



**Clovis Unified School District**

**Special Education Procedural Handbook**

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**Chapter 1**  
**Identification, Referral, and Assessment**

**1.1. Purpose and Scope**

The purpose of this Chapter is to set forth procedures that should be used by the Clovis Unified School District (District) personnel to identify students who have disabilities by referring them for appropriate assessment. Ultimately, as discussed in Chapter 2, it is the responsibility of the Individualized Education Program (IEP) Team or Individual Family Services Plan (IFSP) Team to determine whether a student has a disability and, by reason of that disability, needs special education and/or related services.

**(A) Free Appropriate Public Education**

In accordance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and related state law, students who are eligible to receive special education instruction and related services are entitled to that instruction and services at no cost to the students or their parents. The IDEA provides disabled students with a free appropriate public education (FAPE). (20 U.S.C. §§ 1400(d)(1)(A) and 1412(a)(1)(A); Ed. Code, § 56040(a).)

"Free appropriate public education" means special education and related services that:

- (1) Are provided at public expense, under public supervision and direction, and without charge;
- (2) Meet the standards of the state educational agency;
- (3) Include an appropriate pre-school, elementary school or secondary school education; and
- (4) Are provided in conformity with the student's IEP.

(20 U.S.C. § 1401(9).)

**(B) Who is a Disabled Student?**

An individual is a "child with a disability" or an "individual with exceptional needs" who:

- (1) is identified by an IEP Team, or if applicable an IFSP Team, as a child with a disability under both federal and state law
- (2) requires instruction and services that cannot be provided with modification of the regular school program in order to ensure that the student receives a FAPE; and is in one of the following age categories:

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- (A) younger than three years of age;
- (B) between the ages of three to five years, inclusive;
- (C) between the ages of five to 18 years, inclusive;
- (D) between the ages of 19 to 21 years, inclusive, who is enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday, has not yet completed his or her prescribed course of study or has not met proficiency standards, or has not graduated from high school with a regular high school diploma.

(20 U.S.C. § 1401(3); Ed. Code, § 56026.)

## 1.2. Identification

### (A) Child Find

The District will actively and systematically seek out all individuals with disabilities including children with disabilities who are homeless children or are wards of the state and children with disabilities attending private schools regardless of the severity of their disabilities, and who are in need of special education and related services, and identify, locate, and assess those children. (Ed. Code § 56301.)

Child Find activities may include but not be limited to:

- (1) A comprehensive screening program, including health, vision, hearing, speech and language;
- (2) Distribution of written information, including brochures and pamphlets describing the referral procedure;
- (3) Public awareness campaign, including public service announcements;
- (4) Annual notices to local newspapers;
- (5) Consultation with representatives of private schools, including religious schools on how to carry out activities to identify children with suspected disabilities;
- (6) Coordination with preschools, Head Start and other child-care facilities;
- (7) Communication with hospitals, pediatricians, obstetricians, and other health professionals;
- (8) Coordination with parent resource centers and support groups;

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- (9) Presentations to local professional groups and organizations established to inform and/or to serve culturally diverse populations;
- (10) Coordination with activities of the SELPA Community Advisory Committee (CAC); and,
- (11) Coordination with school site procedures, including referrals from the school site student intervention teams (e.g., Student Study Teams, etc.).

**(B) Student Study Team (SST)**

The Student Study Team (SST) is a regular education function. It is a process of reviewing individual student issues pertaining to educational performance and planning instructional interventions to be implemented in the regular education classroom.

Although school psychologists, speech/language specialists, and resource specialists may be involved in the SST process, the SST is not a special education function and as such is not subject to special education restrictions and timelines.

However, *when a referral for special education assessment* is made and the District wants to hold an SST, the SST should be held in time so that an assessment plan can be developed and provided to parents within the 15-day timeline (not including days between the student's regular school sessions or terms or days of school vacation in excess of 5 schooldays) for development of an assessment plan (or, parents withdraw their request for assessment in writing).

Additionally, all SSTs should be aware of the District's Child Find obligations and should refer students for a special education assessment if a student is suspected of having a disability and in need of special education. Thus, a referral for a special education assessment may be appropriate as a result of an SST meeting.

**(C) Prior to Making Referral**

Students shall be referred for special education and related services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.)

Prior to referring a student for special education and related services, the SST, or the referring instructional personnel, shall document that, where appropriate, accommodations/modifications of the regular program have been attempted and that the results of those accommodations/modifications have not been effective in meeting the student's need for an appropriate education.

A student suspected of having a disability under the provisions of Section 504 of the Rehabilitation Act of 1973 (Section 504) will be assessed by a process defined through local board policies and procedures in compliance with Section 504.

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**1.3. Referral Process**

**(A) Sources of Referrals**

Referrals for assessment to determine eligibility for special education and related services may come from teachers, parents, agencies, appropriate professional persons, and from other members of the public. (Ed. Code, § 56302.1(a).)

**(B) Referral Procedure**

All referrals for special education and related services shall receive a response from the District, consistent with the law.

- (1) Referrals for assessments to determine eligibility for special education and related services will be made to the school site principal or designee at the child's school of residence.
- (2) Referrals may be processed through the school site SST or other student intervention team to review the referral and document interventions tried prior to referral.
- (3) All requests for assessments will be submitted in writing. If a parent or any individual makes the request verbally, the principal or designee will request that the parent or individual make the request in writing. If the parent or individual is unable to make the request in writing, the principal or designee shall provide assistance in putting the request into writing. (5Cal. Code Regs. § 3021(a).)
- (4) If the referral is not coming from the parent, the school site administrator or designee will review the referral. If the information is incomplete, the referral source will be contacted to request additional information. If the information is complete and appropriate, the school site administrator or designee will initiate the assessment process, including notification of parent. If determined that an assessment is required, an assessment plan will be developed within 15 days (not including days between the student's regular school sessions or terms or days of school vacation in excess of 5 school days) of receipt of the referral.

(Ed. Code, § 56321(c).)

- (5) All school staff referrals shall be written and include:
  - (A) A brief reason for the referral; and
  - (B) Documentation of the resources of the regular education program that have been considered, modified, and when appropriate, utilization of those resources and the results of intervention. This



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documentation shall not delay timelines for completing the assessment plan or assessment.

(5 Cal. Code Regs. § 3021(b).)

**(C) Timeline**

The District has fifteen (15) calendar days (not including days between the student's regular school sessions or terms or days of school vacation in excess of 5 schooldays) from the date the written referral is received either to prepare an assessment plan or to notify the parents why assessment is not warranted. (Ed. Code, § 56043(a).) The decision not to assess must be contained in a prior written notice letter. (34 C.F.R. § 300.503; Ed. Code, § 56500.4.)

The 15-day time period does not include days between the student's regular school sessions or terms or days of school vacation in excess of five days. (Ed. Code, § 56321(a).)

In the case of student school vacations, the 15-day time period will recommence on the date that the student's regular school days reconvene. (Ed. Code, § 56321(a).)

The parents shall have at least fifteen (15) calendar days from the receipt of the proposed assessment plan to arrive at a decision. (Ed. Code, § 56321(c)(4).)

When the referral has been made ten (10) days or less prior to the end of the regular school year and the District elects to evaluate the student, the assessment plan shall be developed within ten (10) days after the commencement of the subsequent regular school year. (Ed. Code, § 56321(a).)

**(D) Decision Not to Assess**

- (1) The District may decide not to assess the child for special education and related services if the District determines that there is not a reason to suspect that the student may have a disability and as a result may need special education. If, after reviewing all relevant information, the SST, the Assessment Planning Team or District considers the referral inappropriate, the District must send prior written notice to the parent of this decision that complies with 34 C.F.R. 300.503. Please be aware, however, that some administrative law judges and the California Department of Education have taken the position that a parent request for special education assessment constitutes adequate reason to suspect that the child may have a disability, thus triggering Child Find and requiring the District to conduct the initial assessment.

(34 C.F.R. 300.503; Ed. Code, § 56500.4.)

#### **1.4. Parental Consent**

##### **(A) Who is a "Parent"?**

The "parent" is defined as follows:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child;
- (4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; and/or
- (5) A surrogate parent.

The biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified, as defined above, to act as a parent, shall be presumed to be the parent for purposes of consent, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4) above, to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent."

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

"Parent" does not include a nonpublic, nonsectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child. (Ed. Code § 56028)

##### **(B) Prior Written Notice**

The law requires that parents be given prior written notice of certain decisions made by the District.

- (1) Before the District initially refers the student for assessment.

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- (2) Within a reasonable time before the District proposes to initiate or change the student's identification, assessment, educational placement, or the provision of a free appropriate public education (FAPE) to the student.
- (3) Within a reasonable time before the District refuses to initiate or change the student's identification, assessment, or educational placement or the provision of FAPE to the student.
- (4) Within a reasonable time before the student graduates from high school with a regular diploma thus resulting in a change in placement.
- (5) Upon receipt of the parent/guardian's written revocation of consent for the continued provision of special education and related services to the student.

(Ed. Code, §§ 56346, 56500.4, 56500.5; 20 U.S.C. § 1415; 34 C.F.R. §§ 300.102, 300.300, 300.503.)

Prior written notice consists of the following:

- (1) A description of the action proposed or refused by the agency;
- (2) An explanation of why the agency proposed or refused 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 protections under the procedural safeguards of the IDEA and 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 their procedural safeguards;
- (6) A description of other options that the District considered and the reasons why those options were rejected; and
- (7) A description of other factors that are relevant to the agency's proposal or refusal.

(Ed. Code, § 56500.4; 20 U.S.C. § 1415; 34 C.F.R. § 300.503)

The prior written notice must be:

- (1) Written in language understandable to the general public; and
- (2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

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

- (1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
- (2) That the parent understands the content of the notice; and
- (3) That there is written evidence of compliance with (1) and (2).

(34 C.F.R. § 300.503; Ed. Code, § 56500.4.)

