALS

When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

(A) In general

A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) Exception

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge

(i) In general

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

(A) Rule of construction

Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records

An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) DEFINITIONS In this subsection:

(A) Controlled substance

The term “controlled substance” means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) Illegal drug

The term “illegal drug” means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act [21 U.S.C. 801 et seq.] or under any other provision of Federal law.

(C) Weapon

The term “weapon” has the meaning given the term “dangerous weapon” under section 930(g)(2) of title 18.

(D) Serious bodily injury

The term “serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18.

(6) RULE OF CONSTRUCTION

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

(7) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

(1) In general

A State that receives amounts from a grant under this subchapter may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

- (A) the agency shall provide any notice required by this section to both the individual and the parents;
- (B) all other rights accorded to parents under this subchapter transfer to the child;
- (C) the agency shall notify the individual and the parents of the transfer of rights; and
- (D) all rights accorded to parents under this subchapter transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this subchapter.

Suspension and Expulsion Rates

34 Code of Federal Regulations Section 300.170

(a) *General.* The LEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities -

- (1) Among LEAs in the State; or
- (2) Compared to the rates for nondisabled children within those agencies.

(b) *Review and revision of policies.* If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

(Authority: 20 U.S.C. 1412(a)(22))

Section F – Eligibility Evaluation

EC 56381(a)(2) A reassessment shall occur not more frequently than once a year, unless the parent and the local educational agency agree otherwise, and shall occur at least once every three years, unless the parent and the local educational agency agree, in writing, that a reassessment is unnecessary. If the reassessment so indicates, a new individualized education program shall be developed.

Each local education agency shall conduct a reassessment of each child with a disability if conditions warrant a reassessment, or if the child's parent or teacher requests a reassessment, but at least once every three years.

Section G - Independent Educational Evaluation

EC 56329(b) A parent or guardian has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists, as defined by regulations of the board, if the parent or guardian disagrees with an assessment obtained by the public education agency, in accordance with Section 300.502 of Title 34 of the Code of Federal Regulations. A parent or guardian is entitled to only one independent educational assessment at public expense each time the public agency conducts an assessment with which the parent or guardian disagrees. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

When a parent or guardian requests an independent educational evaluation, the public education agency may initiate a due process hearing to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent or guardian maintains the right for an independent educational evaluation, but not at public expense.

If the school district agrees to an independent evaluation at public expense, the district director should contact the SELPA with the names of the assessors they have agreed to. and release (s) of

information will be developed by the district which specifies those areas to be evaluated and who will complete each assessment. The assessment(s) completed will comply with the locations of the evaluator(s), the minimum qualifications of evaluator/s, the costs of the evaluation, and use of approved assessment instruments as set out in the Criteria for Independent Educational Evaluation.

Parents will be required to sign appropriate releases to exchange information between the independent educational evaluator(s) and the SELPA/school district as a condition of the school district's agreement to provide for an independent evaluation.

As part of an independent educational evaluation, the examiner shall follow guidelines as articulated in current educational code and state law for school district evaluations, which include, but are not limited to, observing the student in an appropriate setting and interviews with parents and staff.

The independent educational evaluation must be reviewed at an individualized education program (IEP) meeting. The District is responsible for scheduling the IEP meeting. The independent examiner shall attend the IEP team meeting in person or through phone contact at which time the evaluation will be discussed. The SELPA/school district will pay the independent examiner to attend the IEP team meeting as part of the evaluation responsibilities.

See West End SELPA Policies and Procedures: Independent Educational Evaluation BP 6159.8 AR 6159.8

DENYING A REQUEST FOR A SPECIAL EDUCATION ASSESSMENT

The District has the right to refuse a request for a special education assessment if it does not believe that the student may have a disability requiring special education and related services. This right should only be exercised only when there is evidence that the student is receiving passing grades, progressing from grade to grade, or that the student's instructional difficulties are the results of factors other than a suspected disability.

Parents have the right to a due process hearing to challenge the refusal. At the hearing the District will have to provide evidence to defend its decision. Thus, a decision to deny a request for a special education assessment should only be made when the school site administrator or designee has documented evidence to support their decision.

Evidence should be based on a review of the following:

- Student records, academic history;
- Prior assessments including curriculum-based assessments, standardized tests, and alternative measures and procedures;
- Progress in current program;
- Progress in meeting content standards, including literacy and mathematics;
- Results of State and District assessments;
- Results of proficiency examinations;
- Results of portfolio assessments and student work samples;
- Types and results of academic intervention provided;
- Teacher information and concerns;
- Parent information and concerns;

- Results of situational observations.
- Review of past medical records and other documents provided by parents/guardians

Denial of Request for Special Education Assessment

If it is decided to deny a request for a special education assessment, the following steps must be taken:

1. Notify the parents in writing of the decision.
2. The letter must include the following:
 - a. A description of the decision made by the school;
 - b. A description of the evaluation procedure, test record, or report used as a basis for the decision;
 - c. An explanation of why the decision was made;
 - d. A description of any other options considered and the reason those options were rejected;
 - e. A description of any other factors relevant to the decision;
 - f. A statement that parents of a child with a suspected or confirmed disability are protected by procedural safeguards
3. Attach a copy of the *Parents' Rights and Procedural Safeguards* to the prior written notice.
4. Be sure that the letter is provided to the parent/guardian within 15 days of receipt of the request for a special education assessment.

Timelines

The timeline noted above must be followed. A Timeline Chart can be used to determine due dates. For example, calculating ccalculate the number of days that have elapsed from the date the referral was received date to when to then the completed the Assessment Plan and/or Prior Written Notice (15 days) are due, as well asand when consent for assessment was received to the IEP due date (60 days). This chart does not take into consideration suspension of timelines for dates when schools are closed or students are not in attendance for more than five (5) days or the extra days allowed for obtaining parental consent.

The referral through assessment process is not completed until the IEP team meeting is held, the student is identified as eligible or ineligible for special education services, and the appropriate IEP pages written.

APPENDIX A

California Department of Education

Memorandum

Date: September 14, 2022

To: Special Education Local Plan Area Directors

From: Heather Calomese, Division Director, Opportunities for All Branch

Subject: Special Education Assessment of African American Students

Background

Recently questions have arisen about special education assessment of African American students for identification and placement and the *Larry P.* court decision, as detailed below. This memo is intended to provide guidance on that issue. This memo reflects the most current federal and state statutory, regulatory and case law, and supersedes any previous guidance on this issue.

Laws Relating to Assessment for Special Education

In the many years since the original *Larry P.* decision, a body of federal and state special education statutes and regulations have evolved that emphasize nondiscriminatory assessment that gathers a wide range of information about the student, using multiple measures, and without focusing on a single criterion such as an intelligence quotient (IQ) score. A summary of key legal requirements for assessment follows. The California Department of Education (CDE) considers these principles in its monitoring of local educational agencies (LEAs) in relation to special education assessment of African American students.

1. No single measure or assessment may be used as the **sole** criterion for determining whether the child has a disability or for determining an appropriate educational program for the child. (20 *United States Code* [U.S.C.] § 1414[b][2][B]; 34 *Code of Federal Regulations* [C.F.R.] part 300.304[b][2]; *Education Code* [EC] §§ 56001[j] and 56320[e]; California Code of Regulations [Cal. Code Regs.], Title 5, § 3030[j][4].)
2. Assessments and other evaluation materials must include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (34 *C.F.R.* part 300.304[c][2]; *EC* § 56320[c].)
3. A variety of assessment tools and strategies must be used, in order to gather relevant functional, developmental and academic information about the child. (20 *U.S.C.* § 1414[b][2][A]; 34 *C.F.R.* part 300.304[b][1]; *EC* § 56320[b][1].)
4. Assessments and other evaluation materials must be valid and reliable for the purpose for which they are used. (20 *U.S.C.* § 1414[b][3][A][iii];

34 *C.F.R.* part 300.304[c][1][iii]; *EC* § 56320[b][2].)

5. Assessments and other evaluation materials must be selected and administered so as not to be discriminatory on a racial or cultural basis. (20 *U.S.C.* § 1414[b][3][A][i]; 34 *C.F.R.* part 300.304[c][1][i]; *EC* §§ 56001[j]; 56320[a].)

The *Larry P.* Case

In 1972 in the *Larry P.* case, the United States District Court for the Northern District of California found that African American students in the San Francisco Unified School District were being placed into classes for “Educably Mentally Retarded (EMR)” students in disproportionate numbers, based on criteria that relied primarily on the results of intelligence quotient (IQ) tests that were racially and/or culturally discriminatory and not validated for the purposes for which they were being used¹. In 1979, the court permanently enjoined LEAs throughout California from using standardized intelligence tests² for (1) the identification of African American students as EMR or its substantial equivalent or (2) placement of African American students into EMR classes or classes serving substantially the same functions³.

The court held that court approval would be required for the use of any standardized intelligence tests for African American students for the above purposes. The court laid out a state process for this.

The EMR category no longer exists. The court has never held hearings to determine the “substantial equivalent” of the EMR identification or placement, or whether IQ tests are appropriate for assessing African American students for identifications or placements other than the substantial equivalent of EMR. The state process to seek approval has not been invoked.

Although the law on assessment has evolved, as described above, the *Larry P.* injunction remains in place, and the court retains jurisdiction over its enforcement. The *Larry P.* injunction does *not* apply to tests that are not considered standardized intelligence tests.

Assessment for Learning Disabilities

So long as LEAs follow legal requirements, generally speaking they have discretion in selecting which particular assessments to use in determining eligibility for special education⁴. When assessing for a learning disability, LEAs are not required to consider whether the student has a severe discrepancy between intellectual ability and achievement. Rather, they must permit a model based on a student’s response to intervention, or RTI. (20 *U.S.C.* § 1414[b][6].)⁵ When assessing for a learning disability using a severe discrepancy model, LEAs are not required to use IQ tests to determine intellectual ability⁶.



INSTRUCTIONAL PLANNING AND THE INDIVIDUALIZED EDUCATION PROGRAM

SECTION A	<u>THE IEP MEETING: PREPARATION, PROCESS, AND FOLLOW-UP</u>	
SECTION B	<u>WRITING THE IEP BASED ON COMMON CORE STANDARDS</u>	
SECTION C	<u>CULTURALLY AND LINGUISTICALLY DIVERSE STUDENTS</u>	
SECTION D	<u>TEACHING AND ASSESSING CALIFORNIA'S ENGLISH LANGUAGE DEVELOPMENT (ELD) AND ENGLISH-LANGUAGE ARTS (ELA) STANDARDS FOR ENGLISH LEARNERS</u>	



Introduction

The Individualized Education Program (IEP) document is the foundation that directs instructional planning for the student with exceptional needs. Therefore, the process of preparing for, conducting, and following-up any IEP meeting is crucial to the development and implementation of the IEP. This chapter will give an overview of the IEP meeting process, including the IEP document, which describes the student's program.

The West End SELPA web-based Individualized Education Program (IEP) is used by all local education agencies within the West End SELPA and includes all required components.

All special education and related services determined by the Individualized Education Program (IEP) team to be necessary for a student to benefit from special education shall be listed on the IEP. The IEP shall include date of initiation, frequency, duration and location of service. A Local Education Agency (LEA) shall assure that each student with a disability is provided services in accordance with his/her IEP, regardless of which agency or contractor provides the service.

Section A – The IEP Meeting: Preparation, Process, and Follow-up

EC -56340 Each district, special education local plan area, or county office shall initiate and conduct meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs.

EC 56341 (a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs, shall be conducted by an individualized education program team.

EC 56343 An individualized education program team shall meet whenever any of the following occurs:

- a) A pupil has received an initial formal assessment. The team may meet when a pupil receives any subsequent formal assessment.
- b) The pupil demonstrates a lack of anticipated progress.
- c) The parent or teacher requests a meeting to develop, review, or revise the individualized education program.
- d) At least annually, to review the pupil's progress, the individualized education program, including whether the annual goals for the pupil are being achieved, and the appropriateness of placement, and to make any necessary revisions.

Activities Prior to the Meeting

- Develop and distribute Invitation/Notice of Meeting
- Request translator, if applicable
- Develop proposed agenda, with team member roles designated
- Complete progress report on current goals and objectives
- Attach assessment reports to SEIS, if applicable
- Contact parent to confirm IEP date if Invitation/ Notice of meeting has not been received
- Ensure all required IEP team members are invited.

Preparation is required for an effective and collaborative IEP meeting. It is best practice to have the Case Manager of the IEP team contact the parent prior to the IEP meeting to obtain input on his/her priorities for goals and objectives, any concerns they may have, and to determine the parent's expectations for the meeting. The chairperson should also ask the parent if s/he has any reports or evaluations that the parent would like the IEP team to consider.

The special education service providers have responsibility for reviewing the criteria for achievement in the goals from the previous IEP and determining if they have been met or not met. Draft goals and objectives based on student progress and parent input should be written and submitted to the case manager. The case manager should send a copy of the draft goals and objectives proposed for the new IEP to the parent(s) for their review in advance of the IEP meeting when feasible to do so. If assessments have been completed in preparation for the IEP meeting,

these reports should also be shared with the parent prior to the IEP meeting. This may be through an informal meeting, email, U.S. mail, or phone contact.

In cases where the student has many different service providers, the service providers and Case Manager may elect to meet prior to the IEP meeting to clarify their roles and the scope of the IEP meeting.

Meeting Notification

Each local education agency shall make every reasonable effort to ensure that one or both parents of the child with a disability are present at the IEP meeting and are afforded the opportunity to participate. Parents should be notified of the meeting early enough to ensure that they will have an opportunity to attend. The meeting should be scheduled at a mutually agreed time and place. When a student reaches the age of majority, the district shall provide notice of the IEP to the student.

If neither parent can attend, the local education agency shall use other methods to ensure meaningful parent participation, including individual or conference telephone calls and other reasonable accommodations. If the parent cannot be convinced to attend the IEP meeting, the LEA must document attempts to arrange the meeting at a mutually agreeable time and place. Documentation may include record of phone call(s) made or attempted and the results, copies of correspondence sent to the parent(s) and any responses received, copies of meeting notices, and records of visits to the parent's home or place of employment and the results of those visits. Local policy has suggested a minimum of ten calendar days' notice to the parents and other parties who have assessed or who serve the student. The notice must contain the following elements:

- Purpose, time, and location of the meeting
- The positions of the people invited to the meeting
- Identification of any other local agency invited to send a representative
- The right to bring other people to the meeting who has knowledge or special expertise regarding the student with disabilities
- Student's aged 16 or younger, if appropriate, a statement indicating that the purpose is to consider needed transition services and the student is invited to the meeting

IEP Team Members

34 CFR Section 300.321 IEP Team.

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes—

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who—
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general education curriculum; and
 - (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.

(b) Transition services participants.

- (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).
- (2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.
- (3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

(d) Designating a public agency representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) IEP Team attendance.

- (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

The responsibilities of the general education teacher include:

- Sharing information about the general education curriculum and the general education classroom environment
- Assisting in developing positive behavioral interventions and strategies, if needed
- Assisting in identifying supplemental aids and services, program modifications, and supports for school personnel needed to allow the student to be involved and progress in the general education curriculum and environment

The responsibilities of the special education teacher include:

The special education teacher and/or related service provider provides individual information about the student's unique needs, including strengths and weaknesses. Their responsibilities include:

- Identifying the student's present level of academic and functional performance
 - Identifying progress toward identified goals
 - Developing measurable annual goals and objectives in all areas of need
 - Providing suggestions for maximizing the extent to which the student is educated with non-disabled peers
 - Making recommendations for related services, specialized equipment, or assistive technology
 - Assisting in developing positive behavioral interventions and strategies, if needed
1. A district representative who: is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; ii) is knowledgeable about the general education curriculum; and iii) is knowledgeable about the availability of district resources.
 2. An individual who can interpret the instructional implications of evaluation results.
 3. At the discretion of the parent(s) or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
 4. Whenever appropriate, the child.

(34 CFR 300.321 (a))

A district should document IEP meeting attendees to be able to later prove that the meeting was properly constituted according to 34 CFR 300.321.

When the purpose of the meeting is to consider postsecondary goals and transition services needed to reach these goals, the student shall be invited to attend the IEP. The student's input regarding preferences and interests will be solicited if he/she is unable or unwilling to attend. The LEA, with

the consent of the parent or a child who has reached the age of majority, must also invite any other agency that is likely to be responsible for providing or paying for transition services.

Education Code § 56341.2 requires an invitation be sent to a representative of the group home in those cases in which a pupil with exceptional needs has been placed in a group home by a juvenile court.

- (a) In the case of a pupil with exceptional needs who has been placed in a group home, as defined in subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations, by the juvenile court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code, the district, special education local plan area, or county office shall invite to the individualized education program team meetings a representative of the group home.

When an infant or toddler who had previously received IDEA Part C services becomes eligible for Part B FAPE-based coverage, an invitation to the initial IEP meeting for a child previously served under Part C must, at the request of the parents, be sent to the Part C services coordinator or other representatives of the Part C system to assist with the smooth transition of services. 34 CFR 300.321 (f).

Excusal of an IEP team member

IDEA 2004 has provisions for a required IEP team member to be excused from the IEP meeting. The purpose of this provision is to provide additional flexibility in scheduling IEP meetings and to avoid delays in holding IEP meetings.

A member of the IEP Team described in 34 CFR 300.321(a)(2) through (a)(5) above is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. When an IEP meeting involves a modification to or a discussion of the member's area of the curriculum or related services, a member of the IEP Team may be excused from attending an IEP Team meeting, in whole or in part, if:

- The parent, in writing, and the public agency consent to the excusal; and
- The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

[34 CFR 300.321(e)] [20 U.S.C. 1414(d)(1)(C)]

The consent for excusal of an IEP team member must be in writing on the IEP Team Member Excusal Form found in SEIS, **and must be provided to Parent prior to the IEP team meeting.** Each Local Educational Agency (LEA) will designate the individual in the LEA that has the authority to provide consent on behalf of the LEA. The excusal applies to attending the meeting in whole or in part. The LEA may not routinely excuse IEP team members from meetings, in whole or in part; it is expected that this provision will only be used when necessary. This provision only applies to the required members of the IEP team meeting, members who are not required may be absent without any formal excusal.

It is important to ensure that the decision to excuse a team member is made based on the unique needs of the student and not as a matter of routine or convenience. The excusal of any IEP team member should be determined on a case-by-case basis and must not be uniformly or consistently applied for any particular setting or meeting type.

THE IEP MEETING

An IEP must be developed annually for every student placed in a special education program. The IEP is developed by an IEP team after the assessment process is completed, or when the student transfers into the LEA. An IEP meeting is held and shall be reviewed at least once each year. An IEP shall be in effect for each student at the beginning of each school year. A single IEP shall be developed for each student that includes all special education services.



The IEP team meeting is conducted by a chairperson (i.e., the member of the IEP team leading the IEP meeting). The chairperson is responsible for facilitating the meeting. The chairperson's responsibilities include:

- Soliciting input from the parent(s), and other team members
- Ensuring that a discussion of pertinent data, reports, and educational alternatives takes place in a positive, productive, and non-adversarial manner
- Prioritizing needs and facilitating determination of goals and objectives,
- Facilitating a discussion of recommended services and placement in the least restrictive environment
- Ensuring the IEP contains a clear written offer of FAPE
- Obtaining parent signature for consent for placement and services
- Providing the parent with a copy of the IEP
- Ensuring that all general education and special education providers are informed of their responsibilities in the IEP, including accommodations and modifications and have access to a copy of the IEP
- Determining when it is necessary to recess the IEP meeting in order to seek advice or obtain additional information
- Following up on referrals, arrangement for services, or other necessary actions
- Notifying the Director of Special Education of the LEA if consensus could not be reached or if the parent requests a due process hearing

Transition Services

For each student with a disability, the IEP in effect at the time the student turns age 16, or younger if determined appropriate by the IEP team, shall contain a statement of the transition service needs of the student that focuses on the student's courses of study and measurable goals based upon age-appropriate transition assessments related to post-secondary training/education, competitive integrated employment and when appropriate, independent living skills.

“Transition Services” means a coordinated set of activities for a student with a disability that:

1. is designed within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate movement from school to post-school activities, including post-secondary education, vocational training, integrated employment including supported employment, continuing and adult education, adult services, independent living, or community participation;
2. is based on the individual student's needs, taking into account the student's preferences, strengths, and interests; and
3. includes –
 - instruction
 - related services
 - community experiences
 - the development of employment and other post-school adult living
 - if appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

Offer of FAPE

The written offer of a Free and Appropriate Public Education (FAPE) is the formal offer of placement and services made by the LEA. The purpose of the offer is to allow the parent to have a clear understanding of the services being offered to the student, which they can either accept or deny.

The formal written offer should include:

- The type of program being offered
- The portion of the school day the student will be in the general education class and the necessary accommodations and supplemental supports and services
- Special equipment or assistive technology to be provided
- Specialized training or support for staff
- Extended school year services, if appropriate

- A description of the means by which the individualized education program will be provided under emergency conditions, as described in Section 46392, in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days. The description shall include all of the following:
 - (i) Special education and related services.
 - (ii) Supplementary aids and services.
 - (iii) Transition services, as defined in Section 56345.1.
 - (iv) Extended school year services pursuant to Section 300.106 of Title 34 of the Code of Federal Regulations.

The IEP document is designed to address all of these components. A summary of the offer of FAPE may be included in the notes section. In some cases, it may be necessary to also include other components related to the student's unique needs such as class size, socialization opportunities, or schedule; these should be identified in the comments portion of the related services section of the IEP.

In addition, whenever a LEA proposes or refuses to change the identification, evaluation or placement of a student, they are required to provide prior written notice. The federal regulations at 34 C.F.R Section 300.503 delineates the requirements for prior written notice; which must include:

- A description of the action proposed or refused by the agency
- An explanation why the agency is proposing or refusing the action
- An explanation of any other options the agency considered and why they were rejected
- A description of each evaluation procedure, assessment, record or report the agency used as a basis for the proposed or refused action
- A description of other factors that are relevant to the agency's proposal or refusal
- A statement that the parents of a child with a disability have protection under the procedural safeguards of the IDEA and the means by which a copy of the procedural safeguards may be obtained
- Sources for the parent to contact to receive assistance in understanding the provisions of the IDEA

In many cases the IEP and the IEP comments will delineate all of the above requirements, however for difficult or complex cases; it is advisable that as a follow-up to the IEP a letter of prior written notice which refers to the IEP and summarizes the offer of educational placement and services be sent to the parent.

PARENT CONSENT

Parent Revocation of Consent

If at any time subsequent to the initial provision of services, the student's parent/guardian revokes consent, in writing, for the continued provision of special education services, the LEA shall provide prior written notice within a reasonable time period before ceasing to provide services to the student. The district shall not request a due process hearing or pursue mediation in order to require an agreement or ruling that services be provided to the student. (34CFR300.300, 300.503)



It is important to note the revocation of consent only applies to the case where the parent is withdrawing the student from all special education services. If the parent disagrees with the continued provision of a particular service that the district feels is necessary for the student to receive a free and appropriate education (FAPE), then the parent may use the established due process procedures to obtain an agreement or ruling that the services with which the parent disagrees is not appropriate. The district would continue to provide the disputed service pending the outcome of the due process proceedings.

Once the district has ceased providing special education services in response to the parent/guardian's revocation of consent, the student shall be classified as a general education student. In the context of school discipline, the school would be able to discipline the student in the same manner as any other general education student. In regard to state testing, the student would participate in the state testing program (SBAC) as a general education student and be considered a general education student who exited special education services for accountability purposes.

The district is not required to amend the student's educational records to remove any reference to the student's receipt of special education services. The student's special education files would be treated in the same manner as any other student who exited special education.

The district is relieved of its obligation to provide FAPE under IDEA; however, child find requirements continue to apply. If the student is not making progress in general education, the district should use the student study team process and when appropriate, re-refer the student for assessment for special education services.

If a parent who revoked consent for special education and related services later requests that the student be re-enrolled in special education, the district must treat this as an initial evaluation.

Providing a Copy of the IEP to the IEP Team Members

It is required that the parent be provided a completed copy of the IEP. This typically occurs at the conclusion of the IEP meeting unless the IEP team specifies in writing within the IEP document that a final copy will be provided at a different time. Those individuals who will be responsible for implementing the IEP, such as general education teachers, special education staff and related service providers must be informed of the content of the IEP. Each person needs to know their

specific responsibilities for implementing the IEP, including the accommodations, modifications and supplemental supports the student is to receive as determined by the IEP team.

Amending the IEP

The annual IEP may be amended if necessary. All amendments to the IEP must be in writing and consented to by the parent. There are no restrictions set on the changes to the IEP that can be made through an amendment. All IEP members must be notified of the changes to the IEP. If the parent requests a revised copy of the IEP with the amendments incorporated it must be provided.

Section B – Writing the IEP Based on Common Core State Standards

Standards-Based IEP

Standards-Based IEPs integrate targeted instruction within an accountability framework, enabling the measurement of student progress within general education curriculum. Individual Education Plans based on standards, focus on student outcomes by setting measurable goals aligned with grade level expectations. By establishing standard based goals and objectives, student progress can be effectively tracked and measured. As noted in the Supreme Court’s decision in *Endrew F. v. Douglas County School District (2017)* “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

Goals and Objectives Aligned to Standards

IEPs that align with Common Core State Standards (CCSS) promote inclusive practices by providing consistency in educational instruction across schools, districts and the state.

When IEP goals reflect Common Core State Standards, IEP teams can communicate using a common language. At the student level, targeting instruction to these standards provides students with disabilities access to the general education curriculum.

The IEP bridges current student function to student needs in relation to Common Core State Standards. It is imperative to review assessment results as part of the IEP process. Every student should be assessed throughout the year to verify progress towards meeting identified standards and goals.

The following questions should be considered at an initial IEP meeting and throughout the year:

1. Will the student require supplemental supports and services to meet grade-level standards, or as appropriate, goals scaffolded to the child’s current levels but aligned to grade level standards?
2. Will the student require designated supports or accommodations to demonstrate mastery on statewide assessments?
3. Will the student require a highly-modified curriculum and a focus on functional skills, therefore needing an alternate assessment on statewide assessments?

Choosing Grade-Level Standards for Special Education Students

After assessing the student, the next step is to identify the target standard. Once the student has been assessed, review the results and decide which standard strand is most appropriate for that student. Start at the student’s current grade level and begin unpacking the standard through task analysis.

After careful assessment, the case carrier/teacher should be able to accurately identify the portion of a standard that needs to be addressed. Once a portion of a standard is identified as an area of need, a goal can be developed.

In summary, unpacking the Common Core State Standards are key components to provide students access in general education curriculum.

Writing Measurable Annual Goals and Objectives/Benchmarks Related to California Content Standards

Develop the Goal and Write an Objective/benchmark

Individualized Education Program (IEP) Goals and Objectives/Benchmarks Required in the IDEA, as Amended in 2004

This section follows the organizational structure of the Association of California School Administrators (ACSA) *Goals and Objectives Handbook*.

One of the changes from IDEA, as amended in 2004, was to eliminate the requirement for objectives/benchmarks for all students with disabilities except those students with disabilities who take the alternate assessment. [20 USC § 1414 (d)(1)(A)(i)(I)]

The IEP definition in 20 USC § 1414(D)(1)(A)(i)(II) provides that the IEP must include the following:

- (II) a statement of measurable annual goals, including academic and functional goals, designed to—
 - (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (bb) meet each of the child's other educational needs that result from the child's disability

Annual educational goals should be developed that directly correlate with the student's present levels of academic achievement and functional performance, as delineated in the first portion of the student's IEP (34 CFR § 300.346(a)(1))

Goals should not be too broad or vague, nor should they be as specific as the short-term objectives. When developing annual goals, goals should be written to build on the student's strengths. Educators should consider three things: past and present educational performance, the priority of various needs, and the amount of time anticipated for the student to attain each of the goals.

Components of a Performance Goal and Objective/Benchmark

A well-written goal and objective/benchmark communicate the same intended outcome to whomever reads it. A performance goal and objective/benchmark must address six components: who, does what, when, given what, how much (criteria/mastery), and how will it be measured.

Who - the student

- a. This is expressed either by a pronoun or a noun.
- b. It is either singular or plural.
- c. This is the individual who has the responsibility of achieving the objective and whose performance will be observed for evaluation purposes.

Does what— describes observable behavior that the student will do to complete the goal or objective/benchmark

Observable behavior

- a. This is the measurable and observable behavior that is proof of the performance that will be exhibited.
- b. It is expressed in action words (action verb).
 - Each standard uses verbs to describe a learner outcome.
 - In writing objectives/benchmarks, it is important to use verbs that are open to few interpretations and that require an overt, observable action e.g., write, solve, compare, list, recite, define, construct, read).
- c. The observable behavior represents a state of doing, not a state of being nor observable activities.
 - Correct:
 - Will read aloud
 - Will point to specific letters
 - Incorrect:
 - Will be able to read aloud
 - Will know how to point to specific letters

Note: Never use *be able*, as this represents a state of being, a verb form which is observable. It is an overwriting trap which many objective writers oftentimes fall into.

When—relates to a specific point in time when something will have been learned or completed.

By reporting date

- a. This is the timeline by which the objective/benchmark should be completed.
- b. The actual day and year needs to be written, (e.g., by April 12, 2004).
- c. The dates should be aligned with your objective/benchmark dates to your report card grading periods.
- d. The action is to be assessed and/or terminated by the reporting date given.

Given what—describes the conditions that will need to be in place for the goal or objective/benchmark to be completed.

Conditions

State where, when, and under what circumstances the observable behavior will occur.

- a. This is under what conditions the objective/benchmark will be completed.
- b. This is the setting in which the activity takes place.
- c. This describes the “conditions” that will need to be in place for the objective/benchmark to be completed.

How much - Mastery, criteria

Criteria: State the extent of achievement or standard of performance which is required of the student.

Mastery: State the level of achievement required of the student before proceeding to the next objective. Mastery should be an 80 percent or higher level of success.

- Mastery – describes the performance accuracy of the behavior needed for the goal and objective/benchmark to be considered completed.
- Criteria – describes how many times the behavior must be observed for the goal or objective/benchmark to be considered completed.
 - a. Although not law, best practice includes both trials and accuracy.
 - b. Refers to the acceptable level of mastery successfully obtained in the assessment condition.
 - c. Unless stated, the implication is without error, 100 percent or perfect performance.

How will it be measured – describes performance data

- Performance data
 - a. Methods of measurement may include student work samples, various data collection strategies, portfolios, teacher observations, and summative and formative assessments.
 - b. The assessment condition activity, if not stated, is implied as being some form of observation by the supervisor, teacher, or manager in charge of the activity or program who can hold the performer accountable
 - c. Also implies that the observer will be reporting the results of observation to the performer.

Two Examples of a Performance Goal

- Reading/Language Arts, Sample Goal:

By Date, after reading a 4th grade reading passage, Student will summarize the text by providing explicit details and identify the page and/or paragraph where the details can be found in 4/5 opportunities with 80% accuracy as measured by teacher record and work samples.

- Behavior, Sample Goal:

By Date, when given different scenarios, Student will state what would be an appropriate response to a particular emotional state in 4/5 opportunities as measured by counselor/teacher record.

