



EL DORADO  
**CHARTERSELPA**

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# Procedural Guide for Special Education

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## WHEN TO CONTACT A SELPA REPRESENTATIVE

In California, every local education agency (LEA) is required to belong to a Special Education Local Plan Area (SELPA). The SELPA is a consortia of LEAs responsible for the development of special education policies and procedures, distribution of federal and state special education funds, and providing a range of professional development pertaining to special education.

Individuals at an LEA/district should contact a SELPA representative about a student-related issue when:

- Conducting a manifestation determination.
- Considering a non-public school (NPS), day treatment or residential facility.
- The team is unable to come to resolution on any component of the IEP.
- Requested by any IEP team member (parent or school).
- The LEA/district or parent would like a facilitated IEP meeting.
- There has been a request for records from the parents or an attorney.
- There is an attorney or advocate involved with the case.
- The parent requests to record the meeting.
- The parent has filed a request for due process hearing or mediation only.
- The parent has filed a California Department of Education (CDE) or Office of Civil Rights (OCR) complaint.
- The parent is having difficulty understanding legal elements/ processes around special education and outside guidance would be helpful.
- An IEE request has been made.
- Any time more information is needed to provide additional consultation on policy and procedures of special education.





## PRE-REFERRAL PROCESS

Parents will be contacted whenever there is a concern about their child's academic or behavioral performance. Concerns may be addressed in a Student Study Team (SST) Meeting. This meeting may be initiated by school staff or parents/guardians/student. During the SST meeting, the Student Study Team can document concerns and which strategies are being implemented or will be implemented to attempt to address the student's concerns related to their learning. Areas that are important to discuss and document during the SST meeting are:

- Developmental/medical history
- Attendance/school enrollment history
- Review of vision, hearing, speech and language screenings
- Behavior
- Academics: Performance and results of interventions

Although a referral for special education assessment may be initiated by a Student Study Team (SST), parent, teacher, student or other person with knowledge of the student, current law requires that all options in the general program be implemented before referral to special education. These options may include, but are not limited to, the following:

- Accommodations within the general education program
- Research-based instructional strategies and interventions, including universal screening, "tiered" interventions, progress monitoring and problem solving teams within the general education program (Response to Intervention (RTI) or Multi-Tiered Systems of Support (MTSS) model)
- Consultation with appropriate staff
- Referral to alternative programs within the LEA/district
- Referral to professional and/or agencies outside of the LEA/district (at cost to the LEA/district)

All options are to be explored and documented by the general education staff prior to a referral for special education. The procedure to be followed when a student is first seen as having difficulty will be the responsibility of the general education staff.

When all of the resources of general education have been exhausted, the student may be referred for special education consideration.

In the event that a parent makes a written request for a special education evaluation, the LEA/district must respond within 15 days. Should the LEA/district determine testing is merited, they would respond by sending an assessment plan and a Prior Written Notice (PWN) and Procedural Safeguards.



## CHILD FIND BASICS

Each state is required by IDEA to identify, locate, and evaluate all children with disabilities in the state who need special education and related services. To do so, states require each LEA/district to conduct what are known as Child Find activities. Such activities may include:

- The use of a “Child Find Notice Letter” (located in the SEIS Document Library under IEP forms).
- Include targeted questions regarding areas of need and/or previous Special Education services in enrollment packets.
- Carefully screen the files and enrollment documentation of all children transferring into the LEA/district to identify children who may have been receiving special services in their prior LEA/district.
- Provide information to parents that explains the LEA’s/district’s special services and who to contact if they suspect their child may have a disability.
- Utilize a clear parent and teacher referral system (i.e. Student Study Team process).
- Provide annual in-service activities to assist teachers in making appropriate referrals.
- Screen all children entering kindergarten to identify children with suspected disabilities.
- Review files of all students with a health plan to screen for suspected disabilities.
- Publish a child find notice in the LEA/district newsletter or website.
- Send Child Find notices to community agencies in conjunction with preschool screening activities.

Additionally, a LEA/district may be violating its Child Find duty by repeatedly referring a student for interventions rather than evaluating the student’s need for special education and related services.



## REFERRAL PROCESS

Referrals may be submitted by the following persons:

- Student Study Team/Student Intervention Team comprised of teachers, education specialists, administration etc.
- Parents
- School Staff
- Student may self-refer
- Community Agency

All referrals should be submitted to the pupil's LEA/district of attendance. If the student is not of school age, the child shall be referred to the district of residence.

The specific procedures for handling referrals are to be determined in each LEA/district; however, written documentation must be included in the referral that appropriate alternatives, accommodations and interventions have been implemented. Written documentation should include, but is not limited to, the "Referral Form" located in the SEIS Document Library.

All referrals for special education and related services shall initiate the assessment process and shall be documented. Either a parent or a public agency may initiate a request for an initial evaluation to determine if a student is a student with a disability 34 CFR 300.301(b). When a verbal referral is made, a staff member of the LEA/district or Special Educational Local Plan Area (SELPA) may assist the individual in making a written request for assessment for special education.

Upon receipt of the written referral, the administrator/designee or Education Specialist must initiate one of the following actions:

1. If referral information is incomplete or is not clear, contact the referral source and request additional information in order to process the referral in a timely manner.
2. If referral is complete, take one of the following actions:
  - A. LEA/district personnel will notify the parent that a referral was made, input student into SEIS, develop an "Assessment Plan" (located in the SEIS Document Library), and deliver the completed plan, a copy of parental safeguards and a Prior Written Notice (PWN) to the parents within 15 calendar days from receipt of the referral.
  - B. If the referral is received and it is determined to be an inappropriate request, a meeting should be scheduled with parents and/or referring party to address their educational concerns and review the purpose and scope of special education. The LEA/district must also respond in writing within 15 days with a PWN explaining why the request for assessment is not being accepted and processed.

A referral for special education must follow legal timelines. For additional information on timelines, see the section of this procedural guide entitled "General Timelines".



## PROCEDURAL SAFEGUARDS

Parents of children with disabilities from ages three through twenty-one have specific education rights under the Individuals with Disabilities Act (IDEA). These rights are called Procedural Safeguards. Individuals serving as surrogate parents and adult students aged eighteen and over who receive special education services are also entitled to these Procedural Safeguards.

The El Dorado County SELPA maintains a copy of the “Notice of Procedural Safeguards and Parents’ Rights” in the SEIS Document Library.

A copy of the “Notice of Procedural Safeguards and Parents’ Rights” must be offered to the parent a minimum of one time yearly. Best practice suggests giving it to the parent to review at the start of every IEP meeting. The LEA/district should ensure the parent(s) understand the notice by inquiring as to whether parent(s) have any questions or would like further clarification and document the receipt on the signature page of the IEP.

LEA/district must provide the parents of a child with a disability with notice of the procedural safeguards at least once every year. A copy must also be provided to parents:

- Upon initial referral or parental request for evaluation.
- When sending out an Assessment Plan and/or Prior Written Notice.
- Upon receipt of the first state complaint in the school year.
- Upon receipt of the first due process complaint in the school year.
- In accordance with disciplinary procedures.
- Upon parental request.

Under IDEA, the procedural safeguards notice must be:

- Written in a language understandable to the general public; and
- Provided in the native language of the parent or in another mode of communication that is used by the parent, unless it is clearly not feasible to do so. [§300.503(c)]

If the native language or other mode of communication used by the parent is not a written language, then the school must take steps to ensure:

- That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
- That the parent understands the content of the notice; and
- That there is written evidence that these requirements have been met. [§300.503(c)]



## PRIOR WRITTEN NOTICE

### ***What is prior written notice (PWN)?***

Prior written notice is a legal requirement per IDEA, and is a protection afforded to parent(s)/ guardian(s) per their Procedural Safeguards. IDEA includes prior written notice as a measure to ensure that parents have adequate notification and understanding of special education decisions made about their child, including elements of a Free Appropriate Public Education (FAPE).

A prior written notice should provide comprehensive documentation of any and all actions proposed and/or refused by an LEA/district. The information included should be sufficient to ensure that parents understand the rationale by which decisions were made, and all things that were considered. Providing prior written notice affords parents an additional opportunity to consider and/or object to decisions that were made prior to implementation by an LEA/district.

### ***Under what circumstances is prior written notice required?***

Prior written notice is a document that is required following the proposal and/or refusal related to the initiation or change in the identification, evaluation, educational placement, or offer of FAPE (34 CFR 500.503).

An IEP team may make decisions regarding the identification of a student including, but not limited to:

- Determination of initial identification (eligibility) for special education
- Refusal to identify a student as eligible
- Changing the identification of a student (eligibility category)
- Termination of identification (student no longer found eligible)

An IEP team may make decisions regarding the evaluation of a student including, but not limited to:

- Requesting consent for initial evaluation
- Requesting consent for reevaluation
- Refusal to conduct an evaluation requested by a parent
- Proposal or refusal to provide a requested independent educational evaluation (IEE)

An IEP team may make decisions regarding the placement of a student including, but not limited to:

- Offering initial placement
- Proposing a change in educational placement
- Refusal to change placement as requested by a parent
- Termination of special education placement due to student being found no longer eligible
- Proposal or refusal to offer placement to parent who has unilaterally placed a student with an IEP in a residential facility or nonpublic school

Graduation with a regular high school diploma is also considered a change of placement, though not through IEP team decision, thus requiring the provision of prior written notice. Additionally, any

disciplinary removal of more than 10 consecutive days, or a series of removals accumulating more than 10 days is considered a change of placement, triggering the prior written notice requirement.

An IEP team may make decisions regarding the provision of Free Appropriate Public Education (FAPE) to a student including, but not limited to:

- Changes in IEP services, including addition, deletion, change in minutes, frequency location, or refusal to change a service
- Changes in accommodations/modifications or refusal to change per parent request
- Change(s) in annual goals or refusal to change goals per parent request
- Changes in how a student will participate in statewide and districtwide assessments
- Refusal to provide a specific instructional methodology requested by a parent

Any changes made to FAPE in an IEP through the amendment process also generate the requirement to provide prior written notice.

Parents may submit a letter revoking consent for special education services when they no longer wish for their child to receive special education services or be considered a child with a disability. An LEA/district must terminate provision of special education services upon receipt of a revocation of consent, thus generating the requirement to provide prior written notice. When an LEA/district receives revocation of consent from a parent, they may offer a meeting to discuss the request, but the parent may not be required to attend any additional meetings, and are not required to provide an explanation for their request. The U.S. Department of Education requires that an LEA/ district “promptly” respond to a parent written revocation letter with a PWN (34 CFR 300.503).The PWN must be provided prior to ending any services, and allows parents the opportunity to consider the change(s) that will result from revoking consent.

***What are the required elements of prior written notice?***

In order to be considered compliant, a prior written notice must include 7 required elements, including:

1. A description of the action proposed or refused by the LEA/district;
2. An explanation of why the LEA/district proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
4. 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, the means by which a copy of a description of the procedural safeguards can be obtained;
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
6. A description of other options considered by the IEP Team and the reason why those options were rejected; and
7. A description of the factors that are relevant to the LEA’s/district’s proposal or refusal.

In addition to including these elements, PWN must be provided in language that is understandable to parents and the general public, and should be provided in the native language of the parent unless it is not feasible to do so. In order to ensure that the PWN is understandable, it is recommended that it be written without the use of acronyms or abbreviations. It should serve as a stand-alone document that can

be understood by a person who does not have other reports and/or IEP documents to which they may refer. Phrases such as “N/A” and “see above” should be avoided.

***How soon after educational decisions should prior written notice be sent?***

Though there aren’t any specific timelines around when to provide prior written notice, it must be provided “within a reasonable timeline prior to action (34 CFR 300.503(a)).” This means PWN must be given to parents in a reasonable time before the LEA/district implements that action, but after the LEA’s/district’s decision on the proposal or refusal has been made. It is recommended that the LEA/district use common sense when considering the timeline for providing a PWN. It should be provided after the meeting but soon enough so that a parent has time to review and voice a response prior to the change in the IEP takes place.

***How should prior written notice be formatted?***

Neither federal nor state special education regulations specify the format in which prior written notice must be provided. Permissible formats include formal letter on letterhead, use of fill in the blank forms (located in the SEIS document library), and use of the IEP document. It is recommended that an LEA/district exercise caution when considering the use of an IEP document to provide prior written notice. Though “there is nothing in the IDEA that would prohibit a public agency from using the IEP as part of the prior written notice so long as the document(s) the parent receives meet all the requirements,” it is not generally the case that an IEP document contains the 7 elements that are required for PWN to be considered compliant. If the LEA/district is not confident that all the required elements for PWN exist in the IEP document, it is strongly recommended that a separate prior written notice be provided along with a copy of the IEP.

***How should the LEA/ district document that prior written notice has been provided?***

IDEA does not require that a parent acknowledge receipt of prior written notice. Since the LEA/district will not be in receipt of copies of prior written notices with parent signatures or other confirmations of receipt, it is recommended that the LEA/district develops a system and record-keeping mechanism to document that the prior written notices have been provided.



## GENERAL TIMELINES

SPECIAL EDUCATION TIMELINES			
Initial Assessment and IEP Development			
Service	Timeline	Exceptions/Considerations	Regulation
Proposal of Assessment Plan (AP) of Initial Assessment *Attach Procedural Safeguards and Prior Written Notice (PWN)	15 calendar days from date of referral	*Exception of school breaks in excess of 5 school days *If a referral is received 10 days or fewer before the end of the school year, then the AP must be sent to parent within the first 10 days of the following school year	EC 56043(a) EC 56321(a)
IEP team meeting to review initial assessments	60 calendar days from the receipt of parent consent on the Assessment Plan, to determine eligibility and areas of need	*Student enrolls in another LEA/district  *Student is not made available	EC 56043(c) EC 56302.1
IEP Meetings			
Service	Timeline	Exceptions/Considerations	Regulation
Annual IEP review	Not to exceed 12 months (365 days) from the date of the last IEP	N/A	EC 56043 (d), (j) EC 56343 (d) EC 56380
IEP team meeting to review reassessments including triennials	60 calendar days after the receipt of parent consent on the Assessment Plan	*Exception for school breaks in excess of 5 school days *If the referral is received 30 days or fewer before end of school year, the IEP is due within the first 30 calendar days of the next school year	EC 56043 (f) (l) EC 56343 (a) EC 56344 (a)
Parent requests an IEP meeting for a child with an existing IEP	30 calendar days after written request is received	*Exception for school breaks in excess of 5 school days *If a verbal request is made by the parent, the LEA/District must assist the parent in making the request in writing	EC 56043 (l) EC 56343.5



<b>IEP Meetings <i>continued</i></b>			
<b>Service</b>	<b>Timeline</b>	<b>Exception/Considerations</b>	<b>Regulation</b>
IEP to review student's lack of progress toward IEP goals	No specific timeline	Recommendation: Convene the IEP team within 30 days of determining that a student is demonstrating a lack of progress	EC 56343 (b)
Notify parents of the IEP team meeting and send the IEP Notice of Meeting	Early enough to ensure an opportunity to attend the meeting	Recommendation: At least 10 school days prior to the meeting date	EC 56043 (e) EC 56341.5 (b)
Notice of Procedural Safeguards	*Inform parent(s) of procedural safeguards at each IEP meeting *Give a copy of procedural safeguards at least once each school year	N/A	EC 56500.1 34 CFR 300.504
Implement the signed IEP	As soon as possible after receiving the signed IEP from the parent	Keep in mind that compensatory education could be owed if IEP is not implemented in a timely manner	EC 56043 (i) EC 56344 (b)
Progress reports on IEP goals provided to the parent(s)	As indicated on the IEP	Recommendation: At least as often as general education progress reports	EC 56345 (a) (3)
<b>Re-evaluations</b>			
<b>Service</b>	<b>Timeline</b>	<b>Exceptions/Considerations</b>	<b>Regulation</b>
Triennial eligibility review	Every 3 years based on the date of the last triennial review	*May occur more often if needed, but no more than once per year, unless the IEP team agrees *Parent and LEA may agree in writing that triennial assessments are not necessary and may also agree to limit the scope of the review *Recommendation: Begin the triennial assessment process at least 90 days prior to the triennial review date	EC 56043 (k) EC 56381

<b>Re-evaluations <i>continued</i></b>			
<b>Service</b>	<b>Timeline</b>	<b>Exceptions/Considerations</b>	<b>Regulation</b>
Proposal for re-assessment	15 calendar days from the date of referral	*Exception for school breaks in excess of 5 school days *If a referral is received 10 days or fewer before the end of the school year, then the AP would be due within the first 10 days of the following school year	EC 56043 (a) EC 56321 (a)
<b>Individual Transition Plans (ITP)</b>			
<b>Service</b>	<b>Timeline</b>	<b>Exceptions/Considerations</b>	<b>Regulation</b>
Individual Transition Plan (ITP)	Must be in the IEP when the student turns 16	ITP's must be reviewed annually	EC 56043 (g) (l) (h) EC 56341.5 (e) EC 56345 (a) (8)
Student informed of transfer of rights at age 18	Must be documented in the IEP when the student turns 17 that the transfer of rights has been discussed	Recommendation: Provide additional notice upon the student turning age 18	EC 56041.5 EC 56043 (g) (3) EC 56345 (g)
Notice to parent(s) of student's graduation from high school with a diploma	Prior Written Notice must be provided	N/A	EC 56500.5
<b>Independent Educational Evaluation (IEE)</b>			
<b>Service</b>	<b>Timeline</b>	<b>Exceptions/Considerations</b>	<b>Regulation</b>
Respond to a request for an IEE	No specific statutory timeline, but should respond without unnecessary delay	Recommendation: respond within 10-15 calendar days after the request is received	34 CFR 300.502 (b)

<b>Discipline</b>			
<b>Service</b>	<b>Timeline</b>	<b>Exceptions/Considerations</b>	<b>Regulation</b>
Provide parent(s) with notice of change of placement if student has been removed from current placement as well as a copy of procedural safeguards	Decision is made to remove student for disciplinary purposes for less than 10 school days	Refer to 34 CFR section 300.530	34 CFR 300.530 (h)
Conduct a manifestation review	Within 10 schooldays after the decision is made to remove the student for disciplinary purposes that result in the removal of the student for 10 days within the same school year	Refer to 34 CFR section 300.530	34 CFR section 300.530 (e)
<b>Student Records/Records Request</b>			
<b>Service</b>	<b>Timeline</b>	<b>Exceptions/Considerations</b>	<b>Regulation</b>
Provide parent(s) with copies of student records	After an oral or written request from parent(s); the records should be provided within 5 business days	N/A	EC 56043 (n) EC 56504
Provide new LEA/District with special education records	5 business days after request for records from new LEA/District is received	N/A	EC 56043 (o)



## ASSESSMENT PLANS

An Assessment Plan (AP) is a document that outlines the assessment tools and methods used to determine eligibility for special education services as well as present levels of performance, the types of measurements used to collect this information, and the individual(s) responsible for the collection/review of data. Assessments will be comprised of data from multiple sources and will require a multidisciplinary team of specialists to gather and interpret the data.

Parental consent is not required before reviewing existing data, or before administering a test or other assessment that is administered to all students, unless before administration of that test or assessment, consent is required of the parents of all the students.

An AP can be initiated for several reasons. Some examples may include:

- Upon parent request
- To initiate an assessment for an initial evaluation
- To initiate an assessment for a triennial evaluation
- If a student is identified as having a new possible area of need, such as behavior or speech and language

Parental consent is not required before:

- Reviewing existing data.
- Administering a test or other assessment that is administered to all students.

### ***Parent Request for Assessment***

According to EC 56043(a), if a parent is requesting an assessment, the LEA/district must respond within 15 days of the written request.

A parent has a right to request an evaluation at any time. For a student that has an IEP, if the school and parent mutually agree, a triennial IEP can be held early. There are circumstances in which holding the triennial IEP meeting early will reset the annual and triennial IEP dates.

The LEA/district may deny the parent's request for an initial assessment or additional assessment using a Prior Written Notice (PWN) if the team feels that the student is receiving a Free, Appropriate Public Education (FAPE) in the least restrictive environment (LRE). The LEA/district shall include data in the PWN to ensure that the student does not require assessment. Careful consideration is strongly encouraged prior to pursuing this option.

### ***Assessment Timelines***

Any time a referral to assess a student is proposed, an Assessment Plan (AP) will be developed and sent to the parent for review within 15 calendar days of receipt of the referral. The parent shall have up to 15 calendar days from the receipt of the proposed AP to either grant or decline the proposed assessment.

Contact with the parent is strongly encouraged as a reminder to return the signed AP or to allow the parent to communicate concerns. When completing Triennial and Transition evaluations, it should be noted that existing IEP due dates may supersede the 60 day assessment plan timeline.

- Initial Referral: The AP will be developed and sent to the parent for review within 15 calendar days of receipt of referral for initial assessment for special education eligibility. The assessment team has 60 days to conduct assessments and hold an IEP meeting to determine initial eligibility for services.
- Triennial Evaluation: The AP will be developed and sent to the parent for review, giving the evaluation team enough time to complete the assessments prior to the triennial due date. The IEP team has 60 days to conduct assessments and hold an IEP meeting to determine if the student continues to qualify for special education services.
  - It should be noted that the triennial IEP due date, as listed on the “Information / Eligibility” section of the current IEP, is the date in which the IEP must be held, regardless of the 60 day assessment timeline.
- Transition Evaluation: The AP will be developed and sent to the parent for review, giving enough time to complete and review the transition assessments and hold the IEP prior to the student’s 16<sup>th</sup> birthday.
- Other Requests for Evaluation: Upon request for assessment by the parent or other interested parties, the AP will be developed and sent to the parent for review within 15 calendar days of receipt of referral.

When a referral has been made 10 calendar days or less to the end of the academic school year, the assessment plan must be developed within the first 10 calendar days of the following school year.

### ***Assessment Plan Content Guidelines***

The proposed AP (along with a Prior Written Notice (PWN)) given to parents or guardians shall meet all the following requirements:

1. Be individualized to reflect the concerns of the referring entity as well as concerns from any other party involved in the student’s learning.
2. Be provided in the primary language of the parent or another mode of communication used by the parent, unless to do so is clearly not feasible.
3. Explain the types of assessments to be conducted and the professional personnel responsible for the administration and interpretation of the assessment. SELPA suggests that assessors be listed by titles rather than by their name.
4. Address all areas of suspected disability.
5. State that no educational placement will result from the assessment without the consent of the parent.

### ***Areas of Assessment***

The AP must be comprehensive and allow for assessing the student in all areas related to the suspected disability, including, if appropriate:

1. Health and developmental history

2. Vision, including low vision, and hearing (to be completed within the past year)
3. Motor abilities
4. Speech and language function
5. General intelligence or cognitive level
6. Processing skills
7. Academic achievement
8. Adaptive skills
9. Orientation and mobility skills
10. Career and vocational interests (transition planning)
11. Social and emotional and behavioral status
12. Any other area of suspected disability

**Please note:** Because of the Larry P. litigation, the use of cognitive tests is prohibited for African-American students, even with informed parental consent. For further information on selecting appropriate tests for African American students, please see the procedural guide section entitled "Assessment, Test Selection and Reports".

#### ***Obtaining Parental Consent to Assess***

An assessment shall not be conducted unless the written consent of the parent is obtained. Assessment may begin immediately upon receipt of parent consent.

An Assessment Plan (AP) will need to be presented to the parent in person, emailed, sent home with the student, and/or mailed to the student/parent/guardian address on file. In some cases, the school may need to require a return receipt to provide documentation that the parent received the assessment plan.

When the AP is presented to the parent for review, the following should be attached:

1. A copy of the notice of Parental Rights and Procedural Safeguards
2. A Prior Written Notice

If a parent is not identified or the location of the parent is unknown, a surrogate parent must be appointed to represent the individual with exceptional needs. For more information on processes involved with surrogate parents, please see the section of this Procedural Guide entitled "Surrogate Parents". If the child is a ward of the state and is not residing with his or her parent, the LEA/district shall make reasonable efforts to obtain the informed consent from the parent.

Consent for initial assessment shall not be construed as consent for initial placement or initial provision of special education and related services to the student.



## ASSESSMENT, TEST SELECTION AND REPORTS

### ***General Guidelines for Conducting Assessments:***

Assessments must:

1. Address all areas related to the suspected disability.
2. Be conducted by a multidisciplinary team, including the parent.
3. Include, if appropriate:
  - Health and developmental history
  - Vision, including low vision, and hearing (unless completed within the past year)
  - Motor abilities
  - Speech and language function
  - General intelligence or cognitive level
  - Processing skills
  - Academic achievement
  - Adaptive skills
  - Orientation and mobility skills
  - Career and vocational interests (transition planning)
  - Social, emotional and behavioral functioning
  - Any other area of educationally related suspected disability

At least one member of the assessment team, other than the student's general education or special education teacher, shall observe the student's performance in the classroom setting and document the observation.

No single procedure/assessment is used as the sole criterion for determining an appropriate educational program for an individual with exceptional needs. Only by collecting data through a *variety of approaches* (e.g., observations, interviews, tests, curriculum-based assessment, and so on) and from a *variety of sources* (parents, teachers, specialists, and student) can an adequate picture be obtained of the student's strengths and weaknesses.

### ***Legal Timelines***

If an assessment is proposed for evaluation/re-evaluation for special education services, the assessment team who recommends the evaluation has 15 calendar days from the date of the referral to create the Assessment Plan and provide it to the parents (the "Assessment Plan" form is located in SEIS).

If an assessment is proposed within the last 10 days of the end of the regular school year, then the Assessment Plan must be developed within the first 10 days of the next school year.

The assessment will be completed and an IEP meeting held to review the results of the assessment within 60 calendar days from the date of receipt of the signed Assessment Plan. The 60 day timeline does not include days between the pupil's regular school sessions, terms, or days of school vacation in excess of five school days.

## El Dorado County Charter SELPA Procedural Guidelines

If the signed assessment plan is received within the last 30 days of school the school year, assessments must be completed and the IEP Meeting held within the first 30 days of the next school year.

Service/ Obligation	Timeline	Exceptions/ Notes/ Considerations	Authority
Propose an assessment plan for initial assessment.	15 calendar days from date of referral.	<ul style="list-style-type: none"><li>School breaks in excess of 5 school days still apply.</li><li>If referral received 10 days or fewer before end of school year, then due within first 10 days of next school year.</li><li><i>Note:</i> Attach procedural safeguards notice to proposed assessment plan and prior written notice.</li></ul>	EC §56043(a) EC §56321(a)
IEP team meeting to review initial assessments.	60 calendar days to determine the student's eligibility and areas of need after receipt of parent consent to assessment plan.	<ul style="list-style-type: none"><li>Exception: Student enrolls in another LEA.</li><li>Exception: Student not made available.</li><li>If AP received 30 days or fewer before end of school year, then due within first 30 days of next school year</li><li>60 day timeline <u>stops</u> for breaks in excess of 5 days, such as: days between the pupil's regular school sessions, terms, or days of school vacation</li></ul>	EC §56043(c) EC §56302.1 EC §56344(a)

### ***Assessment Considerations (Vision, Hearing, Health, and Medical)***

All students being assessed for initial and three year reviews shall be screened in the areas of hearing and vision, unless parent consent is denied. All students continuing to fail a threshold hearing test shall be assessed by appropriately trained personnel for hearing, such as an audiologist. This is the responsibility of the LEA/district and access to these services shall be provided by the LEA/district.

For students with residual vision, a low vision assessment shall be conducted by a specialist.

For students who have been medically diagnosed with a chronic illness or acute health problem, relevant information shall be included within the assessment and reviewed by the IEP team.

### ***Test Selection and Administration***

Tests and other assessment materials must meet all of the following requirements:

- Are selected and administered so as not be to racially, culturally or sexually discriminatory.



- Are provided and administered in the student's native language or other mode of communication, unless the Assessment Plan indicates reasons why such provision and administration are clearly not feasible.
- Are used for purposes for which the assessments or measures are valid and reliable.
- Are administered by trained personnel in conformance with the instructions provided by the producer of such tests and other assessment materials.
- Are tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- Best ensure that when a test administered to a student with impaired sensory, manual, or speaking skills produces test results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure and not the student's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure.
- Materials and procedures used to assess a student with limited English proficiency are selected to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English proficiency.

Assessors should attempt to use the most up-to-date version of assessment tools and ensure that assessment tools are valid, reliable, and appropriately normed. Test selection is at the discretion of the assessor using the best practices set forth in their field of expertise. Eligibility decisions should not be made based upon data from assessment tools that are obsolete.

In addition, assessments and reassessments shall be administered by qualified personnel who are competent in the language and written communication mode of the student. They should also have a knowledge and understanding of the cultural and ethnic background of the student. All testing shall be conducted by persons knowledgeable of the suspected disability.

### ***Test Selection Considerations for African-American Students***

In the state of California, the use of cognitive tests is prohibited for African-American students as a result of the Larry P. vs. Riles litigation, even with informed parental consent. Parents are not required to self-identify their race or ethnicity. In the case of lack of self-identification, the California Department of Education (CDE) suggests that observer identification should be used. If an assessment report is found that includes information on IQ testing of an African-American student, please follow the procedure set out in the sub-section entitled *Purging Assessment Reports and Records* at the end of this section.

The following intelligence tests are prohibited based upon the original 1979 Larry P. court decision:

- Arthur Point Scale of Performance Test
- Cattell Infant Intelligence Scale
- Columbia Mental Maturity Scale
- Draw-a-Person (Good enough)
- Gessell Developmental Schedule
- Goodenough- Harris Drawing Test
- Leiter International Performance Scale
- Merrill- Palmer Pre-School Performance Test
- Peabody Picture Vocabulary Test (P147)
- Raven Progressive Matrices
- Slosson Intelligence Test

- Stanford - Binet
- Van Alstyne Picture Vocabulary
- Wechsler Intelligence Scale for Children (WISC)
- Wechsler Intelligence Scale for Children-Revised (WISC- R)
- Wechsler Pre-School and Primary Scale of Intelligence (WPPSI)

The 1986 Larry P. Settlement recommended additional tests, which purport to be or are understood to be a standardized test of intelligence, would be subject to the Larry P. prohibitions. These may include but are not limited to the following tests:

- Cognitive Abilities Test
- Expressive One-Word Picture Vocabulary Test (EOWPVT)
- K- ABC Mental Processing Subtests
- McCarthy Scales of Children's Abilities
- Structure of Intellect Learning Aptitude Test
- Test of Nonverbal Intelligence (TONI)
- Test of Nonverbal Intelligence- II (TONI- II)
- Test of Cognitive Ability from the Woodcock-Johnson (including the cognitive section of the Bateria Woodcock Psico-Educativa en Espanol)
- Test of Cognitive Ability from the Woodcock- Johnson- Revised (WJ- R)
- Test of Cognitive Ability from the Woodcock- Johnson -III (WJ -III)
- Cognitive Subtest of the Battelle Developmental Inventories

Any tests that have undergone revisions that appear on these lists should be considered prohibited to use with African-American students.

Although not banned by the courts or specifically addressed by the CDE, multidisciplinary assessment personnel are “cautioned against” using tests which might be regarded as IQ tests and/or have been validated primarily through correlation with identified tests of intelligence. These include, but are not limited to, the following (as well as previously noted and prohibited tests listed above):

- Differential Abilities Scale (DAS)
- Detroit Test of Learning Aptitude, all forms
- Language Processing Tests
- Matrix Analogies Test
- Nonverbal Test of Cognitive Skills
- Ross Test of Higher Cognitive Skills
- Test of Adolescent Language
- Test de Vocabulario en Imágenes Peabody

The above lists may not be inclusive of all assessment tools which should be prohibited or used with caution in the assessment of African-American students. In making a determination of whether a test falls under the IQ test ban for African-American students one should consider:

- Is the test standardized and does it purport to measure intelligence (cognition, mental ability or aptitude)?
- Are the test results reported in the form of IQ or mental age?
- Does evidence of the (construct) validity of the test rely on correlations with IQ tests?