**(C) Parental Consent for Assessment**

Except as provided below, the District must obtain informed written consent from the parent prior to conducting an initial assessment or a reassessment. Parents have at least fifteen (15) days from receipt of the assessment plan to arrive at a decision. (Ed.Code, § 56321(c)(4).)

Informed parental consent means that the parent:

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

(Ed. Code, § 56021.1; 34 C.F.R. § 300.9.)

Parental consent for assessment shall not be construed as consent for placement or for the provision of special education and related services. (Ed. Code, § 56321(d).)

If the parent does not provide consent for an initial evaluation or the parent fails to respond to a request to provide consent, the District may, but is not required to, file for a due process hearing to override lack of parent consent. Further, if the District does not pursue the evaluation, it does not violate its Child Find and assessment obligations. (34 C.F.R. § 300.300(b); Ed. Code, §§ 56321(c)(2), (3).)

**(D) Exceptions to Parental Consent for Assessment**

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Parental consent need not be obtained before reviewing existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parents of all children. (Ed. Code, § 56321(e).)

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not an "assessment" to determine eligibility for special education and related services; thus, no consent is required. (34 C.F.R. § 300.302; Ed. Code, § 56321(f).)

Parental consent need not be obtained if the District prevails in a due process hearing in which an administrative law judge authorizes the District to proceed with the assessment or reassessment. (34 C.F.R. §§ 300.300(a), (c); Ed. Code, § 56381(f)(1).)

For a reassessment, informed parental consent need not be obtained if the District can demonstrate that it has made "reasonable efforts" to obtain that consent and the parent has failed to respond. (Ed. Code § 56381(f)(1).) To meet the "reasonable efforts" requirement, the District must document its attempts to obtain parental consent by maintaining 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; and detailed records of visits made to the home or place of employment of the parent and the results of those visits. (34 C.F.R. § 300.300(d)(5); Ed. Code, § 56381(f)(2).)

For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

- (1) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- (2) The rights of the parents of the child have been terminated in accordance with state law; or
- (3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. (34 C.F.R. § 300.300(a)(2).)

For students who are home schooled or who are placed in a private school by the parent at the parent's expense, if the parent does not provide consent for an initial assessment or the reassessment, or the parent fails to respond to a request to provide consent, the District shall not file for a due process hearing to override lack of parent consent. (Ed. Code, § 56346(g).)

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**(E) Parental Consent for Services**

The District is responsible for making a FAPE available to a child with a disability and shall seek to obtain informed consent from the parent of a child before providing special education and related services to the child.

- (1) **Absence of Consent for Initial Services:** If the parent of a child does not provide consent to the initial provision of services, the District cannot use the consent-override procedures by filing for a due process hearing in order to force the provision of the initial special education and related services.
- (2) **Effect on District Obligation:** If the parent of a child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide such consent:
  - (A) The District shall not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide such child with the special education and related services for which the parent refuses to or fails to provide consent; and
  - (B) The District shall not be required to convene an IEP Team meeting or to develop an IEP.

**1.5. Assessment Process**

**(A) Initial Assessments**

A comprehensive and individual assessment shall be conducted for each child being considered for special education and related services to determine if the child meets eligibility criteria as a child with a disability and to determine the educational needs of the child. The District shall conduct an initial evaluation in all areas of suspected disability before the initial provision of special education and related services to a child with a disability. (Ed. Code, § 56320.)

Once a student has been referred for initial assessment, the student must be assessed in all areas of suspected disability. An IEP Team meeting shall occur within 60 calendar days of receiving written parental consent for the assessment, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five school days. (Ed. Code, §§ 56043(c), 56302.1(a), and 56344.)

The 60 day time period does not apply if either of the following occurs:

- (1) The student enrolls in a school served by the District after the relevant time period has commenced but prior to determination by his or her previous district of whether the student has a disability. This exemption applies only if the District is making sufficient progress to ensure a prompt completion

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of the assessment, and the parent and District agree to a specific date by which the assessment shall be completed. (Ed. Code, § 56302.1(b)(1).)

- (2) The parent of a child repeatedly fails or refuses to produce the child for assessment. (Ed. Code, § 56302.1(b)(2).)

However, an IEP required as a result of an assessment of a student shall be developed within 30 days after the commencement of the subsequent regular school year as determined by the school calendar when the referral has been made 30 days or less prior to the end of the regular school year. (Ed. Code, § 56344(a).)

In the case of school vacations, the 60-day timeline shall recommence on the date that student schooldays reconvene. (Ed. Code, § 56344(a).)

**(B) Reassessment and Other Assessments**

(1) When to Reassess

A reassessment of a student shall be conducted if the District determines that the educational or related services needs of the student, including improved academic achievement and functional performance, warrant a reassessment, or if the student's parents or teacher requests a reassessment. (Ed. Code, § 56381(a)(1).)

A reassessment of a student shall occur not more frequently than once a year, unless the parent and the District agree otherwise in writing, and shall occur at least once every three years, unless the parent and the District agree in writing, that a reassessment is unnecessary. (Ed. Code, § 56381(a)(2).)

(2) Timelines

An IEP required as a result of an assessment shall be developed within sixty (60) calendar days of receipt of the parents' written consent to the assessment plan, unless the parents agree in writing to an extension. (Ed. Code § 56043 (f).) The 60 calendar days do not include days between the regular school sessions, terms, or vacation in excess of five (5) school days. (Ed Code, § 56043 (f).) In the case of school vacations, the 60-day timeline shall recommence on the date that student schooldays reconvene. (Ed. Code, § 56344(a).) A meeting to develop an initial IEP shall be conducted within 30 days of a determination that the student needs special education and related services. (Ed. Code, § 56344(a); 34 C.F.R. § 300.323(c)(1).)

The 60 day time period does not apply if either of the following occurs:

- (1) The student enrolls in a school served by the District after the relevant time period has commenced but prior to determination by his or her previous district of whether the student has a disability. This exemption applies only if the District is making sufficient progress to ensure a prompt completion

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of the assessment, and the parent and District agree to a specific date by which the assessment shall be completed. (Ed. Code, §§ 56302.1(b)(1), 56381(e).)

- (2) The parent of a child repeatedly fails or refuses to produce the child for assessment. (Ed. Code, §§ 56302.1(b)(2), 56381(e).)

However, an IEP required as a result of an assessment of a student shall be developed within 30 days after the commencement of the subsequent regular school year as determined by the school calendar when the referral has been made 30 days or less prior to the end of the regular school year. (Ed. Code, § 56344(a).)

In the case of school vacations, the 60-day timeline shall recommence on the date that student schooldays reconvene. (Ed. Code, § 56344(a).)

If the IEP Team determines that the child is a child with a disability and needs special education and related services to address that disability, the results of the assessment will be used by the IEP Team to develop an appropriate IEP.

**(C) Assessment Plan**

After a review of the referral, student records and/or other immediately available material, the District will decide whether to develop an assessment plan or to send prior written notice to parents explaining why assessment is not warranted. (Ed. Code, §§ 56043(a), 56500.4; 34 C.F.R. § 300.503.) Prior written notice must be sent within fifteen (15) calendar days (not including days between the regular school sessions, terms, or vacation in excess of five (5) school days) from the date the written referral is received.

If the District decides to assess, the assessment team will meet to develop a proposed assessment plan. A proposed assessment plan shall be developed within fifteen (15) calendar days of referral for assessment, not counting calendar days between the student's regular school sessions or terms or calendar days of school vacation in excess of five school days from the receipt of the referral, unless the parent or guardian agrees, in writing, to an extension. (Ed. Code, § 56043(a).)

However, the assessment plan shall be developed within ten (10) days after the commencement of the subsequent regular school year when the referral has been made ten (10) days or less prior to the end of the regular school year. In the case of student's school vacations, the 10- or 15-day time shall recommence on the date that the regular school days reconvene. (Ed. Code, § 56321(a).)

The proposed assessment plan given to the parents or guardians shall meet all the following requirements:

- (1) Be in language easily understood by the general public;



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- (2) Be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless to do so is not clearly feasible;
- (3) Explain the types of assessments to be conducted;
- (4) State that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321(b).)

As part of the assessment plan, the parents will be provided with a written notice that upon completion of the administration of tests and other assessment material, an IEP Team meeting that includes the parent or his/her representative shall be convened. The IEP Team will discuss the assessment results, review any additional information, discuss the educational recommendations, the reasons for these recommendations, and whether the student is a student with a disability. The written notice also will include a statement that the student shall not be determined to be an individual with exceptional needs if the determining factor is one of the following and also that the student does not otherwise meet the eligibility criteria:

- (a) Lack of appropriate instruction in reading, including the essential components of reading instruction
- (b) Lack of appropriate instruction in mathematics
- (c) Limited English proficiency
- (d) Limited school experience
- (e) Poor school attendance
- (f) Environmental, cultural or economic factors
- (g) Temporary physical disability
- (h) Social maladjustment.

(Ed. Code, §§56026, 56329; 5 C.C.R. § 3030; 34 C.F.R. § 300.309.)

The notice also will state that parents will receive a copy of the assessment report and the documentation of determination of eligibility. (Ed. Code, § 56329(a).)

Included with the assessment plan will be a copy of Parents' Rights and Procedural Safeguards, which informs parents, among other rights, that they have a right to obtain, at public expense, an independent educational assessment (IEE) of the student from qualified specialists, if the parent disagrees with an assessment obtained by the District. (Ed. Code, § 56321(a).)

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Personal contact with the parents to explain the process and forms is strongly recommended.

**(D) Assessment Requirements**

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

- (1) Are provided and administered in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is not feasible to provide or administer.
- (2) Are used for purposes for which the assessments or measures are valid and reliable.
- (3) Are administered by trained and knowledgeable personnel and are administered in accordance with any instructions provided by the producer of the assessments, except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist.
- (4) Tests and other assessment materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.
- (5) Tests are selected and administered to best ensure that when a test is 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 that the test purports to measure.
- (6) No single measure or assessment is used as a sole criterion for determining whether a student is an individual with exceptional needs or determining an appropriate educational program for the student.
- (7) The student is assessed in all areas of the suspected disability including, if appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. A developmental history shall be obtained when appropriate. For students with residual vision, a low vision assessment shall be provided.
- (8) The assessment of a student, including the assessment of a student with a suspected low-incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the

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unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment.