Remember: The IEP goals and objectives/benchmarks bridge current student functioning with state or district content standards.

Section C – Culturally and Linguistically Diverse Students

IDEA Part B: Culturally and Linguistically Diverse Students

What IDEA Says

IDEA Part B regulations support appropriate service delivery to culturally and linguistically diverse (CLD) populations. Areas of practice include the following:

- Assessment and other evaluation materials should not be racially or culturally discriminatory.
- Assessment and other evaluation materials are to be provided in the child's native language or other mode of communication unless it is clearly not feasible to do so.
- A child must not be determined to be a child with a disability if the determinant factor is lack of appropriate instruction in reading or math or limited English proficiency.
- Parents are entitled to an interpreter at the individualized education program (IEP) meeting if needed to ensure that the parents understand the proceedings.

When developing an IEP, in the case of a child with limited English proficiency, the language needs of the child as they relate to their IEP must be considered. To ensure the IEP includes the language needs of the child, the IEP must include linguistically appropriate goals, programs and services.

Section D – Teaching and Assessing California’s English Language Development (ELD) and English-Language Arts (ELA) Standards for English Learners

English Learners with Disabilities

This section provides information and resources regarding best practices and regulatory requirements for identifying, providing services, and reclassifying English Learners (EL) with disabilities.

Review of Laws & Regulations Governing Instruction for ELs

The English Language Proficiency Assessments for California (ELPAC) is the required state test for English language proficiency (ELP) that must be given to students whose primary language is a language other than English. State and federal law require that local educational agencies administer a state test of ELP to eligible students in kindergarten through grade twelve. The California Department of Education (CDE) transitioned from the California English Language Development Test (ELPAC) to the ELPAC as the state ELP assessment in 2018. The ELPAC is aligned with the 2012 California English Language Development Standards. It consists of two

separate ELP assessments: one for the initial identification of students as English learners (ELs), and a second for the annual summative assessment to measure a student's progress in learning English and to identify the student's level of ELP.

The Initial ELPAC has one purpose:

- To identify students who are ELs or are initial fluent English proficient (IFEP)

The Summative ELPAC has two purposes:

- To determine the level of ELP of EL students
- To assess the progress of EL students in acquiring the skills of listening, speaking, reading, and writing in English

All students in kindergarten through grade twelve (K–12), ages three through 1 twenty-one, whose primary language is a language other than English must take the Initial ELPAC to determine whether they are ELs. This must be done within 30 calendar days after they are first enrolled in a California public school or 60 calendar days prior to instruction, but not before July 1, per ELPAC regulations. The Summative ELPAC must be given annually to students identified as ELs until they are reclassified to fluent English proficient (RFEP).

(Source: “2019-20 English Language Proficiency Assessments for California,” California Department of Education, 2019.)

American Sign Language

For purposes of ELPAC testing and Title III services, American Sign Language (ASL), in and of itself, is not considered a “language other than English,” according to the US Department of Education (ED). Students who use ASL for communication and have not been exposed to any language other than English should not be considered for ELPAC testing. For a student who uses ASL for communication because of deafness or hearing impairment, and for whom there is another primary language other than English indicated on the student's HLS, the individualized education program (IEP) team should consider (1) ELPAC testing with appropriate universal tools, designated supports, and accommodations; or (2) alternate assessment(s).

Hearing students of deaf parents who use ASL as the primary means to communicate upon entering school and who have been exposed to a language other than English by another adult, such as a grandparent or a caregiver, may be considered for ELPAC testing. The LEA may consider ELPAC testing in addition to other appropriate language assessments to determine whether the child may benefit educationally from English language development (ELD) instruction. The LEA should base its decision to administer the ELPAC on whether the student has been exposed to another language other than English, not on the basis of whether the hearing student of deaf parents uses ASL in the home.

(Source: “2019-20 English Language Proficiency Assessments for California,” California Department of Education, 2019.)

Identification of English Learners (ELs)

Step 1. Determination of Students' Primary Language

For all students in K–12, upon first enrollment in a California public school, the LEA uses a standardized procedure to determine a student's primary language. This procedure begins with a home language survey (HLS), which is completed once by the parent or guardian at the time the student is initially enrolled in a California public school. The HLS should not be readministered every year nor readministered if a student enrolls in a new LEA.

If the HLS is completed in error, the parent or guardian may make a request to change it prior to the assessment. However, once a student is identified as an EL on the basis of the results of the Initial ELPAC, and the student has been administered the Summative ELPAC, changing the HLS will not change the student's identification. ENGLISH LANGUAGE PROFICIENCY ASSESSMENTS FOR CALIFORNIA 2019–20 ELPAC Information Guide 15 California Department of Education

A sample HLS is available on the CDE English Learner Forms web page at:

<https://www.cde.ca.gov/ta/cr/el/forms.asp>

The State Board of Education (SBE) approved the following guidelines for interpreting the sample survey:

- If a language other than English is indicated on any of the first three questions, the student should be tested with the Initial ELPAC.
- If a language other than English is indicated on the fourth question, the student may be tested at the LEA's discretion.

Assessment of English Language Proficiency

- In the event of RFEP classification, a regular instructional program is implemented, and the student's progress is monitored for four years following reclassification.

Federal Guidance for Learners with Disabilities

According to 5 CCR sections 11511 and 11516 through 11516.7 (Division 1, Chapter 11, Subchapter 7.5) as well as EC Section 313, the initial and summative administration of the ELPAC are the responsibilities of the LEA. Most students with disabilities are able to participate effectively on the ELPAC. For students whose disabilities preclude them from participating in one or more domains of the ELPAC, their IEP teams may recommend accommodations or an alternate assessment (see EC Section 56385, 5 CCR 11516.5 through 11516.7). Approved universal tools, designated supports, and accommodations are listed in Matrix Four: Universal Tools, Designated Supports, and Accommodations for the ELPAC, which is found on the CDE website at:

<https://www.cde.ca.gov/ta/tg/ep/documents/elpacmatrix4.docx>

Matrix Four will be updated with additional accessibility resources in the coming year as we transition to a computer-based assessment.

In accordance with 34 CFR sections 300.304 through 300.305, initial identification for determining whether a student is a student with a disability takes into consideration existing data, which includes LEA and statewide assessments. For those who participate in programs for students with disabilities, the LEA may be a school district, an independent charter school, the county office of education, or a state special school.

When an EL with disabilities is not able to take the ELPAC (the entire test or any portion of it), that information is shared at the IEP team meeting. IEP team members may determine that alternate assessments are appropriate and necessary. Per the ED, the alternate assessment must be aligned with the ELD Standards. The results of alternate assessments and/or the ELPAC are part of the current levels of performance in the IEP. The scores or performance levels are a part of the information considered by the team to develop linguistically appropriate goals (EC sections 56341.1[b] and 56345[b][2]).

Because such alternate means of assessments fundamentally alter what the ELPAC measures, students receive the lowest obtainable scale score (LOSS) on each domain affected. Caution should be used when interpreting results because the LOSS on one or more domains may lower the Overall performance level on the ELPAC. The LOSS on the ELPAC will be used to calculate the ELPI for Title I accountability purposes. If the student is not reclassified, the LOSS will be entered as the “Most Recent Previous Scale Score(s)” at the next year’s administration of the ELPAC.


Because of the unique nature of individual students’ disabilities, the CDE does not make specific recommendations as to which alternate assessment instruments to use. However, the appropriate alternate assessment must be identified annually in a student’s IEP. The LEA must ensure that the IEP team includes an individual who can interpret the instructional implications of evaluation results (e.g., an ELD specialist to interpret ELPAC results) (34 CFR Section 300.321[a][5]). Identified ELs with disabilities must take the ELPAC with any accommodations specified in their IEP or take appropriate alternate assessments, as documented in their IEP, every year until they are reclassified.

When a student’s IEP or Section 504 plan specifies that the student has a disability for which there are no appropriate accommodations for assessment in one or more of the Speaking, Listening, Reading, and Writing domains, the student shall be assessed in the remaining domains in which it is possible to assess the student, per 34 CFR Section 200.6. A student may be assigned an overall score only if assessed in both oral and written language. To be considered as having been assessed in oral language, the student must have been assessed in either Speaking or Listening. To be considered as having been assessed in written language, the student must have been assessed in either Reading or Writing.

Reclassification Criteria

The reclassification criteria set forth in *EC* Section 313 and Title 5 *California Code of Regulations* (5 *CCR*) Section 11303 remain unchanged. LEAs should continue using the following four criteria to establish reclassification policies and procedures:

Criterion 1: Assessment of English Language Proficiency

Assessment of language proficiency using an objective assessment instrument, including, but not limited to, the English language development test that is developed pursuant to [EC Section 60810](#)

Criterion 2: Teacher Evaluations

Teacher evaluations, including, but not limited to, a review of the pupil's curriculum mastery:

Criterion 3: Parent Consultation

Parental opinion and consultation

Resources to Support Criterion 3

The following resources may be helpful for LEAs looking for tools to support parent consultations during the COVID-19 pandemic.

Criterion 4: Basic Skills Relative to English Proficient Students

Comparison of the performance of the pupil in basic skills against an empirically established range of performance in basic skills based upon the performance of English proficient pupils of the same age, which demonstrates whether the pupil is sufficiently proficient in English to participate effectively in a curriculum designed for pupils of the same age whose native language is English

Detailed information for each criterion can be found here:

<https://www.cde.ca.gov/sp/ml/reclassification.asp>

This guidance can be found on the CDE Reclassification web page at

<https://www.cde.ca.gov/sp/el/rd/>.



SUPPORTS AND SERVICES – A CONTINUUM OF OPTIONS

SECTION A	<u>LEAST RESTRICTIVE ENVIRONMENT – A CONTINUUM OF SERVICES AND PLACEMENT OPTIONS</u>	
SECTION B	<u>RELATED SERVICES</u>	
SECTION C	<u>ASSISTIVE TECHNOLOGY</u>	
APPENDIX A	<u>GUIDELINE STATEMENT – LEAST RESTRICTIVE ENVIRONMENT</u>	
APPENDIX B	<u>LEAST RESTRICTIVE ENVIRONMENT CONTINUUM</u>	

Introduction



West End SELPA Philosophy and Commitment

The West End SELPA is dedicated to ensuring that all individuals with exceptional needs receive a Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE), in compliance with state and federal mandates.

If related services cannot be provided by an LEA employee, the LEA may contract with a certified nonpublic, nonsectarian school or agency under the terms of a master contract and individual services agreement. For mental health services or medically necessary occupational and physical therapy, services may be provided by employees, vendors, or contractors of the State Department of Health Services or Mental Health, or any designated local public health or mental health agency, as outlined in local interagency agreements.

All special education and related services determined by the Individualized Education Program (IEP) team to be necessary for a student's educational benefit will be listed on the IEP. The LEA ensures that each student with a disability receives services in accordance with their IEP, whether provided by the LEA, an agency, or a contractor.

If another agency fails to provide a related service listed on the IEP, the LEA will assume responsibility, ensuring the service is delivered without disruption and at no cost to the parent, unless otherwise provided by law.

Special education programs tailored to student needs are integrated into general education campuses and leased sites throughout the SELPA to serve individuals with disabilities as close to their homes as possible. Each LEA will strive to select program locations that promote continued social interaction with nondisabled students and ensure equal access to general education activities, programs, and facilities. The West End SELPA IEP form includes a statement of supplementary aids and services necessary for the child's participation in the general education curriculum. Collaboration among school personnel is encouraged to foster opportunities for social and academic interaction between students with disabilities and their nondisabled peers. The IEP will detail the program modifications or supports for school personnel required to educate and include students with disabilities alongside nondisabled students in all activities.

Students with disabilities are removed from the general education environment only if their disability's nature or severity makes satisfactory education in general education classes, with supplementary aids and services, unfeasible. The IEP will explain any extent to which the child will not participate with nondisabled children in general education classes and extracurricular or other nonacademic activities.

Each LEA will provide the necessary support to school personnel to ensure student success. The SELPA's funding allocation plan considers resource distribution to support each LEA's ability to offer necessary supports. Referrals for special education instruction and services occur only after

the general education program's resources have been considered and, where appropriate, utilized. These resources may include Student Study Teams, early literacy programs, and remedial programs.

The West End SELPA coordinates the distribution of low-incidence equipment, providing specialized equipment and services to each eligible student with disabilities at their school, thereby minimizing the need to serve students at isolated sites. Annually, the SELPA will distribute procedures for accessing specialized equipment and services.

Section A - Least Restrictive Environment - A Continuum of Services and Placement Options

Continuum of Program Options for Special Education According to California Special Education Laws

Legal Requirements:

- EC 56360: *Each Special Education Local Plan Area (SELPA) must ensure that a continuum of program options is available to meet the needs of individuals with exceptional needs for special education and related services. This requirement is in accordance with the Individuals with Disabilities Education Act (IDEA) and corresponding federal regulations.*

- EC 56361: *The continuum of program options includes, but is not limited to, the following:*

- (a) *Regular Education: Integration in the general education classroom with appropriate supports.*

- (b) *Resource Specialist Program: Specialized instruction for students with exceptional needs who are assigned to a general education classroom for the majority of the school day.*

- (c) *Designated Instruction and Services: Related services provided to students to support their individualized education program (IEP).*

- (d) *Special Classes and Centers: Specialized settings designed to provide intensive instruction for students with significant needs.*

- (e) *Nonpublic, Nonsectarian School Services: Private educational placements when the public school system is unable to provide an appropriate program.*

- (f) *State Special Schools: State-operated schools offering specialized services for students with significant disabilities.*

- (g) *Instruction in Alternative Settings: Education provided outside the traditional classroom setting, such as in a home, hospital, or other institution.*

- (h) *Itinerant Instruction: Specialized instruction provided in various settings, including regular classrooms, resource rooms, or other environments, as required by federal law.*

- (i) *Telecommunication and Home/Hospital Instruction: Instruction provided through telecommunication or in the home, hospitals, or other institutions, as required by federal law.*

Full Continuum of Program Options:

A full continuum of program options is available for the educational placement of students with exceptional needs. These options range from placements in general education classrooms to highly specialized services in separate settings. The continuum ensures that:

- *IEP Team Decision-Making: The Individualized Education Program (IEP) team is the primary decision-making body for determining a student's individual needs and appropriate placement. Decisions are based on the student's needs, rather than the student's disability, service configuration, staff availability, or administrative convenience.*

- *Access to State Standards: Efforts are made to ensure that students with disabilities have access to state-determined frameworks and standards. This includes participation in both academic and extracurricular activities.*

- *Support for Placement: Placement decisions are supported by staff development activities such as disability awareness training, classroom visitations, and the development of appropriate curricular programs.*

Least Restrictive Environment (LRE):

The goal is to place students in the least restrictive environment (LRE) that meets their individual needs. This involves:

-Transition Support: SELPA and district resources encourage the successful transition of students toward the least restrictive environment.

Summary:

Students are placed in educational settings based on the needs identified in their IEP. Placement is determined by the student's individual needs and not solely by the nature of their disability, the configuration of available services, staff availability, or administrative convenience.

Section B - Related Services

EC 56363(a) As used in this part, the term "designated instruction "and services" means "related service"" as that term is defined" in Section 1401(26) of Title 20 of the United States Code and Section 300.34 of Title 34 of the Code of Federal Regulations. The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable an individual with exceptional needs to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist an individual with exceptional needs to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(b) These services may include, but are not limited to, the following:

1. **Language and speech development and remediation**

The speech and language development and remediation services may be provided by a speech-language pathology assistant as defined in subdivision (f) of Section 2530.2 of the Business and Professions Code.

5 CCR 3051.1 *Language and speech remediation means screening, assessment, individualized education program development and direct speech and language services delivered to children*

with disabilities who demonstrate difficulty understanding or using spoken language to such an extent that it adversely affects their educational performance and cannot be corrected without special education and related services.

2. Audiological services

5 CCR3051.2 *Audiological services means aural rehabilitation (auditory training, speech training, speech reading, language habilitation, and speech conservation) and habilitation with individual pupils in the general classroom; monitoring hearing levels, auditory behavior, and amplification for all pupils requiring personal or group amplification in the instructional setting; planning, organizing, and implementing an audiology program for individuals with auditory dysfunctions, as specified in the individualized education program; or consultative services regarding test finding, amplification needs and equipment, otological referrals, home training programs, acoustic treatment of rooms, and coordination of educational services to hearing-impaired individuals.*

3. Orientation and mobility services

5 CCR3051.3 *"Orientation and mobility instruction" means specialized instruction for individuals in orientation and mobility techniques or consultative services to other educators or parents regarding instruction planning and implementation of the individualized education program relative to the development of orientation and mobility skills and independent living skills.*

4. Instruction in the home or hospital

5 CCR3051.4 *"Home and hospital services" means instruction delivered to children with disabilities, individually, in small groups, or by teleclass, whose medical condition such as those related to surgery, accidents, short-term illness or medical treatment for a chronic illness prevents the individual from attending school.*

5. Adapted physical education

5 CCR 3051.5 *Adapted physical education is for individuals with exceptional needs who require developmental or corrective instruction and who are precluded from participation in the activities of the general physical education program, modified general physical education program, or in a specially designed physical education program in a special class. Consultative services may be provided to pupils, parents, teachers, or other school personnel for the purpose of identifying supplementary aids and services or modifications necessary for successful participation in the regular "D" Physical education program or specially designed physical education programs.*

6. Physical and occupational therapy

5 CCR 3051.6 *"Physical therapy" means the:*

- a) administration of active, passive, and restrictive therapeutic exercises and local or general massage, muscle training and corrective exercises and coordination work;*
- b) administration of hydrotherapy treatments;*
- c) assistance in administering various types of electrotherapy including ultraviolet, infrared, diathermy and inductothermy;*
- d) teaching parents of hospitalized pupils exercises which are to be continued at home and interpret to them the significance of physical therapy services; and*

- e) *instruction in walking, standing, balance, use of crutches, cane, or walker, and in the care of braces and artificial limbs.*

“Occupational Therapy” means the use of various treatment modalities including self-help, skills, language and educational techniques as well as sensory motor integrations, physical restoration methods, and pre-vocation exploration to facilitate physical and psychosocial growth and development.

7. Vision services

5 CCR 3051.7 *“Vision services” means:*

- a) *adaptations in curriculum, media, and the environment, as well as instruction in special skills, or*
b) *consultative services to pupils, parents, teachers, and other school personnel.*

8. Specialized driver training instruction

5 CCR 3051.8 *“Specialized driver training instruction” means instruction to children with disabilities to supplement the general driver-training program.*

9. Counseling and guidance

5 CCR 3051.9 *“Counseling and guidance” means educational counseling in which the pupil is assisted in planning and implementing his or her immediate and long-range educational program; career counseling in which the pupil is assisted in assessing his or her aptitudes, abilities, and interests in order to make realistic career decisions; personal counseling in which the pupil is helped to develop his or her ability to function with social and personal responsibility; or counseling with parents and staff members on learning problems and guidance programs for pupils.*

10. Psychological services other than assessment and development of the individualized education program.

5 CCR 3051.10 *“Psychologist services” means:*

- a) *psychological counseling provided to children with disabilities;*
b) *consultative services to parents, pupils, teachers, and other school personnel; or*
c) *planning and implementing a program of psychological counseling for children with disabilities and parent by a credentialed or licensed psychologist or other qualified personnel*
d) *This term does not include assessment services and the development of an individualized education program.*

11. Parent counseling and training

5 CCR 3051.11 *“Parent counseling and training” means assisting parents in understanding the special needs of their child and providing parents with information about child development.*

12. Health and nursing services, including school nurse services designed to enable an individual with exceptional needs to receive a free and appropriate public education as described in the individualized education program.

5 CCR3051.12 *“Health and nursing service” means:*

- a) *managing the child’s health problems on the school site;*

- b) *consulting with pupils, parents, teachers, and other personnel;*
- c) *group and individual counseling with parents and pupils regarding health problems;*
- d) *maintaining communication with health agencies providing care to individuals with disabilities; or*
- e) *providing services by qualified personnel.*

13. Social worker services

5 CCR 3051.13 *“Social worker services” means:*

- a) *individual and group counseling with the individual and his or her immediate family;*
- b) *consultation with pupils, parents, teachers, and other personnel regarding the effects of family and other social factors on the learning and developmental requirements of children with disabilities; or*
- c) *developing a network of community resources, making appropriate referral and maintaining liaison relationships among the school, the pupil, the family, and the various agencies providing social income maintenance, employment development, mental health, or other developmental services.*

14. Specially designed Vocational education and career development:

5 CCR 3051.14 *“Specially designed vocational and career development” means:*

- a) *providing prevocational programs and assessing work-related skills, interests, aptitudes, and attitudes;*
- b) *coordinating and modifying the general vocational education program;*
- c) *assisting pupils in developing attitudes, self-confidence, and vocational competencies to locate, secure, and retain employment in the community or shelter environment, and to enable such individuals to become participating members of the community;*
- d) *establishing work training programs within the school and community;*
- e) *assisting in job placement;*
- f) *instructing job trainers and employers as to the unique needs of the individuals;*
- g) *maintaining regularly scheduled contract with all work stations and job-site trainers; or*
- h) *coordinating services with the Department of Rehabilitation, the Employment Development Department and other agencies as designated in the individualized education program.*

15. Recreation services

5 CCR 3051.15 *“Recreation services” means:*

- a) *therapeutic recreation and specialized instructional programs designed to assist pupils to become as independent as possible in leisure activities, and when possible and appropriate facilitate the pupil’s integration into general recreation programs;*
- b) *recreation programs in schools and the community which are those programs that emphasize the use of leisure activity in the teaching of academic, social, and daily living skills and the provision of nonacademic and extracurricular leisure activities and the utilization of community recreation programs and facilities; or*
- c) *leisure education programs which are those specific programs designed to prepare the pupil for optimum independent participation in appropriate leisure activities, and developing awareness of personal and community leisure resources.*

16. Specialized services for Low-incidence disabilities, such as readers, transcribers, and vision and hearing services

5 CCR 3051.16 *“Specialized services for low-incidence disabilities” means:*

- a) *specially designed instruction related to the unique needs of pupils with low-incidence disabilities; or*
- b) *specialized services related to the unique needs of individual with low incidence disabilities.*

Per Education Code Section 56363 (c), The terms "designated instruction and services" and "related services" do not include a medical device that is surgically implanted, including cochlear implants, the optimization of the functioning of a medical device, maintenance of that device, or the replacement of that device, pursuant to Section 300.34(b) of Title 34 of the Code of Federal Regulations. In accordance with Section 300.34(b) of Title 34 of the Code of Federal Regulations, nothing in this subdivision shall do any of the following:

- (1) Limit the right of an individual with exceptional needs with a surgically implanted device, including a cochlear implant, to receive related services or designated instruction and services that are determined by the individualized education program team to be necessary for the individual to receive a free appropriate public education.*
- (2) Limit the responsibility of a local educational agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the individual, including breathing, nutrition, or operation of other bodily functions, while the individual is transported to and from school or is at school.*
- (3) Prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required by Section 300.113(b) of Title 34 of the Code of Federal Regulations.*

All services currently listed in EC 56363 (b) are available to students with exceptional needs within the West End SELPA based upon what the student needs to benefit from their instructional program. Services are offered to appropriately identified students. Care is continually taken in order to ensure a uniformity of meaningful and appropriate services. Caseload assignments to various related services staff members are periodically reviewed to ensure compliance with state regulations and adherence to program guidelines.

There are basic tasks performed by related services personnel. First, to assist with identification of students with special needs. Second, to conduct therapeutic and remedial work that attempts to offset or to mitigate the effects of the student's disability. The emphasis is to extend education services provided by the regular classroom teacher, the resource specialist, or the special day class teacher. These specialized educational services promote student success with the standards and frameworks through appropriate application of the core curriculum or the alternate curriculum.

The individual education program substantiates the need for specific related services and identifies the goals and objectives to be reached. Related services may be provided through public agencies, such as California Children's Services, or the Department of Behavioral Health when appropriate. When needed services are not available within the SELPA, they are contracted through state certified non-public agencies. This is accomplished through the referral of the case to the West End SELPA Program Manager or designee who participates in the IEP team meeting. The SELPA initiates all contracts for private services and in conjunction with the district is responsible for evaluating and monitoring those services to students and parents.

General Provisions for Related Services

1. Related services may be provided to individuals or to small groups in a specialized area of education need, and throughout the full continuum of educational settings.
2. Related services, when needed as determined by the individualized education program team, shall be specified in the individualized education program, frequency and duration of services are specified.
3. All individuals providing related and services through the Local Education Agencies shall be qualified.
4. All entities and individuals contracted to provide related services shall be:
 - Employees of the school district or county office; or
 - Employed under contract pursuant to Education Code sections 56365-56366.7. Such persons shall be certified by the Department pursuant to Sections 3060-3064 of this Title; or
 - Employees, vendors, or contractors of the State Department of Health Services, or Mental Health, or any designated local public or mental health agency.
5. Instruction and services shall be provided by the regular class teacher, the special class teacher, or the resource specialist if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialist shall provide such instruction and services.
6. Related services shall be provided during the school day unless approved by the district director of special education, or designee.

Section C – Assistive Technology

Assistive Technology needs must be considered for each individual with a disability. Amendments to the Individuals with Disabilities Act of 1997 (IDEA) require the IEP team to consider whether the child requires assistive technology and services (IDEA; 20 U.S.C. Section 1414 (d) (3) (B) (v))

Assistive Technology and Services is defined in Federal Law as follows:

Assistive Technology Device: The term “assistive technology device” means any item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain or improve functional capabilities of a child with a disability.

Assistive Technology Service: The term “assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device. Such terms include:

- The evaluation of the needs of such child, including a functional evaluation of the child in the child’s customary environment;
- Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by such child;
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

- Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- Training or technical assistance for such child, or when appropriate, the family of such child;
- Training or technical assistance for professionals, including individuals providing education and rehabilitation services to the child or otherwise substantially involved in the major life functions of such child.

Assistive Technology Services are further defined by California Code of Regulations as:
CCR § 3051.19

- (a) “Assistive technology service” means any service that directly assists an individual with exceptional needs in the selection or use of an assistive technology device that is educationally necessary. The term includes the evaluation of the needs of an individual with exceptional needs including a functional evaluation of the individual in the individual's customary environment; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education programs and rehabilitation plans and programs; training or technical assistance for an individual with exceptional needs or, where appropriate, the family of an individual with exceptional needs or, if appropriate, that individual's family; and training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with exceptional needs.

Types of Assistive Technology and Services that are to be Considered by the IEP Team

It is important that members of the IEP team recognize that technology is just one strategy in a multi-faceted approach in addressing the needs and strengths of students with disabilities. IEP teams will therefore need to balance the degree of technology assistance with the student's learning potential, motivation, chronological developmental level and goals/objectives, which include, but are not limited to:

1. **Low-Tech:** Equipment and other supports readily available in schools, including off-the-shelf items to accommodate the needs of students, which can be provided by general/special education through the Student Study Team (SST)/IEP processes (e.g., calculators, tape, recorder, pencil grip, and larger pencils).
2. **High-Tech:** Supports students who may need more specialized equipment and support services beyond basic assistive technology, often students with low incidence and/or significant/severe disabilities, which requires more in-depth assessment (e.g., closed circuit television (CCTV), FM systems, augmentative communication devices, , alternative computer access, and specialized software).

The Process for Considering Whether the Child Requires Assistive Technology and Services

Assistive technology is as much a process as a product. Assistive technology is a tool for access (e.g., school environment, core curriculum,) and for independence (e.g., communication, mobility) and will therefore change as the needs of the student and technology continues to evolve. The need for assistive technology should therefore be an integral part of a comprehensive assessment for students with disabilities in all areas related to their disabilities, as appropriate, for each student and must be considered by the IEP team, based upon the student's assessed needs and strengths.

It is important to use a collaborative school-based team approach in education settings for assessment, planning, and provision of needed assistive technology, which includes individuals who are knowledgeable about the student's disability needs and strengths in the area of assistive technology.

The **Wisconsin Assistive Technology Initiative** (WATI) developed a “checklist” of additional examples of assistive technology which may be needed by students.

Free copies of the most current version of the WATI Resource Manual for Assessing Students' Needs for Assistive Technology (ASNAT), and additional AT related information, can be found at www.wati.org.

References

EC 56360, 56361, 56363,
5 CCR 3051,

APPENDIX A: WEST END SELPA GUIDELINE STATEMENT – LEAST RESTRICTIVE ENVIRONMENT

West End Special Education Local Plan Area Philosophy

The West End Special Education Local Plan Area (SELPA) is committed to providing all individuals with exceptional needs a free and appropriate education in the least restrictive environment. This philosophy aligns with state and federal mandates, including the Individuals with Disabilities Education Act (IDEA), which emphasizes educating students with disabilities in the least restrictive environment (LRE).

A full continuum of program options is available for the educational placement of students with disabilities, offering a spectrum of educational settings, from regular classroom alternatives to specialized service sites. The Individual Education Program (IEP) team is the primary decision-making body, ensuring that each student's unique needs are met and that the most appropriate placement is selected. We prioritize educating students with disabilities in general education classes with the necessary aids and services, promoting their participation in meaningful academic and extracurricular activities, including meals, recess, and other school activities.

Students' instructional programs encompass the core curriculum along with the specific goals and objectives outlined in their IEPs. Instruction and coordination of instruction vary depending on the concepts and skills being taught and may occur in regular classrooms, special education classrooms, or community environments.

Students with low-incidence disabilities receive services consistent with state guidelines. Ethnically and culturally diverse students are referred to special education only after general education modifications are deemed unsuitable. These students are identified and served following legal assessment standards. SELPA staff and district program administrators regularly review programs and services to ensure proportional representation.

If the IEP team identifies a need for staff support, these services are detailed in the student's IEP. This may include staff development activities such as disability awareness in-services, classroom visitations, and training in appropriate curricular programs.

When the IEP team determines that a student requires supplemental aids or services, these are also specified in the IEP and provided accordingly. These supports may include Braille instruction, positive behavioral interventions, communication aids, assistive technology devices and services, language supports, related services, curricular modifications or adaptations, and classroom assistant support.

If it is determined that a student with disabilities cannot be satisfactorily educated in a general education classroom for any portion of the school day, the IEP team will provide specific rationale and select an appropriate alternative placement. Regardless of the placement,

opportunities for interaction with non-disabled peers are maximized. Discussions about transitioning to less restrictive settings within the continuum of options are ongoing, with every effort made to encourage successful transitions toward the least restrictive environment where the student can achieve.

In compliance with state requirements, SELPA collaborates with the California Department of Education to address the success of special education programs and services. All students with disabilities, regardless of placement, must have access to the general education curriculum and participate in district and state assessments. High expectations are held for all students, including those with disabilities, in accordance with state and district performance standards as outlined in their IEPs. If a student cannot participate in district and/or state assessments even with accommodations, they will participate in the state alternative assessment program.

In summary, all students will be educated to the maximum extent possible alongside non-disabled children unless compelling reasons necessitate education in a special class or center. When appropriate, a special education student may be educated with peers who have less severe disabilities, providing an environment that is less restrictive.