An affirmative answer to any of these questions indicates that use of the test may fall within the ban.

***Test Selection and Assessment Considerations for Students Who are English Language Learners***

The following requirements of test selection and administration are specifically related to students who are in stages of English Language Development (ELD). Tests must:

- Be selected and administered so as not to be racially, culturally or sexually discriminatory.
- Be provided and administered in the student's native language or other mode of communication, unless the Assessment Plan indicates reasons why such provision and administration are clearly not feasible (students who have been formally re-designated/reclassified as Fluent English Proficient may not need testing in their native language).
- Materials and procedures used to assess a student with limited English proficiency are selected to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English proficiency.

Best practices include the use of informal assessment in addition to standardized measures. Informal and formal assessment procedures should include:

- Background information
- Developmental milestones
- Language use: home survey to determine predominant language
- Interviews with parents and teachers regarding students language use and academic progress
- Health history
- Observations in multiple settings
- Assessment in both native language and acquiring language
- Criterion-referenced measures

When evaluating students who are in the stages of EL development, it is important to consider the following:

- Nonverbal Tests of Intelligence: Nonverbal tests are often used in testing bilingual students. Unfortunately, nonverbal measures of intelligence are less reliable than verbal measures as they measure limited aspects of overall intellectual ability.
- Translated Tests: Assessors are cautioned against use of translated tests due to impact on validity. While it is not difficult to translate a test, it may be difficult to translate psychometric properties from one language to another. For example, a word in English may have different meaning when translated into another language such as Spanish, Hmong, Russian, or Chinese. Furthermore, translation assumes that the EL student has the same cultural background as the norming population, which may not be the case.
- Use of Interpreters: The use of trained bilingual paraprofessionals is an invaluable resource to an evaluator when she/he does not speak the language(s) of the student to be assessed. Qualified individuals can be used to gather information in interviews and to collect data from non-standardized, criterion-referenced instruments.
- Test Results: Assessors should interpret results with caution and take into account developmental history, observations, and other forms of data to inform decisions.

Possible indicators for a language disability are listed below.

- The student has made slow progress in learning English and academics despite accommodations and special classroom interventions. It is suggested that interventions are evidence based and implemented with consistency and fidelity for 6-8 week periods before evaluating effectiveness.
- The student has a significant medical history that may have impaired speech and language development.
- Family reports impairment in the primary/native language.
- Teachers and parents report student is learning very differently from other siblings and/or students who have had similar linguistic background and learning opportunities.
- The student has signs of language loss that seem to transcend normal limits.

Reports must document the use of an interpreter. As appropriate, assessment reports should also include, but not be limited to some or all of the following:

- The impact of language, cultural, environmental and economic factors on learning.
- The presence of a disability or impairment in both native language and language(s) student is acquiring.
- How standardized tests and techniques were altered, if appropriate.
- Use of translation of English tests, including reference to validity and reliability.
- Limitations of non-verbal measures, and comparison of those results to other areas assessed.
- Examiner's level of language proficiency in language other than English and its effect on interpretation of results.
- Use of an interpreter and its effect on the tests results and overall assessment.
- Cross-validation of information from the home setting that supports findings from more formal measures.

Additionally, when determining eligibility criteria for ELD students, it is necessary to determine that their learning problems are not primarily the result of environmental, cultural or economic disadvantage.

It is important that the following factors be revisited when completing a triennial reevaluation:

- Student's language level in both languages (such as CELDT scores)
- History of language of instruction
- Change in language used at home
- Response to Interventions
- English Learners who qualify for Special Education services may not meet the district/ LEA's reclassification criteria. Therefore, reclassification of English Learners should be considered. In order to consider reclassification, the IEP team should be expanded to include district/ LEA English Learner program personnel.

### ***Types of Assessment***

Please note: This list is not inclusive of all possible special education related assessments, rather it is intended to provide an overview of the most common assessments.

Type of Assessment	Minimum Qualifications
Academic Achievement	Credentialed Special Education Teacher Licensed Educational Psychologist Pupil Personnel Services Credential
Adaptive Behavior	Licensed Educational Psychologist Pupil Personnel Services Credential
Adaptive Physical Education	Credentialed Adapted Physical Education Specialist
Assistive Technology	Certified or Licensed Speech/Language Pathologist Occupational Therapist Certified Assistive Technology Specialist
Auditory Acuity	Licensed Educational Audiologist Clinical or Rehabilitative Services Credential Language, Speech and Hearing and Audiology Credential
Auditory Perception/Auditory Processing	Language, Speech and Hearing and Audiology Credential Clinical or Rehabilitative Services Credential Education Specialist Instruction Credential: Deaf and Hard-of-Hearing Licensed Educational Psychologist Pupil Personnel Services Credential
Functional Behavioral Assessment	Credentialed Special Education Teacher Pupil Personnel Services Credential Licensed Marriage and Family Therapist Licensed Clinical Social Worker Licensed Educational Psychologist Board Certified Behavior Analyst
Cognitive	Licensed Educational Psychologist Pupil Personnel Services Credential
Health	Licensed Physician Registered Nurse School Nurse Services Credential
Motor	Licensed Physical Therapist Registered Occupational Therapist Adaptive Physical Education Specialist
Occupational Therapy	Licensed Occupational Therapist
Orientation and Mobility	Clinical or Rehabilitative Services Credential Education Specialist Instruction Credential: Physical and Health Impairment
Physical Therapy	Licensed Physical Therapist
Social/Emotional	Licensed Educational Psychologist Licensed Clinical Social Worker (LCSW) Licensed Marriage and Family Therapist

	Pupil Personnel Services Credential
Transition/Vocational	Credentialed Special Education Teacher Adult Education Credential with a Career Development Authorization Pupil Personnel Services Credential
Visual Acuity/ Developmental Vision	Licensed Optometrist Licensed Ophthalmologist Education Specialist Instruction Credential: Visual Impairments
Visual Motor	Licensed Educational Psychologist Licensed Clinical Social Worker (LCSW) Pupil Personnel Services Credential
Functional Vision	Education Specialist Instruction Credential: Visual Impairments

### ***Assessment Reports***

The personnel who assess the student shall prepare a written report of the results of each assessment. The report shall include, but not be limited to, the following:

- Whether the student may need special education and related services and the basis for making that determination;
- The relevant behavior noted during the observation of the student in an appropriate setting and the relationship of that behavior to the student's academic and social functioning;
- Summarize relevant background information (including the educationally relevant health and development, and medical findings, if any);
- Make a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate;
- Assessment in all areas of suspected disability;
- Be understandable;
- List tests conducted;
- State areas of educational need/interventions previously attempted and their results;
- Include interviews and/ or questionnaires;
- Include assessment results and conclusions;
- Make recommendations for teaching strategies and additional assessment if necessary;
- Include a statement on whether student appears to meet eligibility criteria, with specific criteria stated (it may be relevant to not only determine eligibility, but also to rule out other areas of suspected disability).

If an assessment is not conducted under standard conditions, meaning that some condition of the test has been changed, a description of the extent to which it varied from standard conditions must be included in the assessment report. For example, if an interpreter must be used, and the assessment report shall document this condition and note that the validity of the assessment may have been affected.

The LEA/district may not to use any single procedure as the sole criterion for determining whether a student is a student with a disability. Multiple measures must be used.

A copy of the assessment report and the documentation of recommendation for eligibility shall be given to the parent or guardian. LEAs/districts can prepare and present an assessment report, provided they make it clear to the parents that the eligibility criteria listed is a recommendation to the IEP team by the psychologist, but that eligibility is ultimately the IEP team's decision. LEAs/districts must avoid any predetermination of program, services, and placement.

### ***Outside Reports***

The following are general guidelines for addressing the receipt of outside reports.

- Outside reports may be submitted by the parent for consideration by team. Information gathered from outside reports may guide team in identifying the need to assess for new areas of disability.
- Outside reports do not automatically determine eligibility or drive goals. Schools must conduct their own evaluations to examine student health/mental health needs in the school setting and how those needs impact the student's education or how the medically diagnosed condition manifests in the school setting.
- An outside report may trigger the need for further assessment, but does not immediately change or determine eligibility in school setting (medical diagnosis versus educational eligibility). Conversely, a medical diagnosis is not required for determination of eligibility in the school setting. For example, a student with a medical diagnosis of ADHD does not necessarily automatically qualify under OHI.

### ***Presentation of Assessment Reports***

IDEA requires a LEA/district to ensure that an IEP team for a child with a disability includes:

- The parents of the child.
- Not less than one general education teacher of the child (if the child is or may be participating in the general education environment).
- Not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child.
- A LEA/district representative who:
  - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - Is knowledgeable about the general education curriculum; and
  - Is knowledgeable about the availability of LEA/district resources.
- An individual who can interpret the instructional implications of evaluation results.
- At the discretion of the parent or the LEA/district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
- Whenever appropriate, the child.

Assessment reports should be presented by an individual who can interpret the instructional implications of evaluation results. Most often, reports should be presented by the assessor who conducted the assessment. Should the assessor be unable to present their findings (due to extenuating circumstances) at an IEP meeting, another individual with the same credentials may share their results and answer questions during the IEP meeting. Should an assessor be unable to attend an IEP meeting in person, they may attend via telephone or computer. If an assessor is unable to attend the meeting entirely, and no replacement is available, best practice would be to complete as much as possible of the meeting and

reconvene at a different time to review the assessment results. A team member "Excusal" form (found in SEIS) would be required for absent team members.

***Purging Reports and Records***

In California, LEAs/districts are prohibited from administering IQ tests to African-American students. If the records of an African-American student are received from out-of-state and/or another agency and contain IQ test information, the IQ scores (and all references to them) must be purged. The following steps are recommended when it becomes necessary to purge IQ information from a student record:

1. Review the case file to determine if prohibited information is contained therein.
2. Remove any prohibited protocols and all assessment reports which contain IQ information.
3. Copy the original report.
4. Use a black tip marker or liquid "white-out" to remove the following information on the copy:
  - Any reference to a test instrument which yields an IQ score or standard score that is an indication of cognitive functioning.
  - Any test data summary scores from the test instrument(s).
  - Commentary in the report or IEP, which discusses the student's performance on the test instrument(s).
5. Make a copy of the purged report. File this in the student record.
6. Destroy the copy with the black tip marker or liquid "white-out."
7. Notify the parent/guardian that the student's records are being sealed.
8. Seal the original report, any relevant protocols, and a copy of the letter sent to the parent/guardian in an envelope. Indicate the student's name and destruction date of five years hence on the outside of the envelope. Also attach a label indicating the envelope is only to be opened for purpose of litigation, official state or federal audits, or upon parent request.
9. Add the student's name to an LEA/district level master list of students whose files have been purged and reports sealed due to the Larry P. vs. Riles ruling.





## INDIVIDUALIZED EDUCATION PROGRAM MEETING

### ***Parent Notification***

Parents are critical and necessary members of the Individualized Education Program (IEP) team and shall be given sufficient written notice of the IEP meeting so that they can attend and participate. To ensure parent participation the following is advised:

- Contact parents and IEP team members (at school and outside service providers) to arrange a meeting at a mutually agreed upon time and place.
- Send parents a Meeting Notice a minimum of 10 days prior to the IEP Meeting (Meeting Notice form is available in SEIS).
- On the Meeting Notice indicate the purpose of the meeting, time, location and the titles of those in attendance.
- Ask parent to sign and return the Meeting Notice.
- Arrange for an interpreter if necessary.
- Notify all members of the IEP team of the upcoming meeting to ensure their attendance.
- Place a copy of the signed Meeting Notice in the student's special education file.

### ***Recording IEP Meetings***

Parents, LEA/districts, and the Special Education Local Plan Area (SELPA) may electronically record an IEP meeting if the requesting party provides other members of the IEP team with 24 hours' notice. If the recording is at the request of the LEA/district or the SELPA, and the parent objects or refuses to attend the meeting because it will be recorded, then the meeting shall not be recorded.

### ***IEP Team Membership***

The following individuals are required members of an IEP team, as defined in the California Education Code (Section 56341) for purposes of developing, revising or reviewing the IEP, determining eligibility, and/or recommending placement for any pupil.

1. An administrator or an administrative designee (other than the student's teacher) who is knowledgeable of program options appropriate for the student. This person must be authorized to make decisions and allocate resources.
2. Not less than one general education teacher. The El Dorado County Charter SELPA advises that the student's current general education teacher attend the meeting. If the student does not have a general education teacher, the teacher with the most recent and complete knowledge of the child and who is qualified to teach a student of his or her age should attend.
3. The student's special education teacher(s).
4. The student's parent(s)/legal guardian(s)/surrogate parent, or an individual selected by the parent. It is important to note that no individual or agency is authorized to sign with consent to an IEP unless they possess educational rights for the student.

When appropriate, the IEP team may also include:

- The student.
- Other persons who possess expertise or knowledge necessary for the development of the IEP.
- An assessor(s) who conducted an assessment and is presenting his/her report for the IEP team or an individual with the appropriate qualifications to present the assessment report on behalf of an assessor.

For students with suspected learning disabilities, at least one member of the IEP team, other than the student's general teacher, shall be a person who has observed the student's educational performance in an appropriate setting.

### ***Membership Excusal***

IDEA 2004 allows for the excusal of the following IEP team members.

- Not Necessary: A member of an IEP team may not be required to attend an IEP meeting in whole or in part, if the parent of a child with a disability and the LEA/district agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
- Necessary, but excusable: A member of the IEP team may be excused from attending an IEP 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 both of the following occur:
  - A. The parent and the LEA/district consent to the excusal in writing by completing the IEP Excusal Form (available in SEIS) and
  - B. The excused IEP team member submits, in writing, to the parent and the IEP team input into the development of the IEP prior to the meeting.

When an IEP team member is excused, other team members should refrain from reinterpreting the data of the excused team member or answering questions outside of the scope of their credentials.

### ***Agenda***

It is essential that a well-organized and structured IEP team meeting be conducted. The agenda which follows is recommended as a guide for conducting IEP team meetings. Depending on the purpose of the meeting, the IEP Meeting agenda may be amended. Efforts should be made to present information in a manner that is easily understood by all members of the IEP team, including the parents. This includes providing parents with translated documents when necessary.

1. Welcome: Welcome all participants to the meeting and thank them for their participation.
2. Introduction of All Persons Present: Record the names, titles, agency/school of all attendees, including individuals who may be participating by phone, in meeting notes. Use the Excusal Form if necessary and obtain parent signature. The IEP team may wish to sign attendance sheet at this point or at the close of the IEP.
3. Purpose: The meeting facilitator should briefly review the purpose of the meeting.

4. **Agenda Overview:** The meeting facilitator should briefly review the proposed agenda and request additional agenda items or questions from IEP meeting team members. The IEP team shall finalize and agree on an agenda before continuing the meeting.
5. **Child/Parent Rights:** Provide/verify that the parents have received a copy of their Notice of Parental Rights and Procedural Safeguards. The meeting facilitator shall ask the parents if they have any questions or would like further clarification regarding their rights and procedural safeguards. A copy of Parent Rights and Procedural Safeguards should be presented at minimum one time annually, but it is suggested that they be provided at the beginning of each IEP Meeting. Parents may decline an additional copy of these rights, although one must be offered. It is recommended that the note-taker document in the IEP notes that these rights were offered and accepted or offered and declined and whether or not the parent had any questions.
6. **Review of Information/Eligibility Page:** Review the Information/Eligibility page of the IEP to make sure that parent(s) address(es) and phone number(s) are up-to-date.
7. **Establish Time Parameters:** The meeting facilitator should review the previously agreed upon start and end time for the IEP meeting. If anyone has to leave the meeting at a specific time, address it with the entire team and document the time the individual(s) leave in the IEP meeting notes. An excusal form should be completed and signed by the parent and the Administrative Designee. If the parent disagrees with someone's request to leave early, the team will have to adjourn the meeting at the point of the member's departure and schedule a continuation meeting when the member can attend the entire meeting. Assign a designated person to be the timekeeper, if necessary.
8. **Student Strengths/Preferences/Interests:** Any member of the IEP team may provide strengths of this student to the team. They may be academic, social, behavioral strengths or student preferences, likes, hobbies, talents.
9. **Parent Concerns:** Parents should have an opportunity to share their concerns and provide relevant information to the team. The person taking the notes should document how the parent concerns were addressed during the meeting or make a plan for how to address that concern in the future.
10. **Present Levels of Performance:** The meeting facilitator should request each IEP meeting participant to provide data to update the student's present levels of performance, including the parent(s)/guardian(s). Each classroom teacher should provide input, as well as parents and each assessor. When appropriate (student will turn 16 years of age before next annual IEP) complete transition paperwork in conjunction with present levels, goals and services.
11. **Review of Assessment Reports:** This may include the General Education, Special Education, Specialists, and other agencies. Assessment reports are usually reviewed during the student's triennial IEP which occurs every three years. Individuals who assessed the student and are qualified to interpret the results in their reports should report out on the assessments conducted. Discuss all reports at the IEP (even if parent has received a draft copy and has no questions) for the benefit of all the IEP team members. Reports may be summarized.

12. Statement of Eligibility/Non-eligibility: If eligibility is being considered or reviewed the following applies:

- If the IEP team determines that the student is not eligible for special education services, document on the IEP form that “assessment results indicate that special education services are not appropriate at this time” and check the box on the form indicating “not eligible”.
- If further assessment is needed to clarify eligibility, the IEP team meeting may be suspended pending further testing or evaluation, but reconvened as soon as possible.
- If the student is not eligible for special education services, but educational concerns are present, the IEP team meeting should be concluded. Adjourn the meeting at this time. Then general education support options may be explored, including possible referral to the Student Study Team (SST) and/or consideration of an assessment for 504 eligibility.
- If the student is determined by the IEP team to be eligible for special education, proceed with the rest of the IEP meeting agenda.

13. Special Factors:

- Assistive technology: Does the student require assistive technology devices and/or services to access learning? Did the team have an assistive technology assessment completed?
- Low incidence: Does the student require low incidence services, equipment and/or materials to meet educational goals? Is this student eligible under a low incidence disability (visual or hearing impairment, severe orthopedic impairment or any combination thereof).
- Blindness or visual impairment: If the student is blind or visually impaired, the IEP team must provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

14. Deaf or Hard of Hearing: Consider the communication needs of the child, including:

- Child's language and communication needs,
- Opportunities for direct communications with peers and professional personnel in the child's language and communication mode,
- Academic level, and
- Full range of needs, including opportunities for direct instruction in the child's language and communication mode

15. English Learner: Is the student an English Language Learner, yes or no?

- If yes, does the student need primary language support?
- If yes, who will provide language support?
- What will be the language of instruction for the student?
- Who will provide ELD services to student?

- What type of ELD services will be provided?

16. Behavior: Does student's behavior impede learning of self or others, yes or no?

- If yes, specify positive behavior interventions, strategies, and supports. Consider whether a behavioral goal and/or a Behavior Intervention Plan (BIP) is appropriate depending on student's needs.

17. Areas of Need: For student to receive educational benefit, what areas of need do goals need to be written in? The areas of need should align with the present levels and be supported by data.

- Assessment reports conducted by specialists trained in these specific areas should provide information indicating need for specialized materials, devices or supports.

18. Review of Progress on Current Goals/Objectives: At annual and triennial meetings, IEP teams must address the previous year's goals and objectives and note on the document whether goals were met. If previous goals were not met, document action to be taken (i.e. continue, discontinue or modify) and revise the goal.

19. New Goal/Objectives Based on Current Needs: At an initial, annual and triennial meetings the IEP team shall develop goals tied to the areas of need identified by assessments and /or present levels. As a team, the IEP meeting participants shall establish goals and short term objectives for all areas of need that were identified in the present levels of performance.

Each measurable annual goal, including academic and functional goals, shall be designed to do the following:

- Meet the individual's needs that result from the individual's disability in order to enable the pupil to be involved in and make progress in the general curriculum
- Meet each of the pupil's other educational needs that result from the individual's disability
- Be linguistically appropriate for the student, if the student is an English Language Learner

20. Statewide Assessments: Fill in participation information including accommodations and modifications. Accommodations should be updated for each student on an IEP. Please see the SEIS Document Library for additional information. The following guideline presents the current universal tools, designated supports, and accommodations adopted by the State of California for the Smarter Balanced Assessment Consortium (SBAC) assessment. The SBAC assessment took the place of the California Standards Test (CST).

- **Universal tools** are access features that are available to all students based on student preference and selection.
  - Embedded: Breaks, calculator, digital notepad, English dictionary, English glossary, expandable passages, global notes, highlighter, keyboard navigation, mark for review, math tools, spell check, strikethrough, writing tools, and zoom.
  - Non-Embedded: Breaks, English dictionary, scratch paper, and thesaurus.

- **Designated supports** for the Smarter Balanced assessments are those features that are available for use by any student (including English language learners, students with disabilities, and English language learners with disabilities) for whom the need has been indicated by an educator or team of educators (with parent/guardian and student input as appropriate).
  - Embedded: Color contrast, masking, text-to-speech, translated test directions, translations (glossary), translations (stacked), and turn off any universal tools.
  - Non-embedded: Bilingual dictionary, color contrast, color overlay, magnification, read aloud, scribe, separate setting, translated test directions, translation (glossary)
- **Accommodations** are changes in procedures or materials that increase equitable access during the Smarter Balanced assessments by generating valid assessment results for students who need them and allowing these the opportunity to show what they know and can do. Universal tools, designated supports, and accommodations may be either embedded in the test administration system or provided locally (non-embedded).
  - Embedded: American Sign Language, braille, closed captioning, text-to-speech.
  - Non-embedded: Abacus, alternate response options, calculator, multiplication table, noise buffers, print on demand, read aloud, scribe, speech-to-text.

21. **Supplementary Aids, Services and Other Supports for School Personnel, or for the Student, or On Behalf of the Student:** The IEP team shall develop a list of supplementary aids and services, based on peer-reviewed research to the extent possible. Frequency, duration and location of services to be provided must be specified on the IEP. It is not recommended to write in “as needed” for duration or frequency. The IEP team shall also document program modifications or supports for school personnel. The services, supplementary aids, program modifications, and/or supports will be provided to enable the student to do the following:

- To progress towards obtaining their annual goals
- To be involved in and make progress in the general education curriculum in accordance with their present levels and functional performance
- To participate in extra-curricular and non-academic activities
- To be educated and participate with other students with exceptional needs and non-disabled peers

EDCOE SELPA suggests that the IEP include all accommodations and supports a student needs, including those tied to behavior intervention plans or state testing. If a student requires classroom support, it would be documented at the top portion of the Services-Offer of FAPE (Free and Appropriate Public Education) form under supplementary aids, services & other supports. Classroom support refers to support in the classroom which may include additional adult support. If a student requires individualized support from an aide, it would be documented on the bottom portion of the services-offer of FAPE form under special education and related services.

22. **Accommodations/Modifications:** Consider what classroom and campus supports will the student need to obtain educational benefit. These accommodations and modifications are those that the student requires that are beyond what is currently available to general education students.

23. Offer of Program/Services Based on Goals/Objectives: In considering program alternatives, the IEP team shall make a recommendation based on the individual needs of the student and not on the category under which the student is determined to be eligible for special education.

The IEP team shall consider the full continuum of program options to ensure that all students are provided a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE) and document options considered on the services page of the IEP.

After reviewing all program options, the IEP team shall recommend appropriate related services, calculated to offer the student the opportunity to achieve educational benefit.

24. Educational Setting: What is the most appropriate placement in the Least Restrictive Environment (LRE) for this student? Each public agency must ensure that:
- A. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
  - B. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [§300.114(a)]

Additional Considerations:

- Percentage (%) of time in/out of general education classes and rationale for time out of general education
- Indicate other agencies working with the student
- Indicate promotion criteria
- Progress monitoring/progress reporting
- Special education transportation
- Graduation plan (if appropriate)

25. Extended School Year (ESY): Complete the “Extended School Year” (ESY) forms located in SEIS to help the team determine if a student needs ESY support. For more information, see the “Extended School Year” section of this procedural guide.

26. Ending the Meeting:

- Confirm Agreements
- Obtain Signatures:
  - All IEP team members, including parents and student (when student is present) sign in attendance of the IEP. If parents agree to the IEP and placement of their child, they will also sign in consent to the IEP document.
  - If the parent does not consent to all components of the IEP, then the parent should indicate those areas of exception on the signature page. If the parent needs more writing space, an additional piece of paper can be used and attached to the IEP. Whether the parent submits their letter of exception at the IEP meeting or returns

with a letter that explains the areas of exception, it shall be accepted as a supplemental document to the IEP and attached in SEIS.

- The notes page should reference the additional page of exceptions. If a parent submits consent to some components of the IEP and lists exceptions to others, the case manager should work with parent to schedule a future IEP meeting to discuss the areas of exception. Any areas of the IEP that the parent does not consent to will become areas of exception and will not be implemented.
- The components of the program to which the parents have consented may be implemented so as not to delay providing supports and services to the student.
- Written parent permission must be obtained prior to initiating services and/or educational placement. The services and/or placement will begin following parent's written approval of the IEP.

27. Follow Up: If there are any outstanding agenda items or concerns that the IEP team was not able to discuss/reach consensus on, another IEP meeting shall be scheduled as soon as team can set a mutually agreeable meeting date.

- Provide parents with a copy of the IEP.
- LEA/district may need to send parents a Prior Written Notice (PWN) after the meeting. The purpose of this is to document any changes or proposed changes to the IEP. For information regarding Prior Written Notices, see the PWN section of this procedural guide.





## TRANSITION PLANNING AND STUDENT-LED TRANSITION MEETINGS

As a student with disabilities moves into the teen years, the IEP focuses more on the interests of the student and what he or she hopes for the future, and it is the IEP team's responsibility to create a transition individualized education program to support those interests.

Transition, in reference to individuals receiving special education services, is defined as a coordinated set of activities for a student with a disability that:

- Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student'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, or community participation;
- Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and
- 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.

[34 CFR 300.43 (a)] [20 U.S.C. 1401(34)]

The student's IEP must be updated, prior to their 16<sup>th</sup> birthday (or younger if deemed appropriate by the IEP Team), to include the following transition components:

- Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills;
- The transition services (including courses of study) needed to assist the student in reaching those goals; and
- Beginning not later than one year before the student reaches the age of majority under state law (18 in California), a statement that the student has been informed of the student's rights under Part B, if any, that will transfer to the student on reaching the age of majority, must be included in the IEP.

The LEA/district must invite the student with a disability to attend the student's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

If a purpose of a student's IEP Team meeting will be the consideration of postsecondary goals for the student and the transition services needed to assist the student in reaching those goals, the LEA/ district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to attend the student's IEP Team meeting.

### ***Overview of Transition Planning***

Collaborate closely with the student through each step of the process:

- 1) Transition Assessment: Conduct age-appropriate assessments to determine interests, aptitudes and areas of need.
- 2) Assessment Results: Describe student's strengths and present levels of performance, achievement, and functioning.
- 3) Measureable Postsecondary Goals: Based upon assessment information and present levels, develop student-centered measurable postsecondary goals.
- 4) Course of Study: Determine course of study that will support the student's transition goals.
- 5) Coordinated Set of Activities to Support Transition Goals: Develop a "coordinated set of activities" that support the measurable postsecondary goals and transition plan.
- 6) Transition Services: Determine transition services and document in student's IEP.
- 7) Student Led Transition (IEP) Meeting: Assist the student to plan and prepare to lead the IEP meeting. Be sure to include these additional components:
  - a) Age of Majority: Document the information shared with the student around the Age of Majority. Please see section of this Procedural Guide entitled, "Age of Majority" for more details on this topic.
  - b) Invite Appropriate Outside Agencies: Ensure appropriate agencies are invited to the IEP meeting.
- 8) Implementation: Implement the IEP, monitor progress on goals and course of study, modify and update plan annually.
- 9) Annual Review of Goals and Updates to Plan: Develop annual IEP goals that align with and support the transition plan and postsecondary goals.
- 10) Summary of Performance: The Summary of Performance must be completed in the final year of a student's high school education. It is intended for postsecondary schools, service providers, and employers, to be used at the student's discretion.

### ***Transition Assessment***

Transition Assessment is 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. Assessment is the common thread in the transition process and forms the basis for defining goals and services to be included in the IEP. Transition assessment should include activities, assessments, content, environments, instruction, and/or materials that reflect a student's chronological age.

Each year, the transition assessments should be revisited in a more specific manner, targeting the student's development. For students in grades nine and ten, a career exploration measure or interest inventory is typically satisfactory. For an older student, a vocational skills assessment is more appropriate. Assessment should address all three components of transition- employment, postsecondary education and training, and independent living.

It is best practice to use information in addition to a student's self-report when assessing for transition. Input from parents, teachers, and other providers is helpful in determining needs a student may have but not recognize themselves in employment, independent living, and education.

Tools that can be used to assess a student's transition needs may include:

- Psycho-educational Assessments
- Job Evaluations
- Labor market Surveys\Aptitudes Tests
- Progress on IEP Goals
- Transition Inventories
- Observations & Record Reviews
- Interest Surveys
- Personality Inventories
- Academic Assessments/ Curriculum Based Assessments
- Computerized Career Systems
- Student and family interviews

If doing individual transition assessment, there should be an assessment plan signed by the parent or guardian. Some assessments are often done as a group activity, and may not require an assessment plan. For example, if a whole class is taking an online career interest inventory, individual parent consent is not required. But, if an individual student is asked to complete a career interest inventory and the assignment is not required class wide, an assessment plan must be signed for parent consent.

Document the assessment(s) done each year in the transition assessment section of the IEP. Include the name and date of each tool used, a brief summary of the results, and outcomes of any work, training or community service in which the student has participated.

### ***Measurable Postsecondary Goals***

Measurable Postsecondary Goals (MPSGs) should be student centered and directed by assessment. They typically focus on 12-24 months after high school graduation or completion. It's important that the goals are measurable and identify an outcome rather than a process. These measurable postsecondary goals must be reviewed and updated annually, but they may not change annually. They may become more specific as a student matures.

Measurable postsecondary goals are required for all students in two areas: 1) training/education and, 2) employment. Measurable postsecondary goals in the area of training/education may include college studies (university and community college), occupational certification, technical training, industry certification, or on the job training. Measurable postsecondary goals in the area of employment might include paid, competitive, supported or sheltered employment. It may also include unpaid opportunities such as volunteering in a training capacity, military, etc.

A third measurable postsecondary goal in the area of Independent Living is recommended but not required. It is up to the student's IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the student to receive FAPE (71 Fed. Reg. 46668 (Aug. 14, 2006)). Measurable postsecondary goals in the area of independent living should be considered for students who are Regional Center clients, students taking alternative assessments, students on a non-diploma track, and for students with medical and mental health issues. Recommended best practice is to have a goal in independent living for all students with an IEP.

### ***Suggested IEP Language for Measurable Postsecondary Goals***

The IEP template in SEIS starts the MPSG with "Upon completion of school I will..." From that point on, you could choose to add specificity, i.e. "receive a certificate of completion and..." or "receive a high school diploma and..." and align MPSGs with the outcome identified in the student's Course of Study.

Use results-oriented terms such as, "Will enroll in, will work at, will live independently," etc. (Avoid "hope to," or "plan to," or "will seek employment," etc.). Use descriptors such as full-time, part-time, independently, with adult support, etc.

Annual goals should be specifically and directly linked to the measurable postsecondary goals. Annual goals must be reasonably calculated to assist the student in achieving readiness for postsecondary goals. Skills targeted should be based on identified areas of student need, and there should be at least one annual goal tied to each measurable postsecondary goal.

### ***Course of Study***

Federal and state law require that transition pages in an IEP include a multi-year description of coursework planned to achieve the student's desired postsecondary goals from the student's current year to the anticipated graduation or exit year. A transcript does not meet this requirement unless it includes courses the student will take in the future, by year, that are specifically related to the student's postsecondary goals. List any courses that are LEA/ district, student, or site specific and how they link to measurable postsecondary goals.