As part of an initial evaluation (if appropriate) and any reevaluation, the IEP Team and other qualified professionals, as appropriate, shall review existing evaluation data on the student, including evaluations and information provided by the parent, current classroom-based local or state assessments and classroom-based observations, and observations by teachers and related services providers. On the basis of that review and input from the student's parent, the team shall identify what additional data, if any, are needed to determine:

- (1) (1) whether the student is a student with a disability, or in the case of a reevaluation, whether the student continues to have a disability, and the educational needs of the student;
- (2) the present levels of academic achievement and related developmental needs of the student;
- (3) whether the student needs, or continues to need, special education and related services;
- (4) whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in his/her IEP and to participate, as appropriate, in the general education curriculum.

(Ed. Code, § 56381(b); 34 C.F.R. § 300.305.)

In the case of a reevaluation, if the IEP Team determines that additional tests or other evaluation material is needed to provide the necessary data identified above, the District will administer tests and other assessment materials as may be needed. (Ed Code, § 56381(c).)

In the case of a reevaluation, if the IEP Team determines no additional data is needed, the District will notify the parents of that determination and the reason for it and the right of the parentsto request an assessment. (Ed. Code, § 56381(d).) The District is not required to conduct the assessment unless requested to do so by the student's parents. (Ed. Code, § 56381(d).)Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year shall be coordinated with those children's prior and subsequent schools as necessary and expeditiously as possible to ensure prompt completion of full evaluations. (34 C.F.R. § 300.304.)

**(E) Assessment of Children Under the Age of Three Years**

All identification and assessment procedures for individuals with exceptional needs who are younger than three years old shall comply with the California Early Intervention Services Act and provision governing early education of individuals with exceptional needs. (Ed. Code, § 56320.1.)

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*(Please refer to Chapter 5 of this Procedural Handbook for more information about assessing children under the age of three years.)*

**(F) Assessment of Children Between Three and Five Years of Age**

When standardized tests are considered invalid for children between the ages of three and five years, alternative means, including scales, instruments, observations, and interviews, shall be used as specified on the assessment plan. (Ed. Code, § 56441.11(e).)

Prior to transitioning a student with a disability from a preschool program to kindergarten, or first grade as the case may be, an appropriate reassessment of the student shall be conducted in order to determine if the student is still in need of special education and related services. (Ed. Code, § 56445(a).)

*(Please refer to Chapter 5 in this Procedural Handbook for more information about assessing children between the ages of three and five years.)*

**(G) Assessment of African-American Children under Larry P Decision**

The *Larry P v. Riles* (1979) court case is the basis for the precedent that disallows the administration of standardized intelligence quotient (IQ) tests to African-American students. To ensure compliance with the *Larry P* mandate, the CDE has established compliance review procedures to evaluate how well school districts are meeting this mandate in their African-American student population. The following areas are monitored to ensure compliance with this mandate:

- (1) Does the plan include a description of alternative means that will be used to assess language impairment or specific learning disabilities when standard tests are considered invalid?
- (2) Is there evidence that the assessment will be comprehensive? Do tests and other assessment materials meet the following requirements:
  - (A) materials selected and administered that are not racially or culturally discriminatory?
  - (B) assessment procedures ensure that IQ tests are not administered to African-American students?
  - (C) assessments result in a written report which includes the findings of each assessment and contain required information?
  - (D) what extent is the assessment varied from standard conditions?
  - (E) what effects do environmental, cultural, or economic conditions have on the child's performance?

**(H) Assessment of Deaf and Hard of Hearing Students**

The District may use tools and assessments selected by CDE to assess and track the language and literacy development of deaf and hard of hearing children and to develop a child's IFSP/IEP. (Ed. Code, § 56326.5(b)(5).)

If a deaf or hard of hearing child does not demonstrate progress in expressive and receptive language skills, as measured by one of the educator tools or assessments selected by CDE, or by the existing instrument used to assess the development of children with disabilities pursuant to federal law, the child's IFSP or IEP team, as applicable, shall explain in detail the reason(s) why the child is not meeting the language developmental milestones or progressing towards them, and shall recommend specific strategies, services, and programs that shall be provided to assist the child's success toward English literacy. (Ed. Code, § 56326.5(c)(2).)

**(I) Assessment Report**

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

- (1) Whether the child may need special education and related services;
- (2) The basis for making the determination;
- (3) The relevant behavior noted during the observation of the child in an appropriate setting;
- (4) The relationship of that behavior to the child's academic and social functioning;
- (5) The educationally-relevant health and development, and medical findings, if any;
- (6) For students with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services;
- (7) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and
- (8) The need for specialized services, materials, and equipment for students with low-incidence disabilities. (Ed. Code, § 56327.)

If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the assessment report, and the assessor should give an opinion about whether and to what extent the deviations impacted the validity of the assessment results.

## **1.6. Eligibility Criteria**

### **(A) Determination of Eligibility**

Upon completion of the administration of tests and other evaluation materials, the determination of whether the student is an individual with a disability shall be made by the IEP Team, including the parents of the child, and assessment personnel. The IEP Team will take into account all the relevant material which is available on the student.

No single score or product of scores shall be used as sole criterion for the decision. Three primary factors must be considered in making this determination:

- (1) Does the student meet the eligibility criteria as an individual with a disability?
- (2) Does the severity of the disability have an adverse effect on the student's educational performance?
- (3) Does the child require special education and related services as a result of the effects of the disability?

### **(B) Categories of Disabilities**

- i. Autism
- ii. Deaf-Blindness
- iii. Deafness
- iv. Emotional Disturbance
- v. Hearing Impairment
- vi. Intellectual Disability
- vii. Multiple disabilities
- viii. Orthopedic Impairment
- ix. Other Health Impaired
- x. Specific Learning Disability
- xi. Speech and Language
- xii. Traumatic Brain Injury
- xiii. Visual Impairment

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(34 C.F.R. § 300.8; see also 5 Cal. Code Regs. § 3030 for California definitions.)

*(Please refer to Chapter 2 in this Procedural Handbook for more information about eligibility generally, and to Chapter 5 for more information about eligibility criteria applicable to children between the ages of zero and five years.)*

Students whose educational performance is adversely affected by a suspicion or diagnosis of attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD) and who demonstrate a need for special education and related services by meeting eligibility criteria under one of the above thirteen categories, such as specific learning disability (SLD), other health impaired (OHI) or emotional disturbance (ED), are entitled to special education and related services. (Ed. Code, § 56339(a).) Therefore, when assessing a student with possible ADD/ADHD, assess all areas of suspected disability and analyze, at a minimum, SLD, OHI, and ED as possible qualifying eligibility categories, as appropriate.

Important Note. If it is determined through appropriate evaluation that a child has one of the disabilities identified above, but needs only a related service and not special education, then the child is not a child with a disability for purposes of IDEA eligibility unless the related service required by the child is considered, under state law, to be special education rather than a related service (e.g. speech and language services). (34 C.F.R. § 300.8(a)(2).)

### **1.7. Evaluations before Change in Eligibility**

- (1) The District shall evaluate a child with a disability before determining that the child is no longer a child with a disability, except as provided below.
- (2) Exceptions. The evaluation shall not be required before the termination of a child's eligibility due to graduation from secondary school with a regular high school diploma, or due to exceeding the age eligibility for a FAPE.

(Ed. Code, §§ 56381(h), (i).)

- (3) Summary of Performance. For a child whose eligibility terminates due to graduation from secondary school with a regular high school diploma, or due to exceeding the age eligibility for a FAPE, the District shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post secondary goals, and prior written notice regarding exit from special education due to earning a regular high school diploma or aging out, as the case may be.

Before removing a related service from an IEP, an evaluation must be conducted in that area of need to obtain data justifying the removal.

### 1.8. Independent Educational Evaluations (IEE)

The parents of a disabled child have the right to request an IEE at public expense if they disagree with an assessment conducted by the District. (34 C.F.R. § 300.502(a); Ed.

Code, § 56329(b).) The law sets forth specific procedures the SELPA must follow in responding to an IEE request, and the law is to be read in conjunction with Board Policy and Administrative Regulation 6164.4. If parents request an IEE, the District must, without unnecessary delay, either:

- (1) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
- (2) Ensure that an IEE is provided at public expense, unless the District demonstrates in a due process hearing that the evaluation obtained by the parent did not meet agency criteria.

(34 C.F.R. § 300.502(b)(2).)

If the District files for due process and the final decision is that the District's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. (34 C.F.R.

§ 300.502(b)(3); Ed. Code, § 56329(c).)

Ensuring that an IEE is provided at “public expense” means that the District either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 34 C.F.R. § 300.103. (34 C.F.R. § 300.502(b)(3)(ii).) The District may use whatever State, local, Federal, and private sources of support that are available to ensure that the evaluation is provided at no cost to the parent. (34 C.F.R. § 300.103.) The District and parent may agree for the parent to advance the costs of the IEE conditioned upon District reimbursement of those costs.

If a parent requests an IEE, the District may ask for the parent's reason why he or she objects to the District's evaluation. However, the District may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing for due process to defend the District's own evaluation. (34 C.F.R. § 300.502(b)(4).)

A parent is entitled to only one IEE at public expense each time the District conducts an evaluation with which the parent disagrees. (34 C.F.R. § 300.502(b)(5); Ed. Code, § 56329(b).)

If an IEE is at public expense, the criteria under which the IEE is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the District used when it initiated an evaluation to the extent those criteria are consistent with the parent's right to an IEE. Those criteria include, but are not limited, to:



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- (1) The IEE must be completed by a qualified professional:
- Psychological assessments must be completed by Licensed Educational Psychologists or Clinical Psychologists.
  - Speech/language assessments must be completed by Licensed Speech Pathologists.
  - Occupational Therapists and Physical Therapists must be graduates from an accredited school. Physical Therapists must be licensed by the Board of Medical Quality Assurance. Occupational Therapists must be currently registered with the American Occupational Therapist Association.
  - Other professionals must meet minimum requirements as set out in District criteria.