APPENDIX B: CONTINUUM



STUDENT PROMOTION AND RETENTION

SECTION A	<u>GENERAL PROMOTION AND RETENTION INFORMATION</u>	
SECTION B	<u>STUDENTS WITH SPECIAL NEEDS</u>	

Section A – General Promotion and Retention Information

Promotion and Retention Policy According to California Education Code

Legal Requirements:

Student Promotion and Retention:

EC 48070: The governing board of each school district and each county superintendent of schools must adopt policies regarding pupil promotion and retention. A student may only be promoted or retained based on the policies adopted under this article.

EC 48070.5: This section outlines the requirements for school districts to formulate policies and procedures concerning student promotion and retention. Key components include:

Grade Levels Affected:

- Between second grade and third grade.
- Between third grade and fourth grade.
- Between fourth grade and fifth grade.
- Between the end of intermediate grades and the beginning of middle school grades (typically between sixth and seventh grades, depending on district configuration).
- Between the end of middle school grades and the beginning of high school (typically between eighth and ninth grades, depending on district configuration).

Identification of At-Risk Students:

- Based on state assessments (EC 60640) and minimum proficiency levels recommended by the State Board of Education.
- Based on the student's grades and other indicators of academic achievement designated by the district.

Proficiency Criteria:

- In grades 2-3, identification is based on reading proficiency.
- In grades 4-5 and beyond, identification is based on proficiency in reading, English language arts, and mathematics.

Teacher's Role in Retention:

- If assessments indicate a student is below the minimum standard for promotion, they are retained unless the regular classroom teacher provides a written statement explaining why retention is not appropriate, including recommended interventions.

Parental Involvement:

- The policy requires that parents be notified as early as possible when a student is identified as at risk of retention and provides them an opportunity to consult with teachers.

- The policy also includes an appeal process for parents who disagree with the retention decision, with the burden of proof on the appealing party.

Remedial Instruction:

- The policy must include provisions for providing remedial instruction to students recommended for retention or identified as at risk of retention, using a range of programs including tutorial services, before/after-school programs, Saturday classes, summer school, intersession, and more.

Policy Adoption:

- The policy must be adopted at a public meeting of the governing board of the school district, ensuring transparency and community involvement.

Local School District Responsibilities:

Local school districts must develop a comprehensive policy outlining promotion and retention procedures, including the following components:

1. Parental Notification:
Early notification for parents when a student is at risk of retention.
2. Appeal Process:
A clear process for parents to appeal retention decisions, with the burden of proof on the appealing party.
3. Early Identification:
Early identification of students at risk of retention, particularly in key grade levels, using reading proficiency in early grades and proficiency in reading, English language arts, and mathematics in later grades.
4. Intervention Programs:
5. Development of intervention programs to assist students at risk of retention. This includes supplemental instruction, tutorial programs, before/after-school programs, Saturday classes, and summer school programs, which must be provided in addition to the regular curriculum without removing students from core instruction time.
6. Teacher's Role in Decision-Making:
 - The classroom teacher is responsible for deciding whether a student should be promoted or retained based on district criteria. If a student has multiple teachers, the district policy will designate the teacher responsible for the decision.
7. Summer School Participation:
 - Participation in summer school programs may be required for students at risk of retention. Prioritization is given to students recommended for retention or identified as scoring low in key academic areas.
8. Accelerated Placement for High-Achieving Students:
 - The district may recommend accelerating a student to a higher grade based on high academic achievement, considering the student's emotional and social development before making such a decision.
9. Implementation and Community Involvement:

The policy must be adopted at a public meeting to ensure community awareness and involvement.

Once established, the school district should inform the community of the intent and requirements of these policies.

Summary:

Local school districts are responsible for developing and implementing a promotion and retention policy that addresses the needs of all students, including those with special needs. The policy must include provisions for parental notification, an appeal process, early identification of at-risk students, and opportunities for academic interventions. Decisions about student promotion or retention are based on the student's academic performance, with the classroom teacher playing a central role in the process. The policy must be adopted at a public meeting to ensure transparency and community involvement.

Section B – Students with Special Needs

The IEP document continues to be the critical process in determining the expected level of performance and achievement. Therefore, retention and promotion issues should be topics of discussion at the student's annual IEP meeting. Promotion or retention of students with special needs should be based on the level of mastery expected and achieved on the IEP goals and objectives. The IEP team may develop individual promotion standards within the context of the district adopted standards. Individual promotion standards should be developed before the first day of school or at the next IEP meeting. Each of the IEP team members should be aware that individualized promotion standards might not meet the district requirements for graduating with a diploma.

Since IDEA requires that students with special needs participate in state and district assessment to the greatest extent possible, the local school district is required to ensure that these students are involved in the core curriculum or an alternate curriculum that is based upon the core curriculum. If accommodations are necessary for the student to successfully participate in the curriculum or testing, the IEP team should outline these accommodations in the student's IEP.

If retention is a possibility for a student with special needs, an IEP meeting should be called as soon as possible. The following should be considered at the IEP meeting:

- Is the current IEP for the student's academic, linguistic, social, emotional, and behavioral needs appropriate?
- Is the manner of assessment, including any accommodations and modifications, identified in the IEP appropriate?
- Were all the services required by the student to make progress in the general education curriculum appropriately identified in the student's IEP?
- Did the student receive all the services identified in the IEP?
- Were the linguistic needs of English language learners appropriately identified?

- Was the assessment conducted consistent with the IEP?
- Was the student’s promotion standard appropriate and clarified at the IEP?

If the above questions were answered positively, the student should be required to attend the Intensive Instructional Program developed by the local school board pursuant to EC 37252.5. If the summer school program is an option, before the end of the school year, the IEP team should document all supported and related services the student will need to benefit from that program. If the above questions were answered in the negative, the IEP team should determine why such supports were not provided, develop an alternative plan, provide the summer school option, and consider not retaining the student.

“Promotion, Retention, and Grading: Frequently Asked Questions from the field regarding the promotion, retention, and grading of students with disabilities.”

PROMOTION AND RETENTION OF STUDENTS WITH DISABILITIES

1. May students with disabilities be retained?

Yes, students with disabilities may be retained; however, careful consideration in the development, implementation, and revision of the student’s individualized education program (IEP) should prevent student failure in most cases.

“Research indicates that neither grade retention nor social promotion (the practice of promoting students with their same age-peers although they have not mastered current grade level content) is likely to enhance a child’s learning. Research and common sense both indicate that simply having a child repeat a grade is unlikely to address the problems a child is experiencing.”

2. Do local governing board-adopted standards for promotion apply to students with disabilities?

Local governing board adopted standards for promotion apply to students with disabilities; however, IEP teams should consider whether the student’s disability adversely impacts the student’s potential for learning or rate of learning. If so, the IEP teams should consider whether accommodations or curricular modifications can minimize this impact.

3. Are individualized promotion standards determined by the location where services are provided to students with disabilities?

No, for example, a student with significant disabilities who spends all or most of the instructional day in general education classrooms learning social or communication skills may have individualized promotion standards. Yet, a student with emotional or behavioral disabilities who spends most or part of the instructional day in a more restrictive environment may be held to the regular promotion standards.

4. What if a student with a disability fails to meet board-adopted or individualized promotion standards?

If a student with a disability fails to meet board-adopted or individualized promotion standards, the IEP team should reconvene immediately to consider the following:

- Is the current IEP for the student's academic, linguistic, social, emotional, and behavioral needs appropriate?
- Is the manner of assessment appropriate, including accommodations and modifications identified in the IEP?
- Were all the services required by the student to make progress in the general education curriculum appropriately identified in the student's IEP?
- Were the linguistic needs of English Learners appropriately identified?
- Did the student receive all the services identified in the IEP?
- Was the assessment conducted consistent with the IEP?

5. Was the student's promotion standard appropriate and clarified in the IEP? What if the IEP was written to consider the student's individualized needs, but the student still failed to meet the promotion standards?

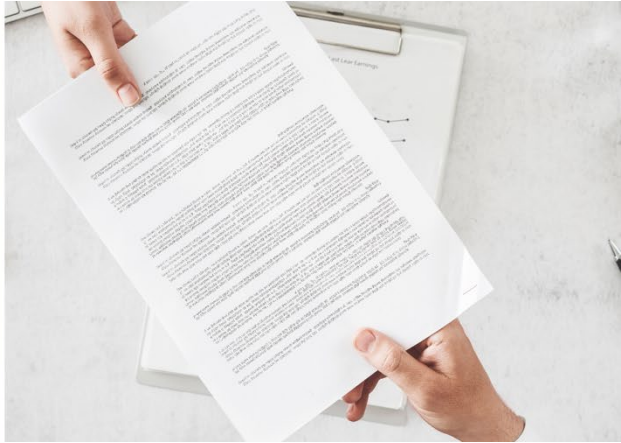
If the questions in item #5 above were answered positively, but the student still failed to meet the promotion standards, then the student should participate in intensive supplemental instruction developed by the local board pursuant to *Education Code 37252.2 – 37252.8*. The IEP team should document all the supports and related services the student will need to benefit from supplemental instruction.

If after intensive supplemental instruction, the student still does not meet the board-adopted or individualized promotion standards, an IEP meeting should be held to develop an appropriate plan to support student progress.

If the questions in item #4 were answered in the negative, the IEP team should determine why such supports were not provided, develop an alternate plan, amend the IEP, provide intensive supplemental instruction, and consider not retaining the student because the district did not provide the supports and services necessary for the student to benefit from the educational program.

6. *May students with disabilities participate in intensive supplemental instruction pursuant to Education Code 37252.2 – 37252.8 and Extended School Year (ESY) under the Individuals with Disabilities Education Act (IDEA) simultaneously?*

Yes, a student may participate in the two programs simultaneously, but only if the need for supplemental instruction is documented in the student's IEP. In order to receive both services, ESY and supplemental instruction, the IEP must reflect that the student needs to participate in an intensive supplemental instruction program as part of the ESY services necessary for the provision of a free appropriate public education (FAPE). In other words, the student is receiving supplemental instruction in order to meet the standards-based goals of the IEP, and special



PROCEDURAL SAFEGUARDS

SECTION A	<u>PROCEDURAL SAFEGUARDS</u>	
SECTION B	<u>IEP MEETING OPTIONS</u>	
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Introduction

The West End SELPA is committed to the assessment, identification, and placement of students with exceptional needs in the appropriate and least restrictive environment. During these processes, parents are afforded their rights through procedural safeguards that are established in accordance with state and federal guidelines. A due process hearing can be initiated at any time during these processes by the parent, the student and/or the school district. Hearings may be filed when a dispute exists between the parent and the education agency concerning the provision of special education services, the student's eligibility for special education, need for assessment, and/or the student's program. Alternative options and guidelines for filing are outlined in this chapter. If programs and services are not provided according to the IEP, the parent may file a complaint with the California Department of Education.

Each participating local education agency shall ensure that parents receive written notification of their procedural safeguards including their right to file a complaint or for a due process hearing. Per Ed Code 56301(d)(2) parents shall be given a copy of their rights and procedural safeguards only one time a year, except that a copy also shall be given to the parents:

- (1) Upon initial referral for assessment
- (2) Upon parental request for assessment
- (3) Upon the first occurrence of the filing for a due process hearing; and
- (4) Upon request by a parent.

The notice of procedural safeguards shall be available in the primary language of parents whose primary language is not English, unless to do so is clearly not feasible. The written notice shall be in language easily understood by the general public and shall include the following:

- (1) The right to initiate a referral of a child for special education services
- (2) The right to obtain an independent educational assessment
- (3) The right to participate in the development of the IEP and to be informed of the availability of free appropriate public education and of all available alternative programs, both public and nonpublic.

Planning for the needs of non-English speaking parents shall include access to interpreters and translators, unless to do so clearly is not feasible.

Section A – Procedural Safeguards

EC 56500.1 (a) All procedural safeguards under the Individuals with Disabilities Education Act shall be established and maintained by each non-educational and educational agency that provides education, related services, or both, to children who are individuals with exceptional needs. (b) At each individualized education program meeting, the public education agency responsible for convening the meeting shall

inform the parent and pupil of the federal and state procedural safeguards that were provided in the notice of parent rights pursuant to Section 56321.

EC 56028 (a) (1)-(5) "Parent" means any of the following:

- (1) A biological or adoptive parent of a child.

- (2) *A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order in accordance with Section 300.30 (b) (1) or (2) of Title 34 of the Code of Federal Regulations.*
- (3) *A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child.*
- (4) *An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare.*
- (5) *A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 or Title 34 of the Code of Federal Regulations and Section 1439 (a)(5) of Title 20 of the United States Code*

Procedural Safeguards

The law requires that local education agencies establish procedures to protect the rights of individuals with exceptional needs and their parents or guardians. These procedures are called procedural safeguards. Parents have a right to receive a written copy of the West End SELPA procedural safeguards. These are provided: Per Ed Code 56301(d)(2) parents shall be given a copy of their rights and procedural safeguards only one time a year, except that a copy also shall be given to the parents: (1) Upon initial referral for assessment; (2) Upon parental request for assessment; (3) Upon the first occurrence of the filing for a due process hearing; and (4) Upon request by a parent.

Parents are afforded these rights through the processes of assessment, as well as under the design and implementation of their student's IEP. Definitions of terms used in the document are included in order to assist parents with further understanding of their rights. The written copy of the parent's rights is provided in the parent's native language, unless it is clearly not feasible, or in their primary mode of communication, if their language is not written.

A complete copy of the West End SELPA Notice to Parent/Guardian/Surrogate regarding parental procedural safeguards is available in both English and Spanish (Form 004-E and 004-S) and is available through the district special education office or West End SELPA office.

Foster Parents

In cases where the juvenile court has limited the right of the parent or guardian to make educational decisions, California Education Code 56055 allows foster parents to represent the foster child for the duration of the foster parent-foster child relationship in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising an individualized education program, if necessary, and in all other matters relating to the provision of a free appropriate public education of the child.

***EC 56055(d)** For purposes of this section, a foster parent shall include a person, relative caretaker, or non-relative extended family member as defined in Section 362.7 of the Welfare and Institutions Code, who has been licensed or approved by the county welfare department, county probation department, or the State Department of Social Services, or who has been designated by the court as a specified representative.*

Surrogate Parents

Federal Regulation, 34 C.F.R. 300.514, and California State Statute, EC 56050, mandates the appointment of a surrogate parent to ensure the educational rights of a child with exceptional needs when (1) (A) The child is adjudicated a dependent or ward of the court, (B) the court has specifically limited the right of the parent or guardian to make educational decisions for the child and (C) the child has no responsible adult to represent him. (2) No parent for the child can be identified. (3) The local educational agency, after reasonable efforts, cannot discover the location of a parent. The surrogate parent shall act as the child's parent and have all rights as delineated in federal and state law.

A local educational agency shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after there is a determination by the local educational agency that a child needs a surrogate parent.

In order to meet the needs of the federal and state mandates, the West End SELPA staff supports the utilization of surrogate parents by developing procedures for the surrogate parent program and implementing a training program for districts' staff and surrogate parent nominees. Individual districts will determine which students require the services of a surrogate parent, nominate surrogate parent volunteers, appoint the surrogate parent after they have successfully completed West End SELPA training, supervise the surrogate parent, and then evaluate the surrogate parent annually.

Applications for the surrogate parenting program are available from the West End SELPA office. The prospective candidate should complete and return the application to that office. To be eligible, it must be established that the volunteer has no interest that would conflict with the interest of the student. For example, the volunteer cannot be employed by any local education agency or hold a position that might restrict or bias his/her ability to make decisions regarding the student's educational needs. Once the West End SELPA trains the surrogate, the district is free to appoint the parent to serve as a surrogate for students with exceptional needs within that district. The surrogate parent may represent the student in matters relating to: identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized educational program, and in all other matters relating to the provision of a free appropriate public education for the student.

Age of Majority

EC 56014.5 When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local education agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to the parent under this part shall transfer to the individual with exceptional needs. The local education agency shall notify the individual and the parent of the transfer of rights.

Section B – IEP Meeting Options

In an attempt to resolve disagreements regarding placement and/or services, districts have varying levels of IEP meetings that can be conducted prior to referral for WESELPA assistance.

School/District IEP Meeting

Within SIXTY (60) days of receipt of the signed Assessment Plan, the case carrier will schedule a school site IEP meeting to review results and come to agreement on district level special education placement and/or services.

County Operations or Provider District IEP Meeting

If appropriate placement and/or services are not available at the school or district site, the district office refers to County Operations or a Provider District for an IEP meeting. At this meeting, the team members discuss program options offered through County Operations or a Provider District.

Standard Referral Process

1. District sends referral packet to the provider district office. Referral packet is to include:
 - Referral for Placement Consideration cover sheet (WESELPA 014) signed by district office
 - Current IEP including behavior support plan if applicable
 - Current Triennial evaluations

Note: When the referral is for initial placement in special education, the student will not have a current IEP or current triennial evaluation, the Referral for Special Education form should be submitted in place of these documents.

2. The provider district will log and send referral to appropriate administrator/administrative designee.
3. The administrator/administrative designee will review referral then contact district representative to discuss referral and to agree upon IEP meeting date and location.
4. Referring district to send IEP notices.
5. Joint IEP meeting is held.
 - Referring district staff to:
 - Chair IEP meeting
 - Provide present levels of functioning and suggested goals, if initial IEP or annual review
 - Provide provider district with:
 - A copy of the signed IEP
 - Assessment data supporting a change in placement (observations, academic progress monitoring, behavioral intervention data, FBA, private evaluations)
 - Teacher reports, related specialist reports
 - Health evaluations and immunization records
 - Transcripts for students in grades 9-12, state testing results

- Other agency reports
- Home Language Survey and CELDT test results, if applicable
- History of counseling services, if applicable.

Provider district to:

- Describe class being considered for placement
 - Provide enrollment packet for parents if program selected
 - Arrange for observation of program if requested
6. If a provider county/district program is agreed to, and upon receipt of parent enrollment packet, transportation will be arranged and a student file will be provided to the receiving teacher before the student's start date.

See Chapter 15 for information regarding referrals for Non-Public Agency and Non-Public School consideration.

If the parent or district continues to disagree and requests a due process hearing, specific procedures as outlined in Section C of this chapter must be followed.

Section C – Due Process Procedures Frequently Asked Questions

OAH Form 65; Rev.6/05 SPECIAL EDUCATION DUE PROCESS HEARINGS PROCEDURAL SAFEGUARDS

DUE PROCESS HEARING RIGHTS INCLUDE THE FOLLOWING:

1. The right to request a mediation conference at any point during the hearing process. The mediation process is not to be used to deny or delay a parent(s) or guardian(s) right to a due process hearing, or to deny any other rights afforded to parties. Attorneys and advocates are permitted to participate in mediation conferences scheduled after the filing of a request for due process hearing. (20 U.S.C. § 1415(e) (1); 34 C.F.R. § 300.506; Ed. Code § 56501, subd. (b)(2).)
2. The parent has the right to examine all school records of the child, and to receive copies of the records within five days of an oral or written request by the parent. A public educational agency may charge no more than the actual cost of reproducing the records, but if the cost effectively prevents the parent from exercising this right, then the parent is entitled to receive a copy or copies at no cost. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a)(1)(i); Ed. Code § 56501, subd. (b)(3).)
3. The parents' right to have the pupil who is the subject of the state hearing present at the hearing. (34 C.F.R. § 300.509(c)(1)(i); Ed. Code § 56501, subd. (c)(1).)
4. The parents' right to open the state hearing to the public. (34 C.F.R. § 300.509(c)(1)(ii); Ed. Code § 56501, subd. (c)(2).)
5. The parents' right to an interpreter at no cost if their primary language or mode of communication is other than English. (20 U.S.C. § 1415 (b)(4); 34 C.F.R. § 300.501(c)(5).)

MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT (STAY PUT)

A child shall remain in his/her current educational placement “stay put” while due process hearing proceedings are pending, unless the parents and the State or local educational agency, agree to a different placement. This provision is subject to certain exceptions in disciplinary matters involving the child. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.514; Ed. Code § 56505 subd. (d).)

RESOLUTION SESSION

Prior to the setting or conduct of any due process hearing, and within 15 days of receiving notice of the complaint, the public educational agency shall convene a resolution meeting. The meeting shall include the parent(s), a public educational agency representative, and relevant member(s) of the IEP team who have specific knowledge of the facts of the complaint. The purpose of the meeting is to provide an opportunity for the parent(s) to discuss their complaint and its factual basis, and to provide the public educational agency an opportunity to resolve the complaint. If the complaint is unresolved 30 days after its receipt by the public educational agency, a due process hearing may be held and the applicable timelines shall begin. (20 U.S.C. § 1415(f)(1)(B)(i-iv).) The resolution session may be waived only under two circumstances; (1) a written waiver signed by the parent(s) and public educational agency representative, or (2) agreement by the parties to participate in mediation. (20 U.S.C. § 1415(f)(1)(B)(i)(IV).)

CONDUCT OF THE HEARING AND RIGHTS OF PARTIES AT HEARING:

1. The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil. (Ed. Code § 56505, subd. (b).)
2. All parties to the hearing have the following rights consistent with state and federal statutes and regulations:
 - A. The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of children with disabilities. (20 U.S.C. § 1415(h)(1); 34 C.F.R. § 300.509(a)(1); Ed. Code § 56505, subd. (e)(1).)
 - B. The right to present evidence, as well as written and oral argument. (20 U.S.C. § 1415(h)(2); 34 C.F.R. § 300.509(a)(3).)
 - C. The right to confront, cross-examine, and compel the attendance of, witnesses. (20 U.S.C. § 1415(h)(2); 34 C.F.R. § 300.509(a)(2); Ed. Code § 56505, subd. (e)(3).)
 - D. At their option, parent(s) or guardian(s) have the right to receive a written or electronic verbatim record of the proceeding at no cost to the parent or guardian. (20 U.S.C. § 1415(h)(3); 34 C.F.R. § 300.509(a)(4); Ed. Code § 56505, subd. (e)(4).)
 - E. At their option, parent(s) or guardian(s) have the right to receive the written or electronic findings of fact and decision, at no cost to the parent(s) or guardian(s). The findings and decision shall be made available to the public after any personally identifiable information has been deleted consistent with confidentiality requirements. (20 U.S.C. § 1415(h)(4)(A); Ed. Code § 56505, subd. (e)(5); 34 C.F.R. § 300.509(a)(5).)
 - F. The right to receive from the other parties, **at least five (5) business days prior to the hearing**, a copy of all documents and a list of all witnesses and their general area of testimony,

which the parties intend to present at the hearing. This shall include all assessments completed by that date and any recommendations based on those assessments that the parties intend to use at the hearing. (20 U.S.C. § 1415(f)(2)(A); 34 C.F.R. § 300.509(b)(1); Ed. Code § 56505, subd. (e)(7).)

G. The right to prohibit the introduction of any evidence at the hearing not disclosed **at least five (5) business days prior to the hearing.** (20 U.S.C. § 1415(f)(2)(B); 34 C.F.R. § 300.509(a)(3); Ed. Code § 56501, subd. (f).)

REPRESENTATION AT DUE PROCESS HEARING

If either party to a due process hearing intends to be represented by an attorney at the state hearing, notice of that intent shall be given to the other party at **least ten (10) calendar days prior to the hearing.** Failure to provide the required notice shall constitute good cause to grant a continuance. (Ed. Code § 56507, subd. (a).)

WRITTEN DECISION UPON COMPLETION OF HEARING

Upon completion of the due process hearing, the Administrative Law Judge shall prepare a written, reasoned decision. The decision shall include reason(s) for any nonpublic school placement or agency services or reimbursement for any nonpublic school placement or agency services. The decision shall be mailed to all parties to the hearing within 45 days from the receipt of the request for a hearing. (20 U.S.C. § 1415(g)(2); 34 C.F.R. § 300.511(a).)

Either party to a hearing may request an extension from the Administrative Law Judge, which request shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension. (34 C.F.R. § 300.511(c).)

**Special Education FAQs:
IDEA/Due Process Hearings Before the
Office of Administrative Hearings
Special Education Division**

SETTING DUE PROCESS HEARINGS

Where do parties send requests for due process hearings?

OAH, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. This information is also on the [OAH website](#).

How do parties receive the request for due process hearing from the filing party, as well as other communications sent to OAH?

By both state and federal law, it is the parties' responsibility to serve all documents filed with OAH on the other parties. A party who files a request for due process hearing is responsible for delivering or serving the request on all other named parties, as well as sending a copy to OAH for filing. The request sent to OAH should include some form of confirmation that all other parties have received the request. Parties represented by an attorney are expected to provide a proof of service.

At what stage of the proceedings are hearing dates scheduled?

It depends on which party is requesting the due process hearing. If a parent is requesting the due process hearing (other than an expedited hearing and absent a written waiver of the required resolution session signed by both sides), OAH will not set the matter for hearing until the expiration of the 30 days for the resolution session. At that point, if the matter has not resolved, OAH will set a hearing date approximately 20 to 25 days out to provide sufficient time to conduct a hearing and issue a decision within the 45-day time period.

When a school district is requesting a hearing date, OAH will almost immediately set the hearing date approximately 20 to 25 days out, as no resolution session is required.

In both scenarios, OAH will typically set the initial hearing date for one day only, because of the high percentage of cases which are continued during mediation. If mediation is unsuccessful, OAH will generally consult with the parties to determine a reasonable estimate of the number of days necessary to hear the matter and the availability of the parties and legal counsel.

Should the parties advise OAH if the resolution session is unsuccessful, so as to initiate the scheduling of a hearing date?

Yes. However, if no communication is received, OAH will assume that the resolution session was unsuccessful and will set the matter for hearing. This is necessary because the 45-day time period begins to run at the end of the 30 days provided for the resolution session.

Do the parties have to wait 30 days before notifying OAH that they can't resolve issues in a resolution session and therefore need to proceed to hearing?

Yes, ordinarily. However, if the parties have reached impasse prior to expiration of the 30-day period and submit to OAH a written statement to that effect signed and dated by both sides, the matter will proceed to hearing. OAH will not set the matter for hearing based on one party's assertion that the parties are at impasse. The parties may also jointly agree to waive the resolution

session and communicate that in a dated, signed statement. OAH will then set the hearing date and refer the matter to mediation.

Should the parties advise OAH if the mediation is unsuccessful?

Yes. If the parties do not resolve the matter through mediation, the parties should notify OAH that the matter was not resolved through mediation, and the hearing date can be set or reset as necessary.

What timeline for scheduling hearings will OAH follow once they receive notification that the resolution solution has not been successful?

OAH follows all timelines specified in the IDEA. As noted above, if a parent filed the request for a due process hearing, the 45-day period begins to run with the expiration of the 30 days allowed for the resolution session. If the District filed the request, the time period begins to run almost immediately.

How will expedited hearings be handled?

Expedited hearings will be handled in accordance with applicable provisions of law. Please note that the 20 days in which to hold a hearing and the 10 days in which to issue a decision thereafter are school days.

How and when will the parties be advised that a hearing date has been scheduled?

OAH will mail a notice of the hearing date to parties (or designated legal counsel or lay advocate) when the matter has been set or reset for hearing.

When and where will the due process hearings be scheduled?

When: Hearings are scheduled on any regular business day, depending on the availability of an ALJ. The starting time will depend on the location and the time that will be required for the ALJ to travel to the hearing site. If the travel time is not excessive, the hearing will likely begin at 9:00 a.m.

Where: Typically, unless the parties agree otherwise, the hearings are set at school district sites.

Will OAH send copies of notices of due process hearings to a particular law firm for a school district upon receipt of written notice to do so?

Typically, OAH will notify the District's chosen representative provided OAH has been notified of the representation. If no notice of representation has been filed, OAH will serve the notice of due process hearing to the school district named in the filing.

What is the OAH policy regarding scheduling more than one hearing on the same day for an attorney or school district?

In large school districts with many pending requests for hearing, OAH may initially set multiple matters for hearing on the same day. Generally, districts with multiple requests for hearings are expected to have an adequate number of attorneys available to handle the caseload. Experience has shown that most of these matters will be resolved in mediation. However, when cases are continued and reset, there is a greater likelihood the hearing will take place. Thus, OAH will attempt to avoid resetting multiple hearings involving the same school district or attorney on the same dates. However, this may not be feasible for large school districts that have multiple requests for hearings.

CONTINUANCES

Are parties permitted to stipulate to continuances?

No. By law, the party or parties seeking a continuance must establish good cause. A stipulation by the parties is not a substitute for the requisite showing of good cause; however, the fact that the parties jointly request a continuance will be considered in the assessment of good cause.

Are parties permitted to stipulate to specific hearing dates as part of a continuance?

No. The parties may not stipulate to a date, however, OAH will consider the parties' preferences in resetting the matter.

May matters be taken off calendar if the parties agree?

No. OAH maintains control of the calendar. When a request for continuance is granted, OAH will always set another date for some further proceeding in the case.

PLEADING REQUIREMENTS

What are OAH pleading requirements? Must all motions and requests be on pleading paper or is a letter acceptable in some circumstances?

Pleading requirements are described in OAH Regulations, specifically CCR, title 1, sections 1006 and 1022, which regulate format and filing of papers and motions. (Pro per parties will be given some latitude, in that their filings need not rigidly conform to the requirements of these sections. Less latitude will be given to attorneys and/or experienced advocates, who are expected to adhere to the statutes and regulations governing their profession.)

What is the OAH standard in determining whether a complaint is sufficient pursuant to 20 U.S.C. sections 1415(b)(7)(A) and (B) and (c)(2)(C)?

The standards are the same as those articulated in the provisions of the IDEA cited. In addition to the name of the child, his or her address, and the school attended, the request must include a description of the problem, the facts relating to the problem and a proposed resolution for each problem alleged.

Please do not phrase problems ("complaint" in the IDEA) as "issues"; rather, list contentions or allegations as such. For example, if a parent is requesting a due process hearing and the perceived problem is the alleged failure of a school district to assess ("evaluate" in the IDEA) in an area of suspected disability, do not phrase the "issue" as: "Whether the district assessed in all areas of suspected disability." Rather, include in your contention the areas(s) of suspected disability allegedly known by the district and the assessments that you contend that the district failed to undertake.

When deadlines fall on a weekend or holiday, when will OAH expect the document to be served?

When deadlines fall on a weekend or holiday, the deadline is extended to the following business day.

By what time of day must documents be filed with OAH?

Between 8:00 a.m. and 5:00 p.m., on regular business days. OAH accepts documents delivered by mail, personal delivery, facsimile (FAX), and, in some cases, email. Usually, documents will

be filed on the day received. However, documents received by FAX or, in some cases, e-mail, after 5:00 p.m., or outside of regular business hours, will be filed on the next business day. (CCR, title 1, section 1006, subd. (h)).

What forms should parties use?

Parties should use the forms available on the California Department of Education (CDE) website and/or the OAH website. (CDE determines the content of the request form for hearing and mediation.)

Due Process Hearing Request Form: www.documents.dgs.ca.gov/dgs/fmc/dgs/oah038.pdf

Request Mediation Only Form: www.documents.dgs.ca.gov/oah/SE/Forms/OAH%2063.pdf

Links to these forms are available on the [OAH website](#), in the Special Education section.