Based on a review of legislation and California Education Code (CEC) that inform the course of study for the state of California, and with the goal of making sure we do not create liabilities for any students, the California Secondary Transition Leadership Team has recommended:

1. The course of study must intentionally and explicitly reflect each student's secondary completion goals and postsecondary transition goals.
2. For students who plan to earn a high school diploma the student must meet state and district graduation requirements.
3. Elective classes or those meeting the state and district graduation requirements such as performing and visual arts, foreign language (language other than English including American

Sign Language), and career technical classes should reflect the individual student's career interests and postsecondary goals.

4. The course of study should be sufficiently generic to be portable across district or state lines.

5. Student progress toward achieving a high school diploma or certificate of completion should be monitored at least once annually with consideration given to attendance, grades, credit status and other educational performance measures. The course of study should also be reviewed at least once annually for all students.

6. It should be recognized that, to the maximum extent possible, attainment of a high school diploma should be recognized as partially meeting postsecondary education and employment goals. (Some employers require a diploma to meet their minimum requirement when considering job applicants).

7. It should be emphasized that the course of study and attainment of a diploma or certificate are not sufficient to document the provision of transition services as mandated in IDEA.

8. For students whose course of study will lead to certificates that are alternatives to a high school diploma, the certificate should intentionally and explicitly reflect each student's secondary completion goals and postsecondary goals.

Compiled by Sue Sawyer, California Transition Alliance, 2015, *Secondary Transition Planning: The Basics*

Note: The certificate of completion option is available to those students who are not able to complete the requirements for a regular high school diploma as offered by the LEA/district. These students are eligible for educational placement and services in accordance with their IEP until the age of 22. If the school is a charter school, the governing board of the LEA/district approves the requirements for the certificate of completion graduation option. In a standard public school, the certificate of completion option is in accordance with EC 56390.

### ***Coordinated Set of Activities to Support Transition Goals***

IDEA requires a "coordinated set of activities" for individual students to meet their postsecondary goals. These activities should be listed in the transition pages of the student's IEP, and must be individualized based on the needs of the student. While some activities included in the list may be general activities offered to all students at a school site, other activities should be identified that help each individual student work toward their measurable postsecondary goals.

Many of these activities may already be happening at a school site and may benefit all students. Examples might include:

- Career Day for all students
- Visits to local community college(s)
- Visit local recreation centers

- Taking public transportation to community activities
- Community Service
- Job shadow other peers

Activities to support a student's transition goals may be provided by a variety of properly qualified personnel, depending on the needs of the student. Some examples might include:

- A school counselor provides information on college admissions, financial aid or campus information
- An occupational therapist provides fine motor therapy for a student to be able to brush her hair on her own
- A special education teacher provides specialized academic instruction to improve math skills in the area banking and money management
- A case manager arranges for job shadowing opportunities in the community
- A "careers class" provides instruction in job search and interviewing skills

### ***Transition Service Codes***

Many service codes for transition services are 800 codes in SEIS/CASEMIS. Students who struggle with activities of daily living may need direct instruction in areas such as hygiene, cooking, budgeting, etc. In some cases "specialized academic instruction (code 330)" may be the appropriate service to support a measurable postsecondary goal in independent living, even though it is not an 800 code.

800 CASEMIS Codes available in SEIS are as follows:

820	College Awareness	
830	Vocational assessment, counseling, guidance, and career assessment	Organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment and may include provision for work experience, job coaching, development and/or placement, and situational assessment. This includes career counseling to assist student in assessing his/her aptitudes, abilities, and interests in order to make realistic career decisions.
840	Career awareness	Transition services include a provision for in self-advocacy, career planning, and career guidance.
850	Work experience education	Work experience education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.
855	Job Coaching	Job coaching is a service that provides assistance and guidance to an employee who may be experiencing difficulty with one or more aspects of the daily job tasks and functions. The service is provided by a job coach who is highly successful, skilled and trained on the job that can determine how the employee that is

		experiencing difficulty learns best and formulate a training plan to improve job performance.
860	Mentoring	Mentoring is a sustained coaching relationship between a student and teacher through on-going involvement and offers support, guidance, encouragement and assistance as the learner encounters challenges with respect to a particular area such as acquisition of job skills. Mentoring can be either formal as in planned, structured instruction or informal that occurs naturally through friendship, counseling and collegiality in a casual, unplanned way.
865	Agency linkages (referral and placement)	Service coordination and case management that facilitates the linkage of individualized education programs.
870	Travel Training (includes mobility training)	
890	Other transition services	These services may include program coordination, case management and meetings, and crafting linkages between schools and between schools and post-secondary agencies. (Note: This code should be used with caution and only when appropriate)
900	Other Special Education/Related Services	Any other specialized service required for a student with a disability to receive educational benefit.

### ***Summary of Performance (Postsecondary Exit)***

The Summary of Performance (SOP) is required under the reauthorization of the Individuals with Disabilities Education Act of 2004. The language as stated in IDEA 2004 regarding the SOP is as follows:

For a student whose eligibility under special education terminates due to graduation with a regular diploma or due to exceeding the age of eligibility, the local education agency “shall provide the student with a summary of the student’s academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student’s postsecondary goals.”

§Sec. 300.305(e)(3).

The Summary of Performance, with the accompanying documentation, is important to assist the student in the transition from high school to higher education, training, and/or employment. This information is necessary under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act to help establish a student’s eligibility for reasonable accommodations and supports in postsecondary settings. The information about students’ current level of functioning is intended to help postsecondary institutions consider accommodations for access. These recommendations should not imply that any individual who qualified for special education in high school will automatically qualify for services in the postsecondary education or the employment setting. Postsecondary settings will continue to make eligibility decisions on a case-by-case basis (adapted from the Council for Educational Diagnostic Services, a division of the Council for Exceptional Children).

The Summary of Performance must be completed in the final year of a student’s high school education. It is intended for postsecondary schools, service providers, and employers, to be used at the student’s discretion. The different organizations may have their own standards regarding the documentation required to establish eligibility. Students may (but are not required to) share their Summary of Performance with colleges, adult agencies, vocational and rehabilitative centers, employers and others.

The SOP helps such organizations identify services and accommodations the student might need in the classroom, the workplace, or the community.

Each Summary of Performance must include information about the student's academic achievement, information about the student's functional performance, and recommendations on how to assist the student in meeting his/her postsecondary goals. IDEA does not identify a specific individual responsible for preparing the Summary of Performance. Typically, a student's special education teacher completes the SOP when a student exits high school.

There is no mandate in IDEA that requires a meeting to be held to discuss a Summary of Performance, and if a meeting is held, membership at the meeting is not prescribed. Typically, there can be a meeting with the case manager, student, and parent. If an exit IEP is being held, an SOP discussion could naturally occur during this meeting.

### ***Performance Indicator***

The Individuals with Disabilities Education Act (IDEA) was reauthorized on December 3, 2004, becoming effective on July 1, 2005. In conjunction with the reauthorization, the U. S. Department of Education required states to develop six-year State Performance Plans around 20 indicators, on which data is submitted annually in Annual Performance Reports.

The 13th Performance Indicator relates to transition services for students, and includes eight specific components to determine compliance around transition mandates:

“Percent of youth with IEPs aged 16 and above with an IEP that includes appropriate (1) measurable postsecondary goals, (2) that are annually updated and based upon an age appropriate (3) transition assessment and (4) transition services, including (5) courses of study, that will reasonably enable the student to meet those postsecondary goals and (6) annual IEP goals related to the student's transition services' needs. There also must be evidence that the (7) student was invited to the IEP team meeting where transition services are to be discussed and evidence that, if appropriate, a representative of any (8) participating agency was invited to the IEP team meeting with the prior consent of the parent or student who has reached the age of majority (20 U.S.C. 1416(a)(3)(B)).”

There are eight questions that must be answered in the Transition Plan of a student's IEP to satisfy Indicator 13:

1. Are there appropriate measurable postsecondary goals (MPSGs) that address education/training, employment, and as needed, independent living?
2. Are the MPSGs updated annually?
3. Is there evidence that MPSGs were based upon assessment?
4. Are there transition services in the IEP that will *reasonably enable* the student to meet the MPSGs?
5. Will the course of study (in the transition services) *reasonably enable* the student to meet the MPSGs?
6. Are there annual IEP goals related to the transition needs of the student?



7. Is there evidence the student was invited to the IEP?
8. Is there evidence of an invitation to the IEP extended to representative of involved agency (as appropriate)?

An IEP may be considered compliant in meeting the requirements of Indicator 13 if it includes evidence of the eight (8) required components stated above.

### ***Student Participation in the IEP***

IDEA requires the student be invited to the IEP meeting whenever appropriate. The IEP is based on the individual student's needs, strengths, preferences and interests. When planning for the transition from high school to post-school life, the student's input is essential for his or her success. In accordance with 34 CFR 300.321(a)(7), the public agency must invite a student with a disability to attend the student's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals under 34 CFR 300.320(b).

There are four areas where a student can be involved in the IEP process:

- Planning the IEP: includes laying the foundation for the meeting by identifying strengths and needs, establishing goals, considering options, and preparing materials for the IEP meeting.
- Drafting the IEP: provides practice in self-advocacy skills and includes having students create a draft of their IEP that reflects these strengths and needs, as well as their interests and preferences.
- Participating in the IEP meeting: in which students have the opportunity to share their interests, preferences, and needs and participate in dialogue with other members of the IEP team to develop a plan.
- Implementing the IEP: involves students evaluating how well they are achieving the goals identified in their IEP.

Konrad, M., & Test, D. W. (2004). Teaching middle-school students with disabilities to use an IEP template. *Career Development for Exceptional Individuals*, 27, 101-124.

Suggested Self-Advocacy strategies to prepare students to participate actively in the IEP:

- Inventory strengths: areas to improve or learn, goals and choices for learning or needed accommodations. Students complete an inventory sheet they can use at the IEP meetings.
  - Provide inventory information: Use inventory, portfolio, presentation video, etc.
  - Listen and respond: learn the proper times to listen and to respond.
  - Ask questions: teach students to ask questions when they don't understand something.
  - State goals: students list the goals they would like to see in their IEP.
  - Use the IEP as an opportunity to develop self-advocacy and leadership skills.
- Compiled by Sue Sawyer, California Transition Alliance, 2015, ***Secondary Transition Planning: The Basics***

Below you will find a Student-Led IEP Script and Transition (IEP) Meeting Agenda.

**SAMPLE STUDENT-LED IEP MEETING SCRIPT**

Hello everyone. Welcome to my IEP meeting. I am \_\_\_\_\_.

Today we will talk about how I am doing in school right now, the progress I've made on my special education goals, my goals for the future, and what type of help I will need to reach my goals.

I will be leading this meeting, so please be sure to address me directly with all of your comments. Will everyone please introduce yourselves? Starting with... Thank you.

Here is a copy of your parent rights (hand to parent). When I turn 18, I will be legally responsible for myself (Team may discuss transfer of rights).

My strengths and interests are.....

The reason I have a right to special education services is because I .....which makes it hard for me to .....

I am interested in working as a .....

Would anyone like to add to what I have already shared?

After high school I want to..... (Student shares Measureable Post-Secondary Goals)

My concerns about school are.... ..

What are your concerns, Mom or Dad?

Here is how I am doing in school right now:

State testing	Credits I need to earn
Current grades	Attendance
Progress on last year's IEP goals	Work samples

Student asks Team Members (specialists) to share reports in other areas (health, social, motor, vocational, living skills).

This year I want to..... (Student or teacher shares Annual Goals for this IEP)

The kind of help I will need is.....

The services I need are.....

- Support in.....
- Special attention on.....
- Work with.....

Are there any other questions or things we need to cover?

Will everyone please sign the attendance page?

Thanks for coming, everyone.

**Suggested Transition Individualized Education Plan Agenda (with Annual IEP)**

**1. Welcome**

- a. Introductions
- b. Purpose of Meeting/Expected Outcomes
- c. Agenda Overview
- d. Review Child/Parent Rights

**2. Present Levels of Performance**

- a. Parent Concerns
- b. Review of Reports (General Education, Related Service Providers, other agencies, if applicable)
- c. Review of Progress on Current Goals/Objectives

**3. Transition Plan (for Students 16 Years and Older)**

- a. Discuss Student Strengths/Preferences/Interests
- b. Review Results from Transition Assessments
- c. Develop/Review Measurable Postsecondary Goals
- d. Discuss Activities and Services to Support Postsecondary Goals
- e. Document Course of Study
- f. Discuss Age of Majority

**4. New Goals/Objectives**

- a. Based on Current Need Areas
- b. Aligned with Postsecondary Goals
- c. Based on Student's Plan for the Future

**5. Special Factors**

- a. Assistive Technology requirements, if needed
- b. Low Incidence Requirements, if needed
- c. Blindness or Visual Impairment, or Deaf or Hard of Hearing, if appropriate
- d. English Learner, if appropriate
- e. Behavior Supports, if needed
- f. Areas of Need Identified
- g. Participation in State/District-wide Assessments

**6. Offer of Program/Services Based on Goals and Transition Plan**

- a. Service Delivery Options (LRE)
- b. Supplementary Aids, Services and Other Supports
- c. Accommodations/Modifications
- d. Special Education and Related Services
- e. Review Transition Services

**7. Offer of Educational Setting**

- a. Percentage of time in/out of general education classes (*rationale for time out of general education*)
- b. Other Agencies Involved

- c. Promotion Criteria
- d. Progress Monitoring/Progress Reporting
- e. Special Education Transportation
- f. Graduation Plan

**8. Closing**

- a. Confirm Agreements
- b. Gather Signatures

\*At Exit IEP or Graduation IEP, complete the Summary of Performance.



## INDIVIDUAL HEALTH PLANS/SCHOOL NURSE SERVICES

*School health services and school nurse services* means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person (see CDE *Program Advisory on Medication Administration*, p. 7, [www.cde.ca.gov/ls/he/hn/documents/medadvisory.pdf](http://www.cde.ca.gov/ls/he/hn/documents/medadvisory.pdf)). School health services and school nurse services are considered related services under IDEA.

An "individual health plan" or "individualized health plan" generally focuses exclusively on addressing a student's medical needs and may be appropriate for a general education student through a 504 Plan as well as a student receiving special education services. "School health services" and "school nurse services" are services designed to enable a child with a disability to receive FAPE as described in the child's IEP.

An Individual Health Plan (IHP) is a formal written agreement developed in collaboration with the school staff (School Nurse), the student, the student's health care provider(s) and the student's family. An IHP is written for students whose healthcare needs affect or have the potential to affect safe and optimal school attendance and academic performance. Per the National Association of School Nurses (NASN) the IHP should include:

- Assessment: The data collection phase helps determine the student's current health status and any actual or potential health concerns.
- Diagnosis: The school nurse uses the assessment data to formulate a nursing diagnosis, including a diagnostic label, etiology, and presenting signs and symptoms.
- Outcome Identification: The school nurse identifies the desired results of nursing intervention and states these in measurable terms.
- Planning: Interventions are selected to achieve desired results.
- Implementation: The written IHP is put into practice and care provided is documented.
- Evaluation: The professional school nurse measures the effectiveness of nursing interventions in meeting the identified outcome. Changes are made to the plan as needed.

"School nurses strengthen and facilitate the educational process by improving and protecting the health status of children and by identification and assistance in the removal or modification of health-related barriers to learning in individual children. The major focus of school health services is the prevention of illness and disability, and the early detection and correction of health problems. The school nurse is especially prepared and uniquely qualified in preventive health, health assessment, and referral procedures." *CA Education Code 49426*

"It is the intent of the Legislature that the governing board of each school district and each county superintendent of schools maintain fundamental school health services at a level that is adequate to accomplish all of the following:

- Preserve pupils' ability to learn
- Fulfill existing state requirements and policies regarding pupils' health
- Contain health care costs through preventive programs and education" *CA Education Code 49427*

Holders of the School Nurse Services Credential shall be authorized to perform the following services:

## El Dorado County Charter SELPA Procedural Guidelines

- Conduct immunization programs
- Assess and evaluate the health & developmental status of pupils
- Interpret health and developmental assessments
- Design and implement individual student health maintenance plans
- Refer the pupil, parent, & guardian to community resources
- Maintain communication to promote needed treatments
- Interpret medical and nursing findings
- Consult with, conduct in-service training for, and serve as a resource person
- Develop and implement the health education curriculum
- Participate in implementing health instruction curriculum
- Counsel & assist pupils & parents in health-related adjustments
- Teach health-related subjects under the supervision of a classroom teacher

The California Department of Education has a page of comprehensive medical guidelines for LEAs/districts to use when developing individualized health plans. <http://www.cde.ca.gov/ls/he/hn/>



## ELIGIBILITY CRITERIA

### *General Guidelines*

According to Ed. Code Section 56320 § 3030, following an assessment, the IEP team, including assessment personnel, shall make the decision as to whether or not the assessment results demonstrate that the degree of the student's impairment requires special education and/or related services.

The IEP team shall take into account all of the relevant material which is available on the student. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the student's eligibility for special education.

In making a determination of eligibility, a student shall not be determined to be an individual with exceptional needs if the determining factor is one of the following:

- Lack of appropriate instruction in reading
- Lack of appropriate instruction in mathematics
- Due primarily to limited school experience or poor school attendance
- Is a result of environmental, cultural difference, or economic disadvantages
- Could be corrected through other interventions and supports offered within the general education program
- Limited-English proficiency

In order to receive special education and related services under Part B of IDEA, a child must be evaluated to determine both:

- A. Whether he or she has a disability, and
- B. Whether he or she, because of the disability, needs special education and related services.

The need for special education and related services is determined by the adverse effect of the disability on educational performance, despite consistently applied and documented general education accommodations in both academic and behavioral areas. Adverse effect on educational performance could be documented by the pervasive nature of a combination of the following:

- The student is not making satisfactory progress towards grade level standards.
- On grade reports, there is an overall pattern of poor or failing grades (equivalent of D's or F's) present for extended period of time.
- Quality and degree of task completion is significantly below the range of the class.
- On standardized and curriculum-based achievement tests, the student demonstrates a significant difference between ability and achievement.

Additionally, students may exhibit needs that are related to the disability but do not have adverse effect on their ability to progress in the general education curriculum. In order to qualify to receive special education and related services in these instances, the student must have adverse effect on educational benefit. Some examples include communication and socialization deficits that affect the student's ability to socialize with peers and work in groups. This may also be true of students with social emotional or behavioral difficulties.

For more information on referral to the California School for the Blind, California School for the Deaf, or Diagnostic Centers for additional assessment, please see the section titled, “State Special Schools and Services.”

### ***Eligibility Categories***

- Specific Learning Disability (SLD)
- Other Health Impairment (OHI)
- Emotional Disturbance (ED)
- Speech or Language Impairment (SLI)
- Autism (AUT)
- Intellectual Disability (ID)
- Hard of Hearing (HH)
- Deafness (DEAF)
- Visual Impairment (VI)
- Orthopedic Impairment (OI)
- Deaf-Blindness (DB)
- Multiple Disabilities (MD)
- Traumatic Brain Injury (TBI)

A student with a disability who does not require special education supports and services to access or progress in the general education curriculum would not be considered eligible under any of the eligibility categories.

**Eligibility Summarized:** *The following information comes from Ed. Code Section 56320 § 3030.*

### ***Specific Learning Disability (SLD)***

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.

A specific learning disability can include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. These conditions are medically diagnosed and do not automatically make a student eligible for special education and related services. A medical diagnosis may trigger an evaluation to determine the corresponding impairment in psychological processes and the need for special education and related services in the school setting.

The basic psychological processes include:

- Attention
- Visual processing
- Auditory processing
- Sensory-motor skills
- Cognitive processing



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

A severe discrepancy shall not be primarily the result of limited school experience or poor school attendance, limited English proficiency, and it must have been documented that prior to, or as a part of, the referral process, the pupil was provided appropriate instruction and intervention in general education settings, delivered by qualified personnel.

In determining whether a student has a specific learning disability, the public agency must ensure that the student is observed in the student's learning environment.

#### *SLD Eligibility Models*

Within all models, both of the following items apply:

- A. Disabilities do not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage, and
- B. The student is observed in the student's learning environment.

#### *Discrepancy Model*

In determining whether a student has a specific learning disability, the public agency may consider whether a student has a severe discrepancy between intellectual ability and achievement in any of the following:

- Oral expression
- Listening comprehension
- Written expression
- Basic reading skill
- Reading fluency skills
- Reading comprehension
- Mathematical calculation
- 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 student. No single score, test, or procedure shall be used as the sole criterion for the decisions of the IEP team as to the student's eligibility for special education.

In determining the existence of a severe discrepancy, the IEP team shall use the following procedures. When standardized tests are considered to be valid for a specific student, a severe discrepancy is demonstrated by:

1. 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,
2. Computing the difference between these common standard scores, and
3. Comparing the 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.

If the standardized tests do not reveal a severe discrepancy, the IEP team may find that a severe discrepancy does exist (between cognitive ability and academic achievement), 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:

- Data obtained from standardized assessment instruments
- Information provided by the parent
- Information provided by the student's present teacher
- Evidence of the student's performance in the general and/or special education classroom obtained from observations, work samples, and group test scores
- Consideration of the student's age, particularly for young students
- Any additional relevant information

A severe discrepancy shall not be primarily the result of limited school experience, poor school attendance, or limited English proficiency.

Per Larry P. vs. Riles litigation, African American students in the state of California cannot be administered cognitive assessments. For additional information on Test Selection and Eligibility for African American Students as a result of the Larry P. vs Riles litigation, please see the corresponding sub-section of "Assessment, Test Selection and Reports".

*Response to Intervention Model (RtI) and Patterns of Strengths and Weaknesses Model (PSW)*

Regardless of whether a student shows a severe discrepancy, a student may be determined to have a specific learning disability if:

- A. The student does not achieve adequately for the student's age or meet state-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or state-approved grade-level standards:
  - Oral expression
  - Listening comprehension
  - Written expression
  - Basic reading skill
  - Reading fluency skills
  - Reading comprehension
  - Mathematical calculation or
  - Mathematical reasoning

-AND-

- B. Response to Intervention Model (RtI) - The student does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified above when using a process based on the student's response to scientific, research-based intervention;

-OR-

Patterns of Strengths and Weaknesses Model (PSW)- The student 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 research/evidence-based assessments.

To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, or due to limited English-proficiency, the group making the decision must consider:

- A. Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel;

-AND-

- B. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

### Comparison Chart

Below is a comparison chart of the 3 types of SLD Eligibility Models.

<b>Discrepancy Model</b>	<b>Response to Intervention (RtI) Model</b>	<b>Patterns of Strength and Weakness (PSW) Model</b>
<p>The IQ-achievement discrepancy model assesses whether there is a significant difference between a student's scores on a test of general intelligence (e.g., an IQ test such as the WISC-IV) and scores obtained on a test of academic achievement (e.g., the Woodcock-Johnson Achievement Test).</p> <p>The IQ-achievement discrepancy model is the approach traditionally used to identify children with learning</p>	<p>The term Response to Intervention (RtI) refers to a process that emphasizes how well a student responds to meaningful changes in instruction. The essential elements of the RtI approach are: the provision of scientific, research-based instruction and interventions in general education; monitoring and measurement of student progress in response to the instruction and interventions; and use of these measures of student</p>	<p>The Patterns of Strengths and Weaknesses model refers to a thorough examination of a student's basic psychological processes (i.e. visual, auditory, memory, attention, etc.) using a range of information gathered through standardized assessment (WISC-IV, WJ-IV Cog), criterion referenced assessment (i.e. DIBELS) and curriculum-based assessment tools.</p> <p>To qualify as a student with a Specific Learning Disability, the</p>

disabilities. If a student's score on the IQ test is at least two standard deviations (23-30 points) higher than his or her scores on an achievement test, the student is identified as having a significant discrepancy between IQ and achievement and, therefore, as having a Specific Learning Disability.	progress to inform instruction and make educational decisions.  A student is identified as having a Specific Learning Disability if he or she displays insufficient response to scientific, research-based intervention as well as insufficient progress toward grade-level standards.	student must display a measured weakness in one or more of the basic psychological processes related to the specific performance and/or achievement weakness (area of concern as reported by observation and assessment data). Student must also display strength in one or more unrelated or minimally related processes.
<b>Additional Considerations</b>		
Although the law allows schools the option of using RTI and PSW procedures as part of the evaluation procedures for special education eligibility, comprehensive assessment is still required to ensure that IEP team members have carefully evaluated and considered all relevant aspects of a student's performance and history. Comprehensive assessment must occur prior to determining that a student has a disability which impacts progress in general curriculum, thus making him or her eligible for special education services.		
<b>Final recommendations regarding eligibility and services will be determined by the IEP team.</b>		

### ***Other Health Impairment (OHI)***

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, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome;

-AND-

- B. Adversely affects a student's educational performance.

### ***OHI and ADHD***

If a student exhibits ADHD-like behaviors, the IEP team should attempt to differentiate indicators that would be more closely associated with conditions such as:

- Substance abuse
- Mood disorders (i.e.: anxiety/depression)
- Conduct disorders
- Oppositional defiant disorder
- Malnutrition

School-based assessments do not diagnose ADHD or any other medical/mental health disorder(s), they document the presence of behavior that may be symptomatic of ADHD or other conditions. If the school deems a medical diagnosis necessary to determine special education eligibility, the school would be liable

to provide access to the medical diagnosis from the doctor along with responsible for the costs of the doctor's visits.

### ***Emotional Disturbance (ED)***

Emotional disturbance 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 student's educational performance:

- 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
- A general pervasive mood of unhappiness or depression
- A tendency to develop physical symptoms or fears associated with personal or school problems
- Emotional disturbance includes schizophrenia.

The term does not apply to students who are socially maladjusted, unless it is determined that they also have an emotional disturbance.

School-based assessments do not diagnose mental health disorders. They document the presence of behavior that may be symptomatic of mental health disorders and how those symptoms impact educational performance.

Due to the complexity of ED assessments, assessors may wish to provide differential eligibility criteria to rule-in and/ or rule-out other areas of eligibility such as OHI, AUT, or SLD. ED assessments typically include both broadband and narrow band assessments in order to help IEP team members pinpoint specific areas of need and target IEP Goals. A thorough ED evaluation should encompass all the components of an Educationally Related Mental Health Services (ERMHS) assessment and provide ample documentation to support student's need for ERMHS services, which may include counseling or Behavior Intervention Plan (BIP). In very rare circumstances, a student who meets the eligibility criteria for ED may not additionally require ERMHS supports, including a BIP.

### ***Speech or Language Impairment (SLI)***

A student has a language or speech disorder once it is determined that the student's disorder meets one or more of the following criteria:

- Articulation disorder- The student 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 student'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. A student does not meet the criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern.
- Abnormal voice- A student has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness.

- Fluency disorders- A student 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 or receptive 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. When standardized tests are considered to be invalid for the specific student, the expected language performance level shall be determined by alternative means as specified on the assessment plan, or
  - The student 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 section 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 student 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 student, the expected language performance level shall be determined by alternative means as specified in the assessment plan.

### ***Autism (AUT)***

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a student'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.

Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance.

A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria are satisfied.

Autism can be medically diagnosed; however, a medical diagnosis does not automatically make a student eligible for special education and related services. A medical diagnosis may trigger a school-based evaluation to determine the corresponding need for special education and related services in the school setting. Conversely, a student does not require a medical diagnosis to meet eligibility criteria for Autism.

School-based assessments do not diagnose autism. They document the presence of behavior that may be symptomatic of autism or autism spectrum disorders and how those behaviors impact a student's learning performance.

Assessors may wish to provide differential eligibility criteria to rule-in and rule-out other areas of eligibility such as OHI, ED, or SLD. Other areas of assessment for students with Autism may include: pragmatic

language (speech) or a Functional Behavioral Assessment (FBA) resulting in a BIP.

***Intellectual Disability (ID)***

Intellectual disability means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.

***Hard of Hearing (HH)***

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

For more information on referral to the California School for the Deaf for additional assessment, please see the section titled, "State Special Schools and Services".

***Deafness (DEAF)***

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

For more information on referral to the California School for the Deaf for additional assessment, please see the section titled, "State Special Schools and Services".

***Visual Impairment (VI)***

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

For more information on referral to the California School for the Blind for additional assessment, please see the section titled, "State Special Schools and Services".

***Orthopedic Impairment (OI)***

Orthopedic impairment means a severe orthopedic impairment that adversely affects a student'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).

***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 students with deafness or student with blindness.

For more information on referral to the California School for the Blind for additional assessment, please

see the section titled, "State Special Schools and Services".

***Multiple Disabilities (MD)***

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.

***Traumatic Brain Injury (TBI)***

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 student'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.

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

Neither the IDEA nor California law expressly require medical documentation of TBI prior to determining whether a student qualifies under the TBI eligibility category. If a parent provides the IEP team, either verbally or in writing, with information that a student has suffered a TBI, the IEP team should consider the information and determine whether the information suffices to prove the student suffers from a TBI or whether additional information is necessary. If the IEP team requires further information, such as a medical evaluation to determine whether the student is suffering from a TBI caused by external physical force or some other impairment, the district is required to provide the assessment at no cost to the parents, just as it would under any other disabling condition.

***Other Considerations with Regards to Eligibility:***

***Attention Deficit Hyperactivity Disorder (ADHD)***

A student whose educational performance is adversely affected by a suspected or diagnosed attention deficit hyperactivity disorder (ADHD) and after other documented interventions have proven unsuccessful, may meet eligibility requirements under the following categories:

- *Specific Learning Disability (SLD)* with a significant discrepancy between ability and achievement and a deficit in attention which is one of the five basic psychological processes; or
- *Emotionally Disturbed (ED)* when the lack of attention is causing a severe emotional condition so pervasive that it adversely affects educational performance; or
- *Other Health Impaired (OHI)* when ADHD is a chronic, acute health problem which causes a limited and/or heightened alertness to the educational environment and adversely impacts educational performance.



It may be beneficial for the Assessment Team to provide differential eligibility criteria (in assessment reports) to examine all three of the above criteria (SLD, ED, OHI) in order to rule-in or rule-out a category and assist the IEP team in documenting that these needs were fully explored.

***Medical Diagnosis: ADHD, Autism, Other Medical Conditions, and/or Mental Health Disorders***

Eligibility for special education and medical diagnosis are two different entities:

- Educational eligibility allows a student to access IDEA services and is determined by a school-based IEP team after school-based assessments are conducted.
- Medical diagnosis is a process conducted by a doctor or team of doctors to determine a medical need exists, which can include either a physical or a mental health disorder.

There is no requirement for medical documentation from a doctor in order for a student to become eligible for or continue to receive special education services, unless the IEP team deems it necessary.

If an IEP team suspects ADHD, autism, other medical conditions, and/or mental health disorders may be impacting a student's learning, the team should conduct a school-based assessment to look at the ways in which the suspected disability is manifesting at school and impacting the student's ability to learn.

In extremely rare circumstances, an IEP team may determine that additional medical documentation is required. If the school deems a medical diagnosis necessary to determine special education eligibility, the school would be liable to provide access to the medical diagnosis from the doctor along with responsible for the costs of the doctor's visits.

In order to access special education services, a student must have an assessment for special education conducted to examine how the student's learning is impacted by the disability. A doctor's recommendation, report, prescription, or letter is not sufficient to determine eligibility, but must be taken into account by the IEP team.

***Accessing Related Services***

In order for a student to access any related services, they must have an evaluation conducted by the appropriately credentialed specialist. The evaluation/assessment must identify that the student qualifies for the related service and the report must outline areas of need. The IEP team will then meet, discuss the assessment results, and develop present levels from the assessments results. The student's needs will be outlined in the present levels and those needs will drive goals and services. The goals should have baseline data to indicate present level of functioning. Services and goals should be updated at each annual IEP and re-evaluated at each triennial IEP. Should a service provider wish to exit a student from a related service, they should complete a full reevaluation to provide the IEP team with documentation that the related service is no longer necessary.