(34 C.F.R. § 300.502.)

- (2) The IEE must evaluate one or more areas of suspected disability and be conducted for the purpose of determining a student's educational needs.
- (3) The IEE assessor must provide a written report of the IEE's findings to the District to be considered by the IEP Team.
- (4) The cost of the IEE must not exceed reasonable rates prevailing in the District's geographical area.
- (5) The independent examiner shall follow all guidelines for District evaluations, which include, but are not limited to, observing the student in an appropriate setting, classroom visitations, and interviews with parents and staff. If the District observed the student in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation, an equivalent opportunity shall apply to an IEE. This equivalent opportunity shall apply to the student's current placement and setting as well as observation of the District's proposed placement and setting, if any, regardless of whether the IEE is initiated before or after the filing of a due process hearing proceeding. (Ed. Code, § 56329(b).)
- (6) The independent examiner shall attend the IEP team meeting at which the IEE is presented in person, by telephone, or by virtual means. If an IEE is at public expense, the District shall pay the independent examiner to attend the IEP team meeting.

If a parent obtains a privately financed IEE, the IEP Team shall consider the results of the assessment with respect to the provision of a FAPE; however, the District is not obligated to adopt the recommendations set out in any IEE. (Ed. Code, § 56329(c).) The privately-financed IEE may be presented as evidence at a due process hearing. (34 C.F.R. § 300.502(c).)

## 1.9. Functional Behavioral Assessments

### (A) Functional Behavioral Assessment: Content

A functional behavioral assessment (FBA) is an assessment that evaluates a student's behavioral deficits and needs and identifies positive behavioral supports, interventions and strategies to maximize positive behavior and minimize maladaptive behavior. An FBA may include review of records, interviews with parents, teachers and service providers, administration of behavior assessment scales, and observation of student behavior and/or environmental conditions.

As with any assessment, the District must provide parents with an assessment plan and obtain written parent approval prior to conducting an FBA.

### (B) Functional Behavioral Assessment: When Warranted

An FBA shall be conducted under the following circumstances.

- (1) If, after a manifestation determination, the IEP Team makes the determination that the conduct was a manifestation of the student's disability, the District must conduct an FBA **and** implement a BIP, unless before the behavior that resulted in the change of placement occurred, the District had conducted an FBA analyzing the same behavior. (20 U.S.C. § 1415(k)(1)(F); 34 C.F.R. § 300.530(f).) *(Please refer to Chapter 6 of this Procedural Handbook for more information about discipline of students with disabilities.)*
- (2) If, after a manifestation determination, the IEP Team makes the determination that the conduct was NOT a manifestation of the disability, the student shall receive, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (34 C.F.R. 300.530(d)(1)(i).) *(Please refer to Chapter 6 of this Procedural Handbook for more information about discipline of students with disabilities.)*
- (3) At any time an IEP Team believes that such an assessment is warranted based on the student's needs. Following the FBA, the IEP Team will develop a BIP and/or include one or more behavioral goals in the student's IEP, if deemed appropriate. The BIP shall be part of the student's IEP and shall specify environmental instructional changes and other techniques and strategies to be implemented, including positive behavioral interventions, strategies and supports.
- (4) Following an emergency intervention and preparation of a behavioral emergency report on a student who does not have a BIP. Within two days of the emergency intervention, the District must schedule an IEP meeting to review the emergency report, determine the necessity for an FBA, and determine the necessity for an interim plan. The IEP Team must document

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the reasons for not conducting the FBA, not developing an interim plan, or both. (Ed. Code, § 56521.1(g).)

*(Please refer to Chapter 3 of this Procedural Handbook for more information regarding behavioral interventions and to Chapter 6 regarding discipline.)*

## Chapter 2 Special Education Eligibility Criteria

### 2.1. Purpose and Scope

The purpose of this Chapter is to define the specific procedures involved in determining whether a student is eligible under the IDEA and related state law to receive special education and related services. This Chapter does not cover decisions pertaining to instructional setting or placement; those decisions are made by the IEP Team based on an eligible student's areas of need. *(Please refer to Chapter 3 of this Procedural Handbook for more information about instructional setting and placement.)*

As discussed previously in Chapter 1, the determination of eligibility must be based on the findings of a multidisciplinary group of assessors who assess all areas of suspected disability or need. In addition, the IEP Team must assure that the student's academic needs cannot be met through modifications of the regular education program, and that the individual with a disability, even with accommodations and modifications within the general education environment, *needs* special education.

Upon the IEP Team's determination that a student is eligible for special education and related services, the IEP Team will determine the student's present levels of academic and functional performance, identify areas of need, and develop goals (and objectives if required) that address each area of need. Goals (and objectives if required) will be supported by appropriate services in a placement setting that is the least restrictive environment, as determined by the IEP Team, for the child to receive educational benefit.

### 2.2. Eligibility Criteria

A student qualifies as an individual with exceptional needs if the results of the assessment demonstrate that the degree of the student's impairment requires special education and related services. The decision as to whether or not the assessment results demonstrate that the degree of the student's disability requires special education shall be made by the IEP Team, including assessment personnel. The IEP Team shall take into account all the relevant information that 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. (Ed. Code, §§ 56026, 56320, 56341(d); 5 Cal. Code Regs. § 3030 (a)-(j).)

It is important to note that students between the ages of 19 and 21 can receive special education and related services **only** if they were enrolled in a special education program or eligible for special education prior to their 19th birthday and have not yet completed their prescribed course of study or who have not met proficiency standards, or have not graduated from high school with a regular high school diploma. (Ed. Code, § 56026(c)(4).)

Eligibility Criteria are separated into 13 main classifications; students need to meet only one of them (see also 2.9 for “developmental delays” effecting children ages 3 through 9,

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and Chapter 5 for additional eligibility criteria for children ages 0 through 5). (34 C.F.R. § 300.8.)

**(A) Three Primary Factors Must Be Considered**

Three primary factors must be considered in making this determination:

- (1) Does the student have a disability?
- (2) Does the disability have an adverse effect on the student's educational performance?
- (3) Does the student need special education and services as a result of the disability?

**(B) Special Rules for Eligibility Determination**

In making a determination of eligibility, a child shall not be determined to be a child with a disability if the child's educational needs are due **primarily** to:

- (1) Lack of appropriate instruction in reading, including the essential components of reading instruction;
- (2) Lack of instruction in math;
- (3) Limited English proficiency;
- (4) Temporary physical disabilities;
- (5) Social maladjustment;
- (6) Environmental, cultural, or economic factors; or
- (7) Limited school attendance or poor school attendance.

(34 C.F.R. § 300.306; Ed. Code, §§ 56026(e) and 56329(a)(2); 5 Cal. Code Regs. §§3030(b)(10)(B)(4).)

**(C) Evaluations before Change in Eligibility**

- (1) The District shall evaluate a student with a disability before determining that the student is no longer a child with a disability. (Ed. Code, § 56381(h).)
- (2) Exceptions: The evaluation shall not be required before the termination of a student's eligibility due to graduation from high school with a regular diploma, or due to exceeding the age eligibility for receipt of special education and related services. Summary of Performance. For a child whose eligibility terminates due to graduation from secondary school with

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a regular high school diploma, or due to exceeding the age eligibility for a FAPE, the District shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals, and prior written notice regarding exit from special education due to earning a regular high school diploma or aging out, as the case may be. (20 U.S.C. § 1414(c)(5)(B); (Ed. Code §§ 56026.1, 56500.5.)

### **2.3. Need for Related Services Only**

If it is determined through appropriate assessment that a child has one of the disabilities identified below, but needs only a related service and not special education, then the child is not a child with a disability for purposes of IDEA and related state law eligibility unless the related service required by the child is considered (under state law) to be special education rather than a related service. (34 C.F.R. § 300.8(a)(2).) In California, "special education" means the following:

- (1) Specially designed instruction;
- (2) Instruction in physical education;
- (3) Speech-language pathology services, or any other related service if that service is considered special education rather than a related service under State standards;
- (4) Travel training;
- (5) Vocational education.(Ed. Code, § 56031.)

### **2.4. Severe Disabilities and Non-Severe Disabilities**

A student meeting eligibility under some of the above federal classifications are considered to be severely disabled as follows:

“Severely disabled” means individuals with exceptional needs who require intensive instruction and training in programs serving students with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance, severe intellectual disability, and those individuals who would have been eligible for enrollment in a development center for handicapped students under Chapter 6 (commencing with section 56800) of this part, as it read on January 1, 1980.

(Ed. Code, § 56030.5.)

### **2.5. Eligibility Categories**

**(A) Autism (AUT).** A severely disabling condition (5 Cal. Code Regs. § 3030.).

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"The federal regulations define Autism" is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (34 C.F.R. § 300.8(c)(1); 5 Cal. Code Regs. § 3030(b)(1).) A child who manifests the characteristics of autism after age three could be identified as having autism if the other criteria are satisfied. (34 C.F.R. §300.8(c)(1)(iii); 5 Cal. Code Regs. § 3030(b)(1)(B).)

A child does not have autism if the child's educational performance is adversely affected primarily because the child has an emotional disturbance. (34 C.F.R. § 300.8(c)(1)(ii); 5 Cal. Code Regs. § 3030(b)(1)(A).)

Implementation Procedures. A multidisciplinary team shall assess a student. Relevant information may include the following:

- (1) A written report from a school psychologist or other person with experience and training in working with autistic individuals;
- (2) A written report from a speech/language specialist addressing verbal and non-verbal communication skills; and
- (3) Assessment/observation which indicates that the behavioral manifestations are so severe that the student requires special education and related services.