CONFERENCES PRIOR TO HEARING

What occurs at the status conferences, trial-setting conferences, and pre-hearing conferences?

Generally, a trial-setting conference is conducted to obtain a time estimate for the hearing and to schedule hearing dates, pretrial motions, prehearing conferences, settlement conferences and status conferences. Any other matter which may be resolved at the time may be discussed and resolved.

A status conference may be scheduled to follow up on specific issues, such as progress on settlement or stipulations.

A pre-hearing conference may deal with the same topics as status and trial setting conferences. However, the focus of the pre-hearing conference is to ensure that the parties will be ready to proceed at the hearing. Motions may be brought and resolved, exhibit and witness lists are generally exchanged, and other expediting measures are taken. Pre-hearing conferences will not be set for all cases. They will generally be set for longer running cases and where there are legal and procedural issues which are appropriate to dispose of prior to the hearing. The Presiding Administrative Law Judge will determine whether a pre-hearing conference is appropriate and the timing thereof.

Which conferences are held telephonically?

Some conferences are conducted by telephone conference call. Several factors are taken into consideration in setting a conference telephonically. Some of these factors are calendar commitments and the travel time and distance for the parties, counsel and the ALJ.

Are the telephonic conferences recorded?

That depends; if only routine issues are discussed and resolved, there is generally no need for testimony or the recording of oral argument. If a significant legal issue is to be argued or evidence received in the form of oral testimony, that part of the pre-hearing conference will likely be recorded to provide a record for judicial review.

MOTIONS

Are pre-hearing motions assigned to the ALJ handling the case?

It depends on the timing of the motion. OAH has centralized special education case filing in Sacramento. Cases are transferred to a regional office close to the time of the scheduled hearing date.

Most motions filed before the transfer of the file to a regional office will be handled by the Presiding Administrative Law Judge of the Sacramento office or his designee. Motions filed after the file transfer may be handled by the regional Presiding Administrative Law Judge, his or her designee, or by the Administrative Law Judge assigned to hear the matter.

If motions are filed in Sacramento after the file transfer, the motion will be transferred by OAH to the appropriate office.

What types of motions will OAH consider (continuance, dismissal, motion for summary adjudication, consolidation, bifurcation or joinder)?

OAH will consider any motion over which it has apparent jurisdiction, including all of the cited examples.

What types of requests do not require a motion?

Most requests should be in the form of a motion. Some requests, such as a request for an interpreter, need not be.

What are the deadlines to respond, reply and rule on motions (briefing schedule)?

These will depend on the nature of the motion, the urgency with which the matter must be decided, and the proximity to the hearing date. OAH will, when appropriate, provide deadlines for response. Parties should

refer to CCR, title 1, sections 1022 and 1026. OAH prefers an expeditious response by the party opponent without OAH prompting. No deadlines for rulings exist except where provided by law.

Does OAH request oral arguments on a motion?

The ALJ deciding the motion has the discretion whether to request oral argument on a motion. The ALJ may also seek declarations/affidavits where factual contentions must be addressed in order to rule upon a motion.

Before OAH rules on a motion, will OAH ensure that all parties get a copy of the motion and an opportunity to respond orally and/or in writing?

With the exception of those matters permitting ex parte motions, OAH will endeavor to ensure that the party opponent has been served and has an opportunity to respond either verbally or in writing. Generally, OAH will rely on proof of service documents attached to the proponent's motion.

CONDUCT OF HEARINGS

Are the hearings recorded?

Yes, currently, the hearings are recorded by digital recording systems loaded as software into laptops with sound mixer and microphones.

May a party request a court reporter and who arranges it?

Yes. The parties, with the permission of the ALJ, may agree to use a certified shorthand reporter (court reporter) at their own expense to produce the official record. If a court reporter is used, the court reporter shall comply only with the directions of the assigned ALJ during the hearing.

Parties who agree to use a court reporter at their own expense must contact the OAH calendaring department to make arrangements for retaining a court reporter. If the parties do not request a court reporter, the record provided by the OAH electronic recording device will be the exclusive record upon appeal.

May a party request that security be present at either the mediation or the due process hearing?

Yes. See CCR title 1, section 1019.

Who requests and makes arrangements for an interpreter?

A party who requires an interpreter makes the request to OAH. Upon request, OAH will arrange for the presence of the interpreter.

How does OAH handle in pro per proceedings? Does OAH provide any special assistance to parents representing themselves?

The ALJ will do his or her best to help the pro per litigant comprehend the proceedings, beginning with an explanation of the rights accorded pro per parties and answering any questions posed by the pro per litigant about the hearing process. However, the ALJ may not act as an advocate for the pro per party.

OAH has many years of experience presiding over matters in which one or more of the parties appear in proper.

Does OAH set time limits for hearings?

OAH will, in consultation with the parties, attempt to determine a reasonable number of days necessary to complete the presentation of evidence. OAH will typically "reserve" that number of days on the calendar for the case and notice the hearing accordingly. If the hearing does not conclude in the days allotted, normally the parties and the ALJ will obtain the necessary additional hearing days to complete the matter.

Does OAH set time limits for witness testimony?

OAH has not historically limited time for the presentation of evidence. However, ALJs have the power to do so in any particular case in the exercise of their discretion.

What can the parties expect to happen at the first day of a due process hearing?

The ALJ will address any preliminary motions and issues, invite opening statements, and begin the process of receiving evidence. Parties must appear at the hearing prepared to proceed with the hearing. Parties should not assume the first day of hearing (or any significant portion of the day) will be spent in settlement discussions.

Is telephonic testimony permitted?

Yes, telephonic testimony is permitted under the California Education Code at the discretion of the assigned ALJ.

Are the technical rules of evidence followed in hearings?

No. CCR, title 5, sections 3082, subdivision (b) and 3089, apply. These regulations generally incorporate the APA rules of evidence found in California Government Code section 11513.

Are closing briefs accepted?

Yes, if the assigned ALJ, in consultation with parties and counsel, determines that closing briefs are appropriate in a particular case.

DECISIONS

Does OAH use a format for writing decisions?

Yes. The general OAH format for decisions includes identification of parties, hearing dates and location(s) and other preliminary information. This will typically be followed by a statement of the issue(s) presented; factual findings; legal conclusions, and the order.

What is the timeframe for issuing decisions after the hearings?

Unless timelines are waived by the parties, OAH will endeavor to meet the timelines within applicable federal and state law.

Does OAH abide by the 45-day timeline in which to issue a decision following a hearing?

Forty-five days is the deadline to complete the hearing process. Absent a waiver by the parties, OAH will comply with the timelines of the IDEA and implementing federal regulations for issuance of decisions.

What precedential value will OAH give to SEHO decisions and to its own decisions?

OAH will follow California Code of Regulations, title 5, section 3085, which characterizes prior decisions (by SEHO or OAH) as "persuasive, but not binding authority."

Will OAH post its decisions on a website? Will the decisions be published? Will OAH send the decisions to a publisher such as LRP and allow them to publish the decisions?

The decisions, after redaction of confidential information, will be sent to the CDE, which will continue to post them on its website. OAH will not independently publish decisions. OAH intends to discuss with LRP the logistics and propriety of including decisions on the LRP website.

RESOLUTION SESSIONS

What is the process for notification of the resolution session? How will meetings be scheduled after notification?

The obligation for convening the resolution session and assembling the required participants falls on the school district. It is not clear that OAH has any responsibility for resolving disputes which arise in the course of the resolution session. OAH's responsibility is limited to ruling on motions that relate generally to the matter and processing of the case if no resolution is reached within the 30 days.

If parents don't want to attend the resolution session, can a district move to have the request for hearing dismissed? (The statute states that parties "may proceed" to hearing if no resolution has been reached.)

No. As noted above, both parties may waive the resolution session or opt to go to mediation. The agreement must be signed by both (or all) parties.

Does OAH expect the parties to notify OAH of the outcome of the resolution session?

OAH does not expect to be notified of the outcome of the resolution session other than whether there was or was not a resolution. If the parties do not notify OAH that the matter was resolved, OAH will assume after 30 days that the case was not resolved and will set the matter for hearing and refer it to OAH for mediation.

Does the resolution session have to include the entire IEP team? (The statute says it has to include the IEP team.)

This is covered in IDEA, which does not, as suggested by the question, require the entire IEP team. The IDEA requires participation by "relevant" IEP members who have knowledge of the complaint.

How does OAH interpret the phrase "relevant members of the IEP team" as it relates to the resolution session?

The phrase "relevant members of the IEP team" will be interpreted by the assigned ALJ in the context of any case in which this becomes an issue. However, OAH will not typically become involved in issues which relate exclusively to the conduct of the resolution session.

MEDIATIONS

How are mediations currently scheduled?

After receiving a request for mediation or a request for mediation and hearing, OAH will schedule and notify all parties on record dates set for mediation.

How are mediation dates selected?

Mediators schedule the dates of mediation with the parties.

How will the parties be advised that a mediator has been assigned to the case?

OAH will notify all parties and including the mediator's name and resume in the hearing notice.

Will the mediations have to be held during the 30-day period for the resolution session?

No. If the school district files the due process hearing request, a hearing date will be noticed and the parties notified of the name mediator who will contact them. The OAH mediator will schedule the mediation.

If a parent files the due process hearing request, OAH will wait the requisite 30 days to notice the matter for hearing and notify the parties of the name of the mediator. Mediations will not be held during the 30 days allocated for a resolution session. The parties can opt to proceed to mediation by joint agreement or may jointly agree to waive the resolution session in writing.

How does OAH ensure that the same ALJ does not mediate a case and then hear a case involving the same school district but a different student? For example, on July 1st the ALJ mediates a case involving student 1 and school district A and on August 1st hears a case involving student 2 and school district A.

There is no legal or ethical impediment to this practice. Civil courts, arbitrators, and dispute resolution services follow this practice. In some of the larger school districts, ALJs will regularly mediate and hear cases involving the school district. ALJs, of course, will not hear cases they have mediated.

SUBSTANTIVE LEGAL ISSUES

How does OAH deal with the current differences between IDEA as amended in 2004, the federal regulations, and state law?

OAH follows case law regarding the relative precedence of federal law, state law and state regulations whenever a conflict exists.

Will there be consistency in terms of rulings and procedures within each Regional Office and among the Regional Offices?

OAH will endeavor to provide a generally consistent hearing process among all of the regional offices and ALJs. However, each ALJ has an individual responsibility to hear and resolve issues that come before him or her. As is true with any adjudicative body, ALJs may not always agree on the correct manner in which to interpret the law.

What is OAH's position with regard to the applicability of IDEA 2004 for cases filed before July 1, 2005?

As a general matter, while the reauthorized IDEA provisions do not appear to apply retroactively, these kinds of issues will be resolved by Presiding ALJs or assigned ALJs on a case by case basis within the context of matters assigned to them.

MISCELLANEOUS

EX PARTE COMMUNICATIONS

When is it appropriate, if ever, to receive calls from ALJs even to discuss procedural matters? (See CCR, title 5, Section 3084 and California Government Code Section 11430.10.)

These matters are covered in the sections cited. See also Government Code section 11430.20 for permissible communications to the Administrative Law Judge. Generally, communications regarding "issues in the proceeding" are prohibited, although communications concerning "a matter of procedure or practice, including a request for a continuance that is not in controversy" are permitted.

ADMINISTRATIVE LAW JUDGE TRAINING

Is OAH ensuring that the ALJs are properly trained pursuant to Education Code section 56505(c)?

Yes



SCHOOL TO ADULT LIVING

SECTION A	<u>TRANSITION PLANNING</u>	
SECTION B	<u>TRANSFER OF RIGHTS</u>	
SECTION C	<u>INTERAGENCY AGREEMENTS</u>	
SECTION D	<u>WEST END SELPA MANAGED PROGRAMS</u>	
APPENDIX A	<u>QUICK REFERENCE ARRAY OF WAI SERVICES</u>	
APPENDIX B	<u>WEST END SELPA WAI POLICIES AND PROCEDURES</u>	
APPENDIX C	<u>ONLINE RESOURCES</u>	
APPENDIX D	<u>OSER QUESTION & ANSWERS ON SECONDARY TRANSITION</u>	



Introduction

According to IDEA 2004, transition services are a set of coordinated activities for a student that is designed within a results-oriented process, that is focused on improving the academic, and functional achievement of the student to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation. IDEA requires that transition services be provided to all youth with disabilities beginning at sixteen years of age or younger as appropriate.

The transition services are based on the student's individual needs, taking into account strengths, preferences and interests. They include instruction, related services, community experiences, the development of employment and other post-school adult living objectives and if appropriate, may include daily living skills and a functional vocational evaluation. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

[34 CFR 300.43 (a)] [20 U.S.C. 1401(34)]

The Individual Transition Plan (ITP) drives the Individual Education Plan (IEP) by clearly defining the desired goals of the student in the areas of Postsecondary Education and or Training, Employment, and Independent Living when appropriate. The purpose is to improve academic and functional achievement to facilitate movement from school to post school activities. Both formal and informal age appropriate transition assessments including student interview, person centered planning and progress monitoring are used to assist in determining the skills, strengths, transition readiness and specific needs of the student. A prescribed course of study, revision of goals, and appropriate transition related activities contribute to a comprehensive and individualized transition plan.

Section A – Transition Planning

According to the Federal Regulations for the implementation of IDEA 2004, beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

- (1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

[34 CFR 300.320(b) and (c)] [20 U.S.C. 1414 (d)(1)(A)(i)(VIII)]

While age-appropriate transition assessments are not defined in the law, The Division of Career Development and Transition, Council for Exceptional Children defines transition assessment as “the ongoing process of collecting data on the individual’s needs, preferences and interests as they relate to the demands of current and future working, educational, living, and personal and social environments”. Transition assessments should assist in identifying the student’s interests, preferences and strengths and provide the information needed to plan an appropriate course of study, identify appropriate post-school outcomes, and document student progress. The assessment process can be informal or formal. Informal assessments include checklists, observations, surveys and review of records. Formal assessments include the use of standardized assessment tools. Whatever process is used, the assessment must provide clear and objective present levels of performance in the areas of education and training, employment and when appropriate independent living skills. The results of the assessment shall be reviewed at the IEP meeting convened prior to the student’s 16th birthday.

Measurable postsecondary goals are a new requirement in IDEA 2004. Measurable postsecondary goals are statements of what a student wants to do after school. Measurable postsecondary goals are required in the areas of education and training, employment and when appropriate independent living. Measurable annual goals are then developed that will assist the student in achieving their postsecondary goals. While school districts are not responsible for ensuring the achievement of the student’s postsecondary goals, the transition plan should be designed and reasonably calculated to assist the student in meeting their long term postsecondary goals.

For information on transition planning please refer to [Transition to Adult Living: An Information and Resource Guide](#), 2007. This guide is available from CalSTAT and may be downloaded from the CalSTAT publications website: www.calstate.org/info.html.

Section B – Transfer of Rights

When students with disabilities reach the age of majority, age 18, the legal rights for special education services move from the parents to the student. Parents and students are notified one year before the student’s 18th birthday of this transfer of rights. §300.520 [see 20 U.S.C. 1415(m)]. If parents or care providers determine that the student is unable to, or incapable of, making decisions about education or independent living, there are two options. A legal guardianship or conservatorship can be established. The legal guardian makes decisions on behalf of the student

for medical care, financial management, education, and all other life situations. An alternate option is conservatorship. Conservatorship differs from a legal guardianship in that it may be limited to certain powers as appointed by the court.

A limited conservator may ask the court to grant any or all of the following 7 powers:

1. Determine the conservatee's residence or dwelling
2. Access the conservatee's confidential records or documents
3. Consent or withhold consent to marriage on behalf of the conservatee
4. Enter into contracts on behalf of the conservatee
5. Give or withhold medical consent on behalf of the conservatee
6. Select the conservatee's social and sexual contacts and relationships
7. Make educational decisions for the conservatee

Page 2 of the Individual Transition Plan of the West End SELPA IEP form provides the means for documenting those students have been advised of the transfer of their rights at least one year before they reach the age of majority; age 18.

Section C – Interagency Agreements

EC 56462 The transition services shall include, but not be limited to the following: (a) (3) the roles of other agencies in the transition process including, but not limited to, the scope of their services, eligibility criteria, and funding. (b) (4) The coordination of the transition planning process, including the development of necessary interagency agreements and procedures at both state and local levels. (g) Coordination with other specialized programs that serve students who face barriers to successful transition.

Interagency agreements shall contain a description of the scope of the agency's services, eligibility criteria, and funding. Services will be coordinated to serve students who face a barrier to a successful transition from school to adult living. The case carrier will review student's abilities and challenges and with the consent of the parent or the student if the student has attained the age of majority, will invite appropriate agency representatives to the IEP annual review. The notice to parents and to the students, in cases where the student is 18 or older, shall contain notification of the agency's participation in the IEP meeting. It is clear that the inclusion of agency participation in the student's transition planning should start prior to the last year of the student's high school education.

Interagency access is accomplished through the IEP process. All students have the right to access services offered by the community agencies; however, the school system is not financially responsible for services beyond the scope of the IEP. Methods chosen to accomplish written goals are at the discretion of the education professionals.

Section D – West End SELPA Managed Programs

These programs are not mandated under California Education Code, but are available to students who meet criteria imposed by the funding source or the West End SELPA Program Advisory Committee.

- **The Transition Partnership Program (TPP)** – This is an interagency contract with the Department of Rehabilitation. Eligible students receive pre-employment transition skills (PETS) training and exploratory work experience. Services are delivered within the TPP classroom and include instruction in career development, employment counseling and preparation, as well as job development and placements. Students may be referred to the program in their sophomore year through the beginning of their senior year if they are demonstrating school success in the areas of behavior and responsibility, while at the same time, receiving special education services. Students need to complete a TPP application packet that is available from their case carrier and provide proof of disability with a current psychological report or medical records. The West End SELPA enters into a contractual agreement with the Department of Rehabilitation on an annual basis to provide these services to the high school member districts.
- **WorkAbility I** - The West End SELPA applies annually to the California Department of Education for funding for this vocational service. All high schools in the SELPA are eligible to submit student applications for this program. The scope of the program ranges from pre-employment transition skills training and work experience services through initial job placement and payment of wages. WorkAbility I is a statewide grant funded program that encourages students with disabilities ages 16-22 to complete high school and supports them in acquiring marketable job skills. It is a program supported by the State of California and sustained by the community's partnering employers. WorkAbility I pays the student's wages, provides Worker's Compensation for a specified training period, provides employers with an opportunity to evaluate potential employees via a trial work period, and encourages employers to hire students who are prepared to work.

A student may access the WorkAbility I program by requesting a WorkAbility I application from the special education case carrier or SELPA Transition Case Technician during a WorkAbility I presentation. This application must be completed as requested, and the student will then be scheduled for an interview with the WorkAbility I Transition Case Technician. Following the interview, a decision will be made concerning the student's readiness for job placement. Collaborative efforts between the teacher, career center personnel, WorkAbility I staff, and parents prepare the student for employment. Preparation includes pre-employment skills, job-seeking skills, job attainment, and retention of employment.

When a special education student is 16-22 years of age, he/she may apply for a WorkAbility I position if the student:

- Can be responsible for transportation to and from the job site.
- Maintains satisfactory attendance and classroom achievement.
- Is responsible, reliable, and honest.
- For additional information see Appendix B

- **WorkAbility Middle School Project** - This program is part of the WorkAbility I grant project. It is a program designed to meet the needs of students in grades 6-8. It is also supported by the California Department of Education. The goal of this project is to empower middle school students to create a personal vision and to prepare them to enter high school with academic skills, social skills, and career awareness information that will allow them to make informed decisions regarding their future as it relates to their high school course of study, and future areas of transition into adult life. These goals will be accomplished by cooperative work between the WorkAbility I staff and teachers to engage middle school students in a variety of classroom activities and community experiences, including secondary education and transition planning based on career and vocational interest inventories.
- **Work Projects** – This program is part of the WorkAbility I grant project. The program involves partnering with local businesses to supply students with severe disabilities with work projects that can be completed in the classroom to enhance the school curriculum. The goals are to enhance the student’s time on task and develop the social and work behaviors necessary to be a successful employee. All high school students with moderate to severe handicapping conditions are eligible to participate in the Work Projects Program if the work complements their curriculum and meets the goals set forth in their IEP. The student’s teacher must decide if this experience aligns with the curriculum set forth by the district and used in the classroom. The teacher then contacts the transition Case Technician assigned to that school to develop an appropriate work project appropriate. In the case of damage, loss, or theft the teacher is responsible for the value of the materials provided by Work Projects’ staff.
- **CaPROMISE** – Promoting the Readiness of Minors in Supplemental Security Income (PROMISE) is a joint initiative between the U.S. Department of Education, the U.S. Social Security Administration, the U.S. Department of Health and Human Services, and the U.S. Department of Labor to promote positive outcomes for children who receive Supplemental Security Income (SSI) and their families.
- The grant is a 5-year demonstration grant, scheduled to end on September 30, 2018. The purpose of the program is to improve the provision and coordination of services and supports for child SSI recipients and their families in order to achieve improved outcomes, such as completing postsecondary education and job training to obtain competitive employment in an integrated setting that may result in long-term reductions in the child recipient’s reliance on SSI. The CaPROMISE grant is focused on supporting one of the key provisions of the Workforce Innovation and Opportunity Act (WIOA) enacted on July 22, 2014, which is to strengthen the Department of Rehabilitation focus on Competitive Integrated Employment (CIE). Participants were chosen via random selection from an eligibility list uploaded to a secure database by the Social Security Administration. Staff authorized to access this database must undergo a federal security background check for clearance.

Expected Outcomes for the Youth and Their Families:

- Increased education attainment in high school, postsecondary education and/or training
- Increased access to community services based on individual need

- Improved employment outcomes for youth and family members
- Increased exploration, understanding and utilization of SSA work incentives
- Improved understanding of financial and benefits planning
- Post-program reduction in SSI payments

Interventions:

- Case Management and Transition Services
- Financial Planning and Benefits Management Services
- Career and Work-based Learning Services
- Parent and Guardian Training and Information Services
- Other Support and Services

APPENDIX A

QUICK REFERENCE ARRAY OF WORKABILITY I (WAI) SERVICES

Source: <https://sites.google.com/a/workabilitycentral.com/workability-1/high-school-array-of-services>

WESELPA

West End Special Education Local Plan Area

WorkAbility I

Matrix – Array of Services Quick Reference

Please use this as a quick reference for explanation of services on the matrix form. The matrix form is available upon request from the WESELPA WorkAbility Office.

SCHOOL-BASED COMPONENT

The integration of school-based and work-based learning is identified as a best practice for transition (National Transition Standards, Office of Disability Employment Policy, High School Reform and the newly reauthorized Carl Perkins Career and Technology Act). This incorporates common core, academic and occupational learning and links elementary schools, middle schools, high schools and postsecondary education.

The School-Based component refers to those elements that are commonly part of the school curriculum and the education delivery system. The following elements are included:

Career/Vocational Assessment: Assessments that evaluate the student's interests, skills and abilities. The results are utilized to assist students to choose a satisfying, lasting career and to evaluate transition needs.

Types of assessments include:

- Self-Assessment: a self-inventory that requires students to reflect on their personal traits, skills, interests and aptitudes to identify their natural talents and abilities.
- Formal Assessments are typically in one of five categories:
- Aptitude / Ability Tests- measure overall abilities, general intelligence, achievement, aptitude.
- Interest Inventories- help individuals identify their preferences for a particular activity.
- Personality Surveys- match types of interests to the Holland Code (Self Directed Search) or Myers Briggs.
- Values Assessments- assist individuals to identify characteristics of occupations of value to them.
- Career Development Assessments- determine where a person is in the career development process.

- Informal Assessments: card sorts, interviews, individual and group discussion, job shadow, and situational assessments.
- Computerized Information Systems: match data assessment, data for research, and exploration.
- Special Vocational Assessment: may include a diagnostic process to identify learning styles, vocational interests, skills, talents and aptitudes, and/or the student's need for accommodation.
- Monitoring progress and attainment of employment goals

Employment/ Post-Secondary Education Planning: services that guide students through a process to make and implement educational and occupational plans based on informed choices; services should assist students in exploring career options with attention to surmounting gender, race, ethnic, disability, language or socioeconomic impediments to career options and encourage nontraditional career choices when appropriate. Services may be delivered individually or through group or class activities. The National Career Development Guidelines (NCDG) and National School Counseling Standards provide an extensive list of age and grade appropriate competencies.

Youth Development and Leadership: Training to assist students to understand their rights and responsibilities, express themselves and their ideas, state their needs, and know where to go for assistance and support (self-advocacy skills). Disability awareness, awareness of learning styles and needed accommodations are encompassed in youth development and leadership.

Curriculum Integration of Work Readiness Skills: Academic and work readiness skills (as reflected in the SCANS Competencies and Common Core) are taught in a manner that emphasizes the relationship and application of skills in the workplace. Documentation of these skills may include:

- **Career/Transition Portfolio:** A collection of a student's transition related documents and assessment results. An age appropriate Career or Transition Portfolio may contain:
 - Personal information
 - Academic information (transcripts, awards, etc.)
 - Exhibits of personal accomplishments
 - Career assessment information (e.g. interest, aptitude, values, learning styles and/or personality survey assessment results)
 - Career exploration results
 - Documentation of career technical skills
 - Work related documents (e.g. resume, master job application, list of references, letters of recommendation, and copies of important documents like driver's license, certificates, etc.)
 - The student's IEP/ITP, dreams and goals, and/or career plan

Career/ Vocational Education: General Education classes that provide introduction to job skills in the areas of agriculture, business, home economics, industrial technology, and health care. Regional Occupational Programs/ Career Technical Education that provide students occupational training and certification in entry level positions through a community classroom model or school-based classes. A collaboration of these options help to enhance college and career readiness.

Independent Living/Functional Skills: Activities and curriculum that teach the use of community resources and help develop domestic skills, money management skills and other skills required for independent living.

CONNECTING ACTIVITIES

Connecting Activities are programs and services that help link school and work based learning opportunities.

Partnership/Collaboration: Cooperative relationships with entities within the school system or in the community that provide students work readiness and life skills or assist in their transition from school to life after high school. The following relationships are included:

- a. Interdisciplinary: collaboration among departments, services, and programs within a school
- b. Interagency: partnerships/collaboration with agencies that provide support for student transitions
- c. Community: facilitating access to community resources for students
- d. Business: partnerships with business community members who provide career resources for youth, serve as advisors, and offer employment and training opportunities for youth

Family Participation/Support of Transition: Involves and recognizes the role of the family as essential to assisting students to become economically self-sufficient individuals.

CAREER PREPARATION AND WORK BASED LEARNING COMPONENT

Activities and learning experiences to increase career awareness, provide students with work-readiness skills and connect the classroom to work. Work Based Learning Component includes activities that involve actual worksite learning experiences or connect classroom learning to work. All community-based placements (paid and unpaid) are in compliance with the Fair Labor Standards Act (FLSA). Key elements of this component include:

Career Awareness Activities: On and/or off-campus activities designed to make students aware of the broad range of careers and/or occupations in the world of work. These activities are typically occasional experiences that may include field trips, guest speakers, career fairs, conducting interviews with employees and/or employers and career research using career information, internet and/or computer information systems.

Career Exploration Activities: Activities designed to provide more in-depth exposure to career options for students. They are of longer duration (2 hours to one semester). These activities may include:

- **Job Shadows:** A student follows an employee at a worksite to learn about a particular occupation of interest. The activity is designed to assist the student to explore a range of career/occupational choices and to select a career/occupational goal as they advance into the latter part of high school.
- **School-Based Project/Business:** An enterprise in which goods or services are produced by students as part of their school program. Project-Based Learning is a type of school based project that provides an opportunity for students to tackle a “real world” problem and identify potential solutions by applying academic skills, social skills, life skills and problem-solving and creative thinking skills.

- **Service Learning:** a method of instruction that combines community service with a structured school-based opportunity for reflection about that service, emphasizing the connections between service experiences and academic learning. Most programs are balanced between students' needs to learn and the recipients need for service. Students benefit from acquiring skills and knowledge, and learning civic responsibility.

Work-Based Learning: Includes activities that involve actual work site learning experiences or connect classroom learning to work. All community-based placements (paid and unpaid) are in compliance with the Fair Labor Standards Act (FLSA).

- **Internship:** provides students an opportunity to participate in unpaid, work based learning for a specified period of time to learn about a particular industry or occupation. In most internship situations, a workplace mentor instructs the student, critiques the performance, challenges and encourages the student to do well. It is critical to ensure that all aspects of criteria outlined by the FLSA are met to ensure that this experience is a work-based learning experience – not employment.
- **Apprenticeship:** Youth apprenticeship programs are formal, multi-year programs that combine school and work based learning in a specific occupational area or cluster and are designed to lead directly into either a postsecondary program, entry level job or registered apprenticeship program. Most apprenticeship programs are developed in collaboration with the State Apprenticeship Standards Board.
- **Community Classroom:** a method of instruction which utilizes unpaid on-the-job training experiences at business, industry, or public agency sites to assist students in acquiring those competencies needed to acquire entry level employment. The intent of the community classroom experience is to augment classroom instruction that can be extended into the community. It is most typically associated with ROP. It is critical to ensure that all aspects of criteria outlined by the FLSA are met to ensure that this experience is a work-based learning experience – not employment.
- **Community Based Vocational Instruction:** the development of learning experiences in the community through WorkAbility and in compliance with all FLSA requirements for a work-based learning experience.

FLSA Requirements for Unpaid Training:

- a comprehensive training plan
- activity involving the performance of work
- planned, sequential learning occurs, resulting in skills documentation
- youth are exposed to all aspects of the industry
- placement provides challenging real or simulated tasks

Career Preparation/Job Search: Community based activities that provide the opportunity to develop work readiness skills and career-related technical skills. These activities may include:

- **Preparation for the Worksite:** Activities that develop awareness of employer requirements in a specific work based learning opportunity and/or work experience placement in the areas of duties to be performed, appropriate attire, work place rules and other expectations.
- **Job Search:** Curriculum and activities that provide students with the needed skills to find a job such as interview skills, use of a portfolio in job search, where to find

job listings, how to make use of resources and networking, and how to contact employers.

Job Development and Placement Services: WAI staff develop job training sites in the community or connect students with other placement opportunities. The typical placement process involves contacting employers, developing training plans, securing a training agreement, arranging schedules, and scheduling the student interview and/or orientation. A training plan includes the following elements:

- Clear statement of student hours and wages
- Name of worker's compensation insurance company
- Statement of related goals and interests
- Statement of employment skills addressed in work experience
- Statement of how performance will be evaluated
- Designation of a work site supervisor and a school coordinator/supervisor

Employment/Work Experience: Provide on the job training experience. Students are productive employees, receiving pay for performing tasks independently. The work experience education component encourages a connection between school and work.

Job Retention: Curriculum and activities that reinforce the skills that a student needs to maintain and/or upgrade a job and the appropriate way to leave a job.

Work Site Mentor: A mentor serves as an advocate and role model for the student. A workplace mentor instructs the student, critiques the performance, challenges and encourages the student to do well and works in consultation with the classroom teacher.