## ANNUAL REVIEW AND RE-EVALUATION

### ***Annual Review***

The Individualized Educational Program (IEP) shall be scheduled for review by an IEP team at least once a year (determined by the month/day of the initial or annual IEP).

For students in residential placements, the case manager must conduct quarterly face-to-face meetings at the residential facility with the student to monitor the level of care and supervision and the implementation of the IEP accordance with state law.

For students placed in a community treatment facility, regular evaluations are necessary in order to determine continuing student needs and appropriate placement in the least restrictive environment.

In addition, a parent may request that an IEP review be conducted at any time. When the LEA/district receives such a request (preferably in writing), an IEP meeting must be held within 30 days.

It is necessary to hold an IEP meeting if the student is not making sufficient progress towards goals and objectives. Parents and members of the IEP team must be notified by established notification procedures. The IEP team may:

- Modify the IEP or program, including the provision of related services and other support services.
- Discuss appropriateness of current goals and modify as appropriate based on data and input from members of the IEP team.
- Review and discuss the appropriateness of the current educational program and/or placement.

### ***Re-Evaluation (Triennial Reviews)***

According to CFR Title 34 § 300.304, a reassessment of the pupil shall be conducted at least every three years or more frequently, if conditions warrant. As part of this re-evaluation, the IEP team shall review existing evaluation data, including evaluations and information provided by the parents of the student, current classroom-based assessments and observations, and teacher and related service providers' observations.

If an assessment is warranted for a triennial evaluation, then an assessment plan will need to be completed and sent to the parent for signature. The procedures for completing an assessment plan are detailed in the "Assessment Plan" section of this Procedural Guide.

The triennial evaluation process is explained in the section entitled "Assessment, Test Selection and Reports" in this Procedural Guide.

As part of the triennial evaluation process, if the student qualifies under Specific Learning Disability (SLD) the psychologist must also complete the "SLD, page 1" (listed in each student's future IEP in SEIS) during the IEP and signatures on this page must be obtained.

### ***Review of Records vs. Complete Re-Evaluation***

The IEP team must identify what additional information, if any, is needed to establish:

- The present levels of performance.
- The educational needs of the student.
- Whether the student:
  - Continues to have a disability.
  - Continues to need special education and related services.
  - Requires any additions or modifications to the educational program in order to meet his/her annual goals and participate in the general curriculum.

The form entitled “Triennial Re-eval”, located in the future IEP record in SEIS, may assist in documenting the decision making process for this determination.

According to EC§ 56381 (g), a formal IEP meeting is not required to make the decision on whether additional assessment is necessary, unless requested by the parent, or agreement can’t be reached.

A reassessment of the pupil shall be conducted if the LEA/district determines that the educational or related service needs, including improved academic achievement and functional performance of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment.

If the team agrees to a review of records, the Assessment Plan should reflect this decision and a Prior Written Notice should be provided to confirm the decision with parents.

Assessment is required in the following situations:

- Upon parent request (document on assessment plan) (EC § 56381(a))
- When dismissal from special education is being considered (EC § 56381(h))
- If the student has displayed inconsistencies in cognitive assessment results as indicated by two prior psycho-educational assessments

### ***Circumstances When Re-Evaluations May Be Necessary***

The following circumstances are examples of conditions warranting more frequent re-evaluation:

- If a substantial change has been observed in the student’s academic performance or disabling condition.
- If the IEP team suspects that the student has an additional area of eligibility for Special Education or needs that have not been previously assessed/accurately assessed.
- A request for change in placement may trigger a re-evaluation, particularly when the new placement is more restrictive. This is suggested, but not required by IDEA. Assessment prior to a placement change will ensure that the student’s eligibility is accurate, that appropriate needs have been defined via past assessments, and that supports, goals and services reflect identified needs.
- Re-evaluation is required prior to exiting a student from continued Special Education services:
  - If an LEA/district believes that a student no longer requires special education or related services, the student must be re-evaluated in all areas of suspected disability. The district

may exit the child from special education if, after a comprehensive evaluation, it is determined that the student does not require Special Education and/or related services to obtain meaningful educational benefit. Related services include speech, occupational therapy, counseling, behavioral supports, adapted P.E, etc.



## CURRICULUM ADAPTATIONS

### ***General Guidelines***

Curriculum adaptations include accommodations, modifications, and supports that allow a child with a disability access to the general curriculum and assessments. LEAs/districts are responsible for ensuring that each teacher and provider is informed of his or her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP (34CFR 300.342 (b)(3)).

### ***What are accommodations?***

Accommodations are adaptations that enable a student with a disability to participate in educational programming and complete school work or tests with greater ease and success. Accommodations DO NOT fundamentally alter the curriculum or lower expectations or standards in instructional level, content or performance criteria. Accommodations are changes made to the curriculum in order to provide equal access to learning and equal opportunity to demonstrate what is known.

### ***What are modifications?***

Modifications are adaptations that provide a student with meaningful and productive learning experiences based on individual needs and abilities. Modifications DO fundamentally alter the curriculum or lower expectations or standards, in instructional level, content or performance criteria to meet the student's needs.

### ***Adaptations to Assessments***

Accommodations and modifications should not simply be applied at the time of testing as a means of support. In order to justify the use of accommodations/modifications during testing, a student should also have access to the needed supports during instruction in the classroom.

### ***Grading when adaptations have been made to the curriculum***

Because accommodations do not fundamentally alter the curriculum, student's grade should not reflect that accommodations have been made. Accommodations provide students with disabilities an equal opportunity to participate in the general education curriculum.

If modifications have been made to the curriculum of any course, it is important that the student's grade reflect the student's achievement in the modified curriculum, as long as modified grades are available to all students. However, any modifications to programming, instruction, and grading must be documented in the student's IEP and be directly related to the student's disability. To automatically give modified grades to all special education students would be discriminatory and potentially violate Section 504 of the Rehabilitation Act of 1973.

### ***How to determine the appropriate adaptations to curriculum***

The IEP team may use the *Nine Types of Curriculum Adaptations* (Diana Browning Wright, Teaching and Learning, 2005) matrix to determine the most appropriate adaptations required for a student with a

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disability to gain access to the general curriculum. Once the team has agreed upon the necessary adaptations, they need to be shared with teachers and service providers to ensure that the accommodations, modifications, and supports written into the child's IEP are being implemented.

### ***Nine Types of Curriculum Adaptations***

<p style="text-align: center;"><b>• * Quantity</b></p> <p>Adapt the number of items that the learner is expected to learn or number of activities student will complete prior to assessment for mastery.</p> <p><i>For example:</i> Reduce the number of social studies terms a learner must learn at any one time. Add more practice activities or worksheets.</p>	<p style="text-align: center;"><b>* Time</b></p> <p>Adapt the time allotted and allowed for learning, task completion, or testing.</p> <p><i>For example:</i> Individualize a timeline for completing a task; pace learning differently (increase or decrease) for some learners.</p>	<p style="text-align: center;"><b>* Level of Support</b></p> <p>Increase the amount of personal assistance to keep the student on task or to reinforce or prompt use of specific skills. Enhance adult-student relationship; use physical space and environmental structure.</p> <p><i>For example:</i> Assign peer buddies, teaching assistants, peer tutors, or cross-age tutors. Specify how to interact with the student or how to structure the environment.</p>
<p style="text-align: center;"><b>* Input</b></p> <p>Adapt the way instruction is delivered to the learner.</p> <p><i>For example:</i> Use different visual aids, enlarge text, plan more concrete examples, and provide hands-on activities, place students in cooperative groups, pre-teach key concepts or terms before the lesson.</p>	<p style="text-align: center;"><b>• * Difficulty</b></p> <p>Adapt the skill level, problem type, or the rules on how the learner may approach the work.</p> <p><i>For example:</i> Allow the use of a calculator to figure math problems; simplify task directions; change rules to accommodate learner needs.</p>	<p style="text-align: center;"><b>* Output</b></p> <p>Adapt how the student can respond to instruction.</p> <p><i>For example:</i> Instead of answering questions in writing, allow a verbal response, use a communication book for some students, allow students to show knowledge with hands on materials.</p>
<p style="text-align: center;"><b>* Participation</b></p> <p>Adapt the extent to which a learner is actively involved in the task.</p> <p><i>For example:</i> In geography, have a student hold the globe, while others point out locations. Ask the student to lead a group. Have the student turn the pages while sitting on your lap (kindergarten).</p>	<p style="text-align: center;"><b>• Alternate Goals</b></p> <p>Adapt the goals or outcome expectations while using the same materials. When routinely utilized, this is only for students with moderate to severe disabilities.</p> <p><i>For example:</i> In a social studies lesson, expect a student to be able to locate the colors of the states on a map, while other students learn to locate each state and name the capital.</p>	<p style="text-align: center;"><b>• Substitute Curriculum</b></p> <p>Provide different instruction and materials to meet a learner's individual goals. When routinely utilized, this is only for students with moderate to severe disabilities.</p> <p><i>For example:</i> During a language lesson a student is learning toileting skills with an aide.</p>
<p><b>* This adaptation is an accommodation if the student can demonstrate mastery of the standard on an assessment.</b> The key concept is: Will the student ultimately master the same material but demonstrate that mastery in alternate ways or with alternate supports? If standards are not fundamentally or substantially altered, then this adaptation is an accommodation to a learning or performance difference.</p> <p><b>• This adaptation is a modification if the student will not demonstrate mastery of the standard on an assessment.</b> If routinely utilized, these adaptations are modifications and require individualized goals and assessment.</p>		
<p><small>Substantially altered by Diana Browning Wright with permission from Jeff Sprague, Ph.D. from an original by DeSchenes, C., Ebeling, D., &amp; Sprague, J. (1994). Adapting Curriculum &amp; Instruction in Inclusive Classrooms: A Teachers Desk Reference. ISDDCSCI Publication.</small></p> <p><b>Diana Browning Wright, <i>Teaching &amp; Learning 2005</i></b></p>		





## PROMOTION AND RETENTION OF STUDENTS WITH DISABILITIES

### *Why Retention?*

A student may be recommended for retention in their current grade by a parent, teacher or administrator for numerous reasons including a failure to meet grade level promotion criteria, concerns regarding developmental maturity, behavioral challenges, or extended periods of absence. Prior to making a final determination it is essential to carefully consider the student's individual needs, previous and future opportunities for support, and the scope of potential academic, social and emotional outcomes the student may experience as a result of retention. In order to make well-informed student-centered decisions, school team members must also remain knowledgeable of research regarding retention outcomes for students.

There are additional crucial considerations when making retention decisions for students with exceptional needs for whom an Individualized Education Plan (IEP) has been developed. Those considerations, as well as general information regarding promotion criteria, retention research outcomes, and alternatives to retention will be provided in this section.

### *Research Related to Retention*

Retention research consistently indicates negative implications for students at all grade levels and into early adulthood. Currently, there is no empirical evidence that repeating a grade yields a positive effect on long-term academic achievement or social-emotional adjustment. Although initial achievement gains may occur, research suggests that gains decline within two to three years after which retained students perform the same or worse than similar groups of promoted students. Additionally, students who have been retained may experience: increased behavioral problems, lower self-esteem, decreased attendance, and lower academic outcomes in reading, written language and math<sup>2</sup>.

The National Association of School Psychologists (NASP)<sup>3</sup> proposes multiple explanations for the negative effects associated with grade retention. Potential explanations include: the absence of specific remedial strategies to enhance social or cognitive competence, a failure to address risk factors, and/or stigmatizing consequences of being over-age for one's grade.

At the secondary level, a consistently high correlation between retention and drop-out rates has been found even when controlling for academic achievement levels, as well as increased risks of health-compromising behaviors. Lastly, longitudinal research provides evidence that retained students have a greater probability of poorer educational and employment outcomes during late adolescence and early adulthood.

Conversely, NASP indicates that retention is less likely to yield negative effects for students who have difficulty in school due to a lack of opportunity for instruction rather than lack of ability. This effect is only the case if the student is no more than one year older than his or her classmates and the reason for the lack of opportunity (i.e. attendance, health or mobility problems) has been resolved. Whether retained or promoted, it is strongly recommended that students receive specific remediation to address skill or behavioral deficits and encourage positive social, emotional and academic outcomes.



### ***Promotion Criteria for Students with Disabilities***

Local governing board adopted standards for promotion apply to students with disabilities; however, IEP teams may choose to recommend individualized promotion standards for students with significant disabilities for whom substantial modifications to the general curriculum are made and defined in the student's IEP. The Individuals with Disabilities Education Act (IDEA) requires that the IEP specify any alternative promotion standards or requirements which may be based on the student's progress on IEP goals.

### ***Retention of Students with Disabilities***

If a student with exceptional needs is recommended for retention, it is suggested that the IEP team meet to thoroughly consider the impact of the disability on the student's ability to access general curriculum and ensure that the student has been provided appropriate services, accommodations and/or modifications with fidelity. IDEA does not specifically address standards for retention or promotion of students with disabilities, therefore the decision to retain is not considered an IEP placement decision. That said, the decision to retain a student with an IEP should be carefully and cautiously considered. Input may be provided by IEP team members; however the final determination is often made by a school administrator in consultation with the parent(s).

According to the California Department of Education (CDE)<sup>1</sup>, 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. Additionally, documentation of these discussions should be included in IEP notes:

- Does the current IEP address the student's academic, linguistic, social, emotional, and behavioral needs?
- Are accommodations and modifications as indicated 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?
- Were the linguistic needs of English Learners appropriately identified?
- Did the student receive all the services identified in the IEP?
- Was the student's promotion standard appropriate and clarified in the IEP?
- Was Extended School Year (ESY) considered?

If the IEP team answered NO to any of the above questions, it is recommended that the student not be retained due to the district/LEA's failure to implement the IEP. The IEP may be amended to reflect any required changes in service needed to allow the student to receive educational benefit. It may also be appropriate to provide supplemental educational services. Supplemental educational services are not to be provided during the regular instructional day and may be offered during the summer, before school, after school, on Saturdays, or during intersession, or in a combination thereof.

If all questions above were answered YES, yet the student failed to meet board approved or IEP determined promotion criteria, it is also recommended that the student participate in supplemental educational services developed by the local board pursuant to Education Code 37252.8. The IEP team should ensure that all supports and related services required for the student to benefit from supplemental instruction are clearly documented. If the student still does not meet the board-adopted or individualized promotion standards after receiving supplemental instruction, an IEP meeting should be convened to determine if additional assessment is required in order to develop an appropriate plan

to support student progress<sup>1</sup>. Team members may also wish to include a statement in the IEP notes to document their recommendation for or against retention based on needs related to the student's disability. However, final determination regarding retention will be the decision of the general education administrator in consultation with the parent(s).

Although a parent is unable to request a due process hearing to object retention or promotion decisions, they may choose to file for due process if a denial of FAPE had a direct impact upon the retention decision. For example, if a student did not receive the IEP services designed to assist in meeting the promotion standards, the student's parents could challenge the lack of services as a denial of FAPE. Therefore, careful review of the student's IEP and access to services which provide meaningful educational benefit is essential when a recommendation for retention is made.

Detailed information on pupil promotion, retention and related supplemental instruction can be found on the CDE Pupil Promotion & Retention Web page<sup>1</sup>.

### ***Alternatives to Retention***

Schools are encouraged to consider a wide array of evidence-based strategies in lieu of retention. Specifically, NASP recommends that educational professionals<sup>2</sup>:

- Encourage parents' involvement in their children's schools and education through frequent contact with teachers, supervision of homework, etc.
- Adopt age-appropriate, culturally sensitive and linguistically appropriate instructional strategies that accelerate progress in all classroom settings.
- Incorporate systematic assessment strategies, including continuous progress monitoring and formative evaluation, to enable ongoing modification of instructional efforts.
- Provide effective early intervention academic and mental health programs.
- Consider development of a school-wide Multi-Tiered System of Supports (MTSS) to bolster both academic and behavioral progress for all students.
- Use student support teams to assess and identify specific learning or behavior problems, design interventions to address those problems, and evaluate the efficacy of those interventions regularly.
- Use effective behavior management and cognitive behavior modification strategies to reduce classroom behavior problems.
- Provide appropriate education services for children with educational disabilities, including collaboration between regular, remedial, and special education professionals.
- Offer extended year, extended day, and summer programs that focus on facilitating the development of academic skills as needed.
- Implement tutoring and mentoring programs with peer, cross-age, or adult tutors.
- Incorporate comprehensive school-wide programs to promote the psychosocial and academic skills of all students.

#### Resources:

<sup>1</sup> California Department of Education (2015). *Promotion, Retention and Grading FAQ*. <http://www.cde.ca.gov/>

<sup>2</sup> National Association of School Psychologists. Jimerson, Shane R. PhD, NCSP and Sarah M. Woehr, & Amber M. Kaufman, MA (2007). *Grade Retention and Promotion: Information for Parents*

<sup>3</sup> National Association of School Psychologists (2003). *Position Statement on Student Grade Retention and Social Promotion*



## PARENT PARTICIPATION

Parents are an integral part of the Individualized Education Program (IEP) development process. IDEA makes parents mandatory members of the IEP team and outlines a number of procedural safeguards to ensure the full and meaningful participation of parents in the IEP process. Each LEA/district must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting and are afforded the opportunity to participate.

### ***Definition of a Parent under IDEA***

The 2006 IDEA Part B regulations, (34 CFR §300.30) clarify that a parent is:

- A biological or adoptive parent of a child.
- A foster parent--unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent.
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the state if the child is a ward of the state).
- 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.
- A surrogate parent who has been appointed in accordance with when a parent cannot be identified and the school district cannot discover the whereabouts of a parent.
- A surrogate parent may also be appointed if the child is an unaccompanied homeless youth, an adjudicated dependent or ward of the court under the state Welfare and Institution Code, and is referred to special education or already has an IEP. For additional information please see the section of this Procedural Guide titled, "Surrogate Parent."

### ***Divorced Parents***

When the parents of a child with a disability are divorced, the parental rights under the IDEA apply to both parents, unless a court order states otherwise. An LEA/district should obtain a copy of court decrees that might affect the parent's right to participate or make educational decisions for the child, and to ensure participation of both parents, if appropriate.

### ***Notice of Meeting***

Under IDEA, to ensure that one or both of the parents are present at the IEP Team meeting, LEAs/districts must:

- A. Provide notice of an IEP meeting to parents early enough to ensure that they have the opportunity to attend the meeting. (for further information, see "Meeting Notice" section of the Procedural Guide)
- B. Schedule the meeting at a mutually agreed upon time and location.

The notice of meeting must:

- A. Indicate the purpose, time, and location of the meeting and who will be in attendance (note: personnel should be listed by title, not actual name);
- B. Inform the parents of the participation of other individuals on the IEP Team who have knowledge or special expertise about the child;
- C. For a child with a disability, beginning no later than the first IEP to be in effect when the child turns 16 years of age (or younger if determined appropriate by the IEP Team), the notice also must:
  - Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;
  - Indicate that the LEA/district will invite the student; and
  - Identify any other agency that will be invited to send a representative.

**Note:** IDEA does not require a specific timeline requirement for parental notice of an IEP meeting. Ten school days is a customary period, based on a standard of reasonableness.

### ***Meaningful Participation of Parents***

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to:

- A. The identification, evaluation, and educational placement of the child; and
- B. The provision of a free and appropriate education (FAPE) to the child.

If parent states in writing that they decline to participate in a meeting in which a decision is to be made relating to the educational placement of their child, the LEA/district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

LEAs/districts should consider the parents' concerns and suggestions and, to the extent appropriate, incorporate them into the IEP. LEAs/districts should consider the results of any independent educational evaluations and any information and reports submitted by the parents, and document these in the IEP.

### ***Use of interpreters or other action, as appropriate***

The LEA/district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. It is advised that interpreters not serve dual roles on the IEP Team and that interpreters not be members of the IEP Team.

### ***Parent Copy of Child's IEP***

The LEA/district must provide the parent a copy of the child's IEP at no cost to the parent.

***Conducting an IEP Team Meeting Without a Parent in Attendance***

A meeting may be conducted without a parent in attendance only after multiple attempts by the LEA/district to schedule an IEP, and if the parent refuses to attend and communicates refusal to participate in the IEP process. The LEA/district should contact a SELPA Program Specialist for guidance.

The LEA/district should continue attempts to include the parent. The LEA/district should keep a record of attempts to arrange a mutually agreed on time and place, and offers to solicit parent participation, such as:

- Detailed records of telephone calls made or attempted and the results of those calls.
- Copies of correspondence sent to the parents and any responses received.
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.



## CONSERVATORSHIP

A conservatorship is granted in a court proceeding where a superior court judge appoints a responsible person (“conservator”) to care for another adult (“conservatee”) who cannot care for themselves and/or their finances.

A limited conservatorship is specifically available for the benefit of adults with developmental disabilities. A limited conservator has the authority to do only those things that are granted at the time of appointment by the local superior court.

A limited conservator (usually a family member) may have the authority to:

- Decide where the conservatee will live.
- Manage the conservatee’s social affairs.
- Manage the conservatee’s financial affairs.
- Examine the conservatee’s confidential records and papers.
- Sign a contract for the conservatee.
- Give or withhold consent for medical treatments.
- Make decisions regarding education and vocational training.
- Give or withhold consent to the conservatee’s marriage.
- Control the conservatee’s sexual contacts and relationships.

After the filing of a petition for limited conservatorship with the Superior Court of the county in which the proposed conservatee lives, a proposed limited conservatee is assessed at a Regional Center to determine if she is indeed developmentally disabled. The Regional Center submits a written report of its findings and recommendations in regard to the conservatorship to the court. While the Regional Center report is not binding, it provides the court with guidance about the appropriateness of the conservatorship. Additionally, the court appoints an attorney and an investigator to represent the disabled adult as a means to make certain that the proposed conservatorship is of merit. Note: a District may ask to see a copy of the court documents to ensure compliance with court orders.

When a student with disabilities reaches the age of 18 the local educational agency shall provide a notice of procedural safeguards to both the student and the parents of the student. All other rights accorded to a parent shall transfer to the student with disabilities. The local educational agency shall notify the individual and the parent of the transfer of rights prior to the student’s 17th birthday, pursuant to CA Education Code. The parent of a student who has been determined to be incompetent under state law may seek conservatorship of the student.



## **“AGE OUT” TIMELINES**

Eligibility for special education services under the IDEA generally terminates on the date the student graduates with a regular high school diploma, or when the student reaches her 22nd birthday, whichever comes first. A student's receipt of an alternative diploma or a certificate of completion does not terminate her right to receive special education and related services under the IDEA.

Students with disabilities who have not received a regular high school diploma and are between the ages of 19 and 21 years, inclusive, must be enrolled in or eligible for a special education program prior to her 19th birthday in order to continue receiving special education services. Any student who becomes 22 years of age during the months of January to June, inclusive, while participating in a special education program may continue her participation in the program for the remainder of the current fiscal year, including any extended school year (ESY) program for students with disabilities.

Any student age 21 eligible to participate in a special education program shall not be allowed to begin a new fiscal year in a program if she becomes 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 her individualized education program in a term that extends into the new fiscal year, then the student may complete that term.

Any student who becomes 22 years of age during the months of October, November, or December while participating in a special education program shall be terminated from the program on December 31 of the current fiscal year (the fiscal year runs from July 1 to June 30), unless the student would otherwise complete her individualized education program at the end of the current fiscal year. For example, if a student has a 22<sup>nd</sup> birthday in November, but is on track to receive a high school diploma in June of the same fiscal year, he or she would not continue to receive services past June, which is the end of that fiscal year.



## **SURROGATE PARENT PROCEDURES**

### ***Definition of a Parent under IDEA***

The 2006 IDEA Part B regulations, (34 CFR §300.30) clarify that a parent is:

- A biological or adoptive parent of a child.
- A foster parent--unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent.
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the state if the child is a ward of the state).
- 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.
- A surrogate parent who has been appointed in accordance with 34 CFR 300.519 or 20 USC 1439 (a) (5) or when a parent cannot be identified and the school district cannot discover the whereabouts of a parent.

### ***Definition of a Surrogate Parent***

A "surrogate parent" is an adult appointed by a Local Education Agency (LEA)/district or Special Education Local Plan Area (SELPA) to represent a pupil aged 0-21, for the purpose of their Individualized Education Program (IEP) to ensure that the rights of the pupil to a Free Appropriate Public Education (FAPE) are protected, when the biological parents, or the parents as defined by IDEA, cannot be found, or the courts have removed their educational rights and those rights have not been assigned to another.

### ***When to Appoint a Surrogate Parent***

An LEA/district shall appoint a surrogate parent for a child in accordance with Section 300.519 of Title 34 of the Code of Federal Regulation (CFR) under one or more of the following circumstances:

- No parent (as defined in §300.30) can be identified;
- The public agency, after reasonable efforts, cannot locate a parent;
- The child is a ward of the state under the laws of the State or the adult student is a ward of the court and has been found to be incompetent;
- The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)); or
- The child is referred for an initial Special Education evaluation.

A child may need an interim surrogate parent when he/she is initially placed in a SELPA, in order to meet the requirements for an immediate educational placement, while the status or location of the child's parent is researched. These children may be living in:

- Foster home
- Private group home
- State hospitals and other health facilities Correctional facilities



- Residential treatment centers

Reasonable efforts to contact parents include, but are not limited to, the following measures:

- Documented phone calls
- Letters, certified letters with return receipts
- Documented visits to the parents' last known address
- The placement of an agency notice of a court order that terminates parents' rights

If the efforts above fail to locate the parent or to obtain parent status notification from the placing agency, an interim surrogate parent appointment may be necessary. A surrogate parent shall be appointed not more than 30 days after the LEA/district determines that a student needs a surrogate parent, California Government Code Section 7579.5 (a). This appointment will facilitate timely IEP review or establish consent for special education assessment, or both.

### ***When a Surrogate Parent is Not Needed***

The following are instances in which a surrogate parent does not need to be appointed.

- The parent's educational rights pertaining to the student have not been removed by a court.
- The parent maintains educational rights and has appointed their own educational representatives for their child.
- A court has appointed a guardian for the student.
- The student was voluntarily placed in a residential facility.
- The student is 18 years of age, or older, and he/she does not have a conservator or guardian, regardless of the individual's functional level.
- The student is an emancipated minor.
- The student is married.
- The student has a legal guardian.
- The student has someone "acting" as the child's parent such as a grandparent or other family member and the child resides with this person and is defined as a "parent" according to 34 CFR §300.30. For a complete description of the definition of a parent, please see above.

### ***Who to Appoint as a Surrogate Parent***

Individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers or school district administrators, social workers, and probation officers who are not employees of the State Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child. A public agency authorized to appoint a surrogate parent under this section may select a person who is an employee of a nonpublic agency that only provides non-educational care for the child. An individual who would have a conflict of interest, for the purposes of this section, means a person having any interest that might restrict or bias his or her ability to advocate for all of the services required to ensure that student has a free appropriate public education.

All individuals who are interested in serving as a surrogate parent shall be fingerprinted, trained, and provide documentation of a clear tuberculosis (TB) test prior to being appointed.

A person who otherwise qualifies to be a surrogate parent under this section is not an employee of the LEA/district solely because he or she is paid by the LEA/district to serve as a surrogate parent.

When appointing a surrogate parent, the LEA/district shall as a first preference, select a relative caretaker, foster parent, or Court-Appointed Special Advocate (CASA), if any of these individuals exists and is willing and able to serve. If none of these individuals are willing or able to act as a surrogate parent, the LEA/district shall select the surrogate parent. If the child is moved from the home of the relative-caretaker or foster parent who has been appointed as a surrogate parent, the LEA/district shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

### ***Responsibilities/Expectations of a Surrogate Parent***

The surrogate parent shall serve as the child's parent for the purpose of the IEP process and shall have the rights relative to the child's education that a parent has under Title 20 (Commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to special education and related services, including:

- Identification
- Assessment
- Instructional Planning and Development of the IEP
- Educational Placement
- Reviewing and Revising the IEP
- Other matters related to a free and appropriate public education (FAPE)

The surrogate parent serves as the child's parent and has parental rights relative to the child's education under Title 20 Section 1400 and part 300 of the Code of Federal Regulation. The surrogate parent should be culturally sensitive to the needs of the child.

### ***Monitoring Surrogate Parents***

If a surrogate parent is not performing the duties in an appropriate manner or if the surrogate has a conflict of interest then the LEA/district shall terminate the appointment and notify the SELPA of the concerns. The surrogate parent may represent the child until:

- The child is no longer in need of special education;
- The student reaches the age of majority;
  - The age of majority is the legally defined age at which a person is considered an adult, with all the attendant rights and responsibilities of adulthood.
- The biological parent is found, or the court restores educational rights to the parent.

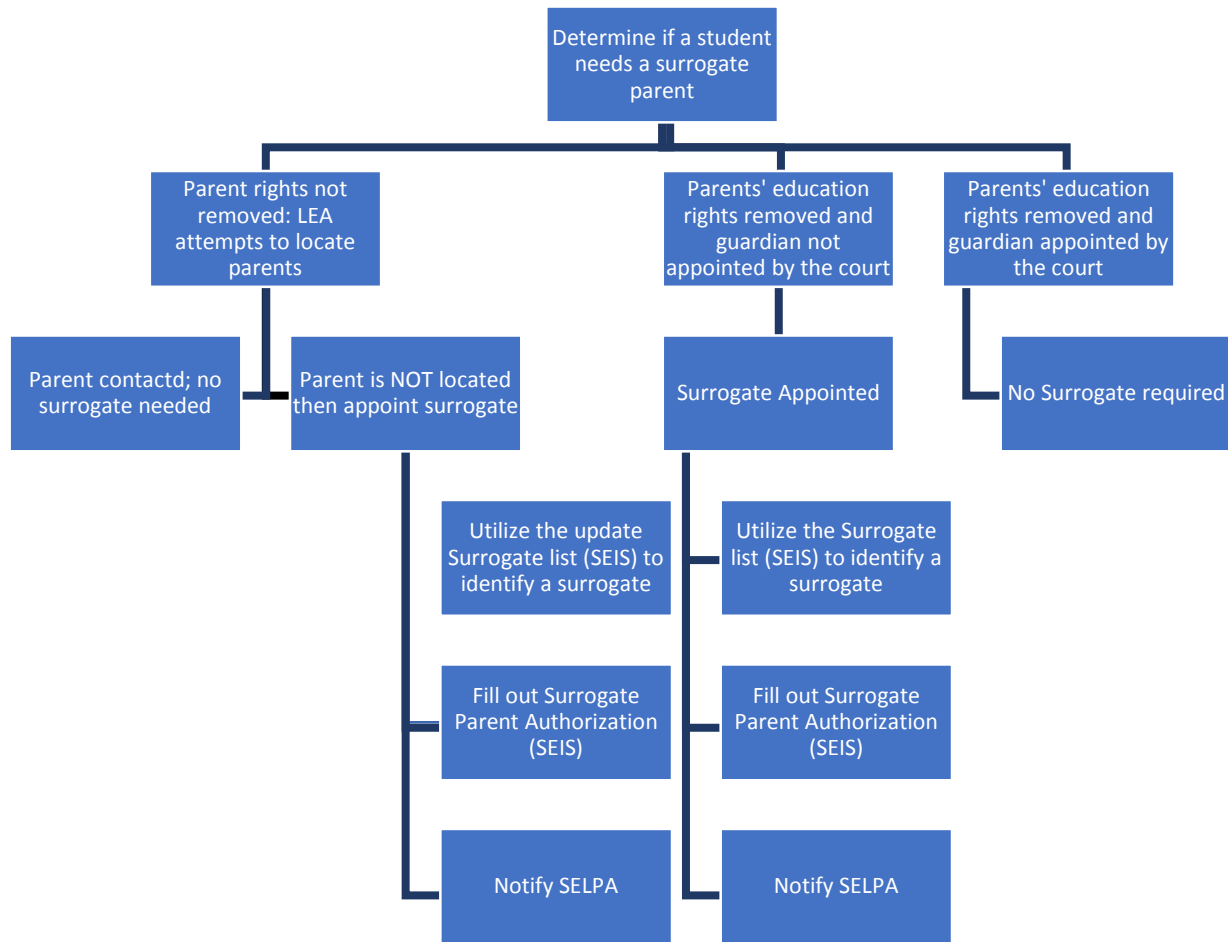
The LEA/district should inform the SELPA when a student is in need of a surrogate parent. The SELPA should also be notified when a surrogate is no longer representing a student.