**(B) Deaf-Blindness (DB).** A severely disabling condition.

"Under the federal regulations, deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 C.F.R. § 300.8(c)(2); 5 Cal. Code Regs. § 3030(b)(2).)

Implementation Procedures. A multidisciplinary team shall assess a student. Relevant information may include the following:

- (1) The effect of the disability on communication, social, emotional, physical, educational, and other areas of development;
- (2) Current audiological measures of auditory functioning which documents a hearing loss, with and without amplification, as determined by a qualified audiologist;
- (3) Performance which reveals significant dysfunction directly related to the physical impairment;

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- (4) A written report of an eye examination by either a physician or an optometrist which states that the student's central visual acuity is 20/200 or less.

**(C) Deafness (D).** A severely disabling condition.

Under the federal regulations, "deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(3); 5 Cal. Code Regs. § 3030(b)(3).) This disability can adversely affect expressive or receptive communication or both, developmental growth, and/or educational performance.

Implementation Procedures. A multidisciplinary team shall assess a student. Relevant information to be considered may include:

- (1) Current audiological measures of auditory functioning with and without amplification as determined by a qualified audiologist; and
- (2) Current assessment of receptive and expressive communication skills and current educational performance reveals significant impairment.

**(D) Hearing Impairment (HI).** A severely or non-severely disabling condition.

Definition. "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects educational performance but that is not included under the definition of deafness. (34 C.F.R. § 300.8(c)(5); 5 Cal. Code Regs. § 3030(a).)

Implementation Procedures. A multidisciplinary team shall assess a student. Relevant information to be considered may include:

- (1) Current audiological measures of auditory functioning with and without amplification as determined by a qualified audiologist; and
- (2) Significant impairment revealed by current assessment of receptive and expressive communication skills and current educational performance.

**(E) Intellectual Disability (ID).** A severely or non-severely disabling condition.

"Under the federal regulations, an intellectual disability" means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(6); 5 Cal. Code Reg. § 3030(b)(6).)

Implementation Procedures. A student shall be assessed by a multidisciplinary team. Relevant information to be considered may include the following:



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- (1) The determination of a significant discrepancy (minimum of two standard deviations) between chronological age and ability level, as determined by a credentialed school psychologist;
- (2) An adaptive behavior measure administered by a school psychologist;
- (3) A report by a school psychologist of an observation of the student in the home and/or school situations, as applicable, to confirm that the student's adaptive behavior is significantly below the expectancy level for chronological age. The report shall describe the observed behavior, the environment in which the behavior occurred, culturally appropriate peer and adult interactions, and any other factors relevant to adaptive behavior;
- (4) A developmental history and current medical history, including vision and hearing testing; and
- (5) The cumulative results, from the multidisciplinary team, of the examinations and observations investigating such factors as health and developmental history, language development, school achievement, adaptive behavior, and psychological processing substantiate individual test scores indicating mild, moderate, or profound delays in overall levels of functioning. These results must verify the need for an educational program that emphasizes, but is not limited to, the development of any of the following, if applicable:
  - (a) Self-help skills.
  - (b) Environmental awareness.
  - (c) Survival skills.
  - (d) Self-sufficiency.
  - (e) Communication/language.
  - (f) Economic usefulness (work skills, vocational education).
  - (g) Independent or semi-independent living skills.

**(F) Multiple Disabilities (MD).** A severely disabling condition.

“Multiple disabilities” means concomitant impairments, such as intellectual disability-blindness or intellectual disability- orthopedic impairment, etc., the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 C.F.R. § 300.8(c)(7); 5 Cal. Code Reg. § 3030(b)(7).)

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Implementation Procedures. A student shall be defined as having multiple disabilities when the IEP Team determines that the student has two or more concomitant disabilities and the combination of disabilities requires unique modifications and support. A written report by a school psychologist shall include an assessment on adaptive behaviors.

**(G) Orthopedic Impairment (OI).** A severe or non-severe disabling condition.

Definition. "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by 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). (34

C.F.R. § 300.8(c)(8); 5 Cal. Code Regs. § 3030(b)(8).)

Implementation Procedures. A student shall be assessed by a multidisciplinary team. Relevant information to be considered may include:

- (1) Observation/assessment by a person with knowledge of orthopedic disabilities, and who is trained to select, administer, and interpret assessments that accurately measure the abilities of the student.
- (2) A review of medical records that documents a diagnosis of physical impairment that may adversely affect educational performance, such as any of the following:
  - (a) Cerebral Palsy.
  - (b) Poliomyelitis.
  - (c) Infections, including but not limited to, bone and joint tuberculosis and osteomyelitis.
  - (d) Congenital anomalies including, but not limited to, amputation, clubfoot, dislocations, or spinal bifida.
  - (e) Birth injury, including but not limited to, Erb's palsy and fractures.
  - (f) Trauma, including but not limited to, amputations, burns or fractures.
  - (g) Tumors, including but not limited to, bone tumors or bone cysts.
  - (h) Developmental diseases, including but not limited to, coxaplane or spinal osteochondritis.

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- (i) Other conditions, including but not limited to, fragile bones, muscular atrophy, muscular dystrophy, Perthe's disease, or juvenile rheumatoid arthritis.

**(H) Other Health Impairment (OHI).** A severe or non-severe disabling condition.

Under the federal regulations, "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:

- (1) 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
- (2) Adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(9); 5 Cal. Code Regs. § 3030(b)(8).)

Implementation Procedures. A student shall be assessed by a multidisciplinary team. Relevant information may include the following:

- (1) The school nurse may provide the IEP Team with specific medical information related to physical limitations and their projected duration.
- (2) Qualified assessors shall include in reports the results of observations within the regular education program.

**(I) Emotional Disturbance (ED).** A severely or non-severely disabling condition.

Definition. Because of an emotional disturbance, a student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance:

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

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- (6) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance as defined above.

(34 C.F.R. § 300.8(c)(4); 5 Cal. Code Regs. § 3030(b)(4).)

Implementation Procedures. A multidisciplinary team shall assess a student. Relevant information may include the following:

- (1) A report written by a credentialed school psychologist documenting the presence of an emotional disturbance. The report shall include a summary of previous and current assessments of educational and emotional status, educational history, school observations and home observations, if appropriate, health and developmental history, and attempted interventions.
- (2) Eligibility as emotional disturbance for purposes of educational placement and/or services shall not be determined solely on the basis of any non-educational evaluation (including evaluations by psychiatrists or clinical psychologists).
- (3) The IEP Team may document the following in order to find that a student has an emotional disturbance:
  - (a) The disturbance is of such severity that the student’s educational needs cannot be met in the regular classroom.
  - (b) The presenting educational difficulties are not the result of social maladjustment. (Ed. Code, § 56026(e).)
  - (c) The presenting educational difficulties are not the result of a behavior disorder.
  - (d) The behavior has been observed for a significant period of time.
  - (e) The inability to learn cannot be explained by intellectual or sensory factors or by limited school experience or poor attendance.

Additional considerations:

- (1) Eligibility is based on a multidisciplinary assessment of the student’s needs.
- (2) The least restrictive environment shall be considered when determining placement.

**(J) Specific Learning Disability (SLD).** A non-severe disabling condition.

Definition. A specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language,

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spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. (34 C.F.R. § 300.8(c)(10)(i); Ed. Code, §56337(a); 5 Cal. Code Regs. § 3030(b)(10).) (Id.)

The term “specific learning disability” includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. In addition, an SLD "includes, but is not limited to, disability within the function of vision which results in visual perceptual or visual motor dysfunction." (Ed. Code, § 56338.) "Basic psychological processes" include attention, visual processing, auditory processing, phonological processing, sensory-motor skills, and cognitive abilities including association, conceptualization and expression. (5 Cal. Code Regs. § 3030(b)(10).)

"Specific learning disability" does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disturbance; environmental, cultural, or economic disadvantage; limited English proficiency; lack of appropriate instruction in reading, including the essential components of reading instruction; or lack of appropriate instruction in math; temporary physical disabilities; social maladjustment; or limited school attendance or poor school performance. (34 C.F.R. §§ 300.8(b)(10)(ii), 300.306(b) and 300.309(a)(3); Ed. Code, § 56337(a); 5 Cal. Code Regs. § 3030(b)(10)(A).)

IEP Team. In addition to the team members enumerated in Chapter 3 of this Procedural Handbook, the IEP Team making the determination of whether a child has a specific learning disability must include:

- (1) at least one qualified professional who is qualified to conduct individual diagnostic examinations of children such as a school psychologist, speech-language pathologist, or remedial reading teacher. (34 C.F.R. § 300.308(b); Ed. Code, § 56341(c).)
- (2) In addition, the IEP Team must include the child's regular teacher, or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age. (34 C.F.R. § 300.308(a).) For children who are less than school age, an individual qualified to teach a child of his or her age must be part of the IEP Team. (34 C.F.R. § 300.308(a).)
- (3) At least one team member shall observe the student's academic performance and behavior in the areas of difficulty in the student's learning environment, including in the regular classroom setting. In the case of a child who is less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age

Eligibility. There are several ways in which a student can be found eligible under the category of specific learning disability. An IEP Team may, but is not required to, utilize the "severe discrepancy" method. (34 C.F.R. § 300.307(a)(1); Ed.

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Code, § 56337(b); 5 Cal. Code Regs. § 3030(b)(10)(B).) Instead of a severe discrepancy, the IEP Team may consider a student's response to scientific, research-based intervention or a student's pattern of strengths and weaknesses, as discussed below. (34 C.F.R. §§ 300.307(a)(2) and (3); Ed. Code, § 56337(c); 5 Cal. Code Regs. §§ 3030(b)(10)(C).) There is no legal requirement that an IEP Team must use more than one method to determine the existence of an SLD.