APPENDIX B

West End SELPA

WorkAbility I Policies and Procedures



WEST END SELPA WorkAbility I Policies & Procedures

Mission of WorkAbility I “WAI”

The mission of WorkAbility I (WAI) is to promote the involvement of key stakeholders, including students, families, educators, employers, and other agencies in planning and implementing an array of services that will culminate in successful student transition to employment, lifelong learning and quality adult life.

WorkAbility I Program Information

The WAI program assists all referred secondary students with an active IEP in one of the following ways:

- Prescreening assessment (formal or informal career survey/interest inventory).
- Pre-Employment Transition Skills (PETS) training and presentations.
- Counseling information for post-secondary education or training.
- Subsidized (WAI paid) temporary employment placement and site support, based on grant funding
- Two-year follow-up after program exit.

WorkAbility I Job Training Referral Process (age 16+)

- Student completes WAI referral packet, available from site Transition Case Technician or special education staff, and obtains necessary parent permission.
- Student returns the completed packet, which includes photocopies of Social Security Card/Permanent Residence Card, photo identification and work permit to the Transition Case Technician
- **Consideration for paid employment is not a guarantee, but a privilege.**

If Considered for Temporary Job Placement, Student:

- Must maintain excellent attendance, behavior, and classroom citizenship/achievement.
- If under age 18, must obtain a work permit from school.
- Must be able to work independently with supervision by an on-site manager and off-site support from Transition Case Technician.
- Must take responsibility for transportation to and from work.
- Will work as scheduled and agreed upon by employer and Transition Case Technician, per state and federal labor laws.
- Must notify the employer and Transition Case Technician when he/she will be absent from work.
- Must notify Transition Case Technician of any change of address or phone number.
- Is responsible for correctly completing and submitting time sheets to Transition Case Technician and signing time card.

- Will be paid once a month for a predetermined number of hours based on available grant funding; check will be issued by San Bernardino County Superintendent of Schools.

WorkAbility I is funded by a grant from the California Department of Education, Special Education Division

APPENDIX C

ON LINE RESOURCES

IDEA 2004

[http://idea.ed.gov/explore/view/p/.root,dynamic,TopicalBrief,17,](http://idea.ed.gov/explore/view/p/.root,dynamic,TopicalBrief,17)

National Center on Secondary Education and Transition

<http://www.ncset.org/>

Transition: CA's School to Adult Life Core Messages

Transition to Adult Life Leadership Team & CDE,
Special Education Division

Each core message is followed by related web sites

<http://www.calstat.org/transitionmessages.html>

U.S. Department of Education: Carl D. Perkins Career and Technical Education Act

<http://www2.ed.gov/policy/sectech/leg/perkins/index.html>

WorkAbility Central

<https://sites.google.com/a/workabilitycentral.com/workability-1/high-school-array-of-services>

CaPROMISE - Promoting the Readiness of Minors in Supplemental Security Income

<https://www.capromise.org/>

APPENDIX D

OSERS: Office of Special Education and Rehabilitative Services Questions and Answers on Secondary Transition

Source:

idea.ed.gov/object/fileDownload/model/QaCorner/field/PdfFile/primary_key/10

Questions and Answers

On Secondary Transition

Revised September 2011

(New Section B)

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Additional regulations were published on December 1, 2008 and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, advocacy organizations, and other interested parties with information regarding secondary transition for students with disabilities. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. This Q&A document supersedes the Department's guidance, entitled: Questions and Answers on Secondary Transition, Revised June, 2009.

The IDEA and its implementing regulations continue to address transition services for children with disabilities. Transition services may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. See 34 CFR §300.43(b). The term "transition services" means a coordinated set of activities for a child with a disability that: (a) is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation; (b) is based on the individual child's needs, taking into account the child's strengths, preferences,

and interests; and (c) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. See 20 U.S.C. 1401(34) and 34 CFR §300.43(a).

Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of the IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and the regulations are found at <http://idea.ed.gov>.

If you are interested in commenting on this guidance, please email your comments to OSERSguidancecomments@ed.gov and include Secondary Transition in the subject of your email or write us at the following address: Ruth Ryder, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, SW, room 4108, Washington, DC 20202.

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A. Federal Activities

Authority: The requirements for transition services are found in the regulations at 34 CFR §§300.43 and 300.320(b).

Question A-1: **Are there activities at the Federal level to support secondary transition services?**

Answer: Yes. There are State Performance Plan/Annual Performance Report (SPP/APR) indicators that address secondary transition. In the SPP/APR, a State is required to set measurable and rigorous targets and annually report data on: graduation rates; competitive employment rates; postsecondary school enrollment rates; and percent of eligible IEPs that contain the required secondary transition elements. The Office of Special Education Programs (OSEP) funds three centers to provide technical assistance for the collection and analysis of data for these indicators: the National Secondary Transition Technical Assistance Center (NSTTAC); the National Dropout Prevention Center for Students with Disabilities (NDPC-SD); and the National Post-School Outcomes Center (NPSO). Additionally, OSEP is involved in collaborative activities with other Federal agencies with a focus on improving the academic and functional achievement of students with disabilities. These collaborative activities include the Matrix-Mapping Federal Resources for Technical Assistance and Information Services; the Interagency Committee on Disability Research/Interagency Subcommittee on Employment; the Federal Partners in Transition Workgroup; and the Youth Vision Federal Collaborative Partnership. The agencies involved in these and other activities include the Departments of Education, Labor, Health and Human Services, Transportation, Justice, Housing and Urban Development, and the Equal Employment Opportunity Commission.

B. Individualized Education Program (IEP) Goals for Postsecondary Transition

Authority: The requirements for the content of the IEP related to transition services are found in 34 CFR §300.320(b).

Question B-1: Must an IEP include measurable postsecondary goals in each of the areas of training, education, employment, and independent living skills? Are there any circumstances in which goals for training and education can be combined?

Answer: The Under 34 CFR §300.320(b)(1), the IEP for each child with a disability, must, beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, include (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate,

independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals. The Department explained in the Analysis of Comments and Changes section of the preamble of the August 2006 final Part B regulations that "...the Act requires a child's IEP to include measurable postsecondary goals in the areas of training, education, **and** employment, and, where appropriate, independent living skills. Therefore, the only area in which postsecondary goals are not required in the IEP is in the area of independent living skills.... It is up to the child's IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE." [Emphasis added] 71 Fed. Reg. 46668 (Aug. 14, 2006).

Regarding postsecondary goals related to training and education, the IDEA and its implementing regulations do not define the terms "training" and "education." However, the areas of training and education can reasonably be interpreted as overlapping in certain instances. In determining whether postsecondary goals in the areas of training and education overlap, the IEP Team must consider the unique needs of each individual student with a disability, in light of his or her plans after leaving high school. If the IEP Team determines that separate postsecondary goals in the areas of training and education would not result in the need for distinct skills for the student after leaving high school, the IEP Team can combine the training and education goals of the student into one or more postsecondary goals addressing those areas. For example, for a student whose postsecondary goal is teacher certification, any program providing teacher certification would include education as well as training. Similarly, a student with a disability who enrolls in a postsecondary program in engineering would be obtaining both education and occupational training in the program. The same is true for students with disabilities enrolled in programs for doctors, lawyers, accountants, technologists, physical therapists, medical technicians, mechanics, computer programmers, etc. Thus, in some instances, it would be permissible for the IEP to include a combined postsecondary goal or goals in the areas of training and education to address a student's postsecondary plans, if determined appropriate by the IEP Team. This guidance, however, is not intended to prohibit the IEP Team from developing separate postsecondary goals in the areas related to training and education in a student's IEP, if deemed appropriate by the IEP Team, in light of the student's postsecondary plans.

On the other hand, because employment is a distinct activity from the areas related to training and education, each student's IEP must include a separate postsecondary goal in the area of employment

C. Summary of Performance (SOP)

Authority: The requirements for the SOP are found in the regulations at 34 CFR §300.305(e)(3).

Question C-1: What is the purpose of the SOP, “a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals”?

Answer: The purpose of the SOP is to provide the child with a summary of the child’s academic achievement and functional performance in order to assist the child to transition beyond high school.

Question C-2: What information is required and what information would be helpful to include in the SOP?

Answer: The SOP must include recommendations on how to assist the child in meeting his or her postsecondary goals. The IDEA does not otherwise specify the information that must be included in the SOP; rather, State and local officials have the flexibility to determine the appropriate content to be included in a child’s SOP, based on the child’s individual needs and postsecondary goals.

Question C-3: Does a general educational development credential (GED) or alternate diploma trigger the creation of an SOP?

Answer: No. A public agency, pursuant to 34 CFR §300.305(e)(3), must provide a child whose eligibility for services under Part B of the IDEA terminates due to graduation from secondary school with a regular diploma, or due to exceeding the age of eligibility for a free appropriate public education (FAPE) under State law, with a summary of the child’s academic achievement and functional performance. This Part B requirement does not apply to the group of children who leave secondary school with a GED credential or alternative diploma and whose eligibility for services under Part B has not terminated. See 34 CFR §300.102(a)(3)(iv), which clarifies that a regular high school diploma does not include alternate degrees, such as a GED credential.

Public agencies are not required to provide an SOP for students who leave secondary school with a GED credential or alternate diploma; however, there is nothing in the IDEA or the Part B regulations that would prevent a State from doing so. If a State establishes a policy or practice requiring LEAs to provide an SOP to students with disabilities who leave high school with a GED credential or an alternate diploma, we recommend that, to avoid any confusion, the LEA notify the student and his or her parents that the student’s eligibility for FAPE under Part B does not terminate until the student is awarded a regular high school diploma or the student exceeds the age of eligibility for FAPE under State law, whichever occurs first. States that require their LEAs to provide children who leave secondary school with a GED credential or alternate diploma with an SOP must comply with 34 CFR §300.199. Each State, under 34 CFR

§300.199(a)(1), must ensure that any State rules, regulations, and policies conform to the purposes of Part B. Further, 34 CFR §300.199(a)(2) requires States to identify in writing to OSEP and to their LEAs any State-imposed requirement that is not required by Part B of the IDEA or the implementing regulations, such as one requiring their LEAs to provide children who leave secondary school with a GED or credential or alternate diploma with an SOP.

Question C-4: Is a public agency required to include in the SOP the documentation necessary to determine a student’s eligibility for the Vocational Rehabilitation (VR) Services program and/or accommodations in institutions of higher education?

Answer: No. Section 614(c)(5) of the IDEA does not require the LEA to include in the SOP the documentation necessary to determine a child’s eligibility for another program or service, such as the State VR Services program, or the child’s need for accommodations in college or in other postsecondary educational settings. However, the SOP may include information that may assist another program to determine a student’s eligibility for services or accommodations. For example, section 102(a)(4) of the Rehabilitation Act of 1973, as amended, requires the State VR Services program to use information submitted by education officials to assist in making eligibility determinations for students with disabilities. The SOP is one of the educational records that may be used to provide information to determine a student’s eligibility for VR services.

A postsecondary student who has identified him or herself as an individual with a disability and has requested academic adjustments, auxiliary aids or modifications of policies, practices or procedures from an institution of postsecondary education may, consistent with an institution’s documentation requirements, provide the institution with the SOP as part of the documentation to be used by the institution to determine whether the student has an impairment that substantially limits a major life activity, as defined under Section 504 of the Rehabilitation Act (Section 504) and/or the *Americans with Disabilities Act (ADA)*, and requires academic adjustments as defined in the Section 504 regulations at 34 CFR §104.44. Institutions may set their own requirements for documentation so long as they are reasonable and comply with Section 504 and the ADA.



POSITIVE BEHAVIORAL INTERVENTIONS

SECTION A	<u>BEHAVIOR SUPPORT PLAN PROCESS</u>	
SECTION B	<u>THE FUNCTIONAL BEHAVIOR ASSESSMENT AND POSITIVE BEHAVIOR INTERVENTION PLAN PROCESS</u>	
SECTION C	<u>BEHAVIORAL EMERGENCY PROCEDURES</u>	
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INTRODUCTION

This chapter contains procedures regarding behavioral assessment and intervention. IDEA and California's Title V Regulations require the implementation of specific procedures to guide IEP teams in their response to individuals with challenging behaviors. The West End SELPA districts have established policies and continue to in-service staff regarding its implementation.

There are two basic triggers to the need for behavioral assessment and intervention plans:

1. Disciplinary actions that constitute a “change of placement”
2. Behaviors which impede the learning of the student, or that of others

IDEA requires the use of functional behavioral assessment and positive behavior strategies and supports with students who are not necessarily dangerous, but who exhibit a pattern of behavior that interferes with learning - theirs or others. The California regulations also make it necessary for instructional staff to have the support of personnel specially trained in behavior analysis with an emphasis in positive behavior intervention when addressing serious behavior problems. IDEA requires that both general and special educators receive the training and support necessary to contribute to the development and implementation of positive behavior strategies. All of this makes it imperative that educational personnel in this SELPA become aware of these procedures and proficient in carrying them out.

The ultimate goal is to have teachers who understand the guiding principles underlying the procedures and who regularly apply sound positive programming strategies. The consequence should be a significant decrease in chronic and/or dangerous behaviors and less dependency on outside sources and exclusionary punitive reactions. The training outcomes are to provide local staff with the tools and knowledge necessary to not only meet the requirements of the law, but to more effectively and efficiently meet the needs of students with challenging behaviors.

Section A - The Behavior Intervention Plan (BIP) Process

The “Behavior Intervention Plan” process is a systematic procedure designed to guide IEP teams to develop positive behavior strategies and goals that are tied to the function of the problem behaviors. A behavior Intervention plan is required whenever a student’s behavior impedes their learning or the learning of others. In addition, in discipline settings, when a manifestation determination has found that the behavior is a manifestation of the student’s disability, if there is not a behavior intervention plan in place, one must be developed and implemented with fidelity. If BIP is in place, it must be reviewed and modified as needed.

**A TEMPLATE OF THE BEHAVIOR
INTERVENTION PLAN
IS
LOCATED IN SEIS
UNDER REFERENCE MATERIALS,
DOCUMENT LIBRARY**

Section B -The Functional Behavior Assessment and Behavior Intervention Plan Process

Functional Behavior Assessment – When a special education student’s significant behavioral challenge(s) have an adverse impact on their learning and the learning of other pupils, or both, the students IEP team shall determine whether the instructional/behavioral approaches specified in the Student’s IEP and BIP, if appropriate, have proven ineffective, If the IEP team finds that these approaches have been ineffective, a functional behavior assessment may be conducted. Before a functional behavior assessment begins, parents/guardians shall be notified and consent obtained. (California Education Code §56320(b)(3) states that assessments of students with exceptional needs “are administered by trained and knowledgeable personnel and are administered in accordance with any instructions provided by the producer of the assessments”) and the WESELPA recommends the FBA should be conducted within the environment where the behavior occurs.

During the assessment the behavior is identified in observable and measurable terms, and information is collected to determine what environmental or instructional factors increase or decrease the behavior, and what purpose is the behavior serving for the student (ie a hypothesis statement regarding the function of the behavior). This information is used to develop a plan of which specifies what the school staff will do to address the behavior, including any changes to the environment, or instructional program, which will decrease the behavior in addition to a teaching plan for an alternative behavior that provides the student with an appropriate way to get his/her needs met. Behavioral goals and communication strategies are developed to monitor the success of the plan. It is best to use a team approach when developing a behavior intervention plan. Having all individuals who work with the student involved in the development of the plan increases the consistency with which the plan is implemented.

The Behavior Intervention Plan (BIP) - A BIP is a written intervention plan, which is may be based on a functional behavior assessment A Behavior Intervention Plan is a proactive action plan to address challenging behavior(s) that are impeding learning of the student or others. Behavior Intervention Plans are required when significant behavioral challenges have an adverse impact on the learning of self and/or others **and less restrictive interventions have been unsuccessful. A BIP** is facilitated by an individual specially trained in behavior analysis with an emphasis on positive behavior interventions

General Provisions

The FBA procedures should include all the following:

1. Systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration, and intensity.

2. Systematic observation of the immediate antecedent events associated with each instance of the display of the targeted inappropriate behavior.
3. Systematic observation and analysis of the consequences following the display of the behavior to determine the function the behavior serves for the individual, i.e., to identify the specific environmental or physiological outcomes produced by the behavior. The communicative intent of the behavior is identified in terms of what the individual is either requesting or protesting through the display of the behavior.
4. Ecological analysis of the settings in which the behavior occurs most frequently. Factors to consider should include the physical setting, the social setting, the activities and the nature of instruction, scheduling, the quality of communication between the individual and staff and other students, the degree of independence, the degree of participation, the amount and quality of social interaction, the degree of choice, and the variety of activities.
5. Review of records for health and medical factors which may influence behaviors (e.g., medication levels, sleep cycles, health, diet); and
6. Review of the history of the behavior to include the effectiveness of previously used behavioral interventions.
7. Interviews with parents/caregivers, teachers, support staff and student (whenever possible)

Following the assessment, a Functional Behavior Assessment Report (SELPA42) shall be prepared, and a copy shall be provided to the parent. The report should include the following components:

1. Identifying student information.
2. A description of the nature and severity of the targeted behavior(s) in clear, measurable, and observable terms.
3. A description of the targeted behavior(s) frequency, intensity, and/or duration that includes baseline data and an analysis of the antecedents and consequences that maintain the targeted behavior, and a functional analysis of the behavior across all appropriate settings in which it occurs.
4. Determination and rationale of whether the behavior is impeding the learning of the student or peers.
5. A review of Tier II Strategies or other positive behavioral interventions and strategies. If strategies have been utilized, then include the results of the interventions and/or strategies.
6. A review of environmental factors, including reported and observed predictors and what supports the student's use of these behaviors; and

7. Hypothesis of the function of the behavior based on data collection and a description of the suggested functionally equivalent replacement behaviors.
8. Recommended behavior interventions and teaching strategies.
9. a summary of data obtained from the functional behavioral analysis.
10. a description of the targeted maladaptive behavior/s and the alternative positive replacement behavior/s.
11. suggested behavioral interventions that utilize positive programming and the circumstances for their use.
12. a description of the recommended data collection modality
13. criteria for discontinuing interventions or modifications following the IEP process.
14. a summary statement that operationally defines the behavior(s) of concern, describes the antecedents that predict the behaviors and consequences that maintain the behaviors, and includes the conditions wherein the behavior(s) are more or less likely to occur
15. (1) a record review, (2) interviews with at least two people who know the student and have seen the behavior occur on multiple occasions, and (3) multiple direct, in-person observations conducted by the behavior support professional who is in charge of the FBA (PENT recommendation)

Redundant? Addressed already on page 9-4....

The Behavior Intervention Plan - A written intervention plan, which is may be based on a functional behavior assessment of both the problem behavior and its functionally equivalent replacement. It is facilitated by an individual specially trained in behavior analysis with an emphasis on positive behavior interventions. It shall become a part of the IEP, shall generate measurable goals and objectives and shall describe the frequency of consultation to be provided by an individual specially trained in behavior analysis with an emphasis on positive behavior interventions to staff members and parents who are responsible for implementing the plan. Behavior Intervention Plans are required when significant behavioral challenges have an adverse impact on the learning of self and/or others.

Functional Behavior Assessment – When a special education student’s significant behavioral challenge(s) have an adverse impact on their learning and the learning of other pupils, or both, the students IEP team shall determine whether the instructional/behavioral approaches specified in the Student’s IEP and BIP, if appropriate, have proven ineffective, If the IEP team finds that these approaches have been ineffective, a functional behavior assessment may be conducted. Before a functional behavior assessment begins, parents/guardians shall be notified and consent obtained. No such assessment shall preclude a parent/guardian from requesting a functional behavior assessment on the basis of language and speech disorders or specific learning disabilities. The functional behavior assessment shall be conducted by “trained and knowledgeable” personnel (EC 5655(b))

Severe Student Behaviors - Pervasive actions that consistently interfere with the implementation of the IEP and/or constitute a behavioral emergency.

Behavior Emergency Incident Report - A formal report that is required any time physical restraint or emergency intervention is used in any form, as a response to significant behavior challenge. This report must be submitted to the parent, district special education director/area director, school site administrator/county principal within one school day of the incident.

Section C - Behavioral Emergency Procedures

This section is intended to assist teachers and support staff in understanding and implementing their roles and responsibilities regarding ED 56521.1 regarding the use of Emergency Interventions. Special training and guidance is required to be provided for teachers and support staff to not only respond appropriately and effectively to serious behaviors, but to proactively incorporate positive behavioral programming planning for all students. The following pages contain the SELPA adopted policies that relate directly to classroom level implementation. Additional information and support can be obtained by contacting your special education administrator or the West End SELPA.

The responsibility of the classroom teacher begins when a special education student demonstrates either, a) a pattern of serious behavior problems or, b) behaviors serious enough to warrant emergency interventions.

What Constitutes a Significant Behavior Challenge?

Serious behavioral problems can be defined by asking the following questions:

1. Is the behavior a function of the student's disability and does it interfere with the implementation of the IEP goals and objectives, and
2. Is the behavior pervasive and maladaptive, , and
3. Does the behavior require the systematic and frequent application of behavioral interventions?

What Procedures Should the Teacher Follow When Significant Behavior Challenges Occur but Do Not Constitute an Emergency?

1. A serious behavior, or pattern of behaviors, is identified.
2. A request for assistance is made to the IEP team by the teacher.
3. The IEP Team administrator/designee invites an individual specially trained in behavior analysis with an emphasis on positive behavior interventions to the meeting.
4. The IEP ~~assessment process is followed to conduct~~ discusses and **determines if** a functional behavior assessment **is required**.
5. **If required**, the functional behavior assessment is facilitated by an individual specially trained in behavior analysis with an emphasis on positive behavior interventions.:
6. Analysis findings are used by the IEP team to develop a Behavior Intervention Plan (BIP).
7. A summary report of the analysis and the BIP is developed and is attached to the IEP.
8. Assure there is at least one goal in the IEP that is driven by the data and recommendations of the BIP.

What Constitutes a Behavioral Emergency?

Behavior Emergency is the demonstration of a significant behavior challenge:

1. Which has not previously been observed and for which a behavioral intervention plan has not been developed; or
2. For which a previously designed behavior intervention plan is not effective.
3. While it is appropriate to intervene in an emergency to prevent a pupil from imminent risk of serious physical self-harm or harm of others, restraint and seclusion are dangerous interventions, with certain known practices posing a great risk to child health and safety. EC 49005 (a).

The teacher can identify a behavioral emergency by asking the following questions:

1. Is there a threat of serious physical harm to the student, to another student, or to a staff member?
2. Is the possibility of serious physical harm imminent?
3. Have less restrictive alternatives been exhausted?

What Interventions may be used in a Behavioral Emergency?

California Regulations define emergency intervention as the temporary application of a technique used to control a student's unpredictable, spontaneous behavior. Each SELPA is required to identify the approved emergency intervention techniques for that SELPA. The West

End SELPA's approved emergency intervention techniques are those developed by Crisis Prevention Institute (CPI). The West End SELPA provides certification in CPI, and all staff working with students displaying significant behavior challenges are to complete the prescribed training. In the West End SELPA, initial certification is good for two years, after which staff are required to attend a refresher training or the full two-day training. Is this a directive from the SELPA, or a rec? Change wording

What Philosophical Guidelines Should be considered by Teachers/Aides in Responding to a Behavioral Emergency?

The use of punishing contingencies, including the use of physical force or corporal punishment, is not an accepted practice. It is neither utilized nor condoned. At times, however, a student may engage in behavior that presents a potential danger to the physical safety of staff, other students, or to the student himself.

In such crisis situations, teachers must be committed to utilizing the least restrictive method that will enable the student to regain self-control. Care is taken to ensure that the safety and welfare of the individual are protected at all times. It is the responsibility of all educators to provide the best care and safety of students by accurately identifying and responding to the unique behavioral and emotional characteristics of any student in a crisis situation.

In What Ways Can a Teacher/Aide Respond to a Behavioral Emergency? Same concern as above- is this required or recommended?

To ensure that these responsibilities are carried out in a professional and consistent manner, all staff who work students displaying significant behavior challenges are required to become certified in the non-violent physical crisis interventions as instructed through the "Crisis Prevention Institute" (CPI) procedures. This is a two-day training and can be scheduled through the WESELPA.

Section D – Federal and State Regulations

CALIFORNIA EDUCATION CODE 56520-56525

Behavioral Interventions for Special Education Students

56520. (a) The Legislature finds and declares all of the following:

(1) That the state has continually sought to provide an appropriate and meaningful educational program in a safe and healthy environment for all children regardless of possible physical, mental, or emotionally disabling conditions.

(2) That some school-age individuals with exceptional needs have significant behavioral challenges that have an adverse impact on their learning or the learning of other pupils, or both.

(3) That Section 1400(c)(5)(F) of Title 20 of the United States Code states that research and experience demonstrate that the education of children with disabilities can be made more effective by providing incentives for positive behavioral interventions and supports to address the learning and behavioral needs of those children.

(4) That procedures for the elimination of maladaptive behaviors shall not include those deemed unacceptable under Section 49001 or those that cause pain or trauma.

It is the intent of the Legislature:

(1) That children exhibiting serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions in accordance with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing regulations.

(2) That assessments and positive behavioral interventions and supports be developed and implemented in a manner informed by guidance from the United States Department of Education and technical assistance centers sponsored by the Office of Special Education Programs of the United States Department of Education.

(3) That when behavioral interventions, supports, and other strategies are used, they be used in consideration of the pupil's physical freedom and social interaction, be administered in a manner that respects human dignity and personal privacy, and that ensure a pupil's right to placement in the least restrictive educational environment.

(4) That behavioral intervention plans be developed and used, to the extent possible, in a consistent manner when the pupil is also the responsibility of another agency for residential care or related services.

(5) That training programs be developed and implemented in institutions of higher education that train teachers and that in-service training programs be made available as necessary in school districts and county offices of education to ensure that adequately trained staff are available to work effectively with the behavioral intervention needs of individuals with exceptional needs.

56521. (a) This chapter applies to any individual with exceptional needs who is in a public school program, including a state school for the disabled pursuant to Part 32 (commencing with Section 59000), or who is placed in a nonpublic school program pursuant to Sections 56365 to 56366.5, inclusive.

(b) The Superintendent of Public Instruction shall monitor and supervise the implementation of this chapter.

56521.1. (a) Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.

(b) Emergency interventions shall not be used as a substitute for the systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior.

(c) No emergency intervention shall be employed for longer than is necessary to contain the behavior. A situation that requires prolonged use of an emergency intervention shall require the staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation.

Emergency interventions shall not include:

(1) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.

(2) Employment of a device, material, or objects that simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in those procedures.

(3) An amount of force that exceeds that which is reasonable and necessary under the circumstances.

To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian,

and residential care provider, if appropriate, shall be notified within one school day if an emergency intervention is used or serious

property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual

with exceptional needs. The behavioral emergency report shall include all of the following:

(1) The name and age of the individual with exceptional needs.

(2) The setting and location of the incident.

(3) The name of the staff or other persons involved.

(4) A description of the incident and the emergency intervention used, and whether the individual with exceptional needs is currently engaged in any systematic behavioral intervention plan.

(5) Details of any injuries sustained by the individual with exceptional needs, or others, including staff, as a result of the incident.

(f) All behavioral emergency reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator.

(g) If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a behavioral

intervention plan, the designated responsible administrator shall, within two days, schedule an individualized education program (IEP)

team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine

the necessity for an interim plan. The IEP team shall document the reasons for not conducting the functional behavioral assessment, not

developing an interim plan, or both.

(h) If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral

intervention plan, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is

ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive

behavioral intervention plan.

56521.2. (a) A local educational agency or nonpublic, nonsectarian school or agency serving individuals with exceptional needs pursuant

to Sections 56365 and 56366, shall not authorize, order, consent to, or pay for the following interventions, or any other interventions

similar to or like the following:

(1) Any intervention that is designed to, or likely to, cause physical pain, including, but not limited to, electric shock.

(2) An intervention that involves the release of noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the individual.

(3) An intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.

(4) An intervention that is designed to subject, used to subject, or likely to subject, the individual to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.

(5) Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention.

(6) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.

(7) An intervention that precludes adequate supervision of the individual.

(8) An intervention that deprives the individual of one or more of his or her senses.

(b) In the case of a child whose behavior impedes the child's learning or that of others, the individualized education program team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior, consistent with Section 1414(d)(3)(B)(i) and (d)(4) of Title 20 of the United States Code and associated federal regulations.

56523. (a) The Superintendent shall repeal those regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services that are no longer supported by statute, including Section 3052 and subdivisions (d), (e), (f), (g), and (ab) of Section 3001 of Title 5 of the California Code of Regulations, as those provisions existed on January 10, 2013.

(b) This chapter is necessary to implement the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and associated federal regulations. This chapter is intended to provide the clarity, definition, and specificity necessary for local educational agencies to comply with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and shall be implemented by local educational agencies without the development by the Superintendent and adoption by the state board of any additional regulations.

(c) Pursuant to Section 1401(9) of Title 20 of the United States Code, special education and related services must meet the standards of the department.

(d) As a condition of receiving funding from the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), a local educational agency shall agree to adhere to this chapter and implementing federal regulations set forth in this

chapter.

(e) The Superintendent may monitor local educational agency compliance with this chapter and may take appropriate action, including fiscal repercussions, if either of the following is found:

(1) The local educational agency failed to comply with this chapter and failed to comply substantially with corrective action orders issued by the department resulting from monitoring findings or complaint investigations.

(2) The local educational agency failed to implement the decision of a due process hearing officer based on noncompliance with this part, provisions of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or the federal implementing regulations, wherein noncompliance resulted in the denial of, or impeded the delivery of, a free appropriate public education for an individual with exceptional needs.

(f) Commencing with the 2010-11 fiscal year, if any activities authorized pursuant to this chapter and implementing regulations are found to be a state reimbursable mandate pursuant to Section 6 of Article XIII B of the California Constitution, state funding provided for purposes of special education pursuant to Item 6110-161-0001 of Section 2.00 of the annual Budget Act shall first be used to directly offset any mandated costs.

(g) The Legislature hereby requests the Department of Finance on or before December 31, 2013, to exercise its authority pursuant to subdivision (d) of Section 17557 of the Government Code to file a request with the Commission on State Mandates for the purpose of amending the parameters and guidelines of CSM-4464 to delete any reimbursable activities that have been repealed by statute or executive order and to update offsetting revenues that apply to the mandated program.

56524. The superintendent shall explore with representatives of institutions of higher education and the Commission on Teacher Credentialing, the current training requirements for teachers to ensure that sufficient training is available in appropriate behavioral interventions for people entering the field of education.

56525. (a) A person recognized by the national Behavior Analyst Certification Board as a Board-Certified Behavior Analyst may conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.

(b) This section does not require a district, special education local plan area, or county office to use a Board-Certified Behavior Analyst to conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.

NOTE: Authority: Section 56523(a), Education Code. Reference: Sections 56520 and 56523, Education Code.