***Surrogate Parent Safeguards***

A surrogate parent:

- Is held harmless by the State of California during execution of duties except when actions are found to be wanton, reckless or malicious.
- May inspect and have copies of all student educational records.
- Has permission to request changes when inappropriate or inaccurate information is contained in the student's records.
- Should be informed about assessment procedures, tests and all results.
- May seek an Independent Educational Evaluation (IEE).
- Shall participate fully in the planning of the student's IEP.
- Can decide if the proposed offer of FAPE is appropriate for the student by either signing or refusing to sign the IEP.
- Should receive progress reports and regular routine communications.
- May request a teacher conference, new evaluation or IEP as deemed necessary by the surrogate.
- Should be notified in writing when the school proposes any educational changes.
- May initiate due process proceedings.
- Should be informed if any due process proceedings have been initiated.
- Receives information about all other state and local agencies that provide services to special education students (California Education Code Section 56050(b)).

**SURROGATE PARENT FLOWCHART**





## PARENTAL CONSENT AND PARENTAL REVOCATION OF CONSENT

### *Parental Consent*

When the term consent or parental consent is used in IDEA, it has the same meaning as the term informed written consent. The following indicates that the parent has been fully informed regarding the action of the LEA/district for which parental consent is being requested:

- The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication.
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

### *Revocation of Consent*

A parent may revoke consent for continued provision of special education and related services at any time. The parent must provide a written statement revoking consent for special education and related services. Upon parent request, LEAs/districts may provide assistance in writing the revocation statement. A statement of revocation of consent must include the date, student's name and parent's signature. Revocation of consent applies to the entire IEP, not to just individual sections of the IEP.

A parent may also revoke consent for assessment after an assessment plan has been signed. A Prior Written Notice (PWN) must be sent once the revocation statement for assessment has been received.

Upon revocation of consent for continued special education and related services, the LEA/district:

- May not continue to provide special education and related services to the student, and must provide **Prior Written Notice (PWN)** before ceasing services that explains the change in the educational program that will result from the parents' revocation of consent. The provision of this notice gives parents the information and time to consider fully the ramifications of the revocation of consent. The PWN should include a copy of parental rights.
- May not use mediation or due process procedures in order to obtain a ruling that services may be provided to the student.
- Will not be considered to be in violation of the requirement to make Free and Appropriate Public Education (FAPE) available to the student because of a failure to provide further services.
- Is not required to convene an IEP team meeting or develop an IEP for the student.

Once an LEA/district has properly discontinued the provision of special education and related services, the student becomes a general education student, and the LEA/district may place the student in accordance with the placement procedures of the general education students. As with all general education students, if the student is not progressing in the general education setting or adequately accessing the general education curriculum, the LEA/district has the responsibility to fulfill Child Find requirements. Schools may also wish to consider evaluating the student for a 504 Plan.

If a parent changes his/her mind and later requests that the child be re-enrolled in special education, the LEA/district must treat this request as an initial evaluation. The LEA/district will need to do an initial evaluation for the student and determine eligibility before developing a new IEP. A student who reaches the age of majority and retains their educational rights may revoke consent of his/her special education and related services; the district must provide prior written notice to the adult student as noted above.

***When Parents Do Not Agree***

In the case of two parents in conflict, the written consent of only one parent with educational decision-making authority is necessary to revoke consent for a child's receipt of special education and related services. A Prior Written Notice should be sent to both parents.

As long as the parent has the legal authority to make educational decisions for the child, the school district must accept the parent's written revocation of consent. A subsequent disagreement by the other parent does not overturn the revocation. Further, a subsequent request for special education services does not overturn the revocation (unless the revocation is made by the parent who initiated the original revocation) and would initiate the initial assessment process.

**Note:** Neither the school district nor the objecting parent can use IDEA due process procedures to overcome a parent's written revocation of consent. The IDEA provides that a parent may file a due process complaint over actions by a public agency and not actions by another parent.



## AGE OF MAJORITY

Age of majority is a term used to describe the time in life after which a person is legally no longer considered a child and becomes an adult in the eyes of the law. In California, the legal age of majority is 18 years.

When a child with a disability turns 18, all rights under state and federal special education law transfer from the parent(s) to the adult student (except in the case of a child with a disability who has been determined to be incompetent under California Law). At this point the student becomes responsible for all educational, medical, financial and legal decisions on their own behalf. This transfer of rights also applies to those students incarcerated in an adult or juvenile federal, state, regional or local correctional institution.

Per IDEA, an LEA/district must inform the parent(s) and special education student **before** the student turns 17 that all rights will transfer to the student on his or her 18th birthday. The Transition Plan section of the IEP includes a statement that must be filled out to document the discussion with the parent and student regarding the transfer of rights upon reaching the age of majority. This conversation typically occurs during an IEP meeting prior to the student turning 17 and should be documented in the notes of the IEP meeting. Both the student and the parent must be present at the meeting for the discussion to ensure all questions are answered, and that the student and parent clearly understand what is included in the transfer of rights.



## INTERIM PLACEMENT

Whenever a student in special education transfers from one LEA/district to another, the LEA/district receiving the student shall:

- Request records from past LEA/district.
- If the previous LEA/district did not use SEIS, manually enter student information to create a new student record (SELPA minimum requirement is CASEMIS A&B tabs).
- Complete the “Interim Placement Form” (located in the SEIS Document Library) and give it to parents. Obtain parental signature. The special education services will begin on the first day of attendance. The LEA/district will provide the student with a Free Appropriate Public Education (FAPE), including services comparable to those described in the previously approved IEP.
- Current information, records, and reports from the prior LEA/district will be reviewed and utilized to develop an Interim IEP. Prior to the Interim (30 day) IEP meeting, the LEA/district will determine if any additional assessment is required in order to determine student’s educational needs and make program recommendations. If additional assessment is required, an assessment plan will be developed and parent signature obtained.
- An Interim (30 day) IEP meeting is held to review the placement/offer of FAPE (including review of goals, accommodations & modifications, services and educational environment, etc.) within 30 days of the student’s first day of instruction.
- At this Interim (30 day) IEP meeting the LEA/district will adopt the previously approved IEP or develop and implement a new IEP based on updated assessment results and/or review of records.

Additional resources (including easy-to-follow flow charts) on Interim Placements are available in the SEIS Document Library (under “Newly Joining Partners: Change of SELPA for schools that already existed”).





## HOME-HOSPITAL INSTRUCTION, HOME INSTRUCTION AND INDEPENDENT STUDY

Ideally, all students would be educated with their peers within the school setting to the maximum extent possible. However, in the incidence that a student is unable to attend school due to a medical disability such as illness or hospitalization, an LEA/district may implement one of the following programs to meet the student's general and/or special education needs for the duration of their absence from the school setting: *Home-Hospital Instruction, Home Instruction or Independent Study*. The purpose of this section is to outline which instructional program in the home is most appropriate based on the student's educational program and level of need.

### ***What is Independent Study?***

The purpose of independent study is to provide an alternative education program that is available to all students across all grade levels. Independent study programs are voluntary and use alternative instructional strategies that respond to individual student needs and learning styles. Instruction may be provided in the home, on a school site, or virtually. While a student is participating in independent study, the LEA/district is responsible for the provision of general education as well as special education and related services as deemed appropriate by the IEP team.

Per CDE, examples of when independent study may be appropriate include students who have health problems, are traveling for a period of time, are parents, need to work, or are child actors. As a reminder, the option to take courses via independent study must be continuously voluntary. [EC Section 51747(c)(7); 5 CCR 11700(d)(2)(A)].

For students with Special Education services, Independent Study must be stipulated in the IEP and must be developed and approved prior to the placement of the student in independent study. For a student who has an IEP and wants to participate in independent study, a determination as to whether independent study is appropriate must be made within 30 days and written into the IEP. The offer of special education and related services must continue to be based on student need while enrolled in the independent study program and must not be decreased based solely on availability of student, staff and/or resources. The IEP must specify the appropriate content under the Individuals with Disabilities Education Act (IDEA) 34 Code of Federal Regulations (CFR) 300.302 including:

- The percentage of time the student will participate in independent study.
- The percentage of time to be spent in regular education, if any.
- The percentage of time the student will receive special education support.
- Discussions of the placement options and supports considered in developing an independent study program for a student with special needs.
- The academic goals and services that are unique to the needs of the special education student.
- The accommodations and related services needed to maximize access in an independent study placement.
- A plan that outlines the course of study as it relates to the independent study curriculum.

For additional information, please refer to the Independent Study Operations Manual by visiting: [www.cde.gov/sp/eo/is/isoperationsmanual.asp](http://www.cde.gov/sp/eo/is/isoperationsmanual.asp)

### ***What is Home Instruction?***

Home instruction is also referred to as *Homebound Instruction* or *Instruction in the Home* and is considered a placement on the continuum of services for special education students. If a student with an IEP is deemed unable to access their educational program due to a temporary or ongoing medical disability, the school is obligated to continue to provide a program of special education and related services to the student during that time.

Home Instruction is also an educational program option available to students with disabilities who are hospitalized for medical or psychiatric purposes or who cannot be educated in the public school setting due to significant health or behavioral needs which may not be temporary in nature.

### ***Home Instruction: Eligibility, Services and Teacher Requirements***

In order to qualify for Home Instruction, a student must have an Individualized Education Program (IEP) or Section 504 plan. Home Instruction may only be provided under the following circumstances:

- Student has been identified as having exceptional needs (IEP or 504)
- IEP team has recommended Home instruction
- IEP team recommendation is based on a medical report which:
  - Is from the student's attending physician, surgeon or psychologist;
  - States the diagnosed condition;
  - Certifies that student's condition prevents attendance in a less restrictive setting; and
  - Contains a "projected calendar date for student's return to school."
- *\*Note: As a reminder, procedures followed by the IEP team in developing an IEP for a home instruction student is the same as those followed for any other student with special education services. Therefore the IEP or 504 team decides duration and type of instruction needed to address student's unique needs (may be more than five hours per week of instruction). If Home Instruction is intended to be temporary, please include an end-date.*

Any home instruction program must be individually designed to assure that the student continues to make progress on goals and objectives. The law also requires that students have access to and make progress in the general education curriculum. Home Instruction may be provided over the summer if required to provide FAPE and may be provided in excess of five hours per week (as is the case with HHI) if required for the student to continue to progress on goals and objectives.

Equipment or technology necessary to enable the child to benefit from home instruction, to access and make progress in the general curriculum, or to ensure progress on IEP or 504 goals must be provided as part of FAPE.

Teacher providing Home Instruction shall contact student's prior teacher to determine:

- The course work to be covered;
- Books or other materials to be used; and
- Who is responsible for issuing grades and/or promoting the student?

For grades 7-12, school must determine:

- Hours earned toward course credit in each subject;
- Student's grade in each subject; and
- Who will issue credit or diploma as work is completed.

### ***Home Instruction: Credentialing***

Home Instruction services may include individual, small group, or virtual instruction and must be provided by a regular education teacher or a specialist with the appropriate teaching or related services credential. There is currently no law in California requiring a parent to be home during periods of instruction, however it may be within the best interest of the educator and student to schedule instruction while parents are home whenever possible.

### ***What is Home and Hospital Instruction?***

California state law affords all students enrolled in a public school the right to access the Home and Hospital Instruction (“HHI”) Program. The HHI Program serves students with temporary disabilities for whom it is impossible or inadvisable to attend regular classes, regardless of their disability status. For example, HHI may be appropriate when a general education student; is in the home or hospital for a temporary period due to pneumonia, a communicable disease, a broken a limb significantly impacting mobility, or is temporarily unable to attend school due to the death of loved one and subsequent emotional impact (with medical documentation of return date).

A temporary disability is defined as, “a physical, mental or emotional disability incurred while a student is enrolled in regular day classes or an alternative education program, and after which the student can reasonably be expected to return to regular day classes or the alternative education program without special intervention” (CDE HHI Program Summary website). A temporary disability does not include a disability for which a student is identified as an individual with exceptional needs pursuant to California Education Code (EC) Section 56026.

The primary outcome of HHI is to maintain a student at the student’s former level of performance while recovering from the temporary disability so as not to jeopardize the student’s future performance upon returning to a regular day class or alternative education program.

### ***Home and Hospital Instruction: Eligibility and Services***

The district where the home or hospital is located is considered the district of residence and is therefore required to provide HHI services. For example, if a student who attends a charter school in San Jose is hospitalized in Sacramento, the district in Sacramento where the hospital is located is considered the district of (temporary) residence and therefore required to provide HHI. If the student is admitted to a hospital or facility within the boundaries of the current district of residence, that district would be responsible for providing services.

If a student has a temporary disability pursuant to Education Code Section 48206.3, it is recommended that the charter school work with the district of residence to ensure that services are provided. Services are not provided over the summer or holiday breaks. Additionally, electives such as foreign languages or PE are typically not provided through HHI.

It is the primary responsibility of the parent or guardian of a student with a temporary disability to notify the LEA/district in which the student is deemed to reside of the request for Home and Hospital Instruction. In the case of a parent notifying a charter school of the request, it is recommended that the charter contact the district of residence immediately to discuss provision of general education services. Upon receiving notification of an HHI request from the parent, the district where the student resides (home or

hospital) must determine the appropriateness of HHI services within five days of the request. Determination of a temporary disability should be based on a physician's written description of the disabling condition for which the student is unable to attend school.

The school must then begin HHI services within five days of determining eligibility. Within five days of beginning such services, the district must notify the prior school district that the student is receiving HHI and the date on which HHI services began. While out of school due to a temporary disability, a student may receive individual instruction provided to the student either in the home, hospital or other residential facility. A student may receive one clock hour of instruction per calendar day of school, up to five hours per week through the district of residence HHI program.

***\*As a reminder, if a student with an IEP is unable to attend school due to a temporary medical disability, the charter school where the student is enrolled continues to be responsible for provision of special education and related services during that time. General education supports would also be provided through the Home Instruction program as indicated in the IEP. Please refer to Home Instruction section above for further information.***

### ***Home and Hospital Instruction: Credentialing***

HHI shall be provided only by teachers with valid California teaching credentials who consent to the assignment. As a reminder, there is no provision in statute that specifically addresses instructional content; however, the goal of home or hospital instruction should be maintenance of the pupil's former level of performance while recovering.

Independent Study, HHI, HI: Quick Reference			
	Independent Study	Home-Hospital	Home Instruction
<i>Brief Description</i>	The purpose of independent study is to provide an alternative education program that is available to <b>all students</b> across all grade levels.	Serves <b>general education</b> students with temporary disabilities for whom it is impossible or inadvisable to attend regular classes.	Home Instruction is considered a placement on the continuum of services for <b>special education students</b> .
<i>Eligibility</i>	Independent study programs are voluntary.  For students with Special Education services, Independent Study must be stipulated in the IEP and must be developed and approved prior to the placement of the student in independent study.	It is the primary responsibility of the parent or guardian of a student with a temporary disability to notify the LEA/district in which the student is deemed to reside of the request for Home and Hospital Instruction, or the student's presence in a qualifying hospital.  Medical documentation of need and return date is required.	In order to qualify for Home Instruction, a student must have an Individualized Education Program (IEP) or Section 504 plan.  Placement in Home Instruction program is the joint decision of the IEP team. Please refer to section above for specific eligibility requirements.
<i>Reminder for all cases</i>	If a student with an IEP is unable to attend school due to a temporary or ongoing medical disability, the charter school where the student is enrolled <b>continues to be responsible</b> for provision of special education and related services during that time.		

Independent Study, HI, HHI: Quick Reference, cont.			
	Independent Study	Home-Hospital	Home Instruction
<i>Function of General Education</i>	X	X	
<i>Function of Special Education</i>	X		X
<i>Timelines?</i>	For a student who has an IEP and wants to participate in independent study, a determination as to whether independent study is appropriate must be made within <b>30 days</b> and written into the IEP.	Upon receiving notification of an HHI request from the parent, the district where the student resides (home or hospital) must <b>determine the appropriateness of HHI services within five days of the request</b> . It is recommended that the charter school work with the district of residence to ensure that services are provided  The school must then <b>begin HHI services within five days of determining eligibility</b> . Within five days of beginning such services, the LEA/district must notify the prior LEA/district that the student is receiving HHI and the date on which HHI services began.	If a parent requests Home Instruction based on medical documentation, or if Home Instruction is deemed appropriate due to another medical or mental health need, it is recommended that the IEP team <b>respond to the request within five days</b> by offering IEP dates for scheduling and/or IEP meeting notice to participants.  Convene an IEP meeting as soon as possible to formally recommend Home Instruction, if applicable based on student need.  Services begin upon receipt of the signed IEP. Include planning for transition to return to school, if applicable. IEP timelines apply.

*For additional information, please contact your SELPA Program Specialist.*



## SCHOOL SPONSORED NONACADEMIC AND EXTRACURRICULAR ACTIVITIES AND FIELD TRIPS

### *School Sponsored Nonacademic and Extracurricular Activities*

Under both Section 504 and IDEA, LEAs/districts are responsible for providing students with disabilities equal opportunity to participate in school sponsored nonacademic services and extracurricular activities. LEAs/districts must ensure that each child with a disability is afforded an equal opportunity to participate with their nondisabled peers in school sponsored extracurricular services and activities to the maximum extent appropriate. Additionally, the LEA/district must take steps, including ensuring supplementary supports and services, generally determined by the IEP/504 team, are made available for that child in order to ensure that the child has equal access to participate in those school sponsored services and activities.

Under Section 504 an LEA/district is required to provide an individual with a qualifying disability the opportunity to benefit from the LEA/district's program equal to that of individuals without disabilities. Under Section 504 a person with a disability is one who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such impairment; or
- Is regarded as having such an impairment.

School Sponsored Nonacademic and Extracurricular Activities include, but are not limited to:

- Counseling services
- Athletics
- Transportation
- Health services
- Recreational activities
- Special interest groups, clubs, or before/after school daycare sponsored by the public agency
- Referrals to agencies that provide assistance to individuals with disabilities
- Employment of students, including both employment by the public agency and assistance in making outside employment available.

Simply because an individual is a "qualified" student with a disability does not mean that the student must be allowed to participate in any selective or competitive program offered by the LEA/district. An LEA/district that offers school sponsored extracurricular athletics (which include clubs, intramural or interscholastic athletics) may require a level of skill or ability of a student in order for that student to participate in a selective or competitive program, as long as the set criteria is non-discriminatory. Additionally, the LEA/district must afford students with a qualified disability an equal opportunity to participate in the school sponsored extracurricular athletics. This means making reasonable accommodations/modifications and providing the supports and services necessary to ensure equal opportunity, unless the LEA/district can show that by doing so would fundamentally alter the program or activity.

### ***Field Trips***

An LEA/district must afford students with disabilities an equal opportunity to participate in school sponsored field trips as well as supply the necessary supports or services in order for that student to participate in the field trip. In some cases, an IEP or 504 team or the LEA/district may determine that a student with a disability should not participate in a field trip. A determination as to whether a student with a disability can be denied the opportunity to participate on a field trip must be made on an individual basis. In these circumstances it is critical that the district provides sufficient documentation and evidence to support why the student was prohibited from attending the field trip.

An LEA/district cannot exclude a student with a disability from participating in a school sponsored field trip because of a lack of funds when such funding is made available for students in general education. Additionally, an LEA/district may not deny a student with a disability the opportunity to attend contingent upon parent supervision. Generally, an LEA/district may not require that a parent of a student with a disability accompany the student on a field trip when parents of non-disabled peers are not obligated to attend. Although a parent cannot be required to attend a field trip, they may certainly be invited to attend. In addition, an LEA/district may not deny a student with a disability the opportunity to attend a field trip as a result of the school's failure to provide the student equal notice about the planned field trip.

An LEA/district may only prohibit a student with a disability from attending a field trip under the following circumstances:

- If the purpose of the field trip is related to curriculum and the student with disabilities is not studying that curriculum (ie. a field trip to a local museum that is intended to supplement a social studies curriculum, but the student with the disability does not participate in the general social studies curriculum, the student may be excluded from the trip).
- If the school has applied behavior and attendance rules to students with disabilities, as long as they are applied equally to their non-disabled peers, and the student breaches the LEAs/district's behavior or attendance policy.
- If the LEA/district believes participation presents an unacceptable risk to the student's health or safety.



## SERVING STUDENTS WITH DISABILITIES IN VIRTUAL & HYBRID LEARNING PROGRAMS

Education in an independent study program may be provided in an online virtual setting or through a hybrid of learning programs which may include a combination of online and in-person instruction. Charter schools that offer virtual learning opportunities, and other hybrid learning programs through independent study must enroll all students who meet the enrollment requirements set in their charter agreement, including both students with and without disabilities.

### *Independent Study*

Independent study is provided as an alternative instructional strategy, not an alternative curriculum. In independent study programs, students work independently, according to a written agreement and under the general supervision of a credentialed teacher(s). While independent study students follow the LEA-adopted curriculum and meet the LEA graduation requirements, independent study offers flexibility to meet individual student needs, interests, and styles of learning.

The Independent Study Written Agreement (also known as the Master Agreement) outlines the course of study for each independent study student. A written agreement may include the following information:

- LEA name
- Student personal information
- Duration- length of the agreement that include a beginning and ending date of the agreement
- Objectives- subjects/course(s) and course value/credits that will be earned
- Method(s) of study- the student activities selected by the supervising teacher that the student will complete in order to meet the course objectives/outcomes
- Methods of evaluation that will be used to determine if the student met the subject/course objectives
- Information about the students requirements to report to their teacher(s)- frequency, location, and manner of reporting
- Resources for the student to accomplish subject/course objectives
- Policies on assignment completion and deadlines
- Statement to demonstrate that independent study is a voluntary program opportunity, and the quality and quantity; rights and privileges; resources and services for students that attend an independent study program

This written agreement must be agreed upon by the student, parent/caregiver/guardian, supervising teacher, and any other assisting person(s) responsible for the students program. A sample independent study written agreement developed by the California Department of Education can be found at <http://www.cde.ca.gov/sp/eo/is/>.



***Independent Study Compared to Home School, and Home- Hospital Instruction***

The following chart depicts and defines common terminology that is mistaken for independent study.

<b>Home- Based Instruction (Independent Study)</b>	<b>Schooling at Home (Home School)</b>	<b>Home-Hospital Instruction</b>
When a parent is a member of the educational team and facilitates the implementation of the master agreement. Teacher of record at the LEA serves as the instructor.	All instructional needs met solely by the family and independent of a LEA. Parent serves as the instructor.	Temporary service provided to help students maintain continuity of instruction during a period of temporary disability. District of residence provides general education instruction and Charter LEA provides special education instruction.
Follows the guidelines of the LEA's independent study and master agreement.	Parent(s) must file a "private school affidavit" with CDE.	Instruction provided to a student in a hospital, health facility, or in the student's home.
Independent Study=YES	Independent Study= NO	Independent Study= NO

***Equal Enrollment for Students with Disabilities***

Federal and state law prohibit any public school, including charter schools, from denying admission to any student on the basis of a disability, or the nature of or extent of a disability. To ensure legal compliance, it is recommended that the LEA adopt policies and procedures to address admissions of a student with a disability in an independent study program. These policies may include, but are not limited to, the following information:

- Specific information pertaining to the independent study written agreement
- Educational opportunities offered through independent study
- The maximum length of time which may elapse between the time an independent study assignment is made and the date by which the student must complete the assigned work
- An explanation that the student will have access to the same services and resources of the LEA in which they are enrolled, as is available to other students enrolled in the LEA
- The provisions of independent study and restrictions for providing independent study as an alternative curriculum, as program for temporarily disabled, and the exclusive method of course offerings for high school graduation
- Procedures to address the enrollment process for students with disabilities and the need for an IEP team decision for placement in an independent study program for a student with exceptional needs

For a sample independent study policy, please refer to the Charter SELPA SEIS document library at [www.seis.org](http://www.seis.org).

Because it is required by law that an LEA enroll all students with disabilities, and independent study placement is an IEP team decision, it is recommended that when a student with an IEP applies to enroll in a virtual or hybrid charter schools, as their own LEA for Special Education, that the LEA enrolls the

students. Then, during the 30 day interim IEP process (please refer to the interim placement section of the procedural guide), the IEP team reviews the IEP to determine whether or not independent study in a virtual or hybrid learning program is an appropriate offer of a free and appropriate public education (FAPE). If the IEP team determines that independent study is not an appropriate offer of FAPE, then the student will remain enrolled in the LEA and the LEA is responsible for funding an appropriate alternative placement. If the IEP team agrees, and determines that the independent study program is the appropriate placement for the student, it must be written into the IEP document and consented to by the parent/guardian of the student.

### ***IEP Team Considerations***

When developing an IEP for a student in a virtual or hybrid learning program, the IEP shall clearly demonstrate that the IEP team has considered the students individualized needs, alternative placement options and how the independent study program is able to provide the student with a FAPE in the least restrictive environment (LRE). The IEP placement recommendation should reflect the independent study virtual/hybrid learning educational program. The LEA shall consider the following information when developing the student's IEP:

- Assessments and the individual student needs including:
  - Social emotional
  - Behavioral
  - Social skill development of the student including needs for: social interaction, peer modeling, and generalization of skills learned with peers
  - If face to face assistance is required and how much
  - Accommodations and/or modifications
- IEP goals based on the students individual needs including progress on IEP goals which are individually monitored
- Services and supports that are required to meet the students' needs within the independent study program. This includes all related services such as, but not limited to, specialized academic instruction, occupational therapy, speech and language services, ERMHS services, behavior intervention services, assistive technology services, etc.
- Where and how special education services will be delivered- including the frequency, duration, how and where service minutes will be accessed by the student
- Assistive technology needed to access curriculum.
- Transportation (see transportation section of the procedural guide for additional guidance)
- Progress monitoring and program review to ensure that the independent study program continues to be appropriate and the student continues to receive educational benefit

It is important that the IEP team carefully investigate and identify student needs for socialization, language pragmatics, and emotional regulation to ensure all of the students' needs are being addressed in the independent study program. It is equally important that the IEP team have a discussion with the parent about parent responsibilities and level of parent involvement required for their child in the independent study program (for information on parent responsibilities refer to Chapter 7: Home-Based Independent Study section of the CA Dept. of Education Independent Study Manual located at <http://www.cde.ca.gov/sp/eo/is/documents/chapter7.pdf>).

### ***Accommodations and Modifications***

There are some basic accommodations and modifications not automatically provided to all students in traditional schools environments that are often characteristic of education provided in a virtual or hybrid learning program may be:

- Extended time on lessons and tests;
- Flexibility in start and end dates;
- Continuous means of communication;
- Parent communication of progress;
- Prepared notes/reviews;
- Clear rubrics;
- Appropriate placements by skill level;
- Working in a closely supported environment;
- Varied activity formats;
- Screen readers and talking browsers;
- Daily lesson planning with the student; and just-in-time remediation.

The IEP team shall consider which accommodations and modifications are necessary for the student to receive educational benefit. Curricular adaptations may be required in an independent study virtual and hybrid learning program for a student to access and make progress in their grade level curriculum to meet standards.

For additional information on accommodations and modifications, please refer to the curriculum adaptations section of the procedural guide.

### ***Assistive Technology***

In virtual education, the use of computer technology may increase the need for assistive technology. The following are a list of some assistive technologies that virtual programs may need to consider and document in the student's IEP:

- On-screen key boards
- Grammatical support tools
- Braille embosser and text to Braille conversion
- Animated signing characters (signing avatars)
- Switches
- Alternative mouse systems
- Word prediction
- Accessible online learning tools
- Alternative key boards
- Display- based personal data assistants
- Voice recognition systems

### ***Continuum of Special Education Services***

An LEA is required to provide a continuum of special education, related services, and placement options for students with IEP's. If an IEP team determines that an independent study program in a virtual school or hybrid learning program is **not** an appropriate placement for a student, the LEA must take steps to ensure that the student receives FAPE by being placed in the appropriate educational setting. This setting may be at an LEA-run program or provided by an outside service provider at cost to the charter LEA. These settings may be a local or district program, non-public school or residential facility. The student will remain enrolled in the Charter LEA and the Charter LEA will contract with the appropriate program through a master contract and individual service plan.

Charter schools are cautioned to use careful consideration when determining whether or not an independent study virtual learning or hybrid program is an appropriate placement for students with disabilities. Children with disabilities must not be placed in separate schools merely because of the availability of placement options, administrative convenience, or institutional barriers to providing related services rather than because of their individual needs (Letter to Johnson, OSERS 1988).

### ***Virtual IEP Meetings***

Parents are required members of the IEP team. LEA's have the obligation to provide a parent with the opportunity for meaningful participation in an IEP meeting. The LEA shall keep a record of attempts to arrange a mutually convenient IEP meeting and attempts to convince the parent to attend the IEP meeting. This record can include detailed logs of telephone calls or e-mails, IEP notice of meeting, copies of correspondence sent to the parents and any responses received, detailed records of visits made to the parents' home and the result of those visits.

The law dictates who must attend an IEP meeting, but does not prescribe where the meeting must be held. If the LEA has a central office that is geographically proximate to the student and convenient to the other team members of the IEP team, then the IEP meeting may be held in person at the central office. However, if this is not the case the LEA is responsible for providing capabilities for all IEP team members to meaningfully participate in the meeting, including making reasonable accommodations for parents' special needs under section 504 or the ADA.

Virtual IEP meetings can be held using computer software programs and services that allow attendees to log-in/call into the meeting from wherever they are located. Examples may include, but are not limited to, video conferencing (ie. Skype) or conference calling using a shared conference call phone line. If the parent is not comfortable with the technology, then the virtual school may need to send a staff member to the student's home to help the parent meaningfully participate in the virtual IEP meeting.

For additional information regarding independent study in virtual schools or hybrid learning programs for a student with an IEP, please contact your SELPA program specialist

For more information about independent study in California schools, refer to the Independent Study webpage on the California Department of Education's website at <http://www.cde.ca.gov/sp/eo/is/>.



## EXTENDED SCHOOL YEAR

### *Defining Extended School Year Services*

Extended School Year (ESY) services are special education and related services that are provided to a child with a disability during extended school breaks. These services are different from summer school. Summer school is an extension of the regular school year available to any student attending the school. ESY services are special education and related services that a student must qualify for and are in accordance with the student's IEP.

ESY services are not provided to enhance a student's education or to provide a student with the best possible educational program. Nor are ESY services to be provided as compensatory time or to help a student who has missed school. ESY services are required when determined to be necessary for a child to progress over time and to benefit from the IEP.

### *Legal Guidelines*

34 CFR §300.106 states the following about ESY services:

- Each public agency must ensure that extended school year services are available as necessary to provide FAPE.
- Extended school year services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.
- In implementing the requirements of this section, a public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

The ESY program shall be provided for a minimum of 20 instructional days per the California Code of Regulations (CCR §3043).

### *General Guidelines*

The following general guidelines may apply when an IEP team is determining a student's need for ESY services. The case manager may use the "ESY Eligibility Worksheets" located in the student's future IEP on SEIS to document the IEP team's decision making process.

- The key question before the IEP team is whether the child needs ESY services in order to secure the minimum benefits of a free and appropriate public education during the regular school year.
- ESY services do not need to duplicate the services provided during the school year because the purpose is different (prevent regression rather than continued progression). A student may require ESY services in only one area (e.g. speech and language) but not in other areas (e.g. specialized academic instruction).
- When an IEP team discusses ESY services, they should consider the student's current placement in order to avoid placing the student in a more or less restrictive environment for ESY services.
- The determination of ESY eligibility must be based on empirical and qualitative data collected by the IEP team members for the student's individual skills.