Severe Discrepancy Method. In determining whether a student has a specific learning disability, the IEP Team may, but is not required to, take into consideration whether a student has a severe discrepancy between achievement and intellectual disability in oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematical calculation, or mathematical reasoning. (34 C.F.R. § 300.307(a)(1); Ed. Code, § 56337(b); 5 Cal. Code Regs. § 3030(b)(10)(B).) To make this determination, the IEP Team must take into account all relevant material that is available about the student. No single score or product of scores, test, or procedure shall be used as the sole criterion by the IEP Team to determine the student's eligibility for special education. (34 C.F.R. § 300.311(a)(2); Ed. Code, § 56320(c); 5 Cal. Code Regs. § 3030(b)(10)(B).)

In determining the existence of a severe discrepancy, the IEP Team shall use the following procedures set forth in the California Code of Regulations:

- (1) When standardized tests are considered to be valid for a specific student, a severe discrepancy is demonstrated by:
  - (a) first, converting into common standard scores, using a mean of 100 and a standard deviation of 15, the achievement test score and the intellectual ability test score to be compared;
  - (b) second, computing the difference between these common standard scores; and,
  - (c) third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests.
  - (d) A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed four 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.

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- (2) When standardized tests are considered to be invalid for a specific student, the discrepancy shall be measured by alternative means as specified on the assessment plan.
- (3) If the standardized tests do not reveal a severe discrepancy as defined in (1) and (2) above, the IEP Team may find that a severe discrepancy does exist, provided that the IEP 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 IEP Team, which shall include, but not be limited to:
  - (a) Data obtained from standardized assessment instruments;
  - (b) Information provided by the parent;
  - (c) Information provided by the student's present teacher;
  - (d) Evidence of the student's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;
  - (e) Consideration of the student's age, particularly for young children; and
  - (f) Any additional relevant information.
- (4) The discrepancy shall not be primarily the result of limited school experience or poor school attendance.

(5 Cal. Code Regs. §§ 3030(b)(10)(B)(1), (2), (3), and (4).)

Response to Intervention Method. As an alternative to the severe discrepancy method, the IEP Team may use a process that determines if the student responds to scientific, research-based intervention as part of its assessment procedures. (34 C.F.R. §§ 300.307(a)(2), 300.309(a)(2) and 300.311(a)(5); Ed. Code, §§ 56337(b) and (c); 5 Cal. Code Regs. §§ 3030(b)(10)(C)(1) and (2).) For a student to be found to have an SLD under this method, the IEP Team must document that:

- (1) The student does not achieve adequately for the student's age or to meet State-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the student's age or State-approved grade level standards:
  - (a) Oral expression;
  - (b) Listening comprehension;

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- (c) Written expression;
  - (d) Basic reading skill;
  - (e) Reading fluency skills;
  - (f) Reading comprehension;
  - (g) Mathematics calculation;
  - (h) Mathematics problem solving, and
- (2) The student does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph 1 above when using a process based on the student's response to scientific, research-based intervention.

(34 C.F.R. §§ 300.309(a)(1) and (2), and 300.311(a)(5)(i) and (ii); 5 Cal. CodeRegs. §§ 3030(b)(10)(C)(1) and (2).)

Pattern of Strengths and Weaknesses Method: Whether or not a student exhibits a severe discrepancy or responds to scientific, research-based interventions under the procedures set forth above, the IEP Team may determine that the student has a specific learning disability if:

- (1) The student does not achieve adequately for the student's age or to meet State-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the student's age or State-approved grade level standards:
- (a) Oral expression;
  - (b) Listening comprehension;
  - (c) Written expression;
  - (d) Basic reading skill;
  - (e) Reading fluency skills;
  - (f) Reading comprehension;
  - (g) Mathematics calculation;
  - (h) Mathematics problem solving, and
- (2) The student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards,



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or intellectual development that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments.

Exceptions to Response to Intervention/Pattern of Strengths and Weaknesses Methods:

- (1) In addition to the exclusions set forth in 2.2(B), a student will not be found to have an SLD under the response to intervention or pattern of strengths and weaknesses methods if the IEP Team determines that its findings are primarily the result of:
  - (a) A visual, hearing, or motor disability;
  - (b) Intellectual disability;
  - (c) Emotional disturbance;
  - (d) Cultural factors;
  - (e) Environmental or economic disadvantage; or
  - (f) Limited English proficiency.

(34 C.F.R. § 300.309(a)(3); 5 Cal. Code Regs. § 3030(b)(10)(C)(3).)

Also, the IEP Team must ensure that the student's under achievement is not due to lack of appropriate instruction in reading or math; therefore, the Team must consider:

- (1) data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- (2) 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.

(34 C.F.R. § 300.309(b); 5 Cal. Code Regs. § 3030(b)(10)(C)(4).)

(Note: These exceptions apply to any finding of SLD even though in the regulations, they appear only in the section describing the response to intervention and pattern of strengths and weaknesses methods. Whether an IEP Team utilizes the severe discrepancy, response to intervention, or pattern of strengths and weaknesses method, a student will not meet the disabling criteria for SLD if any of the exceptions exist.)

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Observation. In determining whether the student has a specific learning disability, there must be an observation of the student in his or her learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of difficulty. The observation can be accomplished either by:

- (1) using information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
- (2) having at least one member of the IEP Team who is a qualified professional conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.

(34 C.F.R. §§ 300.310(a) and (b); Ed. Code, § 56341(c); 5 Cal. Code Regs. § 3030(b)(10)(C)(5).)

In the case of a child less than school age or out of school, a qualified professional must observe the child in an environment appropriate for a child of that age. (34 C.F.R. § 300.310(c); Ed. Code, § 56341(c); 5 Cal. Code Regs. § 3030(b)(10)(C)(5).)

Dyslexia. A student who is assessed as being dyslexic and meets the eligibility criteria for specific learning disability is entitled to special education and related services. (Ed. Code, § 56337.5(a).) If, however, the student exhibits the characteristics of dyslexia or another related reading dysfunction but is not found eligible for special education and related services, then the student's instructional program shall be provided in the regular education program. (Ed. Code, § 56337(b).)

Documentation of Eligibility. Upon completion of the assessments, the IEP Team will determine whether the student is eligible for special education and related services under the category of specific learning disability and will provide a copy of the assessment report and the documentation of determination of eligibility at no cost to the parent. (34 C.F.R. § 300.311(a).) The documentation of determination of eligibility must contain a statement of:

- (1) Whether the child has a specific learning disability;
- (2) The basis for making the determination, including an assurance that the public agency:
  - (a) Drew upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

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- (b) Ensured that information obtained from all of these sources was documented and carefully considered.
- (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (4) The educationally-relevant medical findings, if any;
- (5) Whether:
  - (a) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards in any of the areas of oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving; and
  - (b) The child 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 child's response to scientific, research-based intervention; or
  - (c) The child 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 Team to be relevant to the identification of a specific learning disability, using appropriate assessments.
- (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; limited English proficiency on the child's achievement level; lack of appropriate instruction in reading or math; social maladjustment; or limited or poor school attendance; and
- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
  - (a) The instructional strategies used and the student-centered data collected; and
  - (b) The documentation that the child's parents were notified about—
    - (i) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

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- (ii) Strategies for increasing the child's rate of learning; and
- (iii) The parents' right to request an assessment.

(34 C.F.R. § 300.311(a); Ed. Code, §§ 56026(e) and 56329(a)(2); 5 Cal. Code Regs. §§ 3030(b)(10)(B)(4).)

Each IEP Team member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the member must submit a separate statement presenting the member's conclusions. (34 C.F.R. § 300.311(b).)

The psychological processing disorder should be manifested on more than one instrument and be corroborated by an analysis of other test results and observations.

The relationship of the processing disorder to the student's academic deficits should be clearly established and become the basis for instructional planning and for the development of specific goals and, if required, short-term objectives, for the student's IEP.

If the severe discrepancy, lack of response to intervention, or pattern of strengths and weaknesses is due to environmental, cultural, or economic factors; visual, hearing or motor disabilities; intellectual disability; emotional disturbance; limited school experience or poor attendance; limited English proficiency; lack of appropriate instruction in reading or math; or social maladjustment.

**(K) Speech or Language Impairment (SLI).** A non-severe disabling condition.

Definition. A student shall be assessed as having a language or speech impairment that makes him or her eligible for special education and related services when he or she demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance and cannot be corrected without special education and related services. (Ed. Code, § 56333.) In order to be eligible for special education and related services, difficulty in understanding or using spoken language shall be assessed by a language, speech and hearing specialist who determines that such difficulty results from any of the following disorders:

- (1) Articulation disorders, such that the student's production of speech significantly interferes with communication and attracts adverse attention.
- (2) Abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness. An appropriate medical examination shall be conducted, where appropriate.
- (3) Fluency difficulties which result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the student and listener.
- (4) Inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the student's language performance level is

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found to be significantly below the language performance level of his or her peers.

- (5) Hearing loss which results in a language or speech disorder and significantly affects educational performance.

(Ed. Code, § 56333.)

Under the federal regulations, a speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance. (34 C.F.R. § 300.8(11).)

For an infant or toddler between birth to three years of age, the normal process of second language acquisition, and the manifestation of dialect and sociolinguistic variance alone are not reasons to find a child eligible. (17 Cal. Code Regs. § 52022(d).) (*Please see Chapter 5 for more information regarding early childhood education.*)

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

- (1) **Speech Sound Disorder.** (Ed. Code, § 56333(a); 5 Cal. Code Regs. § 3030(b)(11)(A).)

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 articulation disorder if the sole assessed disability is an abnormal swallowing pattern.

**Implementation Procedures.** A student having hearing within the normal speech range may be assessed as having an articulation disorder when the student demonstrates a developmental delay in the production of one or more developmentally appropriate phonemes.

- Student demonstrates lack of stimulability in syllables/words.
- Student demonstrates consistency of error in two or more speaking situations. Errors must be present in the initial, medial, and final position of words.
- Student demonstrates reduced intelligibility in conversational speech.

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Consider the normal processes of second-language acquisition, as well as manifestations of dialect and sociolinguistic variance that may/may not be considered a handicapping condition.

Consider that children with other disabling conditions may have articulation skills that are delayed compared to same-aged peers but are appropriate for their functioning age level.