West End SELPA Procedural Advisory – Behavioral Emergencies

This advisory is written to assist staff in appropriately responding to serious behavioral challenges, which may require the use of physical intervention. The information is based on California's AB 86, adopted 7/1/2013.

What is a behavioral emergency?

(a) Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.

(b) Emergency interventions shall not be used as a substitute for the systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior.

(c) No emergency intervention shall be employed for longer than is necessary to contain the behavior. A situation that requires prolonged use of an emergency intervention shall require the staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation.

An individual can identify a behavioral emergency by asking the following questions:

1. Is there a threat of serious physical harm to the student, to another student, or to a staff member?
2. Is the possibility of serious physical harm imminent?
3. Are less restrictive alternatives unavailable?

If the behavior can be contained by techniques such as: redirecting the student, removing the other students, removing a demand, providing the student with a break, allowing the student to vent, or maintaining a safe distance from the acting out person, then it is not a behavioral emergency and physical restraint may not be used. For example, if a student is non-compliant, refusing to comply with a teacher directive, it is not permissible to physically force compliance, unless failure to follow the directive would cause imminent serious physical harm.

Emergency Interventions

Emergency interventions may only be used to control unpredictable, spontaneous behavior which poses a clear and present danger of serious physical harm to the individual with exceptional needs, or others, and which cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.

Due to the risk of injury to the students with exceptional needs and others involved, whenever a behavior emergency occurs, only approved behavioral emergency intervention techniques may be used. The approved emergency intervention techniques for the West End SELPA are those developed by the Crisis Prevention Institute (CPI). These techniques are:

1. Holding in a seated position
2. Holding in a standing position
3. Team control position
4. Children's control position

Only staff members who have received training in the above techniques, is current in the certification, and have demonstrated competence in their use are permitted to conduct an emergency intervention.

Staff employing these techniques must be trained and certified in the approved non-violent crisis intervention -CPI. This training is available through the West End SELPA. The initial training is a two-day training. Certification is valid for a two-year period; staff may renew their certification by completing a one-day refresher course within the two-year period, or by retaking the complete two day training. The West End SELPA strongly encourages that all staff who work with potentially acting out students become certified in CPI. Behavior Intervention Case Managers are required to be certified in CPI.

Emergency interventions may not include:

1. Locked seclusion unless it is in a facility otherwise licensed or permitted by state law to use a locked room.
2. Employment of a device, material, or objects that simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in those procedures.
3. An amount of force that exceeds that which is reasonable and necessary under the circumstances.
4. An intervention that precludes adequate supervision of the individual.
5. An intervention that deprives the individual of one or more of his or her senses.

Note:

In the case of a child whose behavior impedes the child’s learning or that of others, the individualized education program team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior, consistent with Section 1414(d)(3)(B)(i) and (d)(4) of Title 20 of the United States Code and associated federal regulations.

Behavioral Emergency Reports

To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one school day if an emergency intervention is used or serious property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual with exceptional needs. A copy of the Behavior Emergency Report must also be sent to:

- Site Administrator/County Principal
- District Director of Special Education/Area Director

The designated responsible administrator must review the behavioral emergency report.

If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an individualized education program (IEP) team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting the functional behavioral assessment, not developing an interim plan, or both.

If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention plan.

West End SELPA Behavior Emergency Report

Date of Incident: _____ Time Incident Began: _____ Time Incident Ended: _____
 Student: _____ Age: _____ School: _____
 Setting/Location: _____ Staff Involved: _____
 Positive Behavior Intervention Plan: YES NO
 Target behavior(s) on the behavior plan: _____

	Describe Student Behavior/Incident (observable behaviors)	Staff Response
Escalation Stages	Anxiety:	<input type="checkbox"/> proximity <input type="checkbox"/> counseling <input type="checkbox"/> restructure routine/environment <input type="checkbox"/> accommodate materials/expectations <input type="checkbox"/> other: _____
Escalation Stages	Defensive:	<input type="checkbox"/> redirect, restate direction <input type="checkbox"/> set limits: _____ <input type="checkbox"/> separate student from group <input type="checkbox"/> separate the group from student <input type="checkbox"/> offer break <input type="checkbox"/> other: _____
Intervention	Risk Behavior:	Disengagement Skills <input type="checkbox"/> Strikes <input type="checkbox"/> Wrist/Arm holds <input type="checkbox"/> Low <input type="checkbox"/> Medium <input type="checkbox"/> High <input type="checkbox"/> Neck hold <input type="checkbox"/> Low <input type="checkbox"/> Medium <input type="checkbox"/> High <input type="checkbox"/> Clothing grab <input type="checkbox"/> Low <input type="checkbox"/> Medium <input type="checkbox"/> High <input type="checkbox"/> Hair pull <input type="checkbox"/> Low <input type="checkbox"/> Medium <input type="checkbox"/> High <input type="checkbox"/> Body hug <input type="checkbox"/> Low <input type="checkbox"/> Medium <input type="checkbox"/> High <input type="checkbox"/> Bite <input type="checkbox"/> Low <input type="checkbox"/> Medium/High Emergency intervention/Holding skills: Duration of restraint: _____ <input type="checkbox"/> Holding in a seated position <input type="checkbox"/> Low <input type="checkbox"/> Medium <input type="checkbox"/> High <input type="checkbox"/> Holding in a standing position <input type="checkbox"/> Low <input type="checkbox"/> Medium <input type="checkbox"/> High <input type="checkbox"/> Team control position <input type="checkbox"/> Children's control position
Debriefing	Tension Reduction:	<input type="checkbox"/> review events <input type="checkbox"/> review schedule <input type="checkbox"/> make plan: _____ _____ _____ _____
	Injury/Medical Follow up Student:	Injury/Medical Follow up Staff:
	_____ sent to nurse <input type="checkbox"/> first aid <input type="checkbox"/> 911 Paramedics <input type="checkbox"/> CPR	_____ sent to nurse <input type="checkbox"/> first aid <input type="checkbox"/> 911 Paramedics <input type="checkbox"/> CPR

**West End SELPA
Behavior Emergency Report**

Other pertinent information:

Were there any precipitating factors? If so, please list.

What was the trigger/antecedent of the behavior?

Is the target behavior an isolated event or is there a history/pattern of behavior? How many times has occurred in the last month? 3 months?

How was the staff or students in eminent danger when staff employed physical emergency intervention?

Check one:

- If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an individualized education program (IEP) team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting the functional behavioral assessment, not developing an interim plan, or both.
- If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention plan.

COPIES OF BEHAVIORAL EMERGENCY REPORTS WERE SENT TO:

Distribution	Name	Date
Parent or Care Provider		
Site Administrator/County Principal		
Special Education Director		
SBCSS Area Director		
Student File		

Note: Behavior Emergency Reports are to be sent within 24 hours of the incident

Signature of Person Completing the Report: _____

Signature of Administrator Reviewing the Report: _____

Instructions for Completing the West End SELPA Behavioral Emergency Report

All Sections of the Behavioral Emergency Report must be completed. The form is two pages in length. Once completed, the report is distributed as indicated on the second page and a copy is placed in the student file.

Target behavior(s) on the behavior plan:

If the student has a current behavior intervention plan, using clear and concise language, list the target behaviors addressed in the plan.

Describe Student Behavior/Incident:

The description of the incident follows the stages of escalation in the CPI model. Using clear, concise language identify the observable behavior the student demonstrated at each stage. This will assist the IEP team in analyzing the event.

Examples of Observable Behavior:

Anxiety	Pacing, finger drumming, wringing hands, rocking, humming, increased rate of breathing, failure to maintain eye contact
Defensive	Questioning, yelling, loud noises, refusals, name calling, verbal threats, swearing, moves toward staff, drops to ground, arms crossed, hands over ears, pushes materials, throws things
Risk Behavior	Hit, kick, strike, choke, breaks property, tears clothing, running in dangerous area, self injury
Tension Reduction	Breathing calmed, follows simple directions, sits down, goes to relaxation area

Staff Response:

Check the responses the staff made to attempt to de-escalate the student. Indicate all that apply, if other, provide a written description.

Injury/Medical Follow up:

Identify any injuries to the student and/or staff and intervention used to address the injury. Complete any additional reports per district requirements.

Other pertinent information:

Indicate anything that will assist the IEP team in analyzing the behavioral incident. List any precipitating factors that may have contributed to the behavior emergency episode. Indicate the trigger/antecedent of the behavior. Indicate the number of times that the behavior has occurred in the last month and three months. Indicate how the staff or student(s) were in imminent danger, resulting in the staff requiring to use behavior emergency intervention.

Procedural Follow up:

Check the appropriate procedures to be followed based on whether the student has a current behavior intervention plan.

Required Notifications:

Indicate the names of the individuals notified and the date that they were notified.

Follow-up Procedure:

The Behavior Emergency IEP Follow-Up Form needs to be completed at the follow-up IEP meeting to discuss the behavior emergency incident report. Once completed, the form needs to be attached to the IEP. The form need to be distributed to the IEP team members.

**West End SELPA
Behavior Emergency IEP Follow-Up Form**

IEP Date: _____ Date of Incident: _____ Student: _____ School: _____

IEP Team Members:

Title	Name
Parent	

1. Does the current behavior intervention plan address the behavior that resulted in the use of behavior emergency intervention?

2. Were the positive behavior supports indicated in the behavior plan employed during the incident? Were they effective?

3. What additional positive behavior support strategies are now in place to prevent future incidents and allow this student to be successful?

4. Does a functional behavior assessment need to be conducted in order to collect additional data before developing a behavior intervention plan?

5. What supports or training does the staff need to more effectively implement positive behavior supports to increase student success?



SUSPENSION AND EXPULSION PROCEDURES

SECTION A	<u>DISCIPLINARY REMOVALS AND CHANGE OF PLACEMENT</u>	
SECTION B	<u>MANIFESTATION DETERMINATION</u>	
SECTION C	<u>INTERIM ALTERNATIVE EDUCATIONAL SETTINGS</u>	
SECTION D	<u>PROCEDURAL SAFEGUARDS</u>	
APPENDIX A	<u>SPECIAL EDUCATION DISCIPLINE CHART</u>	

Introduction

Students with special needs may be suspended for the same violations as students in general education; however, they have additional due process protections under IDEA. It is important to understand when a disciplinary removal from school is considered a change of placement, when a manifestation determination needs to be conducted, and even when a district is considered to have knowledge that a student is a student with special needs.

Section A –Disciplinary Removals and Change of Placement

A student with disabilities may be removed to another setting or suspended for ten days the same as any other student. Suspensions for longer than ten days may constitute a change in placement, and specific procedures must be followed. A series of short term removals totaling more than ten days, that do not constitute a pattern of removal, is not considered to be a change of placement. In this case, the student must be provided educational services which would allow him to participate in the general education curriculum and make progress toward his IEP goals. The educational services may be provided in another setting, and are determined by school personnel in consultation with at least one of the student's teachers.

A series of short term removals, totaling more than ten days, that do constitute a pattern of removal, is considered a change of placement. To determine if the removals constitute a pattern, the district must consider if the behavior that resulted in the removals is substantially similar, the length of time of each removal, the total amount of time the student was removed and the proximity of the removals to one another. It is recommended that the district assign one individual, such as the site principal, to make the decision whether the series of removals constitutes a pattern and the reason for that decision. Careful documentation of the reason for each disciplinary removal will aid in this decision making. In addition, any removal for more than ten consecutive days is considered a change of placement.

On the eleventh day of removal, the student must be provided with educational services which would allow him to participate in the general education curriculum and make progress toward his/her IEP goals. In addition, the student must be provided with a functional behavior assessment and behavior intervention services designed to prevent the behavior from occurring again assuming the behavior resulting in the removal was a manifest of the student's disability and/or the district properly implemented the IEP (refer to Section B). The educational services may be provided in another setting, and in cases where the removal is a change of placement are determined by the IEP team.

When the disciplinary removal of student with a disability constitutes a change of placement, the district must hold a manifestation determination meeting. The manifestation determination meeting must be held within ten days of the date that the decision to make a change of placement was made. On the date the decision is made to make the change of placement, the district must also provide the parent with prior written notice regarding the change of placement.

Section B- Manifestation Determination

A manifestation determination review meeting is conducted by the district, the parent, and relevant members of the IEP team. While a full IEP team is not required for the manifestation determination review, the district may want to have a full IEP team at the meeting in case other issues requiring an IEP team come up during the meeting. The purpose of the manifestation determination meeting is not to determine whether the student engaged in the behavior, but to determine if the behavior was a manifestation of the student's disability. At the manifestation determination review meeting, the team must consider all relevant information in the student's file, the student's IEP and placement, any teacher observations, and any information provided by the parent.

Under IDEA 2004 the manifestation determination process was substantially changed. In determining if the student's behavior is a manifestation of their disability only two questions must be addressed:

1. Was the conduct in question caused by, or had a direct and substantial relationship to the student's disability?
2. Was the conduct in question the direct result of the district's failure to implement the IEP?

If the answer to both of the questions above is no, then the student is subject to the same disciplinary rules as non-disabled students, although educational services as described in Section A must continue to be provided. Under IDEA 2004 the requirement for a functional behavior assessment and behavior intervention plan was removed when the behavior is not a manifestation of the student's disability. However, districts should carefully review the need for positive behavior interventions as required elsewhere in IDEA when behavior is interfering with a student's learning or the learning of others.

If the answer to one or both of the questions above is yes, then the behavior is considered to be a manifestation of the student's disability. When the behavior is a manifestation of the student's disability, the IEP team must conduct a functional behavioral assessment of the behavior that resulted in the disciplinary removal, unless it had already done so, and implement a behavior intervention plan. If a behavior implementation plan was already in place, the plan must be reviewed and modified as needed to address the behavior. In addition, the student is returned to his previous placement, unless the IEP team agrees to a change of placement as part of a modification of the behavior intervention plan. If the behavior was a result of the IEP not being implemented, immediate steps must be taken to rectify this.

Section C– Interim Alternative Educational Settings

School personnel may remove a student to an interim alternative educational setting for up to 45 school days without regard to whether the student’s behavior is a manifestation of his disability under any of the following circumstances:

- When the student possesses a weapon at school, on school premises, or at a school function
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function

In addition, a school district may request an expedited hearing from the Office of Administrative Hearings to have a student placed in an interim alternative educational setting for up to 45 school days if the hearing officer determines that maintaining the student in the current placement would result in the substantial likelihood of injury to the student or others.

A district may also consider a Honig Injunction as a means of temporarily removing a dangerous student from his current placement. In this case the district would apply to the court for a temporary restraining order.

Section D – Procedural Safeguards

A parent who disagrees with the manifestation determination or a disciplinary placement may file for an expedited due process hearing. The expedited due process hearing must occur within twenty school days of the date of the request. The notice of insufficiency process does not apply to an expedited due process hearing. The resolution session must occur within seven days, unless waived by the parties. When the parent or a district requests an expedited due process hearing the student must remain in the disciplinary setting until the hearing decision is issued.

A parent of a student not previously identified as a student with special needs may assert protection under IDEA when the district is deemed to have had knowledge that the student was a student with special needs. A district is deemed to have knowledge that a student is a student with special needs if prior to the incident, the parent has expressed in writing to a district administrator or one of the student’s teachers that the student is in need of special education services, or if the parent had requested an evaluation of the student. The district would also be deemed as having knowledge if a student’s teacher or other district staff member has expressed specific concerns about a pattern of behavior demonstrated by the student to the director of special education or other supervisory personnel. If the parent has not allowed an evaluation, refused special education services, or the student has been evaluated and found not to be eligible for special education, the parent may not assert protection under IDEA.

APPENDIX A – SPECIAL EDUCATION DISCIPLINE CHART

No Change of Placement

Type 1	Type 2
Ten (10) or fewer cumulative days of suspension	Eleven (11) or more cumulative days of suspension
<i>34 CFR § 300.530</i>	<i>34 CFR § 300.530(b)(1)</i>

Change of Placement

Case by case determination 34 CFR§ 300.530(a)

Type 3	Type 4
Ellen (11) or more cumulative days of suspension=pattern based on substantial similarity of behavior, length of each removal, total amount of time removed, proximity of removals	More than ten (10) consecutive days of suspension/expellable offense
<i>34 CFR § 300.536</i>	<i>34 CFR § 300.530©</i>

No Manifestation Determination

Manifestation Determination within 10 school days of decision to change placement by a team including LEA, parent & relevant members of IEP team

- 1) Was the conduct caused by, or did it have a direct and substantial relationship to, the disability.
 - 2) Was the conduct a direct result of LEA’s failure to implement IEP? If yes, the LEA must take steps to remedy deficiency.
- 34 CFR § 300.530(e)(3)*

Manifestation

- 1) Conduct a FBA and develop BIP/BSP~OR~
 - 2) Review and modify as necessary, preexisting BIP/BSP
- 34CFR § 300.530(j)*

Placement

- a. Prior placement unless parent/LEA agree to modify placement as part of BIP/BSP
- b. 45 Day IAES
Special Circumstances
 - Weapons
 - Drugs
 - Serious Bodily Injury

Hearing Officer

 - Substantial likelihood of injury to student or others
- c. Honig Injunction
Available in court based on dangerousness
34CFR § 300.530(f)(2)+(g), 300.532(a)+(b)

Not a Manifestation

Apply same discipline as to students without disabilities, except for educational services below.
34CFR § 300.530(c)

Placement

Expulsion

Educational Services

No services unless general education students receive services.
34 CFR § 300.530(d)(3)

Educational Services

- 1) Enable student to continue to participate in the general curriculum.
- 2) Enable student to progress towards meeting IEP goals.

Educational Services

- 1) Enable student to continue to participate in the general curriculum.
- 2) Enable student to progress towards meeting IEP goals.

Educational Services

- 1) Enable student to continue to participate in the general curriculum.
- 2) Enable student to progress towards

Where-May be in an IAES
Decided by-school
personnel in consultation
with at least one of child's
teachers.
34 CFR § 300.530(d)(4)

3) FBA & BIP as appropriate
designed to address behavior so it
does not recur.

Where- May be in an IAES
Decided by- IEP team.

34 CFR § 300.530(d)(1)+(5)

meeting IEP goals.
3) FBA & BIP as appropriate
designed
to address behavior so it does
not
recur.

Where- May be provided in an
IAES
Decided by- IEP team.
34 CFR § 300.530(d)(1)+(5)



LOW INCIDENCE FUNDING

SECTION A	<u>LEGAL REQUIREMENTS</u>	
SECTION B	<u>ACCESSING FUNDING</u>	
SECTION C	<u>FREQUENTLY ASKED QUESTIONS</u>	

Introduction

This information reviews the procedures related to the funds provided to SELPA and distributed to the local school districts to support their students with low incidence disabilities. Due to the nature and/or severity of low incidence disabilities, this additional money is afforded to districts to provide specialized materials and services that are necessary for these students to benefit from their education as outlined by their Individualized Education Program (IEP) or Individual Family Service Plan (IFSP).

Section A – Legal Requirements

EC 56836.22 (a) Commencing with the 1985-86 fiscal year, and for each fiscal year thereafter, funds to support special education and related services as required under the individualized education program for each pupil with low-incidence disabilities, as defined in [Section 56026.5](#), shall be determined by dividing the total number of pupils with low-incidence disabilities in the state, as reported on December 1 of the prior fiscal year, into the annual appropriation provided for this purpose in the Budget Act.

(b) The per-pupil entitlement determined pursuant to subdivision (a) shall be multiplied by the number of pupils with low-incidence disabilities in each special education local plan area to determine the total funds available for each local plan.

(c) The Superintendent shall apportion the amount determined pursuant to subdivision (b) to the special education local plan area for purposes of providing special education and related services as required under the individualized education program for each pupil with low-incidence disabilities.

The low incidence money is distributed in accordance with the regulations set out in Education Code 56836.22. All local education agencies that have one or more students with a low incidence disability are eligible to access additional funds, monitored through the West End SELPA, for the purpose of purchasing and coordinating the use of specialized books, materials, and services to be used specifically by these identified individuals.

Low incidence funds are used to “supplement”, not to “supplant”, other funding sources (i.e. general education funding, other special education funding, or funding by other agencies).

Low incidence funding may not be used for the following:

- non-specialized instructional service
- medical equipment or storage units
- general classroom supplies
- diagnostic assessments
- consultation or in-service to staff
- materials used primarily by teachers instead of students
- non-specialized computer systems or software

EC 56026.5 “Low incidence disability” means a severe disabling condition with an expected incidence rate of less than one percent of the total statewide enrollment in kindergarten through grade 12. For purpose of this definition, severe disabling conditions are hearing impairments, vision impairments, and severe orthopedic impairments, or any combination thereof. For purposes of this definition, vision impairments do not include disabilities within the function of vision specified in Section 56338.

Low Incidence Funding

Students with the following primary or secondary disabilities are eligible for low incidence funding:

- **Hard of Hearing (HH):** Hard of Hearing means hearing, impairment, whether permanent or fluctuating, that adversely affects a child's educational performance, but that is not included under the definition of "deaf in this section.
- **Deafness (DEAF):** Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through learning, with or without amplification, which adversely affects educational performance. (34 CFR § 300.7(c)(3))
- **Hearing Impairment (HI):** Hearing Impairment is a federal category of disability, which includes both hard of hearing and deaf individuals as defined above.
- **Visual Impairment (VI):** Visually Impaired, including blindness means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children. (34 CFR § 300.7(c)(13)).
- **Orthopedic Impairment (OI):** Orthopedic Impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures). (34 CFR §. 300.7(b) and 300.7(c)(8))
- **Deaf-Blindness (DB):** Deaf-Blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR §. 300.7(c)(2)).

Determine whether or not the disability is primary or secondary by reflecting on whether the disability inhibits the educational process. If the disability does pose a barrier to learning, then it may be listed as a primary disability. If it does not negatively affect learning, it must be listed as a secondary disability to allow purchases to be made using low incidence funds.

The school district may access low incidence funds when the specialist completes a written report that documents the need for specialized services, materials, and/or equipment to support the educational needs of the student brought about by the low incidence disability. At the student's IEP/IFSP meeting, the team must agree that such services, materials, and/or equipment will be necessary in order to support the student in their individualized education program. It is the responsibility of the district to locate funds to purchase the items documented in the IEP or IFSP.

Section B – Accessing Funding

The IEP/IFSP team shall state the need for and the type of specialized materials, equipment, and/or services needed for the student to benefit from their educational program.

The IEP must include the following:

- Documentation of the low incidence disability
- An assessment demonstrating the need for specialized services, materials, and/or equipment which has been completed and reviewed by personnel knowledgeable of the suspected low incidence disability
- A goal/objective which directly relates to the use of the specialized books, materials, or equipment being requested

A low incidence packet should include the following documentation:

- Two copies of the completed “Notice of Intent to Purchase Utilizing Low Incidence Funds” which have been signed by the person authorized by the district to approve the request
- A copy of the student’s signed IEP
- A copy of an assessment completed by personnel knowledgeable of the suspected low incidence disability
- A recommendation for specialized services, materials, and/or equipment that will meet the needs described in the IEP
- Catalogue or web-based pictures of the specialized materials, and/or equipment the IEP team has requested to have funded through low incidence

The district will log and submit the low incidence packet for review to the West End SELPA. Upon approval from the West End SELPA, the district is responsible for procuring the specialized services, materials, and/or equipment. Please see Appendix A

Section C – Frequently Asked Questions

1. May Low Incidence funding be spent in only one of the eligible low incidence disability areas even though all Low Incidence disability students generate income?

Yes. Although the allocation is generated on a per student basis and must be expended on only students who have a Low Incidence disability, there is no requirement that the funds be spent proportionally on each of the various disability groups consistent with the funds generated.

2. Is a SELPA or LEA required to use Low Incidence Funding to purchase prescription devices?

The California State Board of Education has adopted CCR, Title 5, § 3051.12(b)(3)(c), which states in part that “the school district shall not be required to purchase medical equipment for an individual student.” Based on this regulation, the CDE has a long-standing practice to encourage the purchase of prescription devices and medical equipment through other funding sources such as private medical insurance or Medi-Cal.

3. If a student with a low incidence disability within our SELPA for whom we purchased books, materials and equipment with our low incidence funds moves to a different SELPA, are we required to send the books materials and equipment with the student to the new SELPA?

No. EC § 56836.22 (e) states in part that “it is the intent of the legislature that SELPAs share unused equipment, books and materials with neighboring SELPAs....” However, if the books, materials and equipment are still needed by other students with low incidence disabilities in your SELPA, there is no requirement to send it with the student who moved away. Providing these resources is the responsibility of the SELPA where the student now resides. If, however, books, materials and equipment purchased with low incidence funds are unused, SELPAs are encouraged to make arrangements with other SELPAs to share the unused equipment, books and materials. The CDE may be contacted for assistance in locating another SELPA that has need of the unused equipment, books or materials.

4. Our SELPA has obsolete, unusable materials and equipment purchased by low incidence funds. How do we dispose of these things?

When the low incidence materials or equipment are no longer usable, it must be handled in the same manner that materials and equipment purchased by state funds other than low incidence is managed.

5. May we give one of our graduating high school students who has a low incidence disability the specialized equipment purchased for him by our SELPA through low incidence funds so he can use it in college?

No because a SELPA has a responsibility to use the equipment with other students in the SELPA. If there are no other students in the SELPA that need the piece of equipment, it is to be shared with other SELPAs as needed. Since the student has graduated from high school, he is no longer eligible to receive special education services from a SELPA. If a SELPA no longer has use for the equipment or materials, the CDE should be notified so that we can find another SELPA that has need of these resources. If the student needs similar equipment in college, he should contact the Department of Rehabilitation who has the legal responsibility to assist in training adults with disabilities.

6. The parents of one of our graduating high school students with a low incidence disability wish to purchase the specialized equipment from our SELPA that we provided for her use while in our special education program. May we sell it to them?

No because the equipment should be reassigned to another student in your SELPA, a neighboring SELPA or the CDE should be notified to identify a SELPA that can use the equipment. Even if the equipment is so personalized that it cannot be used by another student, the procedures for disposal of obsolete or unusable property must still be followed, but the parent could attempt to purchase the equipment at the public auction held by the school.



STATE SPECIAL SCHOOLS AND SERVICES

SECTION A	<u>STATE SPECIAL SCHOOLS</u>	
SECTION B	<u>DIAGNOSTIC CENTERS</u>	

Introduction

California School for the Blind (Fremont) and the California Schools for the Deaf (Riverside and Fremont) were established to provide a comprehensive educational program for students who are in need of extensive specialized services due to impairments in vision and/or hearing. Placement in state special schools pursuant to Education Code Sections 59020 and 59120 is made as a result of recommendations from the student's IEP team, and/or upon a finding that no appropriate placement is available within the local plan area.

According to California Education Code 56326, a student can be referred for further assessment by the California School for the Deaf or Blind. This assessment, however, does not constitute placement in the state special schools. This information, along with other relevant factors, would assist the IEP team in their decision-making process regarding the most appropriate placement for the student.

The Diagnostic Centers (Southern, Central and Northern) are also in the State Special Schools and Services Division, California Department of Education. Under Education Code 56326, the Diagnostic Centers provide assessments and trainings to the school districts in California.

Section A – State Special Schools

CALIFORNIA SCHOOLS FOR THE DEAF

EC 59001 The California School for the Deaf is part of the public school system of the state except that it derives no revenue from the State School Fund, and has for its object the education of the deaf who, because of their severe hearing loss and educational needs, cannot be provided an appropriate educational program and related services in the regular public schools.

CALIFORNIA SCHOOL FOR THE DEAF – RIVERSIDE (CSDR) <http://www.csdr-cde.ca.gov/>

California School for the Deaf, Riverside (CSDR) is a State Special School that serves hearing-impaired students who live in Southern California and are between the ages of three and twenty-one. Both residential and day programs are available for students. CSDR staff members work closely with local school districts to collaborate and provide students who are hard of hearing or deaf with the state adopted curriculum, standards, and pupil performance outcomes.

CALIFORNIA SCHOOL FOR THE BLIND <http://www.csb-cde.ca.gov/>

EC 59101 The California School for the Blind is a part of the public school system of the state except that it derives no revenue from the State School Fund, and has for its object the education of visually impaired, blind, and deaf-blind pupils who, because of their severe sensory loss and educational needs, cannot be provided an appropriate educational needs, cannot be provided an appropriate educational program and related services in the regular public schools.

REFERRAL TO A STATE SPECIAL SCHOOL

Rationale for State School Referral

- Documentation must exist that no district or county program exists where the student's needs can be met appropriately, even with modifications or,
- Documentation must indicate that district or county staff cannot adequately assess the student's ability, functional levels, and learning potential.

Prerequisites to State School Referral

All local public resources must be investigated and proven inappropriate. IEPs must be implemented and documented. This documentation should include all modifications that have been made in order to help the student be successful in the least restrictive environment.

Referral Process

The following stages represent the process that follows a referral to a state school:

- If all resources and options have been exhausted, the case must be scheduled for a SELPA Level meeting to include the Program Manager or Designee.
- The Program Manager or Designee reviews the file and confers with the referring staff as needed.
- The Program Manager or Designee confers with the state school staff to determine placement openings, admission procedures for the school, and availability of the school staff to attend the SELPA Level meeting.
-

SELPA Level IEP Meetings for Possible State School Placement

The IEP team members review all available data relative to assessment, modification to current program, program needs, local program options, and state school programs.

Based on the information presented, the IEP team may recommend any of the following:

- Additional assessment,
- A district or county operated program within the West End SELPA,
- A public program outside the West End SELPA, or
- A state school:
 - a) California School for the Deaf, Riverside, or
 - b) California School for the Blind, Fremont.

Section B – Diagnostic Centers

EC 59201 The diagnostic centers are part of the public school system of the state, except that they derive no funding from the State School Fund. The diagnostic centers provide services, including pupil assessment, consultation, technical assistance, and training, to school districts, county offices of education, and special education local plan areas.

The Diagnostic Centers, which were established nearly 50 years ago, are the California Department of Education's foremost providers of specialized services and assistance to students with special needs, their families, and local educational agencies. The Diagnostic Centers provide high quality assessments to hundreds of students each year and conduct valued training programs for thousands of educators and families across the State of California. The services offered include assessment, technical assistance, transition services, and staff development training.

DIAGNOSTIC CENTER, SOUTHERN CALIFORNIA

The West End SELPA is served by the Diagnostic Center, Southern California, 4339 State University Dr.

Los Angeles, CA 90032 Tel: (323) 222-8090 Fax: (323) 222-3018 Website: <http://www.dcs-cde.ca.gov>

Diagnostic Center Service Description

A description of the Diagnostic Center services follows:

1. Assessment services and technical assistance are dynamic, transdisciplinary processes. The Diagnostic Centers utilize expert teams of assessment specialists. A team may include an educational specialist, a language speech and hearing pathologist, a school psychologist, a clinical psychologist, a transition specialist, a pediatrician, or a motor specialist. Assessments are carefully planned and include a dynamic individualized process with educationally relevant diagnostic questions. The outcome is a student profile with a specialized intervention plan that includes strategies and programming options.
 - Assessments and locations vary. A student may have an individual field-based assessment at the local school. The assessment may be given at the Diagnostic Center, or, the student may be assessed at both environments. A group assessment could be a part of a field-based model, which would include issues of service delivery, intervention design, behavior, and curriculum as applicable to the group with which the student interacts.
 - Parent collaboration is valued and becomes an integral part of the assessment process. Parents assume an active role in the team process through input during the referral, through extensive interviews with the Diagnostic Center's assessment staff, and actually participate during portions of the assessment.
 - At the completion of the individual assessment Diagnostic Center staff meets with parents and LEA staffs to provide findings, provide practical teaching strategies, and plan interventions. This review is accompanied by a comprehensive written report.