- The IEP should clearly indicate a start date, end date, frequency and duration of the ESY services.

### ***Regression and Recoupment***

The two main criteria that need to be addressed to determine if a child qualifies for ESY services are the high probability that the child will regress without additional services during the summer and also, their inability to recoup that loss within approximately 4-6 weeks after the start of the school year.

All students will experience regression during the summer. The problem exists when a child will experience serious regression without the ability to recoup the loss. Regression refers to a decline in knowledge and skill that can result from an interruption in education; recoupment is the amount of time it takes to regain the prior level of functioning. The issue is whether the benefits derived by the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months.

### ***Other Factors When Determining the Need for ESY Services***

In *Reusch v. Fountain*, the court listed other factors in addition to regression and recoupment that the IEP team should consider in deciding if the child is eligible for ESY as a related service.

- The degree of progress toward IEP goals and objectives
- Emerging skills/breakthrough opportunities (e.g. Will a lengthy summer break cause significant problems for a child who is learning a key skill, like reading or speaking?)
- Interfering Behavior (e.g. Does the child's behavior interfere with his or her ability to benefit from special education?)
- Nature and/or severity of disability
- Special circumstances that interfere with child's ability to benefit from special education



## GRADUATION OPTIONS FOR STUDENTS WITH DISABILITIES

### *Types of Graduation Options*

The graduation options available to students are determined by LEA/district board policies and these options must be written into a school's charter. This may include:

- A diploma based on the state mandated requirements,
- A diploma based on A-G requirements, or
- A charter school may set their own diploma requirements,
- A certificate of completion.

Students with disabilities must be given adequate notice of the requirements for the types of graduation options offered.

The following table shows a comparison of the different types of graduation options.

<b>Subject Area</b>	<b>State Mandated Requirements for High School Graduation (EC 51225.3)</b>	<b>A-G Requirements (as approved by UC course approval process)</b>	<b>Certificate of Completion (EC 56390)</b>
English	Three Years.	Four years.	Satisfactorily completed a prescribed alternative course of study approved by the district governing board and identified in the student's IEP AND Satisfactorily met his or her IEP goals and objectives as determined by the IEP team AND Satisfactorily attended high school, participated in instruction, and met the objectives of the statement of transition services.  NOTE: The above is a requirement of a
Mathematics	Two years, including Algebra I.	Three years, including algebra, geometry, and intermediate algebra. Four years recommended.	
Social Studies/ Science	Three years of history/social studies, including one year of U.S. history and geography; one year of world history, culture, and geography; 1/2 year of American government and civics, and ½ year of economics.	Two years of history/social science, including one year of U.S. history or 1/2 year of U.S. history and 1/2 year of civics or American government; and one year of world history, cultures, and geography.	
Science	Two years, including biological and physical sciences.	Two years with lab required, chosen from biology, chemistry, and physics. Three years recommended.	
Foreign Language	One year of either visual and performing arts, foreign language, or career technical education.	Two years in same language required. Three years recommended.	

## El Dorado County Charter SELPA Procedural Guidelines

Visual and Performing Arts	One year of either visual and performing arts, foreign language, or career technical education.	One year of visual and performing arts chosen from the following: dance, drama/theater, music, or visual art.	standard public school, but not of a charter school. A charter school can use this Ed. Code as a guideline for determining criteria for the board approved certificate of completion option.
Physical Education	Two years	Not Applicable	
Electives	Not Applicable	One year	

### ***Termination of Special Education Services***

The following table illustrates the guidelines around the termination of special education services. A prior written notice is required upon the termination of special education services for any of the below situations.

If student's 22nd birthday is between January and June, the student may continue through remainder of the fiscal year (school year and ESY ending July 1).	EC 56026(c)(4)(A)
If student's 22nd birthday is in July, August, or September of new fiscal year, then the student will not be allowed to begin a new fiscal year (school year and ESY ending July 1 of the current year).	EC 56026(c)(4)(B)
If student's 22nd birthday is during October, November, or December, student shall be terminated from program on December 31 of current fiscal year, unless student would otherwise complete his or her IEP at the end of the current fiscal year.	EC 56026(c)(4)(C)
Student graduates from high school with regular high school diploma.	EC 56026.1(a)

### ***Certificate of Completion or Regular High School Diploma***

The IEP team must determine which graduation option is most appropriate for the student, given the options made available by the LEA/district as determined by the governing board. Not all LEAs/districts offer a diploma based on the state mandated requirements; some choose to offer only diplomas based on A-G requirements or their own requirements as outlined in their charter. If the student is on track for earning a regular high school diploma, either A-G or state mandated, then the student has until the date indicated on the table above to complete this course of study. Students may not receive a diploma if they do not meet the requirements of the types of diplomas offered as determined by the LEA/district.

The LEA/district cannot deny a student a diploma based on their disability, but the student does not have a right to a diploma because of their disability either. The certificate of completion option is available to those students who are not able to complete the requirements for a regular high school diploma as offered by the LEA/district. These students are eligible for educational placement and services in accordance with their IEP until the date indicated on the above table. If the school is a charter school, the governing board of the LEA/district approves the requirements for the certificate of completion graduation option. In a standard public school, the certificate of completion option is in accordance with EC 56390 as stated above.

The graduation option chosen by the IEP team shall be documented clearly as part of the Transition Plan as well as marked on the Offer of FAPE- Educational Settings page of the IEP.



### ***California High School Exit Examination (CAHSEE)***

If the student has a current and valid IEP that indicates the student is scheduled to receive a high school diploma and has satisfied or will satisfy all state and local graduation requirements other than passing the CAHSEE, then an exemption or a waiver may be granted. In order to be able to qualify for a waiver or exemption from the CAHSEE the student is required to first take the CAHSEE in grade ten for the purpose of meeting the federal requirements under the Elementary and Secondary Education Act. Appropriate accommodations and modifications must be made available to students with IEPs and must be listed on the Test Accommodations/ Modifications page of the IEP.

- **Exemptions-** This is an exemption from the requirement of passing the CAHSEE in order to receive a high school diploma. The exemption from meeting the CAHSEE requirement will be in effect until June 30, 2015, unless the State Board of Education extends the implementation of the alternative means assessment one additional year.
- **Waivers-** If the student scores 350 or higher on the mathematics and/or ELA portion of the CAHSEE with the use of modifications, then the school may request a CAHSEE local waiver. At the parent or guardian's request, a school administrator shall submit a request for a waiver to the governing board. The charter governing board may waive the requirement to successfully pass one or both subject matter parts of the CAHSEE for an eligible student with a disability.

### ***California High School Proficiency Examination (CHSPE)***

The California High School Proficiency Examination (CHSPE) is a testing program established by California law (EC 48412). The passing of this test earns a student the legal equivalent of a high school diploma. The CHSPE consists of two sections: an English-language Arts section and a Mathematics section. If a student passes both sections of the CHSPE, the California State Board of Education will award a Certificate of Proficiency, which by state law is equivalent to a high school diploma (although not equivalent to completing all coursework required for regular graduation from high school).

If a student with an IEP takes and passes the CHSPE, the student is still eligible to receive educational placement and services in accordance with their IEP at the LEA/district until they meet the requirements of one of the graduation options offered by the LEA/district.

### ***Graduation Checklist***

When preparing a student with an Independent Education Plan (IEP) to graduate with a high school diploma, please ensure the IEP team has completed the following steps:

- Schedule an exit IEP meeting.
  - It is recommended that this meeting be held within the last 8-10 weeks of school.
- At the IEP meeting, complete the following:
  - Update Present Levels of Performance
  - Complete SEIS Post-Secondary Exit Page 1 and Page 2
  - Ensure the student's "Age of Majority" information has been discussed with the student and documented on the SEIS Individual Transition Plan page 2 form.

- Send the parent/guardian a Prior Written Notice (PWN) confirming that the student has met the requirement to graduate with a high school diploma. The notice shall also specify federal law, Individuals with Disabilities Education Act (IDEA), states that students who receive a high school diploma are no longer eligible to receive a Free Appropriate Public Education (FAPE). As a result, the student's graduation is considered to be a change in placement and upon graduation from high school the student will no longer be eligible for special education related services. Lastly, the notice shall include contact information for the LEA, should the parent disagree with the determination.
- Provide the parent/guardian/student with a copy of the last signed IEP and the last triennial assessments.



## SPECIAL EDUCATION TRANSPORTATION

### ***Legal Requirements Regarding Special Education Transportation***

Education Code Section 56040(a) states: "Every individual with exceptional needs, who is eligible to receive special education instruction and related services under this part, shall receive that instruction and those services at no cost to his or her parents or, as appropriate, to him or her." Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education [34 CFR 300.34(a)]. Transportation as a related service includes travel to and from school and between schools, travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability [34 CFR 300.34(c)(16i-iii)].

LEAs/districts should not automatically assign students to transportation based on the students' disability without considering the students individual needs and the continuum of placements [Hopkinton (MA) Pub. Schs., [108 LRP 41626](#) (OCR 2007)].

For students with medical needs, 34 CFR 300.34(a)(ii) limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school.

### ***Length of School Day, Related Services, Extracurricular Events***

The use of alternative starting times for all special education students at a site can lead to program compliance concerns. Pupils receiving special education and related services must be provided with an educational program in accordance with their Individualized Education Program (IEP) for at least the same length of time as the regular school day for their chronological peer group, unless otherwise stated in a student's IEP. If a student is temporarily placed on a shortened day due to an IEP team decision, the LEA/district is required to offer transportation to the student to accommodate their modified schedule if that student is otherwise eligible for special education transportation. In addition, there may be occasions where the needs of the pupil require receiving therapy or some other related service that cannot be provided during the "established" school day. If it is determined by an IEP team that a student requires services outside the typical school day, the team must also consider whether transportation to and from the service is required. If provisions for "early" or "late" transportation are made for pupils within the general education program due to extracurricular events, provisions for equal opportunity to these events for pupils with exceptional needs who require special transportation must also be made.

### ***Transportation in IEPs***

Per legal mandate, the IEP team determines if transportation is required to assist a child with a disability to benefit from special education and related services, and how the transportation services should be implemented. The IEP document should describe the transportation services to be provided, including transportation to enable a child with disabilities to participate in nonacademic and extracurricular activities in the manner necessary to afford the child an equal opportunity for participation in those services and activities to the maximum extent appropriate to the needs of that child. The IDEA's Least Restrictive Environment (LRE) mandate applies to all aspects of special education and related services,

including the provision of transportation services. According to the comments and discussion preamble to the 2006 IDEA Part B regulations, the Education Department stated: "It is assumed that most children with disabilities will receive the same transportation provided to nondisabled children, consistent with the LRE requirements in [34 CFR 300.114](#) through [34 CFR 300.120](#), unless the IEP team determines otherwise." LEAs/districts should start with the presumption that a student with a disability will ride regular transportation with nondisabled peers, as long as such transportation is appropriate to meet the child's educational needs. Additionally, transportation is a related service under the IDEA, which means that it should be provided such that it enables a child with a disability to be as fully integrated as possible with nondisabled peers. Denial of parent participation in the IEP process, including decisions relating to the least restrictive environment for transportation, may result in a procedural violation that results in substantive harm to the student.

It is important to remember that all pupils, including those receiving special education instruction and services, are subject to the rules and policies governing regular transportation offerings within the LEA/district, unless the specific needs of the eligible pupil or the location of the special education program/service dictate that special education transportation is required.

### ***Transportation Options***

The IEP for any special education student must clearly specify how the child's transportation needs will be met. Regarding transportation as a related service, it is recommended that services be described in sufficient enough detail to inform the parties of how, when and from where to where transportation will be provided and, where arrangements for the reimbursement of parents are required, the amount and frequency of reimbursement. Transportation options may include, but not be limited to: walking, riding the regular school bus, utilizing available public transportation (any out-of-pocket costs to the pupil or parents are reimbursed by the LEA/district), riding a special bus from a pick up point, and portal-to-portal special education transportation via a school bus, taxi, reimbursed parent's driving with a parent's voluntary participation, or other mode as determined by the IEP team. The specific needs of the pupil must be the primary consideration when an IEP team is determining transportation services.

If a student with a disability is found eligible for specialized transportation and parents voluntarily elect to arrange for their own transportation, it is advisable that schools should document this fact in the IEP. Thorough documentation of this arrangement should include the following information:

- That the child is entitled to transportation;
- That parents are knowledgeable about their special education rights;
- That parents prefer to provide their own transportation without the involvement of the school district; and
- An explanation of how the reimbursement will be calculated.

The school also may seek to include a waiver of liability for injuries that result from parents using their own methods of transportation and attempt to obtain parents' signature to give legal effect to these provisions.

The IDEA does not specify the type of vehicles to be used for students who are disabled or the nature of the specialized equipment that is appropriate. The IEP team generally determines the choice and type of equipment. If decisions regarding these aspects of transportation will have an impact on the health, safety or welfare of the student or the educational program provided to the student, then parental input into

these decisions may be required. Safety is only one of many relevant considerations that go into making a determination about the appropriate equipment for transporting a student who is disabled. The following criteria should also be met in selecting assistive devices for students with disabilities:

- Functional assistance
- Whether an excessive amount of equipment is involved
- Normalcy of the child's appearance in using the device
- Family's acceptance of the device
- Child's acceptance of the device

While the student's IEP can specify the type of transportation or special equipment required, it usually may not mandate the selection of the company that will perform the service. Even in situations justifying parental leverage over the mode of transportation and types of equipment to be used in transporting a student with a disability, parents generally cannot compel the use of certain brand name vehicles or equipment, unless the device in dispute is the only one of its kind on the market and no substitutes would be reasonable under the circumstances. LEAs/districts generally have discretion in selecting the item to fit necessary specifications and criteria, provided the district's choices are equally as suitable as parental preferences.

### ***Participation of Transportation Personnel and Administrators/ Designees in IEPs***

Effective practice requires that procedures are developed for communication with transportation personnel and that transportation staff are present at IEP team meetings when:

- Student needs the use of adaptive or assistive equipment
- School bus equipment is required to be modified
- Student exhibits severe behavioral difficulties and a Behavior Intervention Plan (BIP) is to be implemented
- Student is medically fragile and requires special assistance
- Student has other unique needs

It is often beneficial to have transportation staff present at IEP team meetings for the purposes of planning, problem solving, and communication even if the above mentioned conditions are not met. It is up to an LEA/district to determine those IEP meetings at which it may be beneficial to have transportation staff attend.

It is recommended that administrative designees and case managers be familiar with the transportation options available locally prior to attending IEP meetings at which transportation may be identified as a necessary related service, in order to facilitate consideration of transportation options in the least restrictive environment at IEP meetings. An LEA/district may need to conduct research to identify transportation options that may be available to serve students.

### ***Special Education Transportation Evaluation***

Districts must evaluate the student's transportation needs prior to determining what services to provide. LEAs/districts should keep in mind that, in many instances, the results of the evaluation will be essential in designing appropriate transportation programs for students. For example, findings about motor skills, communication abilities, health, vision and hearing are not only important in the classroom, but they also

can impact the student's ability to access transportation and may present unique needs that do not arise among the general student population.

While some transportation requirements will remain constant, others may change in direct response to a student's physical or mental condition, as well as outside circumstances unrelated to the child's disability. Schools must stay responsive to such developments as they arise. Evaluation is important when considering changes in an existing transportation program. While the student need not be observed on the school bus or other form of transportation, school districts nevertheless have found personal observation to be extremely helpful in gauging the student's special education needs.

Medical evaluations of transportation needs may be necessary for some students. When a student suffers from a disability that makes him medically fragile, LEAs/districts have an obligation not only to accommodate him in the classroom, but also during transportation to and from school.

### ***Key Considerations for Determining Transportation Need***

The case-by-case determination of students' eligibilities for transportation should include consideration of a child's mobility, behavior, communication skills, physical needs, age, ability to follow directions, the distance the child will have to travel, the nature of the area, and the availability of private or public assistance. Issues in these areas may make it difficult for a student to get to and from school, and may create a need for special education transportation. Factors that may contribute to the consideration of special education transportation may include, but are not limited to:

- Medical diagnosis and health needs: consideration of whether long bus rides could affect a pupil's health (duration, temperature control, need for services, health emergencies); general ability and/or strength to ambulate/wheel; approximate distance from school or the distance needed to walk or wheel oneself to the school; consideration of pupil needs in inclement weather;
- Physical accessibility of curbs, sidewalks, streets, and public transportation systems;
- Consideration of a pupil's capacity to arrive at school on time, to avoid getting lost, to avoid dangerous traffic situations, and to avoid other potentially dangerous or exploitative situations on the way to and from school;
- Behavioral Intervention Plans (BIP) specified by the pupil's IEP and consideration of how to implement such plans while a pupil is being transported;
- Mid-day or other transportation needs as required on a pupil's IEP (occupational or physical therapy or mental health services at another site, community based classes, etc.) must also be taken into consideration when the IEP team discusses a pupil's placement and transportation needs;
- Extended school year services should be another consideration of a pupil's need for transportation if considered necessary to provide a free appropriate public education as specified in a pupil's IEP.

### ***IEP Goals and Services to Increase Transportation Independence***

The determination as to whether goals and objectives addressing transportation are required in a student's IEP depends upon the purpose of the transportation. If transportation is being provided solely to enable the student to attend school, no goals or objectives may be needed. However, if transportation is provided for some other purpose related to the student's education and the student receives instruction during the provision of the related service, then goals and objectives must be provided. For instance, if

services are being provided to increase a student's independence while in transit, goals and objectives would be necessary. When developing specific IEP goals and objectives related to the pupil's use of transportation, the IEP team may wish to consider a blend of transportation services as the pupil's needs evolve. Students may require ongoing assessment and refinement of IEP goals as transportation skills increase.

The 2006 IDEA Part B regulations continue the requirement of travel training for some students. Travel training is "instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

- A. Develop an awareness of the environment in which they live; and
- B. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community."

The IEP team may wish to consider the travel training needs of some students for whom transportation is being considered as a related service.

### ***Bus Suspension***

Occasionally pupils receiving special education services are suspended from bus transportation. The suspension of a pupil receiving special education services from transportation can constitute a significant change of placement if the district:

- A. Has been transporting the student;
- B. Suspends the student from transportation as a disciplinary measure; and
- C. Does not provide another mode of transportation.

A significant change in placement requires a meeting of the IEP team to review the pupil's IEP.

An alternative form of transportation must be provided if transportation is specified in the pupil's individualized education program. During the period of any exclusion from bus transportation, pupils must be provided with an alternative form of transportation at no cost to the pupil or parent or guardian in order to be assured of having access to the required special education instruction and services.

### ***Resources***

CDE Special Education Transportation Guidelines: <http://www.cde.ca.gov/sp/se/lr/trnsprtgdlns.asp>



## STATE SPECIAL SCHOOLS AND SERVICES

The State Special Schools & Services Division is a subdivision of the California Department of Education that provides services to deaf, hard-of-hearing, blind and visually impaired students in addition to offering LEA/district special education programs with assessment services, technical assistance and staff development.

State run schools for the deaf and schools for the blind also provide intensive, disability-specific educational services for pupils who are blind, visually impaired, deaf and hard of hearing pupils, or deaf-blind, age 3-22.

The Diagnostic Centers provide comprehensive assessments to special education students and staff development and training services to LEA/districts.

### ***Referral to Special Schools and Services for Further Assessment***

A referral to a Special School or the Diagnostic Center must follow the guidelines below.

- Prior to referring a pupil for further assessment to California Schools for the Deaf or Blind or to one of the Diagnostic Centers, assessments shall first be conducted at the local level within the capabilities of the LEA/district. Results of local assessments shall accompany the referral request. The reason for the referral shall be discussed with the parents. The LEA/district refers a student by submitting an application packet. Applications are reviewed by the Admissions Committee at the State School or Diagnostic Center to determine if the applicant meets the admissions criteria set forth in the California Code of Regulations, Title 5, Sections 17660-17663.
- The Schools for the Deaf and Blind, and the Diagnostic Schools shall conduct assessments pursuant to the provisions of EC 56320.
- A representative of the LEA/district shall participate in the staffing meeting and shall receive copies of the final report and recommendations. Conference calls may be acceptable forms of participation, provided that written reports and recommendations have been received by the LEA/district representative prior to the meeting.

### ***Procedure for Referral to State Schools for Placement***

The procedure for a referral is as follows:

1. Referrals to state special schools for placement shall be made only as a result of recommendations from the IEP team, upon determining that no appropriate placement is available in the local plan area. Parents have the right to appeal any decision of the IEP team, including whether their child should be referred to a state special school.
2. Whenever a referral for placement is being considered to one of the state special schools, the IEP team shall include a representative of the LEA/district.
3. If the IEP team (including the representative from the LEA/district) determines that a referral to a state special school is appropriate, a case manager shall be designated to coordinate the referral process.



4. As provided within EC 59300, the LEA/district of the parent or guardian of any pupil attending a state-operated school is responsible for 10% of the excess cost of the placement. The cost for a student placed less than a full year is prorated based on the number of days in attendance.

### ***Review of Placement at State Special Schools***

The LEA/district shall be notified of any upcoming review of students placed in state special schools. The LEA/district may request assistance from the County Office of Education (if appropriate) in attending the review, considering assessment results or any other activity needed.

### ***Education Code Relating to State Schools***

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.

The Legislature finds and declares all of the following:

- It is essential for the well-being and growth of deaf and hard-of-hearing pupils that educational programs recognize the unique nature of deafness and ensure that all deaf and hard-of-hearing pupils have appropriate, ongoing, and fully accessible educational opportunities.
- It is essential that a deaf or hard-of-hearing pupil obtain an education in which special education teachers, psychologists, speech therapists, assessors, administrators, and other school and residential program personnel understand the unique nature of deafness and are trained to work with a deaf or hard-of-hearing pupil.
- It is essential that a deaf or hard-of-hearing pupil obtain an education in which his or her special education teachers are proficient in the primary language mode of that pupil.
- It is essential that a deaf or hard-of-hearing pupil obtain an education in which his or her parents are involved in determining the extent, content, and purpose of programs.
- It is essential that a deaf or hard-of-hearing pupil, like all pupils, have programs in which his or her unique vocational needs are provided for, including appropriate research, curricula, programs, staff, and outreach.
- Each deaf or hard-of-hearing pupil should receive an education that allows him or her to master a primary language.



## BEHAVIOR INTERVENTION PLAN

### *What is a Behavior Intervention Plan (BIP)?*

- A proactive plan to address problem/targeted behavior (that is impeding the learning of the student or others) by:
  - Identifying the hypothesized function of the problem behavior(s);
  - Describing positive changes to the environmental structure;
  - Defining supports and resources to be provided; and
  - Providing instructional strategies and materials to ensure student has access to his/her education and an alternative replacement behavior(s) that support classroom success.
- A guide for school site staff supporting the student
- A tool for focusing team members, establishing accountability for tasks, ensuring communication and consistent intervention implementation
- A document developed or revised by the IEP team based on the data and information gathered in the Functional Behavior Assessment (FBA) report and ongoing progress monitoring
- A BIP is a legal component of the Individualized Education Program (IEP) document (to be included in the numbered pages of the IEP document) that is revised based upon need or at minimum at student's annual IEP

### *When MUST a BIP be Developed or Reviewed?*

- If a student is subjected to a disciplinary change of placement, and the conduct is found to be a manifestation of a disability.

### *When MIGHT a BIP be Developed or Reviewed?*

- A student with a disability has been removed for more than 10 consecutive days from his current educational placement for a behavioral or disciplinary offense.
- In developing an IEP, the IEP team finds the child's behavior impedes his own learning or the learning of others—team may consider a BIP as one of the interventions to address behavior.
- A LEA/district must consider implementation of a BIP as a supplementary aide and service for a student whose behavior is disruptive to other students prior to changing his placement to a more restrictive setting.
- It is strongly recommended that all students under the Special Education designation of Emotional Disturbance (ED), Specific Learning Disability (SLD) (due to attention processing), Other Health Impaired (OHI) (due to ADHD) and Autism (AUT), who have behaviors that impede their learning or the learning of others, have a BIP developed to address the behavioral needs that impedes their learning (or the learning of others) and that align directly with their eligibility criteria for special education.
- Any time that a physical restraint is implemented to ensure student safety, the IEP team may need to meet to review the behavioral supports in a student's IEP and determine if an FBA and BIP need to be developed or reviewed.

- Should an IEP team determine that a student eligible under ED, OHI, SLD, or AUT; does not need a BIP, it is strongly recommended documentation (in IEP Notes) of the IEP teams rationale for how behaviors are being addressed via an IEP goal or alternative intervention.

### ***Who May Develop a BIP?***

According to 5 CCR §3065 (d) Behavior Intervention shall be designed or planned only by personnel who have:

- Pupil personnel services credential that authorizes school counseling or school psychology; or
- Credential authorizing the holder to deliver special education instruction; or
- License as a Marriage and Family Therapist certified by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
- License as a Clinical Social Worker certified by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
- License as an Educational Psychologist issued by the licensing agency within the Department of Consumer Affairs; or
- License in psychology regulated by the Board of Psychology, within the Department of Consumer Affairs; or
- Master's degree issued by a regionally accredited post-secondary institution in education, psychology, counseling, behavior analysis, behavior science, human development, social work, rehabilitation, or in a related field.

LEAs/districts are encouraged to make use of trained personnel on staff at their schools before considering contracting to an outside Non-Public Agency (NPA) to design or plan behavior interventions (such as FBAs/BIPs). School personnel provide an in depth understanding of the school's unique culture and resources that allow them to design or plan comprehensive behavior interventions. Should a school plan, design, implement, and modify behavior interventions and continue to fail to see documented progress on behavior goals tied to these interventions, they may then wish to consider hiring a California Department of Education (CDE) Certified NPA for additional guidance and support.

### ***Who May Implement a BIP?***

According to 5 CCR §3065 (e), to be eligible for certification to provide behavior intervention, including implementation of behavior modification plans, but not including development or modification of behavior intervention plans, a school shall deliver those services utilizing personnel who:

- Possess the qualifications (listed above) under "Who May Develop a BIP";

-OR-

- A person who is under the supervision of personnel qualified to develop a BIP (listed above) who also possess a high school diploma or its equivalent;

-AND-

Who has received the specific level of supervision required in the pupil's IEP.

***What are the Key Components of a BIP?***

LEAs/districts are required to complete the BIP form provided in SEIS. This document serves as a template which provides all the legal components of a BIP. For more information, you may also reference the Positive Environments Network of Trainers (PENT) "Desk Reference" ([www.pent.ca.gov/](http://www.pent.ca.gov/)).

***What are the Steps in Developing a BIP?***

1. Obtain written parent consent to conduct an FBA (see section of this manual titled, "Functional Behavior Assessment" for more details) and BIP.
2. Upon receipt of written parental consent, set IEP Meeting date to align with 60 day timeline for assessment.
3. Conduct FBA and compose written FBA report.
4. Information and data gathered in FBA assists IEP team in developing BIP.
5. Complete BIP forms located in SEIS and attach the FBA Report in SEIS.
6. When team develops a BIP, IEP goal(s) must be developed that are tied to the BIP (at least one goal should be tied to the BIP's Functionally Equivalent Replacement Behavior (FERB)).
7. As with all IEP goals, the IEP goal(s) tied to the BIP shall have a person responsible for providing support and service for goal(s) and monitoring student progress on goal.
8. All IEP goals related to the BIP should be listed in SEIS on the goals page.
9. Once a BIP has been developed the case manager shall document the following in SEIS:
  - A. Present Levels Page: Please indicate in the area of Social/Emotional/Behavioral all areas of need tied to the FBA/BIP.
  - B. Special Factors Page: "Does the student's behavior impede the learning of self or others" Please check "YES" box. If yes, please specify the behavior interventions, strategies and supports used and check the appropriate box for BIP and Behavior Goal.
  - C. Goals Page: Please develop goal(s) tied directly to the BIP to allow IEP team to monitor progress on the BIP.
  - D. Services/FAPE Page: Please include any Aids, Services, Program Accommodations/Modifications and/or Supports that are tied to the BIP. Please include any Special Education or Related Services that may be needed to provide support/service to the student related to the Goal. At the IEP meeting, present the draft BIP to the parent/guardian and the IEP signature page to request their consent to implement the agreed upon BIP.
  - E. Begin implementing BIP and all supports and services tied to BIP, including progress monitoring of BIP related goal(s).
  - F. Ongoing data collection related to the BIP goal(s) should be conducted regularly to determine if the BIP is effective and student is making progress on the goal(s).

***How Should the BIP be Monitored for Effectiveness?***

- Ongoing data collection should be conducted to evaluate the IEP goal(s) tied to the BIP.

- Data collection will help inform the IEP team to determine if the BIP is successful. If the data collected indicates that the student is not making progress on the IEP goal(s) tied to the BIP; the team should hold an IEP meeting to either update the BIP related goal(s) or revise the BIP or both.
- If the student meets IEP goal(s) tied to BIP and data indicates that the problem behaviors are no longer an area of need, the team may extinguish the BIP entirely at an IEP Meeting (document this in IEP Notes with rationale and data to support decision) or revise BIP to focus on continued area of needs or other/new behavior areas of need.
- BIP should be updated at annual IEP or at any point when team merits the need for revision based on lack of progress on IEP goal(s) tied to BIP or new behaviors need to be addressed. BIP Revisions should be done at an IEP team meeting.

***BIPs and Least Restrictive Environment (LRE):***

- BIP is a support that is used to help a student with behavioral problems to remain in the LRE. A student's BIP should not require them to earn access to general education setting or less restrictive placement.
- A student's BIP should not change their access to the placement provided on their IEP, if a BIP changes student placement it needs to be revised or placement options need to be revisited.

***Can Students with a BIP be Disciplined?***

A student's BIP does not serve to prevent the student from being disciplined, but rather serves as a way to prevent and respond to their behavioral needs. Should a student with a BIP engage in behaviors that merit disciplinary action (even suspension or expulsion) the school should first determine if all parts of the student's BIP were available and implemented with fidelity. If all components of the BIP were available and implemented and student still engaged in behavior meriting disciplinary action the LEA/district should discipline student and document disciplinary actions. The following points are guidance for disciplining students on BIPs:

- The school must ensure that any disciplinary action taken with respect to the student has no adverse effect on the goals and objectives of the IEP and is not applied in a discriminatory manner in violation of Section 504.
- Schools should document disciplinary infractions and school removals/suspensions. For more information on discipline of Special Education students please reference the section of this manual titled "Suspension, Expulsion, and Manifestation Determination."

For additional guidance on BIPs and Restraint and Seclusion, please see the section of this manual titled, "Behavioral Emergency Interventions".



## SHORTENED DAY GUIDELINES

### ***FAPE, LRE, and Educational Benefit***

When considering shortening the day of any student receiving special education, an IEP team must be mindful of legal mandates regarding free appropriate public education (FAPE), least restrictive environment (LRE), and educational benefit. Under the IDEA, FAPE is defined as an educational program that is individualized to a specific child, designed to meet that child's unique needs, provides access to the general curriculum, meets the grade-level standards established by the state, and from which the child receives educational benefit (34 CFR §300.17). FAPE requires both access to the general curriculum and progress toward IEP goals and objectives as outlined in a student's IEP. Regarding LRE, IDEA establishes, "To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled," and "special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.114(a))." It is also mandated that student with disabilities participate with students without disabilities in nonacademic and extracurricular services and activities, including meals and recess periods, to the maximum extent appropriate to their individual needs. An IEP team is required to assure the IEP for each student constitutes a good-faith description of a free and appropriate public education in the least restrictive environment.