(2) **Voice Disorder.** (Ed. Code, § 56333(b); 5 Cal Code Regs. § 3030(b)(11)(B).)

A student has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness.

Implementation Procedures.

- (a) A student shall be assessed by a multidisciplinary team as having abnormal voice when the disorder adversely affects educational performance. Where appropriate, vocal assessment shall include a medical examination.
- (b) The IEP Team shall document that the abnormal voice is noticeable to both familiar and unfamiliar listeners, interferes with communication, is noticeable over a long period of time, and is inappropriate for the student's age and/or sex.

(3) **Fluency Disorder.** (Ed. Code, § 56333(c); 5 Cal. Code Regs. § 3030(b)(11)(C).)

A student has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the student and listener

Implementation Procedures.

- (a) A student may be assessed by a multidisciplinary team as having a fluency disorder when the student exhibits inappropriate rate or rhythm of speech or excessive repetition, revision, interjection, pauses, and other breaks in the flow of speech that do not enhance meaning at an average of 10 percent or greater frequency of dysfluent incidences.
- (b) A certain degree of normal non-fluent behavior characterizes the speech of very young children. In this case, periodic monitoring and parent education may be more appropriate than direct intervention.

(4) **Language Disorder.** (Ed. Code, § 56333(d); 5 Cal. Code Regs. § 3030(b)(11)(D).)

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

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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 morphology, syntax, semantics, or pragmatics, 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 fifty 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.

Implementation Procedures. A multidisciplinary team shall assess a student and may consider the following relevant information:

- (1) Assessment in one or more of the following areas of language development:
  - (a) Morphology.
  - (b) Syntax.
  - (c) Semantics.
  - (d) Pragmatics.

Scores on standardized tests and scores from analysis of a language sample shall meet the requirements set forth in Title 5 of the California Code of Regulations, quoted above.

When standardized tests are considered to be invalid for a specific student, the expected language performance level shall be determined by alternative means as specified on the assessment plan. (5 Cal. Code Regs. §§ 3030(b)(11)(D)(1) and (2).)

Language disorder does not include:

- (1) Students who have a typical language patterns resulting from lack of familiarity with or limited English, or from environmental, cultural or economic disadvantage; or

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- (2) A student whose language is commensurate with his/her general cognitive functioning may be found to have a language disorder, but not need special education and related services and thus not qualify as a disabled student.

**(5) Hearing Impairment or Deafness.** (Ed. Code, § 56333(e).)

Hearing impairment or deafness that contributes to or results in a language or speech disorder and significantly affects educational performance.

**(L) Traumatic Brain Injury (TBI).** A severe or non-severe disabling condition.

Definition. “Traumatic brain injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. (34 C.F.R. § 300.8(c)(12); 5 Cal. Code Regs. §§ 3030(b)(12).) The term 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. (Id.) The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (Id.)

Implementation Procedures. A multidisciplinary team shall assess a student. Relevant information may include the following:

- (1) A review of medical records, which documents a diagnosis of traumatic, brain injury.
- (2) A written report by a school psychologist that shall include a summary of previous and current educational performance, cognitive functioning, home and school observations and attempted interventions.
- (3) Assessment by persons knowledgeable in the following areas:
  - a. Post trauma academic functioning
  - b. Language and speech production
  - c. Perceptual and motor abilities
  - d. Judgment and psychosocial behavior
  - e. Health and physical functions
  - f. Adaptive behaviors



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For the student to qualify for special education and related services under the disabling condition of traumatic brain injury, the IEP Team must determine that the traumatic brain injury adversely affects the student's educational performance.

**(M) Visual Impairment Including Blindness (VI).** A severe or non-severe disabling condition.

Visual impairment, including blindness, means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 C.F.R. § 300.8(c)(13); 5 Cal. Code Regs. § 3030(b)(13).)

Implementation Procedures. A multidisciplinary team shall assess a student. A current written report of an eye examination by either an ophthalmologist or optometrist may be required prior to functional vision assessment by a person credentialed to serve the visually impaired. One of the following descriptions should apply:

- (1) **Partially Sighted.** The student's visual acuity in the better eye, after the best correction, is between 20/70 and 20/200.
- (2) **Legally Blind.** Central visual acuity is 20/200 or less in the better eye after best correction with conventional spectacle lenses, or visual acuity is better than 20/200 if there is a field defect in which the widest diameter of the visual field is no greater than 20 degrees. In the United States, this definition has been established primarily for economic and legal purposes.
- (3) **Blind.** The student's visual impairment is so severe that for education purposes, vision cannot be used as a major channel of learning.

**2.6. Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder**

A student whose educational performance is adversely affected by a suspected or diagnosed attention deficit or attention deficit hyperactivity disorder (ADD or ADHD) and who demonstrates a need for special education and related services by meeting eligibility requirements for the categories of "other health impairments," "serious emotional disturbance," or "specific learning disabilities" is entitled to special education and related services. (Ed. Code, § 56339(a).) Therefore, when assessing a student with possible ADD/ADHD and assessing all areas of suspected eligibility, the MDT should consider, at a minimum, whether the child might be found eligible under the categories of SLD, OHI and ED.

If, however, a student with ADD or ADHD is not found to be eligible for special education and related services, the student's instructional program will be provided in the regular education program. (Ed. Code, § 56339(b).)

**2.7. Additional Eligibility Criteria: Children Birth to Under Three Years Old.**

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*Please refer to Chapter 5 of this Procedural Handbook for information about eligibility of children between the ages of birth to younger than 3 years old.*

**2.8. Additional Eligibility Criteria: Children Ages Three through Five Years**

*Please refer to Chapter 5 of this Procedural Handbook for information about eligibility of children between the ages of three and five years.*

**2.9. Additional Federal Eligibility Criteria: Children Ages 3 through 9 Experiencing Developmental Delays**

A child between ages three through nine (or any subset of that age range, including ages three through five), may be found to have a "disability," subject to the state adopting a definition of "developmental delay," if the child:

- (A) Is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
- (B) By reason thereof, needs special education and related services. (34 C.F.R. § 300.8(b).)

### Chapter 3 Individualized Education Program (IEP)

#### 3.1. Purpose and Scope

The purpose of an IEP is to provide a disabled student with a FAPE in the least restrictive environment. Of key importance is that the IEP must show a direct relationship among the student's present levels of performance and needs (as ascertained by assessment data), goals and objectives, and the specific educational placement and services that are offered. (Ed. Code, §§ 56341.1 (a) and 56345; 5 Cal. Code Regs. § 3040(b).) The IEP Team considers the assessment data, information from personnel working with the student, information from parents, and any other relevant information in order to ascertain the student's needs, develop goals, and offer placement and services where those goals can be addressed in an environment that maximizes the disabled student's opportunity to be educated with non-disabled students.

#### 3.2. Educational Benefit

The United States Supreme Court was decisive in describing what constitutes "educational benefit." In *Board of Education v. Rowley* (1982) 458 U.S. 176, the Court stated that Districts must provide a "basic floor of opportunity" that "consists of access to specialized instruction and related services which are individually designed to provide educational benefit" to the disabled student. IDEA and related state law do *not* require that school districts *maximize* the potential of students with disabilities nor that districts must comply with parent preferences. The Court held that a District has provided FAPE when the child's IEP sets out an educational program that is "reasonably calculated to enable the child to receive educational benefits." Specifically for children receiving instruction in the regular classroom, the IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."

In 2017, the Court again examined the question of what constitutes "educational benefit" in *Andrew F. v. Douglas County School District RE-1* (2017) 137 S.Ct. 988. The Court clarified that a District must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances [meaning, the specific needs of that child based on that child's disability]." As articulated in *Rowley*, "appropriate progress" for children fully integrated in the regular classroom means that the IEP is reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. For students who are not fully integrated in the regular classroom and cannot achieve on grade level, "appropriate progress" means the child's educational program must be appropriately ambitious in light of that child's circumstances.

#### 3.3. Individualized Education Program Requirements

##### (A) Parental Consent

Before the District can provide any special education services to a student with a disability, the parents must provide informed written consent (unless the student

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has reached the age of majority, in which case the student must consent). (Ed. Code, §56346.)

Informed parental consent means that the parent:

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

(Ed. Code, § 56021.1; 34 C.F.R. § 300.9.)

For initial IEPs, if the parents refuse to consent to the initiation of special education and related services, the District cannot provide those services by filing for due process. (Ed. Code, § 56346(b).) If the parent refuses consent, the District will not be in violation of providing FAPE and the District is not required to prepare an IEP for that student. (Ed. Code § 56346(c).) Send prior written notice (and a copy of procedural safeguards) documenting the IEP and parents' refusal to consent to the initiation of services.

For any IEPs other than initials, if the parents consent to receipt of special education and related services, but do not consent to all components of the IEP, then the District shall implement those components with which the parents agree. (Ed. Code, § 56346(e).) The District must file for due process if it determines that the components with which the parent disagrees are necessary to provide a FAPE.(Ed. Code, § 56346(f).) While the due process hearing is pending, the student shall remain in the current placement unless the parent and District agree otherwise. (Ed. Code, § 56346.)

**(B) Parental Revocation of Consent**

Parents have the right to revoke consent for their child's receipt of special education and related services, and school districts may not challenge the decision through due process. (34 C.F.R. § 300.300(b)(4)(ii); Ed. Code, § 56346(d)(1).)

If the parent revokes consent for the child's receipt of special education services after the child is initially provided special education and related services, the District is not required to amend the child's education records to remove references

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to the child's receipt of special education and related services because of the revocation of consent. (34 C.F.R. § 300.9(c)(3).) Also, if parents revoke consent for special education, the District will not be considered to be in violation of its obligation to provide a FAPE to the child during the period of time when the parents refuse to consent to services, and is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of services. (34 C.F.R. §§ 300.300(b)(4)(iii), (iv).)

California Department of Education officials emphasize that when parents revoke consent for special education and related services, they must do so in writing.