- Implementation of the assessment findings occurs as the Diagnostic Center staff provides technical assistance to the IEP team. Direct support may be provided to the classroom teacher and other support specialists. If requested, staff demonstrates recommended strategies, interventions, or methodologies, as well as assists with development of behavior intervention systems. Additionally, a large selection of resource materials and handouts may be of assistance to the LEA and/or parents for implementation of the ideas and strategies outlined in the report.
2. Transition services and resources for students ages 14-22 with disabilities, their families, and service or care providers. These services facilitate an outcome-driven transition process for the student. Services promote a student focused process based upon student empowerment and informed decisions. Student decisions and family plans lead to meaningful employment and/or adult living that are commensurate with the student's interests, abilities and aptitudes.
 - Transition services include: assessment, consultation, training and technical assistance on specific transition issues for school districts, WorkAbility I project, Juvenile Court, Community School programs, and Job Training Partnership Act (JTPA). Formal staff development on various topics related to transition services for special education students is available for LEAs, families, and other service providers.
 - Technical assistance relates assessment to classroom and community instruction. Linkages with other agencies results from development of a plan for coordinated services. Student and parent involvement is promoted during the planning and implementation of the transition process.
 3. Staff development is provided through an extensive array of topics. Diagnostic School specialists provide half and full day workshops throughout the state. Many of the presentations are provided through the 12 Regional Coordinating Councils and are scheduled as a part of the council's training plan. Additional times are available for individual SELPAs or districts upon request. Training topics include: behavior, reading, transition, early education, autism, classroom instruction, and other timely and current topics. The Diagnostic Center continues to provide up-to-date information on topics that are current and represent areas of need within the state.

The Referral Process

The decision to refer a student often originates from the student's IEP Team. However, a formal application for admission must be made by the local educational agency and signed by the Director of Special Education. Referrals sent in by parents are not accepted and will be returned.

The application packet takes some time to complete. The local educational agency is responsible for: filling out a detailed form, securing written parental releases for information, submitting all educationally-relevant reports and testing results, and compiling critical student information. The parents must also complete an information packet as part of the application process. **Incomplete referrals will be returned.**

Once the completed application is received, the Diagnostic Center's Admission and Review Committee will do a comprehensive case review of the referral. This will include telephone consultation with the referring administrator, or district contact person. Following case review, the decision to accept or reject the referral will be made.

If the student is not accepted for assessment, the file will be returned with a letter explaining why the case was rejected, and in many cases, suggestions for other agencies or resources which may be better suited to assist the student.

If accepted for either a field-based or center-based assessment, both the district and the parent/guardian will receive written notification. Students are placed on a waiting list in the order in which received. When an appropriate assessment team becomes available, the student will be scheduled. The waiting list varies, depending on the time of the year and other factors, but it is not uncommon for students to wait 3-6 months for a center assessment.

Application packets are not available online. Local educational agency personnel may obtain a packet by calling the Center at (323) 222-8090. We welcome the opportunity to discuss any referral or to clarify any part of the referral process.

Contact Information – State Special Schools and Southern California Diagnostic Center

Further information regarding State Special Schools and the Diagnostic Centers can be obtained from:

Diagnostic Center, Southern California
4339 State University Drive
Los Angeles, CA 90032
(213) 222-8090

Southern California Assessment Center for the Deaf
3044 Horace Street
Riverside, CA 92505
(909) 782-6542

California School for the Blind Assessment Center
500 Walnut Avenue
Fremont, CA 94536
(510) 794-3832

REFERENCES

EC 56326, 59001, 59201



STUDENT RECORDS

SECTION A	<u>STUDENT RECORDS</u>	
SECTION B	<u>MAINTENANCE OF SPECIAL EDUCATION RECORDS</u> _____	

Introduction

School districts maintain records on all students including students identified with special needs. These records are cumulative and detail the entire school history of the student from the time of first enrollment through graduation or at the completion of their course of study. The information contained within these files include, but not be limited to, the student’s family background, medical information, school disciplinary actions, psychological evaluations, intelligence test scores, grades, individualized education programs (IEP’s), standardized test scores, and a wide variety of other sensitive information. It is the responsibility of the local school district to ensure the confidentiality, security, and maintenance of all student records according to IDEA 2004, California Education Code, and the Family Educational Rights and Privacy Act (FERPA).

Section A – Student Records

EC 49061 (b) “Pupil record” means any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his/her duties whether recorded by handwriting, print, tapes, film, microfilm and/or other means.

“Pupil records” does not include informal notes related to a pupil compiled by a school officer or employee, which remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute. For purposes of this subdivision, “substitute” means a person who performs the duties of the individual who made the note on a temporary basis, and does not refer to a person who permanently succeeds the maker of the notes in his/her position.

Confidentiality

All student files are confidential and should be stored in a locked and secured location at all times. Access is permitted only to those individuals with a legitimate need. When requested, parents are to be informed of all files on their child and the location of those files.

Access to Student Records

The parents have the right to review their child’s file and to receive a copy of the file within five business days of their request. Parental requests for review and/or copies of records must follow the established policies and procedures of the local school district.

Education Code 49069

Parents of currently enrolled or former students have an absolute right to access any and all pupil records related to their children that are maintained by school districts and/or private schools. The editing or withholding of any of those records, except as provided for in this chapter, is prohibited by law.

Each school district should adopt procedures for granting of records requests by parents. Procedures should be in place to provide copies of all pupil records pursuant to Section 49065, and/or to inspect and review records during regular school hours, provided that the requested access is granted no later than five business days following the date of the request. Procedures shall include notification to the parent of the location of all official pupil records, if not centrally located, and the availability of qualified certificated personnel to interpret records, if requested.

Based on the Family Educational Rights and Privacy Act (FERPA), access to student records and information shall not be denied to a parent because he/she is not the child's custodial parent.

The following persons or agencies shall have access to student records:

- Natural parents, adoptive parents, or legal guardians of students younger than age eighteen. (Education Code 49061).
- Once a student reaches the age of eighteen or attends a postsecondary school, he/she alone shall exercise these rights and grant consent for the release of records. (Education Code 49061).
- Those so authorized in compliance with a court order. (Education Code 49077) If lawfully possible, the district shall first give the parent or adult student three days' notice, indicating who is requesting and what records they wish to examine (Title 5, Section 435).
- School officials and employees. (Education Code 49076)

Many requests for student records require the consent and/or notification of the parent, but some do not. Requests for student records by school districts or Special Education Local Plan Areas (SELPA) within the State of California do not require a parent's signature and must be processed within five business days. Requests for student records by San Bernardino County Probation Department, Juvenile Division via a court order may be processed after attempting to advise the parents and/or student of the district's compliance with the court order. Any other requests for records must be accompanied by a release of information that has been signed by a parent and/or adult student, age eighteen or older.

Those granted access are prohibited from releasing information to another person or agency without written permission from the parent or adult student, age eighteen or older. (Education Code 49076)

Persons, agencies, or organizations not afforded access rights may be granted access only through written permission of the parent and/or adult student. (Education Code 49075)

Access Log

*EC 49064 A log or record shall be maintained for each pupil's records which lists all persons, agencies, or organizations requesting or receiving information from the record and the legitimate interest therefore. Such listing **need not** include:*

1. *Parents or pupils to whom access is granted pursuant to EC 49069 or EC 49076(6)(a),*
2. *Parties to whom directory information is released pursuant to ED 49703,*
3. *Parties to whom written consent has been executed by the parent pursuant to EC 49075, and*
4. *School officials or employees having a legitimate educational interest pursuant to EC 49076(1)(a).*

The log or record shall be open to inspection only by a parent and the school official or his/her designee, responsible for the maintenance of pupil records, and to the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, an administrative head of an

educational agency as defined in Public Law 93380, and state educational authorities as a means of auditing the operation of the system.

Access logs are maintained within each individual student file. They are typically located in the front of the student file and may either be stapled to the inside cover or located in the front of the file.

For those employees of the district who have routine access to student files, a list of their names and positions should be clearly posted on the filing cabinet where the files are securely stored. When those not listed review student records, the reviewer is required to state the purpose for the review and sign and date the access log in the student's file.

Request for Records

EC 56504 The parent shall have the right and opportunity to examine all school records of his/her child and to receive copies pursuant to this section and to Section 49065 within five business days after the request is made by the parent, either orally, or in writing. The public education agency shall comply with a request for school records without unnecessary delay before any meeting regarding an individualized education program or any hearing pursuant to Section 300.507 or Sections 300.530 to 300.532, inclusive, of Title 34 of the Code of Federal Regulations or resolution sessions pursuant to Section 300.510 of Title 34 of the code of Federal Regulations and in no case more than five business days after the request is made orally, or in writing. The parent shall have the right to a response from the public education agency to reasonable requests for explanations and interpretations of the records. If any school record includes information on more than one pupil, the parent of those pupils have the right to inspect and review only the information relating to their child or to be informed of that specific information. A public education agency shall provide a parent, on request of the parent, a list of the types and location of school records collected, maintained, and/or used by the agency. A public education agency may charge no more than the actual cost of reproducing the records, but if this cost effectively prevents the parent from exercising the right to receive such copy, or copies, the copy or copies shall be reproduced at no cost.

When a parent or parent's representative submits a student's records request to the SELPA, the written request will be forwarded to the students' district and/or LEA of service. The district of service will coordinate the collection, copying, and provision of all records to the parent, or parent's representative, as appropriate.

When a new student enrolls within a district, the student's cumulative folder including the special education file will be requested from the previous district by the new district of residence. Utilizing a district Request for Records form, records can be requested from within California without the requirement of a parental signature. When needed, parental signatures should be obtained through a district form authorizing the release of information.

All original records must be sent to and stored in the district special education office, with a copy maintained at the school site in the student's special education file. This includes records of students receiving services through San Bernardino County Superintendent of Schools. The SBCSS Principal is responsible for ensuring that these records are properly stored and should work closely with the site secretary to monitor the receipt and storage of records.

Challenging Content of Records

EC 49070 Following an inspection and review of a pupil's records, the parent or guardian of a pupil or former pupil of a school district may challenge the content of any pupil record.

(a) The parent or guardian of a pupil may file a written request with the superintendent of the district to correct or remove any information recorded in the written records concerning his or her child which the parent or guardian alleges to be any of the following:

- (1) Inaccurate.*
- (2) An unsubstantiated personal conclusion or inference.*
- (3) A conclusion or inference outside of the observer's area of competence,*
- (4) Not based on the personal observation of a named person with the time and place of the observation noted.*
- (5) Misleading*
- (6) In violation of the privacy or other rights of the pupil*

(b) Within 30 days of receipt of a request pursuant to subdivision (a), the superintendent or the superintendent's designee shall meet with the parent or guardian and the certificated employee who recorded the information in question, if any, and if the employee is presently employed by the school district. The superintendent shall then sustain or deny the allegations.

If the superintendent sustains any or all of the allegations, he or she shall order the correction or the removal and destruction of the information. However, in accordance with Section 49066, the superintendent shall not order a pupil's grade to be changed unless the teacher who determined the grade is, to the extent practicable, given an opportunity to state orally, in writing, or both, the reasons for which the grade was given and is, to the extent practicable, included in all discussions relating to the changing of the grade.

If the superintendent denies any or all of the allegations and refuses to order the correction or the removal of the information, the parent or guardian may, within 30 days of the refusal, appeal the decision in writing to the governing board of the school district.

Section B – Maintenance of Special Education Records

Confidentiality

All student files are confidential and should be stored in a locked and secured location. Access is permitted only to those involved with the student. Parents are to be informed of all files on their student and the location of those files, as requested.

All school records in California are divided into three groups for the purpose of defining how long records are kept before they are disposed:

1. Class I –Permanent or “Mandatory Permanent Pupil Records”
Records which are maintained in perpetuity and which school schools have been directed to compile by state law, regulation or administrative directive. (5 CCR 430)

2. Class II – Optional or “Mandatory Interim Pupil Records”
Records which the school is directed to compile and maintain for stipulated periods of time and are then destroyed in accordance with state law, regulation or administrative directive. (EC 48918.5; 5 CCR 430, 432, 437, 16027)
3. Class III – Disposable or “Permitted Student Records”
The only disposable records are Class III and are to be destroyed by “foolproof Methods” so as to maintain the confidentiality of the record. Whenever records are deemed Class III, parents are to be notified in writing. (5 CCR 432,437)

Retention and Destruction of Student Records

The following mandatory permanent student records shall be kept indefinitely: (5 CCR 432,437)

1. *Legal name of student*
2. *Date, place of birth, and method of verifying birth date*
3. *Sex of student*
4. *Name and address of parent/guardian of minor student*
 - a. *Address of minor student if different from the above*
 - b. *Annual verification of parent/guardian’s name address and student’s residence*
5. *Entrance and departure date of each school year and for any summer session or extra session*
6. *subjects taken during each year, half-year, summer session or quarter, and marks or credits given*
7. *Verification of or exemption from required immunizations*
8. *Date of high school graduation or equivalent*

Mandatory interim school records, unless forwarded to another district, shall be maintained subject to destruction during the third school year following a determination that their usefulness has ceased or the student has left the District. While mandatory interim school records may be destroyed after the third school year following the point at which usefulness has ceased. Such records, as related to special education may include: special education forms, access log, health records, special education test protocols, assessment reports, case studies, and authorizations.

The school district must inform the parent when personally identifiable records are no longer needed to provide educational services to a student. At that time, or at parent request, the student’s records may be destroyed. (34CFR 300.573 (a) and (b)) Destruction notices are normally sent at the time of graduation or completion of a course of study. The notice should include the items that are no longer needed and a timeline for destruction or parent retrieval of the information. This option is given to ensure that nonessential information regarding the student’s behavior, performance, and abilities are not kept after they are no longer necessary for educational purposes.

Actual test protocols should be maintained in district files, if they are used and cited in the preparation of any disseminated report, they will constitute official school records for legal purposes and are governed in accordance with California Education Code.

SAMPLE GUIDELINES

THE ORGANIZATION OF STUDENT FILES

The original documents go to the District office file. A copy of the documents is kept in the teacher file.

Outer Folder

- Confidential office file is manila folder
- Restraining orders are placed inside of the outer folder while active

IEP Meeting – Green Divider

- All paperwork should be filed in date order with the most recent first.
- Log of Access and Request for Access to Student’s Records is stapled to the outside of the divider.
- IEPs are stapled together in date order, with the most recent one on top
- Student Management Plans should be stapled to the back of the current IEP
- Transition Plans should be stapled to the back of the current IEP

Psycho-Educational – Pink Divider

- All paperwork should be filed in date order with the most recent first.**
- Psycho-educational reports
- Independent Educational Evaluations completed by a psychologist
- Protocols for each report are placed together directly behind the corresponding report
- California Diagnostic Center evaluations

Health and Development – Blue Divider

- All paperwork should be filed in date order with the most recent first.**
- Most recent list of current medications
- All medical reports
- Initial health and developmental and triennial reports
- Audiological reports
- Vision reports
- Developmental histories
- California Children’s Services reports
- Medication forms
- Specialized care plan(s)
- Immunization Records
- Nurse’s report(s)

Special Reports – Orange Divider

- All paperwork should be filed in date order with the most recent first.**
- Reports from DIS/related service providers
- Protocols for each report are placed together directly behind the corresponding report
- Independent Educational Evaluations related to DIS/related services
- Inland Regional Center Continuous Notes or I.P.P.’s



Parent Contact – White Divider

- 1. All paperwork should be filed in date order with the most recent first.**
2. Invitations to IEP conferences and parent responses
3. The Home Language Survey
4. Signed Release of Information forms
5. Forms (from the Parent Packet sent yearly) signed by parents
6. Signed Release from Responsibility forms
7. Guardianship forms
8. Assessment Plans
9. Emergency Cards
10. All correspondence to parents

Previous Data and Information – Yellow Divider

- 11. All paperwork should be filed in date order with the most recent first.**
- Bus requests
- Inactive Restraining Orders
- Individual Family Service Plan information
- Inland Regional Center information prior to age 3

References

34 CFR 300.507, 300.510, 300.530, 300.532, 300.573

CCR 16027

Education Code 48918, 49061, 49064, 49065, 49068, 49069, 49070, 49075, 49076, 49077, 49703, 56504

Family Educational Rights and Privacy Act (FERPA)

Government Code, Title I, Division 7, Chapter 3.5, Section 6250

IDEA 2004

Public Law 93380

Title 5, Section 430, 431, 432, 435, 437



OTHER PUBLIC EDUCATION PROGRAMS

SECTION A	<u>ALTERNATIVE EDUCATION</u>	
SECTION B	<u>CHARTER SCHOOLS</u>	
SECTION C	<u>COMMUNITY DAY SCHOOLS - DISTRICT/COUNTY</u>	
SECTION D	<u>COURT SCHOOLS</u>	
SECTION E	<u>CONTINUATION SCHOOLS</u>	
SECTION F	<u>INDEPENDENT ALTERNATIVE EDUCATION</u>	

Introduction

San Bernardino County Superintendent of Schools (SBCSS) offers educational options for students who have been expelled by their local school district, those students ordered to attend by the court or by Probation, or students referred by their district through the School Attendance

Review Board (SARB) or other local district process. A description of these public school options is contained within this chapter. Special education students who attend any of these instructional programs receive services in accordance with their IEP. Local school districts may also offer options for alternative education students as approved by their Board of Education. The Countywide Plan for Expelled Students outlines program options available for expelled students.

Section A – Alternative Education

The Student Services Division of San Bernardino County Superintendent of Schools works collaboratively with school districts, community colleges, families, and agencies to provide student-centered educational programs throughout the West End SELPA. Working together in a collegial and professional manner, highly qualified staff supports students' academic, vocational, social, and emotional growth. Students' talents and abilities are strengthened through instruction that focuses on life, employment, and critical thinking skills. Curriculum is aligned with state standards and approved by the Board of Education. While not required to do so, all Alternative Education schools operated by SBCSS are accredited by the Western Association of Schools and Colleges (WASC).

Student Services educational/program objectives include: 1) provide a transitional educational program which allows students to continue to earn credits toward high school graduation regardless of circumstances; 2) provide opportunities for eligible students to take the GED or the CHSPE; 3) provide students with the opportunity to receive a high school diploma in collaboration with local school districts; 4) assist students in developing social skills which will enable students to function successfully in society; and 5) assist students in developing work skills and habits which will enable them to function successfully in the work place.

Section B – Charter Schools

EC 56145 Individuals with exceptional needs attending charter schools pursuant to Part 26.8 (commencing with Section 47600) shall be served in the same manner as individuals with exceptional needs are served in other public schools.

A charter school is a public school and as such is subject to state and federal special education laws and regulations. A charter school may be authorized to operate as part of a LEA, or may itself be an LEA. A charter school must enroll any student who wishes to attend the charter school, subject to their capacity. A student may not be denied admission due to their eligibility for special education or special education needs. A charter school does not have specific geographic boundaries, and once a student has enrolled in a charter school, it no longer matters where the student resides, for purposes of special education the LEA authorizing the charter is responsible for the special education services required by the student.

California public charter schools are required to participate in the statewide assessment test, called the STAR (Standardized Testing and Reporting) program. The law also requires that a public charter school be nonsectarian in its programs, admission policies, employment practices, and all other operations, and prohibits the conversion of a private school to a charter school. Public charter schools may not charge tuition and may not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability.

Section C – Community Day Schools (District-Operated Special Day Classes)

EC 1980 A county board of education may establish and maintain one or more community schools. If a county board of education does not establish and maintain one or more community schools, the county superintendent of schools shall develop a plan with the governing boards of the school districts in that county to ensure that pupils in that county who need an alternative school placement are served.

EC 1981 The county board of education may enroll in community schools any of the following:

- (a) Pupils who have been expelled from a school district for any reason other than those specified in subdivision (a), (b) or (c) of Section 48915.*
- (b) Pupils who have been referred to county community schools by a school district as a result of the recommendation by a school attendance review board or pupils whose school districts of attendance have, at the request of the pupil's parent or guardian, approved the pupil's enrollment in a county community school.*
- (c) Pupils who are probation-referred pursuant to Section 300, 601, 602, and 654 of the Welfare and Institutions Code, pupils who are on probation or parole and who are not in attendance in any school, and who are expelled pursuant to subdivision (a) or (c) of Section 48915.*

AB 922 authorizes establishment of community day schools (sections 48660-48664). Community Day School may be operated by school districts or by a County Office of Education

Definition

In 1995 the Legislature enacted two significant bills that responded to the zero tolerance mandate from the general public: AB 922 and SB 966. Among their many provisions, AB 922 (Chapter 974) established Community Day Schools and SB 966 (Chapter 9720) effective July 1, 1996, required a governing board of the school district to provide an educational placement to all students who were expelled pursuant to subdivisions (b) and (e) of Education Code Section 48915. The Countywide Plan for Expelled Students was developed in compliance with requirements of this legislation.

This placement must be in a program of study that can appropriately accommodate referred students, is not provided at a comprehensive school, and is not housed at the school that the student was attending at the time of expulsion. Community Day Schools have the following characteristics:

- They must offer a 360-minute instructional day
- They serve grade spans K-6 and 7-12
- They can be co-located with a regular school, an opportunity school, or a continuation campus only under special circumstances
- They receive tiered incentive funding
- They cannot offer independent study

Although expelled students may be served in a county-operated Community School, many local administrators view district Community Day Schools as an appropriate placement for some, but not necessarily all expelled students and as an option for providing a structured, well-supervised instructional environment for some students who have not been expelled.

Program Description

The Community Day School Program will provide a comprehensive educational program for at-risk students designed to meet their individual academic and behavioral needs with the intent for them to return to school, graduate, obtain a GED, and/or employment. Alternative strategies include reduced class size, strong emphasis on personal development through a social skills curriculum, career education, and collaboration with other public agencies to provide counseling and support services.

The program components are listed as follows:

- 360 minutes instructional day
- 180 days instructional year plus extended year
- Board of Education approved curriculum aligned with state frameworks, or local district approved curriculum
- Counseling
- Elective curricular offerings
- Specialized assessment

Community School – SBCSS

Definition

County community schools are public schools operated and administered by county offices of education to serve students in grades kindergarten through twelve. County community schools provide educational placement for students who are expelled from their regular schools, referred by a School Attendance Review Board or at the request of the student's parent or guardian, referred by probation (pursuant to the *Welfare and Institutions Code* sections 300, 601, 602, 654), on probation or parole and are not in attendance in any school, or homeless.

When to Access

Community Schools, which are established at the request of school districts, serve students who have been expelled from the schools of the local school district or are referred by the County Probation Department's Juvenile Division.

County community schools offer students an alternative education program that reinforces or reestablishes educational development. The standard minimum school day for county community schools is 240 minutes of instruction; minimum school day for students in attendance in approved vocational education and work experience programs is 180 minutes. *California Education Code* sections that provide for county community schools include sections 1980 through 1986.

Instruction focuses on standards aligned curriculum, active hands-on participation, and individualized instruction. Most students work toward earning credits that will facilitate high school graduation; however, older students who are severely credit deficient, work toward successful GED or CHSPE completion and development of employment skills.

Section D – Court Schools

Definition

County boards of education administer and operate the Juvenile Court Schools authorized by Education Code sections 48645-48645.7. The Student Services Alternative Education Department provides educational programs for students who are wards of the court. Programs offered on the grounds of Juvenile Hall include detention and placement programs.

Students engage in a standards-aligned curriculum enriched with career preparation and computerized instruction.

The County Probation Department works in partnership with Alternative Education staff to ensure that each student has a well-balanced instructional program that teaches and reinforces academic skills, social skills, and employability.

When to Access

Juvenile Court Schools provide an alternative educational program for students who are under the protection or authority of the juvenile court system and are detained in juvenile hall.

How to Access

Students are placed in Juvenile Court Schools when they are referred by the juvenile court.

Section E – Continuation Schools (District Operated)

EC 48430 It is the intent of the Legislature that continuation education schools and classes shall be established and maintained to provide all of the following:

- (1) An opportunity for pupils to complete the required academic courses of instruction to graduate from high school.*
- (2) A program of instruction which emphasizes occupational orientation or a work study schedule and offer intensive guidance services to meet the special needs of pupils.*
- (3) A program designed to meet the educational needs of each pupil, including but not limited to, independent study, regional occupation programs, work study, career counseling, and job placement services as a supplement to classroom instruction.*

Definition

Continuation Education, an educational option for students since 1919, is a high school diploma program designed to meet the needs of students sixteen through eighteen years of age who have not graduated from high school, are not exempt from compulsory school attendance, and deemed at risk of not completing their schooling. Students enrolled in continuation education programs are often credit deficient. Others need a flexible educational environment because they are employed or are having adjustment problems.

For apportionment purposes, a day of attendance in continuation education is 180 minutes. However, many continuation high schools design programs with maximum access to required courses that exceed the minimum daily requirement. In addition to the required academic courses for graduation, the program of instruction must emphasize occupational or career orientation or a



education laws. Many students are referred involuntarily. Others elect to go to continuation schools because of the available flexible schedules and individualized services. Continuation high schools serve as a major dropout recovery option and a transitional program for students desiring to return to their regular programs.

Section F – Independent Alternative Education

Definition

The goal of the independent study program is to develop in students the highest degree of performance, self-confidence, self-esteem, and motivation while he/she earns credits toward a high school diploma, makes progress toward the next grade level, prepares for the GED or CHSPE, or prepares for employment. Both school districts and county offices of education may operate independent study programs.

When to Access

Students need to show that they can work independently and are motivated to make progress. Academic functioning at the fourth grade level or higher is required to access the county operated independent study program. Board policy states that students must complete sufficient work assigned each week to remain on IAE. County operated IAE primarily serves junior and senior high school students. Under IAE a Master Agreement is developed with input from the student, the supervising teacher and the parent/guardian. This agreement provides for the student's involvement in an alternative learning experience through a course of study aligned to the California State Frameworks. Alternative Education teachers may also provide guidance to students concerning reinstatement procedures to local school districts as well as GED and CHSPE preparation.

References

EC 1980, 1981, 48915, 56145, 56146
Welfare and Institutions Code Sections 300, 601, 602, 654



NON-PUBLIC SCHOOLS AND AGENCIES

SECTION A	<u>NONPUBLIC AGENCY SERVICES</u>	
SECTION B	<u>NONPUBLIC NONSECTARIAN SCHOOL SERVICES</u>	

Introduction

Nonpublic school and agency services are provided when the needs of a student are more intensive than can be met in the public school setting. All program options and modifications should be exhausted prior to an IEP team recommending consideration of a nonpublic school or agency placement. This chapter contains information regarding the placement of students with special needs in nonpublic schools and agencies. Guidelines are presented in this chapter for the referral process and how to access these services-

Each LEA that contracts with a nonpublic, nonsectarian school shall evaluate the placement of its pupil/s in such schools on at least an annual basis as part of the annual IEP review. The LEA representative shall review the master contract, the individual services agreement, and the IEP to ensure that all services agreed upon and specified in the IEP are provided.

Nonpublic, nonsectarian schools are required by the master contract with the nonpublic school and the IEP to annually evaluate the pupils to determine if they are making appropriate educational progress. The local education agency representative shall collaboratively review with the nonpublic, nonsectarian school the evaluations conducted by the nonpublic, nonsectarian school to ensure that they were appropriate and valid for measuring pupil progress. The local education agency may choose to administer additional assessments as necessary, with parent consent, to determine whether the pupil is making appropriate educational progress.

Section A – Nonpublic Agency Services

EC 56035 “Nonpublic, nonsectarian agency” means a private, nonsectarian establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupil’s educational program pursuant to an individualized education program and that is certified by the department. It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, a public university or college, or a public hospital. The nonpublic, nonsectarian agency shall also meet standards as prescribed by the superintendent and board.

EC 56366 It is the intent of the Legislature that the role of the nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to district, special education local plan areas, county offices, and parents.

Nonpublic agency services can be used when the resources available to the WESELPA district staff cannot adequately address the student’s needs. A child may be referred with parent consent to a public or private agency for evaluation. If payment for such diagnostic services is required, the SELPA will process such payment. Reports from these agencies will become a permanent part of the student’s records. Such referrals will be made on an individual case basis and only when the service cannot be provided through public school services available within the West End SELPA.

The SELPA will ensure that the agency meets the following standards:

- The agency has adequately trained personnel to do the diagnostic work

- The agency has appropriate facilities and equipment
- The agency meets local health, fire, and safety standards

T In order to ensure that the student is being provided such a program within the least restrictive environment, the IEP team shall utilize such nonpublic agency services only after exploring all public school program alternatives. If all resources and options have been exhausted, the case must be scheduled for an IEP meeting to include a SELPA Program Manager or designee and District Special Education Director or representative.

When the IEP Team determines that nonpublic agency services are required, a contract for such services shall be developed and entered into by the SELPA Administrator. Such contracts will be developed only after the parent has agreed to the placement.

The West End SELPA will monitor the progress of pupils in nonpublic agency services. This will consist of evaluating nonpublic agency quarterly reports of student progress on goals and objectives established by the IEP team in written instructional plans and/or reports of nonpublic agency staff and may include observing the student in the home and school program and attending clinic meetings with the NPA.

Every attempt will be made to assure pupil progress so that a pupil may ultimately be able to return to some form of public school program. The Program Manager or designee shall be responsible to monitor the progress of children placed in nonpublic agency programs. The Program Manager or designee shall also act as a liaison between the SELPA and the nonpublic agency in all matters concerning a student's placement.

Individuals with exceptional needs may be enrolled concurrently in both public and nonpublic agency services, provided one is the major enrollment and the other is supplemental. This determination will be made by the Individual Education Program team based upon the educational needs of the student and will be provided only when this arrangement best meets these needs.

Students placed in a nonpublic agency by their parents or guardians may be evaluated for special education eligibility and services by public school staff upon referral in the manner previously described for all students.

After thoroughly reviewing available services, some children with disabilities will need intensive, individualized, and specialized educational services that can only be provided outside public education.

WESELPA Program Specialist Role with Non-Public Agencies

1. As a participating member of the IEP Team, ensure ongoing communication with the district regarding student progress.
2. As a participating member of the IEP Team, review of data summaries and quarterly progress reports.
3. As a participating member of the IEP Team, attend clinic meetings and provide observation of in home or school based program as appropriate and requested by the IEP team.

Rationale for Nonpublic Agency Referral

- Must be documented that there is no available public program that can appropriately meet the student's needs, even with modification.

- Must be documented that no existing contracting agency (CCS, Regional Center) can meet the student’s needs appropriately.
- Must be documented that the service is required for the student to benefit from an educational program.
- All public resources must be exhausted and proven inappropriate.