### ***Consideration of shortened day***

If supports exist that can allow a student to participate in classes and a regular school setting for a full school day, it is strongly recommended that those be offered in lieu of a shortened day in order to provide FAPE in the LRE and allow the student to receive educational benefit. Access and exposure to the general curriculum is maximized if a student is able to attend school for a full day. Opportunities for non-academic and extracurricular activities with non-disabled peers are reduced as well when the school day is shortened. It would not be possible in some cases to provide adequate interaction with non-disabled peers and progress toward social/ behavioral goals if a student does not participate in a full school day at a regular school setting. On the other hand, a placement must foster maximum interaction between disabled pupils and their nondisabled peers "in a manner that is appropriate to the needs of both (EC 56031; *Sacramento City Unified School Dist. v. Rachel H.* (9<sup>th</sup> Cir. 1994))." This suggests there could be instances in which the negative impact of a student on peers might be a consideration yielding a shortened day determination, though this would not occur often and would generally be time-limited.

It is recommended that any offer of a shortened day as FAPE should be brief and for specific purpose, and designed to meet a student's unique needs. It is often prompted by the recommendation of a physician through written request. A student's IEP should reflect team discussion of the continuum of services and placement including shortened day and any alternatives considered as appropriate. It is best practice for IEPs of students placed on a shortened day to include language regarding reintegration and return to full day and method/ criteria for determining reintegration to a less restrictive setting.

When considering shortening the school day of a student based on his or her individualized needs, the following cautions should be considered:

- Removal limits still apply. Take care that shortened days are not equivalent to removals, which are subject to IDEA and education code. Sending a student home for a partial day based on behavior is not considered shortened day as an offer of FAPE. This would be considered a removal.
- Any IEP offering a shortened day needs to carefully document that services and placement are providing FAPE for the individual student in order to be defensible. Compensatory education may be determined appropriate if shortened days are not providing FAPE per a student's IEP.
- If a student is temporarily placed on a shortened day due to an IEP team decision, the LEA/district is required to offer transportation to the student to accommodate their modified schedule if that student is otherwise eligible for special education transportation.
- Make sure behavioral interventions don't deprive a student of necessary instructional time. A BIP should be crafted to minimize instructional disruption.
- Pay attention to unintended interruptions that can have unintended impact on instruction/progress. Bus coming late every day or parent dropping student late every day may be considered impact on FAPE that IEP team needs to address, *even when transportation is considered a parent obligation*.

### ***Examples and non-examples of appropriate use of shortened day***

Use of a shortened day to provide FAPE may be appropriate for limited students, in limited circumstances, and for limited periods of time. Examples of appropriate uses of shortened day could include, but are not limited to:

- For a student with a recent brain trauma who is currently in recovery
- Upon recommendation of physician of a student who is transitioning her to new seizure medications, and is requesting gradually increasing of length of the school day
- For a recently adopted student from another country who is experiencing transition difficulties when parents and therapist request a gradual transition to school
- For a student with school phobia, school refusal or selective mutism who is in treatment, when the student's therapeutic plan specifies a gradual transition to full day attendance with beginning and end dates specified

In many cases, a shortened day will not provide a student FAPE in the LRE and/or will not provide a student with educational benefit. In these instances, a full day must be offered to support the needs of a student. Shortened day should only be considered when such an offer of FAPE can address the unique needs of a child and not for other reasons, such as schedules mandated by teacher contracts, availability and/or convenience of transportation, difficulty with implementation, or limited funding. Inappropriate uses of shortened day may include, but not be limited to:

## El Dorado County Charter SELPA Procedural Guidelines

- If the team knows the student cannot graduate due to missing credits as a result of an offer of a shortened day. Use of shortened day in this situation wouldn't meet criteria for allowing student to move from grade to grade, but could still occur on time-limited basis in limited circumstances with caution.
- In lieu of a full day program that could offer FAPE. An IEP team should not make an offer of shortened day if another public or non-public placement could provide a full-day learning experience to meet IEP goals and progress in general curriculum.
- In lieu of appropriate BIP or necessary behavioral supports
- Upon parent request alone. The team is obligated to offer and implement a legally compliant IEP, and thus must refuse a parent request if the team believes the shortened day does not constitute FAPE in an LRE and provide a student with an opportunity to receive educational benefit.
- When FAPE has yet to be determined. Indefensible rationales: "We knew he shouldn't attend school only one hour a day, but we didn't know what else to do so now we are shortening his day." "We can't have him at our school. He gets in too many fights in the afternoon. He's fine in the morning, so we will only have him on campus for the first three periods." Having parent come pick student up in these temporary situations would be considered removal, so caution is warranted.

### ***Alternatives to shortened day***

Creative problem solving by an LEA and IEP team may be necessary to identify solutions or service arrangements that meet the needs of students without shortening the school day as appropriate. Some alternatives to a shortened day could include:

- PE credit earned outside the school setting for an appropriate physical activity substitution. In an IEP meeting changes in staff, changes in rules for dressing out, a peer buddy, and other supplementary services could be considered as additional alternatives.
- Volunteer or paid work outside the school setting in addition to a shorter school day. In this case, volunteer or paid work could be included to address IEP goals (such as transition or social skills), and on the job experience credit may be granted.
- School based activities outside of class time, such as assisting staff, or onsite work experience (if supporting IEP goals).
- Part time school/ part time intensive educationally related mental health treatment. A day treatment component might be required to address the student's social-emotional needs. The IEP team would document the combination of placements as offering FAPE in the LRE.

If you have concerns or questions regarding the use of shortened day as an offer of FAPE, please contact your program specialist. As mentioned above, shortened day may be an appropriate offer of FAPE in limited circumstances, and care must be taken to assure that an offer of placement and services also provides a student educational benefit in the Least Restrictive Environment.





## BEHAVIORAL EMERGENCY INTERVENTIONS

### *Limitations on the Use of Emergency Interventions*

Emergency interventions may not be used in lieu of an appropriate Behavior Intervention Plan (BIP) that is designed to change, replace, modify, or eliminate a targeted behavior. In fact, emergency interventions may only be "used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm" to the student with a disability or others and that "cannot be immediately prevented" by a lesser restrictive response. Emergency interventions should be used as a last resort when the student is a danger to self or others and after all other preventative and reactive strategies in the student's BIP have been exhausted.

### *Approved Behavioral Emergency Interventions*

The law continues to prohibit the use of both restraint and seclusion (except by agencies licensed and authorized to use such interventions). In addition, it prohibits the use of interventions that are designed or are likely to cause pain (such as electroshock) or that subject students to verbal abuse, humiliation or ridicule; that deprive students of any of their senses or of sleep, food, water or shelter or proper supervision; or that involve the use of noxious sprays or substances.

The following behavioral emergency interventions, included in "CPI Nonviolent Crisis Intervention" training, are approved by the EDCOE Charter SELPA for use by CPI (Crisis Prevention Institute) trained staff only. The CPI "Crisis Development Model" should be used to help prevent a student from escalating their behavior to the point of being a danger to self or others. The following guidelines should be used when implementing any and all behavioral emergency interventions:

- The following approved CPI "Personal Safety Techniques" may only be used **as a last resort, when the student is a danger to self or others:**
  - CPI Kick Block
  - CPI One-Hand Wrist Grab Release
  - CPI Two-Hand Wrist Grab Release
  - CPI One-Hand Hair Pull Release
  - CPI Two-Hand Hair Pull Release
  - CPI Front Choke Release
  - CPI Back Chose Release
  - CPI Bite Release
  - CPI Children's Control Pose (utilizing a trained CPI team member for a child who is significantly smaller than the trained adult)
  - CPI Team Control Position (utilizing at least two trained CPI team members)
  - CPI Transport Position (utilizing at least two trained CPI team members)
  - CPI Interim Control Position (utilizing at least two trained CPI team members)
- Prone restraints (laying face down) of any type are not approved by SELPA, and are not a part of CPI training. Force shall never exceed what is reasonable and necessary under the circumstances, and the duration of the intervention shall not be longer than is necessary to contain the dangerous behavior.

- Behavioral emergency interventions may not include:
  - Any intervention that is designed to, or likely to cause physical pain, including, but not limited to, electric shock
  - An intervention that involves the release of noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the individual
  - An intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities
  - 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
  - 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
  - Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room
  - An intervention that precludes adequate supervision of the individual
  - An intervention that deprives the individual of one or more of his or her senses

### ***Behavior Emergency Report***

Parents/guardians shall be notified within one school day whenever a behavioral emergency intervention is used that is defined above under the “Approved Behavioral Emergency Interventions” section. The LEA/district also immediately complete Behavioral Emergency Report (BER) Form (form located on CDE’s website) documenting the details of the incident and whether or not the student has a BIP. The BER must be submitted to a designated, responsible administrator (within the LEA/district) and placed in the student’s file.

### ***Obligation to Schedule and Convene an IEP Meeting When Emergency Interventions are Used***

Anytime a Behavioral Emergency Report (BER) is written regarding a student who does **not** have a BIP, the designated responsible administrator shall:

- Within two days, the administrator must schedule an IEP team meeting to review the BER.
- The IEP team shall decide if a Functional Behavioral Assessment (FBA) and/or Interim BIP is needed.
- The IEP team must document its reasons if it decides not to perform the FBA or develop an Interim BIP.

Anytime a BER is written regarding a student who has a BIP, any incident involving a previously unseen, serious behavior problem or where a previously designed intervention is not effective, should be referred to the IEP team to review and determine if the incident constitutes a need to modify the BIP.

### ***CPI Nonviolent Crisis Intervention Certification & Training Guidelines***

- EDCOE Charter SELPA offers training to staff members to become CPI certified. The initial training is a one-day course taught by CPI certified instructors. Staff members who attend will be taught

how to deescalate student behaviors by using the “CPI Crisis Development Model” and how to implement the “Safety Techniques” that are approved by CPI.

- In order to remain certified, LEA/district staff members who have taken the initial training must take the half-day “CPI Refresher” course annually.
- LEA/Districts are encouraged to review the “Risks of Restraint” (see CPI Training Manual) and practice the CPI Safety Techniques on a weekly basis to ensure that their staff will continue to provide the safest interventions possible.
- Should a staff member become injured in the course of implementing a Safety Technique, they should refer to their LEA/district’s policy on reporting injuries.
- Staff members who attain the CPI certification need to notify their LEA/district if they become unable to perform a CPI Safety Technique.
- Only staff members who have current CPI certification should be engaging in “Approved Behavioral Emergency Interventions.”
- An LEA/district shall assume responsibility for tracking staff who are trained and need to update their training.



## **SUSPENSION, EXPULSION AND MANIFESTATION DETERMINATION**

### ***Disciplinary Removals of Less Than 10 Days***

A LEA/district may remove a student with a disability who violates a code of student conduct from his/her current placement to an appropriate interim alternative educational setting, another setting or suspension, **as long as the removal does not constitute a change of placement** (34 CFR 300.536).

### ***Determining a Change of Placement***

A change of placement occurs if:

- The removal is for more than 10 consecutive school days; or
- The child has been subjected to a series of removals that constitute a pattern due to:
  - A series of removals total more than 10 school days in a school year;
  - The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - Additional factors, such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

### ***In-School Suspensions***

An in-school suspension occurs when the LEA/district suspends a student during the course of the school day without the student leaving the school campus. Federal policy guides that in-school suspension does not count as a student's removal from their current placement if the LEA/district affords the student the opportunity to continue to:

- Appropriately participate in the general curriculum;
- Receive the services specified on the student's IEP; and
- Participate with nondisabled peers to the same extent.

### ***Disciplinary Removals of 10 Days or More***

If a student's removal from his/her current placement exceeds ten days in an academic school year, the removals qualify as a change in placement and the LEA/district shall conduct a Manifestation Determination (MD) meeting within ten days of the decision to change the student's placement.

### **Manifestation Determination Meeting**

#### ***Meeting Attendees:***

The following individuals shall be in attendance at the manifestation determination meeting:

- Parent(s)/guardian(s)
- LEA/district
- All relevant members of the IEP team as determined by the parent and the LEA/district.

### ***Purpose***

The Manifestation Determination (MD) meeting is held to evaluate a student's misconduct, determine whether the misconduct is a manifestation of the student's disability, and determine if the student's Individualized Education Program (IEP) was being fully implemented at the time of the misconduct.

In order to accomplish this purpose, the MD meeting attendees shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents (34 CFR 300.530). In addition, the El Dorado County SELPA recommends that the MD team review all current educationally related assessments (including health and medical information) and, if determined necessary, propose additional assessments to the IEP team for their consideration.

After completing a full review of all relevant information, the manifestation determination meeting attendees shall answer to the following two questions:

1. Was the conduct in question caused by the student's disability (medical or educational) or did it have a direct and substantial relationship to the disability?
2. Was the conduct in question the direct result of the LEA/district's failure to implement the IEP?

If the MD meeting attendees answer "no" to both questions above, the determination is made that the behavior was not a manifestation of the disability.

If the MD meeting attendees answer "yes" to either or both questions above, the determination is made that the behavior was a manifestation of the disability.

The SELPA recommends that MD meeting attendees utilize and complete the "Manifestation Determination" form located in the student's SEIS profile. In addition, although it is not legally required, some LEA/districts may choose to have their school psychologist compile a MD report to help the IEP team review all data and answer the MD questions.

### ***MD Team Determines Misconduct is a Manifestation of the Student's Disability***

If the MD team determines that the misconduct is a manifestation of the student's disability the student shall return to the placement from which the student was removed and an IEP meeting shall be convened.

The IEP team shall then do one of the following:

- Conduct a Functional Behavioral Assessment (FBA), unless the LEA/district had conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a Behavioral Intervention Plan (BIP) for the child; or
- If a BIP already has been developed, review the plan and modify it, as necessary, to address the behavior.

***MD Team Determines Misconduct is not a Manifestation of the Student's Disability***

If the MD team determines that the misconduct was not a manifestation of the student's disability, then the student is subject to the same sanctions for misconduct as a child without a disability.

***Expulsions***

If the manifestation determination meeting attendees determine that the misconduct was not a manifestation of a student's disability and the student is properly expelled from the LEA/district, the student must continue to receive a Free and Appropriate Public Education (FAPE).

The offer of FAPE shall provide educational services so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP. Please note: The LEA/district need not replicate all services and instruction the LEA/district would have offered the student had s/he remained in the public school setting.

In addition, the student shall receive, as appropriate, a Functional Behavioral Assessment (FBA) and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur (34 CFR 300.530).

***Prior Written Notice***

On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the LEA/district must notify the parents of that decision (via a Prior Written Notice), and provide the parents with a copy of their procedural safeguards.

***Special Circumstances***

School personnel may remove a student to an Interim Alternative Educational Setting (IAES) for no more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a LEA/district;
- 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 LEA/district; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a LEA/district.

After the student's removal, the LEA/district shall conduct a Manifestation Determination (MD) meeting.

***Student Not Yet Found Eligible***

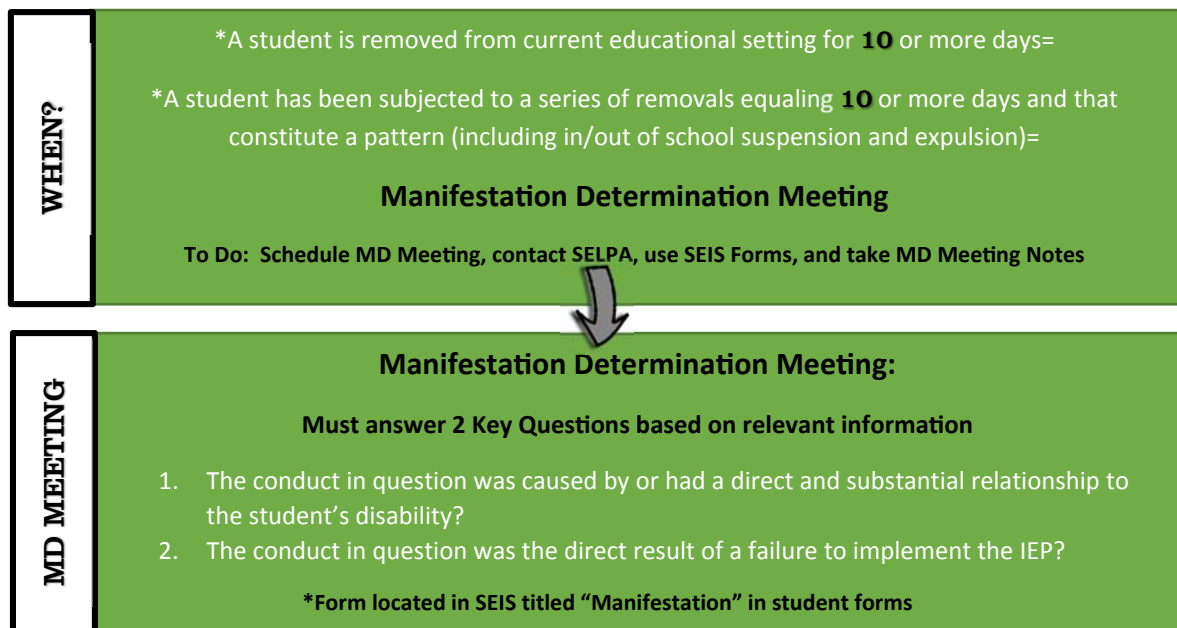
A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct, may be entitled to a manifestation

determination meeting if the LEA/district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred (34 CFR 300.534(a)).

A LEA/district shall be deemed to have knowledge that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred; one or more of the following took place:

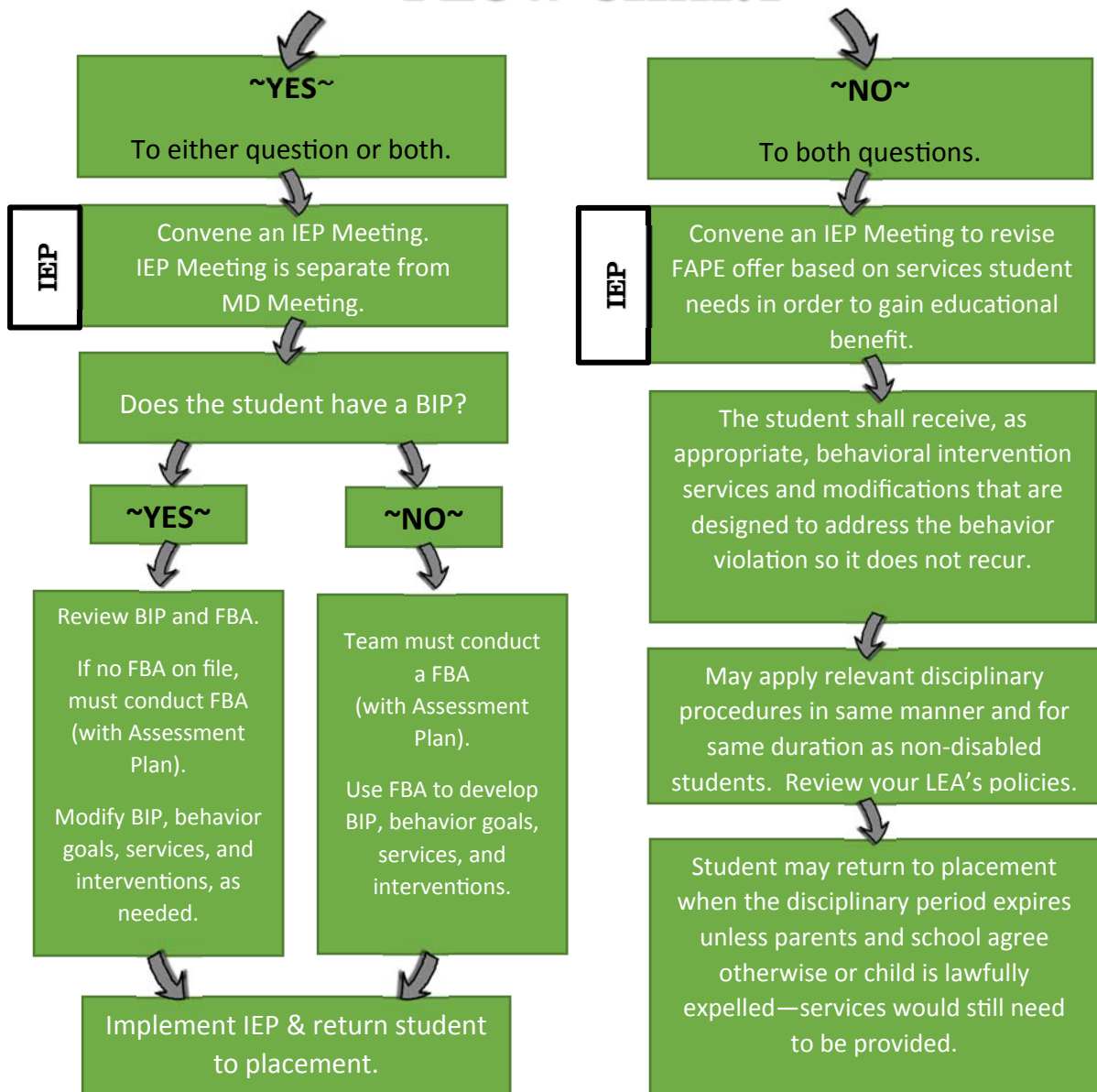
- The parent of the student expressed concern in writing to administrative or instructional personnel of the LEA/district that the student is in need of special education and related services
- The parent of the student requested an evaluation of the student
- The teacher of the student, or other personnel of the LEA/district, expressed specific concerns about a pattern of behavior demonstrated by the student to the director of special education or to other supervisory personnel of the LEA/district (34 CFR 300.534)
- LEA previously assessed the student and the student did not qualify for special education services; or student did qualify for services and parents declined them
- LEA referred student for special education testing to establish initial eligibility, but parent refused evaluation and/or services.

For additional information regarding these circumstances and recommended action by the LEA/district, please contact your SELPA Program Specialist.



# **MANIFESTATION DETERMINATION**

## **FLOW CHART**







## NON-PUBLIC SCHOOLS AND NON-PUBLIC AGENCIES REFERRAL PROCEDURES

### ***Non-Public Agency Referral Procedures***

A Non-Public Agency (NPA) is a private, nonsectarian establishment or individual that provides related services necessary for a pupil with exceptional needs to benefit educationally from the pupils' individualized education program. This 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.

Often, a LEA/district may not have the number of special education students enrolled at their school site to warrant employing a full-time special education provider. As a result, the LEA/district may choose to enter into a Master Contract with a Non-Public School (NPS)/Non-Public Agency (NPA) for the purpose of providing special education and/or related services to students with exceptional needs.

The "SELPA NPS/NPA Guidelines" document further defines best practices for entering into a master contract with a NPS/NPA and highlights additional resource documents. The Guidelines can be obtained through the SEIS document library.

### ***Non-Public School Referral Procedures***

A Non-Public School (NPS) means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program and is certified by CDE. 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.

Any member of an Individualized Education Program (IEP) team, including the parent/guardian, may make a recommendation that the IEP team consider placement in a residential or non-public day school.

When this occurs, the LEA/district shall hold an IEP meeting as soon as possible but no later than thirty days of the date that a change in placement was recommended. IEP meeting attendees shall include:

- The parent(s)/guardian(s)
- A Special Education Local Plan Area (SELPA) representative
- A representative from the LEA/District's mental health provider or LEA/district school psychologist/counselor
- A general education teacher, special education teacher
- LEA/district administrative designee
- Other LEA/district staff that may provide input regarding the student's present levels

Should an IEP team member unexpectedly request placement at an NPS (in-state or out-of-state) during an IEP meeting, the team should:

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- Note the specifics of the request in the IEP notes;
- Note why the request is being made and by whom;
- Indicate that further data will be gathered, possibly through formal assessments; and
- Schedule an IEP team meeting at a future date in order to determine if NPS placement is appropriate.

Please contact your SELPA Program Specialist to coordinate scheduling this IEP meeting at a mutually agreeable date and time.



## UNILATERAL PLACEMENTS

### *How is Placement generally defined?*

- a) Specific educational placement means that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings.
- b) The IEP team shall document its rationale for placement in other than the pupil's school and classroom in which the pupil would otherwise attend if the pupil were not disabled. The documentation shall indicate why the pupil's disability prevents his or her needs from being met in a less restrictive environment even with the use of supplementary aids and services.

(CCR §3042)

### *What is a Unilateral Placement?*

A Unilateral Placement occurs when a parent believes that their child's current educational placement is denying the child FAPE and makes a decision to place the child in a private placement (where they believe FAPE can be achieved) against the agreement of the IEP Team. Parent either notifies LEA/district of this Unilateral Placement at the last IEP meeting before the placement was made, or via a letter 10 business days prior to the Unilateral Placement change.

### *May students who are parentally placed in private schools participate in publicly funded special education programs?*

Students who are enrolled by their parents in private schools may participate in publicly funded special education programs. The LEA/district must consult with private schools and with parents to determine the services that will be offered to private school students. Although LEAs/districts have a clear responsibility to offer FAPE to students with disabilities, those students, when placed by their parents in private schools, do not have the right to receive some or all of the special education and related services necessary to provide FAPE.

(20 USC 1415[a][10][A]; 34 CFR 300.137 and 300.138; EC 56173)

If a parent of a student with exceptional needs who previously received special education and related services under the authority of the LEA/district enrolls that student in a private elementary school or secondary school without the consent of or referral by the local educational agency, the LEA/district is not required to provide special education if the LEA/district has made FAPE available. A court or a due process hearing officer may require the LEA/district to reimburse the parent or guardian for the cost of special education and the private school only if the court or due process hearing officer finds that the LEA/district had not made FAPE available to the student in a timely manner prior to that enrollment in the private elementary school or secondary school, and that the private placement is appropriate.

(20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56175)

***When may reimbursement be reduced or denied?***

When parents believe a LEA/district is denying their child FAPE, they may remove the child to a private placement, but they do so at “their own financial risk.” Parents may be financially responsible for the private placement if a court later finds that the LEA/district provided an appropriate FAPE. The court or hearing officer may reduce or deny reimbursement if parent(s) did not make the student available for an assessment upon notice from the LEA/district before removing the student from public school. Parents may also be denied reimbursement if they did not inform the LEA/district that they were rejecting the special education placement proposed by the LEA/district, including stating their concerns and intent to enroll the student in a private school at public expense.

Notice to the LEA/district must be given either:

- At the most recent IEP team meeting attended before removing the student from the public school, or
- In writing to the LEA/district at least ten (10) business days (including holidays) before removing the student from the public school.

(20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56176)

***When may reimbursement not be reduced or denied?***

A court or hearing officer must not reduce or deny reimbursement to parent(s) if they failed to provide written notice to the LEA/district for any of the following reasons:

- The school prevented parent(s) from providing notice
- Parent(s) had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of the requirement to notify the LEA/district
- Providing notice would likely have resulted in physical harm to the student
- Illiteracy and inability to write in English prevented them from providing notice, or
- Providing notice would likely have resulted in serious emotional harm to the student

(20 USC 1412[a] [10] [C]; 34 CFR 300.148; EC 56177)

***What steps may the LEA/district consider when informed of a Unilateral Placement change?***

- Ensure that all related service providers, case managers, and LEA/district Special Education staff are aware of the Unilateral Placement and suspend providing services.
- Provide parents with a Prior Written Notice (PWN) indicating that services provided by the LEA/district will be suspended based on parent’s Unilateral Placement decision.
- Invite parents to an IEP Meeting to discuss Unilateral Placement (preferably within 10 days of when parent provided notice).
- Contact your SELPA Program Specialist.
- Contact your legal counsel.



## STUDENT RECORDS

The Special Education Information System (SEIS) is a virtual database that holds electronic versions of each student's IEPs. Not all LEAs/districts use this system. SEIS can only be accessed by authorized users who have a username and password. SEIS is a highly secure database and information is accessible to only a limited number of users per LEA/district. A student's original IEP documents (original hard copies) serve as the legal document, with SEIS serving as a management system for record keeping. Original hard copies of students' IEPs should be printed out and stored in students' confidential file(s).

For more detailed instructions and guidance on SEIS, please contact your SEIS Program Technician at EDCOE or visit the Document Library located within SEIS ([www.seis.org](http://www.seis.org)).

### ***Safeguards:***

- Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- All personnel collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under 34 CFR 300.123 and 34 CFR part 99 (Family Educational Rights and Privacy Act).
- Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

LEA/districts shall establish, maintain and destroy pupil records as authorized by law. Parents have the right to inspect, and review education records relating to their children that are collected, maintained, or used by the agency.

### ***Mandatory Permanent Records***

Mandatory permanent records are those records which the schools have been directed to compile by California statute authorization or authorized administrative directive. Each LEA/district shall indefinitely maintain all mandatory permanent pupil records or an exact copy thereof for every pupil who was enrolled in a school program within that LEA/district. The mandatory permanent pupil record or a copy thereof shall be forwarded by the sending LEA/district on request of the public or private school in which the student has enrolled or intends to enroll. Such records shall include the following:

- Legal name of pupil
- Date of birth
- Method of verification of birth date
- Sex of pupil
- Place of birth
- Name and address of parent of minor pupil
  - Address of minor pupil if different than the above

- An annual verification of the name and address of the parent and the residence of the pupil
- Entering and leaving date of each school year and for any summer session or other extra session
- Subjects taken during each year, half-year, summer session, or quarter.
- If marks or credit are given, the mark or number of credits toward graduation allows for work taken
- Verification of or exemption from required immunizations
- Date of high school graduation or equivalent

### ***Mandatory Interim Pupil Records***

Mandatory interim pupil records are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed as per California statute or regulation. Such records include:

- A log or record identifying those persons (except authorized school Personnel) or organizations requesting or receiving information from the record. The log or record shall be accessible only to the legal parent or guardian or the eligible pupil, or a dependent adult pupil, or an adult pupil, or the custodian of records.
- Health information, including Child Health Developmental Disabilities Prevention Program verification or waiver
- Participation in special education programs including required tests, case studies, authorizations, and actions necessary to establish eligibility for admission or discharge
- Language training records
- Progress slips and/or notices as required by Education Code Sections 49066 and 49067
- Parental restrictions regarding access to directory information or related stipulations
- Parent or adult pupil rejoinders to challenged records and to disciplinary action
- Parental authorizations or prohibitions of pupil participation in specific programs
- Results of standardized tests administered within the preceding three years.

### ***Permitted Records***

Permitted records are those pupil records which districts may maintain for appropriate educational purposes. Such records may include:

- Objective counselor and/or teacher ratings
- Standardized test results older than three years
- Routine discipline data
- Verified reports of relevant behavioral patterns
- All disciplinary notices.

**NOTE:** The records of students who were assessed but did not qualify for special education aren't required to be kept. However, they can be of assistance in the event of any future evaluation, and may provide evidence that a school fulfilled their Child Find obligations.

### ***Required Notification to District of Residence When Student Leaves a Charter School***

A charter school must notify the superintendent of the school district of the pupil's last known address within thirty (30) days if a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason (CA Education Code §47605(d)(3)). Additionally, upon request, charter schools are obligated to provide the LEA/district with a copy of the cumulative record of the pupil, including a transcript of grades or report card and health information. LEAs/districts should maintain a standard notification letter that may be used for this purpose, thereby ensuring compliance with this legal requirement. A sample letter, named Notice of Student Expulsion or Disenrollment, may be found in the SEIS document library.

### ***Confidential Special Education Records***

The following guidelines apply to confidential special education records.

#### ***Access***

Special education records are subject to the same privacy and access right as other mandatory records. In addition, parents have the right to examine all school records of their child that relate to the identification, assessment, and educational placement of the child. Even though records may be stamped "confidential" or contain sensitive information, the parent or eligible student has full right of access. Parents have the right to receive copies within **five business days** of making the request, either orally or in writing. A public educational agency may charge no more than the actual cost of reproducing the records, but if this cost prevents the parent from exercising their right to receive the copies, the copies shall be reproduced at no cost to the parents.

The Family Educational Rights and Privacy Act (FERPA) requires that LEAs / districts inform parents that they have the right to:

- Inspect and review the student's education records
- Seek amendment of the student's records that they believe to be inaccurate, misleading, or otherwise in violation of the student's privacy rights.
- Consent to disclosures of personally identifiable information contained in the student's educational records, except to the extent that FERPA authorizes disclosure without consent.
- File a complaint with the Family Policy Compliance Office (FPCO) alleging the LEA's / district's failure to comply with the requirements of FERPA.