Section B - Nonpublic, Nonsectarian School Services

EC 56034 “Nonpublic, nonsectarian school” means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program, employs at least one full-time teacher who holds an appropriate credential authorizing special education services, and is certified by the department. It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, or a public university or college. A nonpublic nonsectarian school also shall meet standards as prescribed by the superintendent and board.

- The WESELPA generates and maintains the master contract, and monitors compliance with the contract.

The West End SELPA will consider nonpublic school services for all students who require such services in order to benefit from their educational program as determined by the IEP team. In order to ensure that the student is being provided such a program within the least restrictive environment, the IEP team shall utilize such nonpublic school services only after exploring all public school program alternatives. If all resources and options have been exhausted, the case must be scheduled for an IEP meeting to include a SELPA Program Manager, West End SELPA Program Specialist, or West End SELPA Psychologist and District Special Education Director or representative.

When the IEP Team determines that nonpublic school services are required, a contract for such services shall be developed and entered into by the Chief SELPA Administrative Officer.

In most areas, the West End SELPA will monitor the progress of pupils in nonpublic school services. This review will consist of evaluating nonpublic school quarterly reports of student progress on goals and objectives established by the IEP team in written instructional plans, report cards and incident reports.

Every attempt will be made to assure pupil progress so that a pupil may ultimately be able to return to a less restrictive setting. The WESELPA Program Manager or designee shall be responsible to monitor the progress of children placed in nonpublic school programs. This Program Manager or designee shall also act as a liaison between the SELPA and the nonpublic school in all matters concerning a student’s placement.

Individuals with exceptional needs may be enrolled concurrently in both public and nonpublic school services,

Students placed in nonpublic secondary schools must complete graduation requirements of their districts of residence, which will issue a diploma. Students will be able to participate in their districts' graduation ceremony. Students who are attending non-public school out-of-state and are eligible to graduate from high school can choose to receive a diploma from the state where they are attending non-public school.

Students placed in a nonpublic school by their parents or guardians may be evaluated for special education eligibility and services by public school staff upon referral in the manner previously described for all students.

The West End SELPA will consider nonpublic placement and/or services for all students who require such services in order to benefit from their educational program as determined by the IEP team. In order to ensure that the student is being provided such a program within the least restrictive environment, the IEP team shall utilize such nonpublic school services only after exploring all public school program alternatives. Repetitive

After thoroughly reviewing available services, some **students** with disabilities will need intensive, individualized, and specialized educational services that can only be provided **in a non public school setting**.

Rationale for Nonpublic School Referral

- Must be documented that there is no available public program that can appropriately meet the student's needs, even with modification.
- Must be documented that the Local Education Agency (LEA) attempted supports and services.
- Must be documented the impact of the attempted supports and services.
- Must be documented that no existing contracting agency (CCS, Regional Center) can meet the student's needs appropriately.
- Must be documented that the service is required for the student to benefit from an educational program.
- All public resources must be considered and found to be inappropriate.
- Must have statement on the referral IEP indicating, "Student should be considered for a more restrictive placement." District should not indicate the name of a specific non-public school.

Referral Process for Nonpublic School Consideration

1. If all resources and options have been exhausted, the case must be scheduled for an IEP meeting to include the WESELPA Program Manager, WESELPA Program Specialist, or West End SELPA Psychologist. In order to schedule a meeting, the referring district shall submit the following to the WESELPA REST DEPARTMENT:
 - Referral for Placement Consideration cover sheet signed by the district office
 - Current IEP with goals and objectives
 - Current psycho-educational report
 - Assessment data supporting a change in placement (observations, academic progress monitoring, behavioral intervention data, FAA, private evaluations)
 - Immunization record

- Behavior Intervention Plan (BIP),
- Other agency reports, if applicable
- Transcripts for high school age students, if on diploma track
- Vision/Hearing screening
- Signature required – District director of special education
- Hospitalization records, if applicable

Releases of Information for NPS settings

2. The WESELPA Program Manager, WESELPA Program Specialist, or West End SELPA Psychologist will review the student’s file and confer with referring staff as needed.
3. The WESELPA Program Manager, WESELPA Program Specialist, or West End SELPA Psychologist will confer with (will send a referral packet to the) appropriate nonpublic schools to determine placement openings, admission procedures, and availability of staff to attend the IEP meeting.
4. At the IEP meeting, team members will review data relative to assessment, program needs, and appropriate program options, both public and nonpublic. (Upon acceptance by an NPS and district agreement with placement , an IEP will be completed. The NPS program cannot begin until parent consent is obtained.

The school District of residence is responsible for coordinating and completing any triennial assessments.

Additional Information

Additional information or questions that have not been adequately addressed in this handbook may be directed to the West End SELPA Due Process office. The phone number is (909) 476-6135. The mailing address is:

8265 Aspen Ave., Suite 200
Rancho Cucamonga, CA 91730

Inquiries may also be directed to the West End SELPA web site at: www.weselpa.net

References

EC 56034, 56035, 56366



PRIVATE SCHOOLS AND SERVICES

SECTION A	<u>PARENTALLY PLACED STUDENTS WITH DISABILITIES IN PRIVATE SCHOOLS</u>	
SECTION B	<u>EQUITABLE SERVICES FOR PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES</u>	
APPENDIX A	<u>INDIVIDUAL SERVICE PLAN</u>	

Introduction

The U.S. Department of Education states, “The Department believes that the right of parents to choose where their children should be educated, whether at public or private school, is extremely important. Nevertheless, the rights of parentally-placed private school children with disabilities under Part B are not the same as those of children with disabilities that are enrolled in public schools and are served at public agency programs or public agency placements in private schools.” There are two major categories of private school students – “publicly placed” and “parentally Placed”:

In the first instance, the educational agency places a student in a private facility in order to meet its requirement of free appropriate public education (FAPE) and the local educational agency (LEA) obligation to serve the student is exactly the same as if the

student attended the public school.

In contrast, the special education rights of the parentally placed private school student are considerably more limited. A parentally placed private school student with a disability does not have an individual right to FAPE. There are no instances when a LEA will be required to provide a service to such a child. However, there are particular obligations that the LEA must fulfill as explained herein.

These SELPA procedures and supporting documents apply to all SELPA member LEAs. It is recommended that each LEA develops a school board policy and procedural administrative regulations whether there is a private school within its boundary or not. To assist in that endeavor, this document (1) explains the key definitions used herein, (2) defines child find through identification procedures, (3) delineates differences in provision of services, (4) describes obligations for meaningful consultation, (5) explains proportionate share, and (6) provides West End SELPA approved forms for documenting and addressing the needs of students with disabilities enrolled by their parents in private schools.

The following procedures are developed for the school districts within the West End SELPA, San Bernardino County to ensure that school districts:

- Locate, identify and evaluate all children ages three through 21* inclusive with disabilities enrolled by their parents in private schools including religious schools, who may be eligible for special education services;
- Additionally, Districts have an obligation to consult with private schools located within their boundaries regarding procedures for child find, calculation of the amount of federal funds available for services to parentally placed private school students with disabilities and how, where and by whom special education services will be provided to parentally placed private school students with disabilities. Districts must also report annually, to the State Educational Agency the number of parentally placed private school students assessed, the number found to be eligible under IDEA, and the parentally placed private school students with disabilities provided with services.

SECTION A – PARENTALLY PLACED STUDENTS WITH DISABILITIES IN PRIVATE SCHOOLS KEY DEFINITIONS:

- District of Residence (DOR): As used in this policy, the District of Residence (DOR) refers to the school district within which the child with a disability resides.
- District of Location (DOL): As used in this policy, the District of Services (DOL) refers to the school district within which the private school is located.
- Individualized Education Program (IEP): As used in this policy, the Individualized Education
- Individual Service Plan (ISP): As used in the policy, the Individual Service Plan (ISP) is a plan created by the DOL when a parent unilaterally and voluntarily places an eligible student with a disability in a private school.
- Local Educational Agency (LEA): As used in this policy, LEA refers to a school district, county office, or charter school.

- Private School Students with Disabilities: As used in this policy, “private school students with disabilities” mean students with disabilities enrolled by their parents in a private school or Facility.
- Private School or Facility: As used in this policy, “private school or facility” means: (1) private full-time day school pursuant to California Education Code section 48222 (including religious schools); (2) any other California Department of Education (CDE) identified educational institution, program, arrangement, or facility not sponsored, maintained, or managed by the LEA and for which the LEA does not collect average daily attendance funds; (3) CDE authorized private school affidavit. This does not include ‘for-profit’ private schools.
- Consultation: The term “Consultation” involves discussions between the LEA, private school representatives, and parents of parentally placed private school students with disabilities on key issues that affect the ability of eligible private school children with disabilities to participate equitably in federally funded special education and related services. Consultation serves as a vital platform for all parties to voice their perspectives and ensure those perspectives are carefully considered by the Local Education Agency (LEA). Through effective consultation, all parties can develop and maintain ongoing, positive, and productive working relationships that prioritize student success.

SECTION B: EQUITABLE SERVICES FOR PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES

A. Which Students are Eligible for Equitable Services?

The equitable services provisions apply to parentally-placed private school children with disabilities, which means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school. (The equitable services provisions do **not** apply to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.)

B. Preschool Students

If a private preschool meets the definition of elementary school, the equitable services provisions apply to students with disabilities age 3 to 5 who are enrolled by their parents in the private preschool. On the other hand, if a student with a disability age 3 to 5 is enrolled by their parents in a private preschool that does **not** meet the definition of elementary school, the equitable services provisions do **not** apply.

The federal regulations define “Elementary school” as “a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.” While California law does not have a uniform definition of elementary school, California’s Education Code indicates that kindergarten (including transitional kindergarten or TK) is considered elementary education.

Therefore, it appears that in California the equitable services provisions apply to a student with a disability age 3 to 5 enrolled by their parents in a private school that offers not only preschool but also any of the grades TK or above. On the other hand, it appears that in California the equitable

services provisions do **not** apply to a student with a disability age 3 to 5 enrolled by their parents in a “stand-alone” private preschool.

In May 2024, the California Department of Education (CDE) released updated guidance regarding equitable services and proportionate share funding for parentally-placed private school students with disabilities. Reversing prior guidance, CDE now opines that the equitable services provisions *do apply* to preschool students with disabilities, when they are parentally-placed at a private school that offers transitional kindergarten, kindergarten, or other elementary grades.

CDE previously issued [CALPADS Update FLASH #167](#), dated December 13, 2019, and revised on October 31, 2022, which stated that children ages three to five and not yet in kindergarten, who attended a private preschool must be on an IEP and not on an individualized service plan to receive IDEA services. CDE conjectured in that guidance that California law did not define “elementary school,” as contemplated in the IDEA, so “children, ages 3 to 5 not in Kindergarten, parentally-placed in a private school, cannot be on [a service plan], and instead must be on an IEP and enrolled in a public school.”

Most-Recent CDE Guidance

CDE has now altered that position, issuing new guidance entitled Equitable Services for Students with Disabilities, stating the equitable services provisions apply to any student with a disability age three to five enrolled by their parents in a private school that offers preschool *and* any other elementary grade(s).

Although remarking that California still does not have a uniform definition of “elementary school,” CDE noted that the Education Code indicates that “kindergarten (including transitional kindergarten or TK) is considered elementary education,” citing to California Education Code sections 48000, subdivision (d), 46114, subd. (c), and 46115. Consistent with this operational definition, CDE further determined that the equitable services provisions do apply to a student with a disability, ages three to five, enrolled at a private school “that offers not only preschool, but also any of the grades TK or above.”

CDE also determined that the equitable services provisions *do not apply* to PPPS three- to five-year-old students with a disability enrolled at “stand-alone” private preschools, as those programs fall outside their interpretation of “elementary school.” CDE declined to expressly define a “stand-alone” private preschool. Local educational agencies should be aware of the inconsistencies this may cause between similarly situated preschool students depending on the school in which they are enrolled and should be cognizant of the equity issues which might arise from those inconsistencies.

C. Home School Students

The equitable services provisions apply to home-schooled children in a state that recognizes home schools as private elementary schools and secondary schools. Because California does recognize home schools as private elementary schools and secondary schools, children with disabilities in such home schools must be treated in the same way as other parentally-placed private school children with disabilities.

D. Child Find

Each local educational agency (LEA) must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA. In doing so, the LEA must undertake activities similar to those undertaken for the LEA's public school children.

The DOL shall undertake the following child-find activities with regard to private school children ages five (5) to twenty-one (21):

- Consult with representatives of private school children with disabilities (including private school administrators, teachers, parents, and students) regarding the child-find process, including, but not limited to, criteria for special education eligibility and special education referral procedures under federal and state laws and regulations.
- Distribute materials to representatives of private school children with disabilities (including private school administrators, teachers, parents and students) regarding issues, including but not limited to, criteria for special education eligibility and special education referral procedures under federal and state laws and regulations.
- Ensure child-find activities undertaken for private school students are comparable to activities undertaken for children with disabilities ages five (5) to twenty-one (21) with disabilities in public schools. Child-find activities shall include consultation with representatives (staff and parents) of private school children five (5) to twenty-one (21).

The West End SELPA will undertake the following child-find activities for private school children within the SELPA, ages three through 21 inclusive:

- Consultation with representatives of private school children with disabilities, including private school representatives and representatives of parents regarding issues including, but not limited to, criteria for special education eligibility and special education referral procedures under federal and state laws and regulations.
- Between September 1 and December 1 each year, ask private schools to list all students enrolled in the school who are eligible for special education services, with and without individual service plans, and the district of residence for those children.
- The West End SELPA will ensure that child-find activities undertaken for private school students are comparable to activities undertaken for children ages three through 21 inclusive with disabilities in public schools. Child-find activities will include dissemination of the special education child find brochure to all private schools in the SELPA and an annual notice in the local newspaper.

- The cost of Child Find, including individual evaluations, shall not be considered in determining if a district has expended its proportionate share of federal funds.

E. Provision of Services

To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision must be made for the participation of those children in the program assisted or carried out under Part B of the IDEA by providing them with special education and related services, including direct services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. A services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services. Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools. Services must be provided by employees of a public agency or through contract by the public agency with an individual, association, agency, organization, or other entity. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

F. Consultation

The LEA must engage in timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding: (a) the child find process; (b) the determination of the proportionate share of funds; (c) how the consultation process itself will operate throughout the year; and (d) how, where, and by whom special education and related services will be provided, including a discussion of the types of services, including direct services and alternate service delivery mechanisms; how special education and related services will be apportioned if funds are insufficient to serve all children; and how and when those decisions will be made.

G. Proportionate Share Expenditures

LEAs must consider those parentally-placed private school children with disabilities enrolled by their parents in private schools located in the LEA that meet the definition of elementary school and/or secondary school when determining two different proportionate share expenditures:

For children aged **3 to 21**, the LEA must spend an amount that is the same proportion of the LEA's total subgrant under section **611(f)** of the IDEA (20 *United States Code* [U.S.C.] § 1411(f)) as the number of private school children with disabilities aged 3 to 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in the LEA's jurisdiction aged 3 to 21.

For children aged **3 to 5**, the LEA must spend an amount that is the same proportion of the LEA's total subgrant under section **619(g)** of the IDEA (20 *U.S.C.* § 1419(g))

as the number of parentally-placed private school children with disabilities aged 3 to 5 who are enrolled by their parents in a private, including religious, elementary school located in the LEA, is to the total number of children with disabilities in the LEA's jurisdiction aged 3 to 5.

The cost of carrying out child find activities cannot be considered in determining if an LEA has met its obligation for proportionate share expenditures.

Sample Calculation for 611(f), Ages 3 to 21

There are five (5) eligible parentally-placed private school children with disabilities enrolled in private schools located in Anytown District (inclusive of home school students) that meet the definition of elementary school or secondary school. Anytown District also serves 495 eligible students with disabilities who reside in and are enrolled in the District.

The total number of eligible students age 3 to 21 is 500. The District's proportion of eligible parentally-placed private school students with disabilities age 3 to 21 to all eligible students with disabilities age 3 to 21 is 5 to 500, or 1%.

Anytown District received \$200,000 for its 611(f) grant. Because the proportion of parentally-placed private school children with disabilities is 1% of all students with disabilities, the proportionate share of the 611(f) funds is 1% of the total grant of \$200,000, or \$2,000.

Anytown District must spend at least \$2,000 of its 611(f) grant on services for the five parentally-placed private school students with disabilities age 3 to 21 enrolled in private schools located in the LEA to meet its proportionate share obligation for the 611(f) grant.

Sample Calculation for 619(g), Ages 3 to 5

Of the five eligible parentally-placed private school children with disabilities enrolled in private schools located in Anytown District, one (1) is a preschool-aged child (age 3 to 5) enrolled in a private preschool that meets the definition of elementary school. Anytown District also serves nine (9) eligible preschool students with disabilities who reside in and are enrolled in the District.

The total number of eligible students age 3 to 5 is 10. The District's proportion of eligible parentally-placed private school students with disabilities age 3 to 5 to all eligible students with disabilities age 3 to 5 is 1 to 10, or 10%.

Anytown District received \$2,500 for its 619(g) grant. Because the proportion of parentally-placed private school children with disabilities age 3 to 5 is 10% of all eligible students with disabilities age 3 to 5, the proportionate share of the 619(g) funds is 10% of the total grant of \$2,500, or \$250. Anytown District must spend at least \$250 of its 619(g) grant on services for the one parentally-placed private school student with a disability age 3 to 5 enrolled in a private school located in the LEA to meet its proportionate share obligation for the 619(g) grant.

H. Carryover

If an LEA has not expended all proportionate share funds by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education

and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

I. SPECIAL EDUCATION REFERRAL AND SERVICES

- Students must be referred for special education instruction and services only after the resources of the general education program have been considered and, where appropriate, utilized.
- If after considering and, where appropriate, utilizing general education resources, representatives of private school children with disabilities (including private school administrators, teachers, and parents) determine that a private school child may be eligible for special education services, a referral shall be directed to the Director of Special Education of the DOL.

NOTE: Parents can request assessment from both or either the DOS and the DOR. If this occurs, the district(s) who received the request is/are legally responsible for conducting assessment. DOS and DOR should exchange information related to assessment as appropriate, and coordinate assessment as necessary, to ensure compliance with timelines based on a written parental request to both or either district.

Since the parent can potentially ask for assessment by both the LEA where they reside and where the private school is located, if two assessments are completed, the LEA conducting the meeting would consider both evaluations when holding the Initial IEP to determine eligibility and offer FAPE.

NOTE: Within the West End SELPA, the member LEAs will have the flexibility to choose to complete assessments for their students living within their boundaries, even if the private school is located in another member LEA's boundaries.

Initial Individual Education Program (IEP) Team Meeting

The LEA that completed the initial evaluation shall invite the student's teacher and an administrator from the private school. If the student was assessed by the DOL, and the DOL is different from the DOR, representatives from both LEAs should be present. The team meeting purpose is to share the assessment results and develop an individualized education program (IEP) by the DOR. The student's eligibility for special education services will be determined by the IEP team. All required IEP team members need to be present at this initial IEP meeting. This includes an administrator, regular education teacher, special education provider, parent, and all assessors.

Should the student be found eligible for special education services, the student's DOR is responsible for completing the IEP process within 60 days of the parent's consent for assessment. This process includes, among other things, the development of goals to address identified needs, consideration of special factors, supplementary aids and services, and an offer for a free appropriate public education (FAPE) in the least restrictive environment (LRE).

In most cases, the LEA completes the IEP process and determines that the offer of FAPE in the least restrictive environment is a public-school program. The IEP should reflect the public school of attendance and the public-school offer of FAPE. It is important that the parent understand that the IEP will get implemented should the parent enroll their child in the public-school setting and that they have no individual right to such services should they maintain their child's enrollment in the private school setting.

If the IEP team determines that the appropriate services are those provided in a private school setting, such services shall be provided at no cost to the parents. In these few instances, the LEA obligation to serve the student is exactly the same as if the student attended the public school since the IEP team determined the private school setting is appropriate.

When the parent consents to the IEP, it is important to note in the IEP if the parent intends to enroll their child in the public school or maintain the child in the private school setting. In the first instance, the IEP will be implemented upon enrollment in the public school. In the second instance, the parent should consent to the IEP as appropriate, and indicate their intent to maintain private school enrollment.

If the parents of a private school child with a disability are clearly not interested in enrolling their child in public school, and if the child is eligible for special education and related services as a child with a disability, the DOL shall develop an Individual Service Plan ("ISP") in accordance with this policy and federal and state laws and regulations. (See below for ISP)

In order to ensure that the parents' intention are clear, the District of Residence may request that the parents sign the following statement :

“Parents of _____ hereby certify that we are not interested in enrolling our child, _____, in the District. We are not interested in the development of an IEP for our child, the District's offer of a free appropriate public education, and are only interested in an ISP from the DOL, the school district where the private school in which we are unilaterally placing our child is located. We have received the West End SELPA's Notice of Parents' Rights, and Procedural Safeguards, and we understand the notice.”

If the parents of a private school child with a disability are interested in enrolling their child in public school, or are unsure of their intentions, the DOR IEP team shall develop an IEP for the child.

If the parents of a private school child with a disability agree with and consent to the IEP developed by the DOR IEP team, the IEP shall be implemented by the DOR without undue delay following the IEP team meeting.

The DOR shall not be required to pay for the cost of education, including special education and related services of a student with a disability enrolled at a private school or facility if the DOR made a free appropriate public education available to the student, and the parent of the child elected to place the child in the private school or facility. (EC 56174)

A private school student with a disability may receive a different amount of services than a student with disabilities enrolled in a public school receives pursuant to paragraph (2) of subsection (a) of Section 300.455 of Title 34 of the Code of Federal Regulations. No private school student with disabilities is entitled to any amount of services the student would receive if enrolled in a public school pursuant to paragraph (3) of subsection (a) of Section 300.455 of Title 34 of the Code of Federal Regulations.

NOTE: The U.S. Court of Appeals for the Ninth Circuit ruled that special education students who have been parentally-placed in private school are not entitled to an individualized education plan (IEP) offer from their public school district, unless they request one. (Capistrano Unified School District v. B.W. (9th Cir. Dec. 30, 2021, Nos. 20-55961, 20-55978) F.4th .) Although practical reasons remain to offer an IEP to a parentally-placed private school student, according to the Ninth Circuit, choosing not to do so is not a basis for determining that a free appropriate public education (FAPE) was denied. However, it still may be advantageous to the district to offer an annual IEP in certain circumstances, for example upon receiving a unilateral placement notice and request for reimbursement.

Individual Services Plan (ISP)

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education services that the child would receive if enrolled in public school.

Pursuant to federal and State law and regulations, the DOL shall spend a proportionate share of federal funds to provide special education and related services to private school children with disabilities ages three (3) to twenty-one (21) eligible for special education services. Decisions about the services that shall be provided to private school children with disabilities are made after consulting, in a timely and meaningful way, with representatives of private school children with disabilities.

Each private school child with a disability who has been designated to receive services under this policy shall have an ISP that describes special education and related services that the DOL shall provide to the child as determined by the DOL under this policy. 34 CFR § 300.138 (b) requires the individual services plan must be developed according to IEP procedures.

The DOL shall ensure that a representative of the private school attends each meeting involving the individual child's ISP. If the private school representative is unable to attend, the DOL shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

The services offered in this policy shall be reviewed by the DOL at least annually by means of a survey initiated by each DOL and/or consultation with representatives of private school children with disabilities ages three (3) to twenty-one (21).

The services provided pursuant to the policy may be provided at a private school, including a religious school, to the extent consistent with law. The location of the services shall be set out in the student's ISP. Service providers shall be hired and supervised by DOL or West End SELPA.

The DOL or West End SELPA shall also control all property, equipment, and supplies allocated to benefit private school students with disabilities.

APPENDIX A

Individual Service Plan

West End Special Education Local Plan Area San Bernardino County Superintendent of Schools
Individual Service Plan for Students Enrolled by Their Parents in Private School

Meeting Date: _____

PURPOSE OF MEETING: Initial Meeting Plan Review Reevaluation

Student Name: _____ DOB: _____ CA: ___ Grade: ___ Gender: M F

Parent/Guardian/Surrogate: _____

Address: _____ City/State/Zip: _____

Phone: Home:() _____ Work-Mother:() _____ Work-Father:() _____

Private School Name: _____ Contact: _____

Address: _____ City/State/Zip: _____

I agree that the district of residence has offered my child a free and appropriate public education and special education services. However, I am voluntarily placing my child in a private school. Please initial: ___Yes ___No

The district of residence has offered a program of special education services to the student in a public school setting pursuant to an Individual Education Program (IEP), dated _____, designed to provide a free appropriate public education. The parents have declined to enroll their child in public school where special education services are offered in accordance with the IEP. Instead they have placed or continued the enrollment of their child in a private school at their own expense. The parents have been informed that the district of residence has no responsibility for the costs of this placement.

Pursuant to 20 USC 1412(a)(10), the district where the private school is located will provide the following special education service(s) for the student enrolled in private school:

Service(s)	Personnel Responsible	Frequency/Duration	Location

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The following individuals have participated in this Individual Service Plan meeting:

_____ Parent/Guardian/Surrogate	_____ Date	_____ Private School Representative	_____ Date
_____ Administrator	_____ Date	_____ Additional Participant/Title	_____ Date
_____ Special Education Teacher/Provider	_____ Date	_____ Additional Participant/Title	_____ Date
_____ General Education Teacher	_____ Date	_____ Additional Participant/Title	_____ Date

Please attach the developed portion of the Individual Education Program (IEP) to this Individual Service Plan.

Notification of Parental Intent

[LETTERHEAD]

[DATE]

[PARENT'S NAME]

[STREET]

[CITY, CALIFORNIA, ZIP]

Re: Private School Student

Dear [PARENT'S NAME]:

Your child has previously been identified as a student eligible for special education; however, you have voluntarily chosen to enroll your child in a private school. Federal laws and regulations require school districts to identify, locate and assess students enrolled in private schools.

The law also requires that districts provide special education and related services to students enrolled in private schools, consistent with their numbers and needs using a proportionate share of federal funding. This obligation is the responsibility of the school district where the private school is located.

Please be advised that your district of residence, continues to make available a free appropriate public education to your child. If you express an interest in enrolling your child in a public school, the school district will develop an IEP for your child. The district will then implement that IEP if and when you enroll

your child in a public school. If you choose to continue to enroll your child in private school and the private school your child attends is in the [DISTRICT], we will continue to offer you an Individual Service Plan.

Please inform us of how you intend to proceed with regard to your child by completing the enclosed Notification of Parent Intent form. Thank you for your prompt attention to this inquiry. If you have any questions or need further information, please do not hesitate to contact us at [PHONE NUMBER].

Sincerely,

[Title]

**Children Eligible for Special Education Enrolled by Their Parents in Private School
Notification of Parent Intent**

Student's Name: _____ DOB: _____

Private School of Attendance: _____

Private School Address: _____

Individual Services Plan (If Private School is located in District's boundaries)

Please select one of the options below:

- My child has an Individual Service Plan.
 - I consent to my child's continued receipt of services as outlined in the Individual Service Plan
 - I decline my child's continued receipt of services as outlined in the Individual Service Plan
 - I would like to schedule a meeting to review my child's Individual Service Plan
- My child does not have an Individual Service Plan
 - I would like to schedule a meeting to develop an Individual Service Plan
 - I am not interested in an Individual Service Plan

Reevaluation Review (If Private School is located in District's boundaries)

If the box below is checked, please select one of the options:

- Your child is due for a three-year review to determine if they continue to be eligible for special education.
 - I request a three-year assessment review, please contact me to schedule the assessment.
 - I decline a three-year assessment review, I understand that my child will not receive services under an Individual Service Plan, if continued eligibility for special education cannot be determined.

Print Name

Signature

Date

Certification of Parent's Decision Not to Enroll in Public School

Student's Name: _____ D.O.B. _____

Address: _____

District of Residence: _____ Date of Last Reevaluation: _____

School of Attendance: _____ District of Attendance: _____

The parents of _____ hereby certify that we understand that our child has been found to be eligible for special education services and the District of residence is required to provide free and appropriate special education services to all students enrolled in public school. We understand that by unilaterally placing our child in a private school, our child has no entitlement to the special education services they would receive if enrolled in public school.

We certify that we are not interested in enrolling our child in the _____ School District. We are not interested in the development of an IEP for our child, which would specify the District of residence's offer of a free appropriate public education. We are only interested in an Individual Service Plan from the LEA, the school district where the private school in which we are unilaterally placing our child is located. We have received the West End SELPA's Notice of Parents' Rights, and we understand the notice. We are knowingly and voluntarily signing this certificate.

Parent's Name

Parent's Signature

Date

Parent's Name

Parent's Signature

Date



DISPUTE RESOLUTION

SECTION A	<u>WESELPA DISPUTE RESOLUTION CONTINUUM</u>	
SECTION B	<u>PREVENTATIVE</u>	
SECTION C	<u>DISAGREEMENT</u>	
SECTION D	<u>RESOLUTION</u>	

Introduction

The West End SELPA is committed to providing a comprehensive continuum of supports for dispute prevention and resolution in special education. Our approach focuses on fostering collaboration and building positive relationships among all stakeholders, including families, educators, and community partners. The Alternative Dispute Resolution (ADR) process is an integral part of our strategy, designed to address concerns proactively and resolve conflicts effectively. This manual outlines the procedures and strategies utilized within our ADR continuum to ensure equitable and constructive outcomes for all parties involved.

SECTION A- Dispute Resolution Continuum

SECTION B – Preventative

The preventative phase of the ADR continuum emphasizes early intervention and proactive strategies to prevent disputes before they arise. This includes community outreach initiatives, family engagement activities, professional development opportunities, and the provision of accessible information through various mediums, such as parent video modules and a dedicated website. Our consultation services are also key components of this phase, offering proactive and preventative guidance to families and educators. By equipping stakeholders with the knowledge and skills needed to navigate the complexities of special education, we aim to build a foundation of understanding and collaboration that minimizes the likelihood of disagreements.

SECTION C - Disagreement

Despite the best preventative efforts, disagreements can still occur. The disagreement phase of the ADR continuum is designed to address these situations promptly and constructively. Our approach includes facilitated resolution sessions, conflict resolution coaching and consultation, and restorative mediation. These services are intended to support parties in navigating through disagreements with a focus on open communication and mutual respect. We also provide strategy sessions to assist families and educators in understanding their options and making informed decisions. The goal during this phase is to address conflicts at the earliest stage possible to prevent escalation and to maintain positive relationships among all parties involved.

SECTION D – Resolution

When disagreements progress beyond initial resolution efforts, the resolution phase of the ADR continuum comes into play. This phase includes more structured interventions such as negotiation and settlement support, facilitated resolution sessions and restorative mediation. The goal is to work collaboratively with families and educators to reach amicable solutions that are in the best interest of the student. The resolution phase is designed to ensure that all parties feel heard and that the final agreements are fair, equitable, and sustainable. By fostering an environment of cooperation and understanding, we strive to resolve disputes in a manner that strengthens the overall special education process.

These narratives capture the essence of each section of the procedure manual, focusing on the ADR continuum's various stages to support dispute prevention and resolution in special education.