The LEA/district will not permit access to any child's records without written parental permission except as follows:

- LEA/district officials and employees who have a legitimate educational interest including a school system where the child intends to enroll
- Certain state and federal officials for audit purposes
- A pupil 16 years of age or older, having completed the 10th grade who requests access to their own records

The LEA/district may release information from the student's records for the following:

- In the event of emergency and/or when the knowledge of such information is necessary to protect the health or safety of the child and/or others
- To educational organizations (i.e. the California Department of Education) to the extent necessary for the organization's function

- To officials and/or employees of private schools or school systems in which the child is enrolled or intends to enroll

### ***Confidentiality of Records***

All procedural safeguards of the Individuals with Disabilities in Education Act (IDEA) shall be established and maintained. A custodian of records must be appointed by each LEA/district to ensure the confidentiality of any personally identifiable student information. This is usually the case manager, but may be another person who has been trained in confidentiality procedures. The custodian of records is responsible for ensuring that files are not easily accessible to the public. Files shall be located in a secure area. Records of access are maintained for individual files, which include the name of party, date, and purpose of access. (California Education Code §49064).

If an agency or person provides a written report (i.e. assessment reports and protocols) for the school's information, it becomes a part of the pupil's record and therefore becomes available to the parent upon request. If emails are electronically or physically maintained, they become part of the pupil's record and therefore becomes available to the parent upon request. Test protocols are considered to be a part of a pupil's confidential file. Protocols must be maintained in a pupil's confidential file and copies provided to the parent upon request.

### ***Transfer of Records***

When a student transfers from one school to another, records should also be transferred in accordance with state and federal law. California schools are not required to obtain parent permission to forward records. In fact, they are required to forward records to any California school of new or intended enrollment "within five (5) days." Records cannot be withheld for nonpayment of fees or fines (EC 49068). Mandatory permanent pupil records must be forwarded to all schools and a copy must be retained by the sending LEA / district. Private schools in California are required to forward mandatory permanent pupil records.

School personnel must have parental permission to communicate with outside providers about students. The family will need to provide consent through a written exchange of information to authorize transfer of records, verbal and/or email communications, etc., as appropriate. The Family Educational Rights and Privacy Act (FERPA) stipulates different guidelines to schools when communicating about students than the Health Insurance Portability and Accountability Act (HIPAA), with which medical providers are more familiar.

### ***Special Education Record Request Process***

When a parent requests copies of a student's special education records, please use the following process to guide your response:

1. Parents have the right to request records verbally or in writing per California Education Code § 56504.
2. If a parent's written request is received, the LEA/district shall date stamp the request. If the parent makes a verbal request, the LEA/district shall have a process in place to document the date of the request and the specific files requested.



3. The special education director/coordinator and/or LEA/district site administration should be informed of the request so they may assist with this process.
4. Provide parents with requested student records within 5 business days without exception. If your school receives a record request the day before a holiday break, you must provide the records within 5 business days, regardless of your school break.
5. Once you have provided copies, document how the records requested were provided to the parent (if mailing, it is recommended to use certified mail that provides you with a return receipt).
6. Use the form titled "Special Education Records Request Process" to document the date sent, person who sent the records, and what files/records were included. If possible, obtain parent's signature to indicate the records requested were received. The form is located in the SEIS document library.



## INDEPENDENT EDUCATIONAL EVALUATIONS

### *Introduction*

The following guidelines will provide special education administration and staff with an overview of the federal and state laws surrounding Independent Educational Evaluations (IEE) and recommended best practices when working with parents and assessors when the LEA/district has received a request for an IEE.

### *Definitions*

- “Independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the responsible LEA/district.
- An IEE can only be conducted in areas previously evaluated by the local education agency (LEA). Should a parent request that an IEE be conducted in an area not previously assessed by the LEA, the LEA may consider this a request for new assessment and provide the parent/guardian with an assessment plan.
- “Public expense” means that the LEA/district either pays for the full cost of the evaluation or ensures that the evaluation or evaluation components are otherwise provided at no cost to the parent.
- A “parent” is defined as the following:
  - A biological or adoptive parent of a child
  - 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. (C.F.R. 34, 300.30(b)(1) or (2)).
  - 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. (Sections 361 and 726 of the Welfare and Institutions Code)
  - 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
  - A surrogate parent who has been appointed. (Section 7579.5 or 7579.6 of the Government Code, 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)

### *When May a Parent/Guardian Request an IEE?*

A parent/guardian has the right to obtain an independent educational evaluation (IEE) for their child at their own expense at any time (34 CFR 300.502(a)(1)).

The parent/guardian of a student with a disability has the right to obtain an independent educational evaluation at public expense, subject to the provisions of federal and state law, when the parent disagrees with an assessment obtained by the LEA/district within the last two years (34 CFR 300.502(b)(1) and (d)(2)(A), California Education Code Sec 56329(b), and (OAH Case No. 2012051153)).

A parent/guardian may request one IEE in response to each area of evaluation completed by the LEA/district within the last two years.

***Procedures for Sharing a “Parent-Initiated IEE”***

When a parent/guardian obtains an IEE at private expense, the results of the evaluation, if shared with the LEA/district, shall:

- Be considered by the LEA/district, if it meets agency criteria, in any decision made with respect to the provision of a free, appropriate, public education (FAPE) to the student; and
- May be presented as evidence at a due process hearing regarding the child.

***Responding to a Request for an IEE at Public Expense***

Once a parent/guardian has requested an IEE at public expense, the LEA/district must provide the parent/guardian with a copy of their Procedural Safeguards *and* either:

- Provide the parent/guardian with the IEE Information Packet for Parents (located in the SEIS Document Library) which provides information about where an IEE may be obtained, the agency criteria applicable for IEEs, and expense information (34 CFR 300.502(a)(2)); or
- Prior Written Notice (PWN) indicating that an IEE is not appropriate and initiate a due process hearing to show that LEA/district’s evaluation is appropriate.

The LEA/district may request that the parent/guardian explain why s/he objects to the LEA/district’s evaluation or specific areas of evaluation. However, the LEA/district may not require the parent/guardian to provide an explanation and may not unreasonably delay providing the IEE at public expense.

***Providing Prior Written Notice (PWN)***

When the LEA/district is responding to a parents request for an IEE, whether granting or denying the request, the LEA/district shall provide the parent with a Prior Written Notice (PWN) and a copy of their Procedural Safeguards.

***Obtaining Written Consent to Conduct an IEE***

In circumstances in which the LEA/district is granting the parent’s request for an IEE, the LEA/district shall provide the parent/guardian with PWN, their Procedural Safeguards, and the SELPA IEE Parent Information Packet (SEIS Document Library).

***Agency Criteria for Conducting an IEE***

According to federal regulations, the criteria under which the IEE is obtained at public expense, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the LEA/district uses when it initiates an evaluation (34 CFR 300.502(e)(1)).

The LEA/district may not impose conditions or timelines related to obtaining an IEE at public expense (34 CFR 300.502(e)(2)).

### **Location**

The IEE shall be administered by an evaluator in the same type of educational setting as that used by the LEA/district in providing similar evaluations including, but not limited to, classroom observations (California Education Code Section 56329(c)).

### **Guidelines for Determining Qualifications**

All assessments shall be completed by persons competent to perform the assessment as determined by the LEA/district (California Education Code Section 56322).

The IEE shall be administered by an evaluator who holds equivalent certifications, licenses, or other qualifications that would be required of the LEA/district staff to provide similar evaluations.

Independent evaluators shall have the following minimum credentials issued by the appropriate agency or board with the State of California:

Type of Assessment	Minimum Qualifications
Academic Achievement	Credentialed Special Education Teacher Licensed Educational Psychologist Pupil Personnel Services Credential
Adaptive Behavior	Licensed Educational Psychologist Pupil Personnel Services Credential
Adaptive Physical Education	Credentialed Adapted Physical Education Specialist
Assistive Technology	Certified or Licensed Speech/Language Pathologist Occupational Therapist Certified Assistive Technology Specialist
Auditory Acuity	Licensed Educational Audiologist Clinical or Rehabilitative Services Credential Language, Speech and Hearing and Audiology Credential
Auditory Perception/Auditory Processing	Language, Speech and Hearing and Audiology Credential Clinical or Rehabilitative Services Credential Education Specialist Instruction Credential: Deaf and Hard-of-Hearing Licensed Educational Psychologist Pupil Personnel Services Credential
Functional Behavioral Assessment	Credentialed Special Education Teacher Pupil Personnel Services Credential Licensed Marriage and Family Therapist Licensed Clinical Social Worker Licensed Educational Psychologist Board Certified Behavior Analyst
Cognitive	Licensed Educational Psychologist Pupil Personnel Services Credential

## El Dorado County Charter SELPA Procedural Guidelines

Health	Licensed Physician Registered Nurse School Nurse Services Credential
Motor	Licensed Physical Therapist Registered Occupational Therapist Adaptive Physical Education Specialist
Occupational Therapy	Licensed Occupational Therapist
Orientation and Mobility	Clinical or Rehabilitative Services Credential Education Specialist Instruction Credential: Physical and Health Impairment
Physical Therapy	Licensed Physical Therapist
Social/Emotional	Licensed Educational Psychologist Licensed Clinical Social Worker (LCSW) Licensed Marriage and Family Therapist Pupil Personnel Services Credential
Transition/Vocational	Credentialed Special Education Teacher Adult Education Credential with a Career Development Authorization Pupil Personnel Services Credential
Visual Acuity/ Developmental Vision	Licensed Optometrist Licensed Ophthalmologist Education Specialist Instruction Credential: Visual Impairments
Functional Vision	Education Specialist Instruction Credential: Visual Impairments

A parent/guardian shall have the opportunity to demonstrate that unique circumstances justify a waiver of any of the criteria listed above as defined by the LEA/district.

A parent/guardian may also request a list of suggested IEE evaluators who meet the LEA/district agency criteria, but the parent/guardian is not required to select from the list provided.

### ***Conflict of Interest***

The LEA/district should ensure there is no conflict of interest between the evaluator and service provider. After completing an IEE, it is not recommended that the independent evaluator or their agency provides the service(s) recommended to the IEP team.

### ***IEE Cost Determination***

The cost determination for an IEE shall be comparable to the costs incurred by the LEA/district when it uses its own employees or contractors to complete a similar assessment. Such costs shall include:

- Observations;
- Administration and scoring of assessments;
- Report writing; and
- Attendance in person, or by phone, at the IEP meeting in which the IEE is presented.

As a result, the El Dorado County Charter SELPA would recommend that the LEA/district determine a reasonable cost ceiling for each evaluation listed on page 3 and 4 of this section. The SELPA would recommend that the ceiling be determined by averaging the cost of the following three assessors:

- The cost of an assessment provided by a LEA/district employee;
- The cost of an assessment provided by a neighboring LEA/district; and
- The cost of an assessment provided by a private service provider, with appropriate qualifications, within a reasonable distance from the LEA, usually 40 miles.

A parent/guardian shall have the opportunity to demonstrate that unique circumstances justify a financial waiver of any of the cost determination criteria listed above as defined by the LEA/district.

### ***Payment of IEE Costs***

- IEE Obtained at Public Expense:
  - The LEA/district shall issue payment to the independent evaluator for the cost of conducting the IEE following the LEA/district's receipt of the following:
    - A written IEE assessment report prepared by the independent evaluator containing all necessary assessment and eligibility sections. The report shall be received by the LEA/district and the parent five days prior to the IEP meeting;
    - The original assessment protocols utilized to conduct the IEE shall be provided to the LEA/district; and
    - Detailed invoice(s), including dates of assessment, observation(s), and hourly rates.
- Unilaterally Obtained IEE at Private Expense:
  - A parent/guardian is requested, but is not required, to notify the LEA/district prior to obtaining a unilateral IEE. Regardless, if a parent/guardian obtains an IEE at private expense, the parent's request for payment and/or reimbursement shall be received by the LEA/district within a reasonable time after receipt of the results of the completed IEE.

Once a parent/guardian has requested that a unilaterally obtained IEE be paid for by the LEA/district, the LEA/district must provide the parent/guardian with a copy of their Procedural Safeguards *and* either:

- Initiate a due process hearing to show that the LEA/district's evaluation is appropriate; or
- Provide the parent/guardian with the El Dorado Charter SELPA IEE Information Packet (SEIS Document Library), which provides information about where an IEE may be obtained, the agency criteria applicable for IEEs, and proceed with consideration of the LEA/district's obligation to pay for the independent evaluation.

If the LEA /district proceeds with consideration to pay for the unilaterally obtained IEE, the LEA/district shall:

- Review and consider the parent/guardian's request for payment;
- Ensure the request was made within a reasonable time after receipt of the results of the evaluation; and
- Ensure all criteria discussed in this policy are met and the required documents (assessment report, original assessment protocols and invoice(s)) have been received.

Evaluations Ordered by Hearing Officer:

- If a hearing officer orders an IEE as part of a hearing, the cost of the evaluation must be at the LEA/district expense, unless otherwise specified by the Hearing Officer.

***Criteria for Accessing Private Insurance***

When private insurance will cover all, or a portion of, the costs of the IEE, the LEA/district may request that the parent/guardian voluntarily have their insurance pay the costs of the IEE covered by their insurance. However, parents will not be asked to have private insurance cover the costs of an IEE if the process would result in a financial cost to the parent/guardian including but not limited to:

- A decrease in available lifetime coverage or any other benefit under an insurance policy;
- An increase in premiums or the discontinuance of the policy; or
- An out-of-pocket expense such as payment of a deductible amount incurred in filing a claim.

***IEE Assessment Results***

The results of the IEE, whether obtained at public or private expense, will be considered by the IEP team when making a determination regarding the student's eligibility for special education and related services, educational placement, and other components of the student's educational program as required by federal and California special education laws and regulations.

However, the results of an IEE will not control the IEP team's determinations and may not be considered if not completed by a qualified professional, as determined by the LEA/district.

***IEE LEA & Independent Evaluator Service Agreement***

The SELPA recommends that the LEA complete a service agreement with the independent evaluator to ensure clarification regarding terms of the agreement. A sample agreement is available in the SEIS Document Library for review and use.



## LOCAL COMPLAINT PROCEDURES

LEAs/districts may at times receive complaints from parents or guardians regarding special education. LEAs/districts are required to have a local complaint process in place. Below are guidelines to assist LEAs/districts on the requirement.

LEAs/districts are required to adopt policies and procedures for the investigation and resolution of complaints of alleged violation of federal or state laws governing educational programs. Local policies shall ensure that complainants are protected from retaliation and that the identity of a complainant alleging discrimination remains confidential as appropriate. LEAs/districts shall submit their policies and procedures to the local governing board for adoption.

Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring LEA/district compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

The LEA/district may provide a complaint form for persons wishing to file a complaint to submit. However, a person is not required to use the complaint form furnished by the LEA/district in order to file a complaint.





## **CALIFORNIA DEPARTMENT OF EDUCATION COMPLAINT AND INVESTIGATION PROCEDURES**

A California Department of Education (CDE) or “state” complaint is a formal request to the CDE to investigate allegations of noncompliance with special education laws, federal or state, and may be filed by either an organization or individual(s). It is the responsibility of the CDE to ensure that LEAs/districts abide by laws pertaining to special education while meeting the educational needs of students with disabilities. A complaint must be filed within one year of the alleged violation. [34 CFR 300.151].

IDEA regulations require state educational agencies such as the CDE to:

- Adopt written procedures for resolving complaints
- Include remedies for the denial of appropriate services
- Specify minimum requirements for state’s complaint procedures
- Contain procedures for complaints related to due process hearings
- Include procedures for filing a CDE complaint
- Specify the timeline for filing a complaint
- Provide model complaint forms. [34 CFR 300.151-153 and 34 CFR 300.509][U.S.C. 1221e-3 and 20 U.S.C. 1415(b)(8)]

### ***Who May File a Complaint?***

Individuals, including parents, students, teachers, and agency representatives, may file a complaint with CDE. Organizations may file complaints as well. The party filing the complaint must forward a copy of the complaint to the LEA/district or public agency serving the child at the same time the party files the complaint with CDE. [34 CFR 300.153(b) and 300.153(d)]

### ***What are the Required Elements of a Complaint?***

A complaint must be submitted in writing and include the following:

- A statement that the LEA/district has violated special education law
- Facts on which such statements are based
- Signature and contact information for the complainant
- Child’s name, address, and school if alleged violations are student specific
- Proposed resolutions [34 CFR 300.153(b) and 300.153(d)]

### ***Where Must a CDE Complaint be Filed?***

CDE complaints may be sent by mail or fax to:

California Department of Education  
Special Education Division  
Procedural Safeguards Referral Service (PSRS)  
1430 N Street, Suite 2401  
Sacramento, CA 95814-5901  
Fax: 916-327-3704

***What are the Elements of a Complaint Investigation?***

Once an individual has filed a complaint with the CDE, an investigator will contact the complainant and the LEA/district in the complaint. The investigator will gather facts about the allegations through interviews and document reviews.

Based on documentation/information collected, the investigator will prepare a complaint investigation report which will contain the following:

- Allegation summary
- General investigation procedures
- Applicable law and regulation
- Finding of facts
- Report conclusions (compliance or noncompliance)
- Corrective actions and timelines, if applicable

The CDE will send a copy of the investigation report to the complainant, the LEA/district and the parent (if different from the complainant).

A complaint investigation is completed within 60 days of receipt of the complaint by CDE; however the 60 day timeline may be extended under certain circumstances.

***What if Noncompliance is Found?***

If the complaint investigation yields a finding of noncompliance, the investigation report may include corrective actions, including requiring an LEA/district to:

- Convene a new IEP meeting
- Conduct further assessments
- Submit plans outlining proposals to correct violations and prevent future ones
- Initiate personnel training in the area(s) of violation(s)
- Provide compensatory education or reimbursement
- Review and revise procedures and practices
- Participate in monitoring and reporting activities

***What if There is Disagreement with Investigation Findings?***

The CDE has an appeals process in which any party involved in the complaint may request reconsideration. In order to initiate the appeal process the party in disagreement with the investigation findings shall submit a written reconsideration request to the CDE within 35 calendar days of receiving the investigation report.

***What Can an LEA/district Do to Facilitate a Complaint Investigation?***

- Cooperate with any complaint investigation and provide any requested documentation in a timely manner
- Submit all documentation regarding the complaint.

- Offer a resolution session (alternative dispute resolution (ADR)) to address resolve concerns that prompted the complaint. This step is voluntary. For more information, please reference the section of this guide titled, “Due Process.”

Failure to respond may result in a finding and remedy in favor of the complainant.

Please contact your SELPA program specialist for additional information regarding the complaint process and investigation procedures. You may also contact the California Department of Education (CDE).



## **DUE PROCESS AND MEDIATION**

### ***What is Due Process?***

The El Dorado County Charter SELPA is committed to supporting LEAs/districts in assessment, identification, and placement of students with special needs in the appropriate and least restrictive environment. LEAs/districts are required by IDEA 2004 to follow procedures to provide access to due process and the protections conferred by procedural safeguards, which are required by federal law. Under IDEA, due process hearings are a principal vehicle for resolving disputes between parents of children with disabilities and LEAs/districts concerning identification, evaluation, placement or provision of Free and Appropriate Public Education (FAPE) [34 CFR 300.511]. Parents, students who have reached the age of majority, and LEAs/districts may request a due process hearing.

### ***When May Due Process be Filed?***

A parent or guardian, adult student and the LEA/district involved may initiate the due process hearing procedures under any of the following circumstances:

- There is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child;
- There is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child;
- The parent or guardian refuses to consent to an assessment of the child;
- There is a disagreement between a parent or guardian and a local educational agency regarding the availability of a program appropriate for the child, including the question of financial responsibility [34 CFR 300.148]. If programs and services are not provided according to the IEP, the parent may file a complaint with the California Department of Education (CDE).

### ***What are Due Process Protections?***

Due process protections include the option of a mediation conference, the right to examine pupil records, and the right to a fair and impartial administrative hearing at the state level before a person knowledgeable in the laws governing special education and administrative hearings. Specific procedures and timelines are delineated in the following pages.

### ***How is a Request for Due Process Hearing Filed and What Must it Contain?***

To initiate a due process hearing, a parent, adult student, or LEA/district files a written request with the Office of Administrative Hearings (OAH). Under the IDEA there is no right to a due process hearing without a valid complaint. In order to be considered valid, a due process complaint must contain:

- A. The child's name, address and school of attendance;
- B. A description of the problem with specific related facts; and
- C. A proposed resolution with specific related facts.

The requesting party must also submit a copy of the hearing request to the other party. The hearing must be completed and a decision reached within 45 days of receipt of the request, unless a continuance has been granted. Timelines for due process begin when the party named in the complaint receives the complaint from the filer. If both parties agree to a mediation conference, it is held and completed within 15 days of receipt of hearing request. If parties proceed to a due process hearing, it is held and completed within 30 days of the mediation conference. To file for mediation or a due process request, contact:

Office of Administrative Hearings  
Special Education Division  
2349 Gateway Oaks, Suite 200  
Sacramento, CA 95833-4231  
Telephone: 926-263-0880  
Fax: 916-263-0890

A due process request shall be deemed sufficient unless the party receiving it notifies OAH in writing that the complaint does not meet the requirements. LEAs/districts may file a motion to dismiss those complaints that do not meet requirements per IDEA. Such motions must be filed within 15 days of receipt of the complaint. If the LEA/district chooses not to file a motion to dismiss based on the contents of the complaint, it is assumed that the LEA/district accepts the complaint as is, and an LEA/district may be forced to defend an incomplete complaint at a due process hearing. Therefore, it is important that the LEA/district evaluate each new complaint as it is received. A party may amend a due process complaint only for two reasons:

1. The other party consents in writing to the amended complaint
2. OAH grants permission for the amended complaint. Due process timelines start over with an amended complaint

### ***What Happens After a Due Process Request is Filed?***

Once a valid due process request is received from a parent or adult student, the LEA/district must, within 10 calendar days of receipt, provide a written response to the complaint. It is important that the LEA/district abide by this requirement to respond within the timeline. The response from the LEA/district to the parent shall include all of the following:

- An explanation of why the agency proposed or refused to take the action raised in the due process hearing request
- A description of other options that the individualized education program team considered and the reasons why those options were rejected
- A description of each assessment procedure, assessment, record, or report the agency used as the basis for the proposed or refused action
- A description of other factors relevant to the proposed or refused action of the agency. [34 CFR 300.508(e)(1)]

Once an LEA/district receives a request for due process hearing from the Office of Administrative Hearings (OAH) they should notify the SELPA office immediately. OAH does not inform the SELPA of due process requests, so it is important to date stamp the date of receipt and fax a copy to the SELPA immediately upon receipt. The SELPA can assist an LEA/district with responses to parent(s)/guardian(s) and/or OAH. If a resolution session is required, staff from the El Dorado County SELPA may serve as a neutral facilitator.

The LEA/district is required to convene a resolution session, sometimes called an alternative dispute resolution session (ADR), within 15 days of their receipt of a due process complaint. As soon as an LEA/district receives notice of a request for a due process hearing, they should fax a copy to the SELPA so that the SELPA, LEA, and parent can coordinate a resolution session. Attendees at a resolution session may include the parent(s)/ guardian(s), LEA representative(s) who has the authority to make decisions, and the facilitator. The purpose of this session is to foster early resolution of the concerns prompting the request for due process hearing. The meeting shall not include an attorney of the LEA/district, unless the parent is accompanied by an attorney. If a parent brings an attorney, that attorney is not entitled to recover fees from the LEA/district for attending the resolution session. The resolution session is similar to mediation, but without the assistance of a formally trained mediator. Any information discussed at that meeting is confidential, and the outcome of the resolution session shall be a legally binding settlement agreement if the parent(s) and LEA/district reach agreement regarding the concerns that prompted the request for a due process hearing.

The El Dorado County Charter SELPA implements a local process in alternative dispute resolution (ADR) as an alternative to formal mediation and fair hearing. Due process includes the conducting of a resolution session, and the SELPA uses the alternative dispute resolution process to this end. This ADR process is facilitated by SELPA personnel who have received training in the ADR process, seeks to build positive relationships, encourages flexibility and creative problem solving, and promotes a sense of ownership in the outcome. This process does not preclude the option of formal mediation or fair hearing, but is offered as a positive alternative. For more information on the ADR process, contact the SELPA office at (530) 295-2462. Nothing in the due process procedures described in this chapter is to be construed as prohibiting or preventing the parent and the LEA/district from meeting informally and resolving any issue(s) of concern. It is encouraged that solutions be reached at a local level whenever possible. A facilitated IEP may also be suggested and/or attempted prior to moving forward with more formal avenues to resolve disagreements.

### ***Mediation***

Mediation a voluntary process through which parties seek mutually agreeable solutions to education disputes with the help of an impartial mediator. Parents or LEAs/districts may seek “mediation only” (without request for a due process hearing), or they may participate in mediation as an element of due process. Mediation cannot be used to delay a parents’ right to a due process hearing. A parent or an LEA/district may file a request for mediation.

### ***Mediation Only***

A parent or LEA/district may request a Mediation Only conference. Requests for Mediation Only are filed with the Office of Administrative Hearings (OAH), and copy of the request must be provided to the LEA/district at the same time the request is filed with OAH. Both the parent and the LEA/district must voluntarily agree to participate. Attendees at a Mediation Only session should include the parent(s), LEA representative(s) who has the authority to make decisions, and a mediator. An interpreter may be required if a parent requests one. A parent or an LEA/district may be accompanied and advised by non-attorney representatives. Attorneys or other independent contractors used to provide legal advocacy services may not participate in the Mediation Only conference.

A Mediation Only conference is scheduled by an OAH Administrative Law Judge (ALJ) within fifteen (15) days of receipt of the request, and at a time and place reasonably convenient to both parties. If a resolution is reached, both parties execute a legally binding written agreement, which also states that conference discussions are confidential and may not be used in any subsequent request for due process hearing. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the Mediation Only conference has the option of filing a request for due process hearing. The mediator may assist the parties in specifying any unresolved issues to be included in the hearing request.

***Mediation and Due Process Hearing***

Each party in a request for due process hearing shall be notified by the California Department of Education (CDE) and offered a formal mediation as a means of resolving the complaint. Should the parties agree to mediate, written confirmation shall be sent indicating the time and place of the mediation conference. A mediation session must be held within 15 days of filing a request for due process hearing.

Attorneys and advocates are permitted to participate in mediation conferences scheduled upon the filing of a request for due process hearing. A qualified, impartial mediator is appointed when mediation is agreed upon. This person must be trained in effective mediation techniques. During the mediation session, the neutral mediator facilitates communication between the parent(s) and the LEA/district. All parties are involved in the decision making.

If mediation yields an agreement by both parties, the mediation results are documented in a binding settlement agreement and signed by the involved parties. All discussions in mediation sessions are automatically confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding. The mediator confirms that the agreement is consistent with all applicable laws and regulations.

A copy of the mediation agreement is sent to each party involved. The compliance status of the LEA/district will revert to noncompliance if they do not perform the provisions of the mediation agreement within the time specified.

If mediation (either Mediation Only or mediation as part of a request for due process hearing) does not yield an agreement by both parties, either party may move forward with the formal due process hearing request.

***Elements and Timeline of a Request for Due Process Hearing***

**I. Initiation of Due Process Hearing**

- A. If a parent desires a due process hearing to dispute any educational decision by an LEA/district covered under due process guidelines, parent shall submit a written hearing request to Office of Administrative Hearings (OAH) and the LEA/district. If a hearing request is submitted by a parent or adult student directly to an LEA/district, the request must immediately be forwarded to the Office of Administrative Hearings.  
OAH letter confirms receipt of request, and informs parent and LEA/district of dates of mediation conference, and due process hearing.
- B. LEA/district determines if they believe request for due process hearing meets requirements of IDEA 2004, which include:
  - a. Child's name, address and school of attendance;

- b. A description of the problem with specific related facts; and
- c. A proposed resolution with specific related facts

If a request for due process hearing is determined by the LEA/district to be valid, the LEA/district must, within 10 calendar days, provide a written response to the complaint to the parent which specifically addresses:

- a. Why the action subject to dispute was proposed or rejected;
- b. Includes a description of the other options considered and the reason for rejection;
- c. The basis of the action; and
- d. All relevant factors related to the decision

LEA/district may file a motion to dismiss the request for due process hearing if the LEA/district deems the complaint to be insufficient.

- C. An administrator or designee may meet informally with parents as soon as possible after receipt of request for due process hearing to address concerns raised in the request. An IEP team meeting may be scheduled as necessary to discuss concerns and any potential changes to FAPE based on the needs of the student and the concerns which resulted in the request for due process hearing.
- D. If concern(s) remain(s) unresolved, the administrator or designee may inform parent:
  - a. The LEA/district would like to participate in a resolution session;
  - b. The LEA/district would like to move forward to mediation;
  - c. The LEA/district waives the mediation conference and is proceeding directly to the due process hearing before a State Hearing Officer.

## II. Resolution Session

- A. The LEA/district is required to offer a resolution session (Alternative Dispute Resolution (ADR)) to be held within 15 days of their receipt of the request for due process hearing. When the LEA/district files for Mediation Only or a due process hearing, a resolution session is not required to be offered, but may still be scheduled.
- B. If agreement is reached at the resolution session within the timeline, OAH must be notified to remove the matter from hearing. Sample forms may be found at:  
<http://www.documents.dgs.ca.gov/oah/SE/Forms/OAH%2069,%20rev.%2003-10.pdf>  
<http://www.documents.dgs.ca.gov/oah/SE/Forms/OAH%2068,%20rev.%2007-08.pdf>
- C. An IEP meeting may be scheduled as needed to document any changes to the IEP document agreed upon in the resolution session.
- D. If concern(s) remain(s) unresolved after the resolution session is held, the administrator or designee may inform the parent that either:
  - a. The LEA/district will participate in a mediation conference; or
  - b. The LEA/district waives the mediation conference and is proceeding directly to the due process hearing before a state hearing officer.

## III. Mediation Conference

- A. A mediation conference will be held if the parent and/or LEA/district do not waive the conference. The parents and LEA/district have the right to request a mediation conference at any point during the hearing process.



- B. If the parties attending mediation come to agreement, the decisions are documented in a mediation agreement. Attorneys and advocates are permitted to participate in mediation conferences.
- C. An IEP team meeting is scheduled as soon as possible to incorporate pertinent agreement elements into the IEP.
- D. If concern(s) unresolved through mediation, OAH lists unresolved issue(s) as the basis for due process hearing and sets hearing date and place convenient for both parties.

**IV. Due Process Hearing**

- A. A due process hearing must be completed within 30 days of the mediation conference or within 45 days of receipt of request for due process hearing if the mediation conference is waived.
- B. OAH assigns a state hearing officer who is knowledgeable of administrative hearing procedures.
- C. All evidence (written documentation and list of witnesses) shall be exchanged by parent and LEA/district 5 days prior to due process hearing. The party requesting the due process hearing shall not be allowed to raise issues that were not raised in the request for due process hearing, unless the other party agrees otherwise.
- D. During the hearing proceedings, the student is to remain in his or her last agreed upon educational placement, including agreed upon services and setting, unless the LEA/district and the parent agree otherwise.
- E. Hearing proceedings will be recorded verbatim and both parties will be given access to the recording. All testimony shall be given under oath or affirmation. A hearing is conducted in English with an interpreter provided when necessary. The decision of the OAH hearing officer shall be written in English and, as appropriate, the primary language of parent and mailed to both parties involved in the hearing. Both parties are given notice of rights and an explanation of the procedure for appealing the hearing decision to a court of competent jurisdiction.
- F. An LEA/district must continue to meet IEP timelines and FAPE obligations during the period of any due process proceedings and until resolution is reached. This means that an LEA/district must continue to offer FAPE by convening IEP meetings during due process proceedings, even though the parents may not consent.
- G. If an LEA/district does not intend to appeal the decision made in due process hearing, it should implement the decision as soon as possible, and in any event, within a reasonable amount of time.