Although school officials cannot delay in ceasing to provide special education and related services to the child, the District must provide the parent with prior written notice (and a copy of procedural safeguards) prior to stopping services. Prior written notice confirms that parents have decided to withdraw consent for special education and related services, summarizes the effects of withdrawal of consent (e.g. return to the regular classroom, subject to discipline rules as a general education student), and specifies the date on which services will cease.

When the District ceases to provide special education services in response to the parent/guardian's revocation of consent, the student shall be classified as a general education student.

**(C) Development of IEP**

Once a student has been referred for initial assessment, the student must be assessed in all areas of suspected disability. An IEP Team meeting shall occur within 60 calendar days of receiving written parental consent for the assessment, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five school days. (Ed. Code, §§ 56043(c), 56302.1(a), and 56344.) An IEP Team meeting to develop an initial IEP shall be conducted within 30 days of a determination that the student needs special education and related services. (Ed. Code, § 56344(a); 34 C.F.R. § 300.323(c)(1).)

The 60 day time period does not apply if either of the following occurs:

- (1) The student enrolls in a school served by the District after the relevant time period has commenced but prior to determination by his or her previous district of whether the student has a disability. This exemption applies only if the District is making sufficient progress to ensure a prompt completion of the assessment, and the parent and District agree to a specific date by which the assessment shall be completed. (Ed. Code, § 56302.1(b)(1).)
- (2) The parent of a child repeatedly fails or refuses to produce the child for assessment. (Ed. Code, § 56302.1(b)(2).)

An IEP required as a result of other assessments shall be developed within a total time not to exceed 60 calendar days, not counting days between the student's

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regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of the parent’s written consent for assessment, unless the parent agrees, in writing, to an extension. (Ed. Code, § 56043(f).)

If parents request an IEP Team meeting, the team must meet within 30 days, not counting days between the student’s regular school sessions, terms, or days of school vacation in excess of five school days, of that request. (Ed. Code, § 56043(l).)

A District administrator or designee will initiate and conduct the meeting for the purpose of developing, reviewing, and revising the IEP of a child with a disability.

Reasonable efforts will be made to ensure that the parent(s) of a child, with a disability, is/are present at each IEP Team meeting or are afforded the opportunity to participate by other means. (Ed. Code, §§ 56304; 56341.5(a) and (g).) See 3.4 (C), (D).

**(D) IEP Team Considerations**

When developing each student’s IEP, the IEP Team shall consider:

- (1) the strengths of the child
- (2) the concerns of the parent(s) for enhancing the education of their child
- (3) the results of the initial or most recent evaluation of the child (including, as appropriate, the results of the child’s performance on any general state or District-wide assessment program, and any private assessments provided by the parents)
- (4) the academic, developmental, and functional needs of the child
- (5) in the case of a student whose behavior impedes the student’s learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior
- (6) in the case of a student with limited English proficiency, the language needs of the student as such needs related to the student’s IEP
- (7) in the case of a student who is blind or visually impaired, the need to provide for instruction in Braille and instruction in the use of Braille. However, such instruction need not be included in the IEP if the IEP Team determines that instruction in Braille or the use of Braille is not appropriate for the student. This determination shall be based upon an assessment of the student’s reading and writing skills, needs, and appropriate reading and writing media, including an assessment of future needs for instruction in Braille or the use of Braille.

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- (8) the communication needs of the student and, in the case of a student who is deaf or hard of hearing, the student’s language and communication needs, opportunities for direct communications with peers and professional personnel in the student’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student’s language and communication mode. The team shall also consider the related services and program options that provide the student with an equal opportunity for communication access as described in Education Code section 56345.
- (9) whether the student requires assistive technology devices and services. If, in considering the special factors in the items above, the IEP Team determines that the student needs a particular device or service, including an intervention, accommodation, or other program modification in order to receive FAPE, the IEP Team shall include a statement to that effect in the IEP. (Ed. Code, § 56341.1.)

**(E) IEP Content**

The term “individualized education program” means a written statement for each child with a disability that is developed, reviewed, and revised and shall include, but not be limited to, the following:

- (1) A statement of the child’s present levels of academic achievement and functional performance, including:
  - (a) How the disability affects the child’s involvement and progress in the general education curriculum;
  - (b) For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities; and
  - (c) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.
- (2) A statement of measurable annual goals, including academic and functional goals designed to:
  - (a) Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and
  - (b) Meet each of the child’s other educational needs that result from the child’s disability.
- (3) A description of how the child’s progress toward meeting the annual goals will be measured, and when periodic reports on progress the child is making

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toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with issuance of reportcards) will be provided.

- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
  - (a) To advance appropriately toward attaining the annual goals;
  - (b) To be involved in and make progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
  - (c) To be educated and participate with other children with disabilities and typically developing peers in the activities described above.
- (5) An explanation of the extent, if any, to which the child will not participate with typically developing peers in the regular class and extracurricular and nonacademic activities.
- (6) A statement of any appropriate individual accommodations that are necessary to measure the academic achievement and functional performance of the child on state and District-wide assessments.
  - (a) If the IEP Team determines that the child shall take an alternate assessment on a particular state or District-wide assessment of student achievement, a statement of why:
    - (i) The child cannot participate in the regular assessment; and
    - (ii) The particular alternate assessment selected is appropriate for the child;
- (7) The projected date for the beginning of services and modifications, and the anticipated frequency, location, and duration of those services and modifications.
- (8) Beginning not later than the first IEP to be in effect when the child is 16(or younger if determined appropriate by the IEP Team) and updated annually thereafter:
  - (a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;



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- (b) The transition services (including course of study) needed to assist the child in reaching those goals; and
  - (c) Beginning not later than one year before the child reaches the age of majority (age 18), a statement that the child has been informed of the child’s rights that will transfer to the child when reaching age 18. (Ed. Code, § 56345(g).)
- (9) A description of the means by which the IEP will be provided under emergency conditions, as described in Education Code section 46392, in which instruction and/or services cannot be provided to the student either at the school or in person for more than 10 school days. The description shall take into account public health orders and shall include special education and related services, supplementary aids and services, transition services, and extended school year services
- (10) If appropriate the IEP shall also include:
- (a) For students in grades 7 to 12, inclusive, any alternative means and modes necessary for the student to complete the prescribed course of study of the District and to meet or exceed proficiency standards for graduation.
  - (b) For individuals whose native language is other than English, linguistically appropriate goals, objectives, programs, and services.
  - (c) Pursuant to section 300.106 of Title 34 of the Code of Federal Regulations, extended school year services shall be included in the IEP and provided to the student if the IEP Team of the student determines, on an individual basis, that the services are necessary for the provision of a FAPE to the student.
  - (d) Provision for the transition into the regular class program if the student is to be transferred from a special class or nonpublic, non-sectarian school into a regular class in a public school for any part of the school day, including the following:
    - (i) A description of activities provided to integrate the student into the regular education program. The description shall indicate the nature of each activity, and the time spent on the activity each day or week.
    - (ii) A description of the activities provided to support the transition of students from the special education program into the regular education program.

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- (11) For students with low-incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Education Code section 56136.

(Ed. Code, § 56345(b).)

To assist a student who is blind, has low vision, or is visually impaired to achieve the student's maximum potential, the IEP team may consider instruction in the expanded core curriculum, including compensatory skills such as Braille, concept development, or other skills needed to access the core curriculum; orientation and mobility; social interaction skills; career technical education; assistive technology, including optical devices; independent living skills; recreation and leisure; self-determination; and sensory efficiency. When appropriate, such services may be offered before or after school. (Ed. Code, § 56353)

When appropriate, the IEP will also include other necessary services, such as extended school year (ESY), transportation, type of physical education, pre-vocational, vocational, and career education.

All service providers, the school site and any outside agencies who will provide services will be given a copy of the IEP and be knowledgeable of its content.

(Ed. Code, §§ 56345, 56345.1; 20 U.S.C. § 1414; 34 C.F.R. § 300.320.)

**(F) When IEP Goes Into Effect**

Special education and related services must be provided "as soon as possible" following development of the IEP and approval by the parent. (34 C.F.R. § 300.324(c)(2); Ed. Code, § 56344(b).) The District must have an IEP in effect for each disabled student within its jurisdiction at the beginning of each school year. (34 C.F.R. §300.324(a); Ed. Code, § 56344(c).)

**(G) Provision of Services to Students Ages 18 – 22 years**

When a student reaches the age of majority (18 years old), he or she either will be conserved or non-conserved. Except for students meeting the residency requirements of Education Code section 48204, the district of residence responsible for providing special education services will be as follows:

- (1) For non-conserved students, the last district of residence in effect prior to the student's turning 18 shall become and remain the responsible district as long as and until the parent relocates to a new district of residence. At that time, the new district of residence shall become the responsible district.
- (2) For conserved students, the district of residence of the conservator shall attach and remain the responsible district as long as and until the

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conservator relocates or a new one is appointed. At that time, the new district of residence shall attach and become the responsible district.

(Ed. Code, § 56041.)

### **3.4. IEP Team Members**

Each meeting to develop, review, or revise the IEP of a child with special needs shall be conducted by an IEP Team.

#### **(A) Members of the IEP Team**

Unless excused, the IEP Team shall include all of the following:

- (1) One or both of the student's parents/guardians and/or a representative selected by them. This person must meet the definition of a parent pursuant to Education Code section 56028. This person could also meet the provisions related to foster parent pursuant to Education Code section 56055.
- (2) Not less than one general education teacher of the student, if the student is, or may be, participating in the general education environment. If more than one general education teacher is providing instructional services to the student, one general education teacher may be designated by the District to represent the others. The general education teacher of a student shall, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies for the student, and the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student.
- (3) Not less than one special education teacher of the student, or if appropriate, not less than one special education provider of the student.
- (4) A representative of the District who meets all of the following criteria:
  - (a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of individuals with exceptional needs;
  - (b) Is knowledgeable about the general curriculum; and
  - (c) Is knowledgeable about the availability of resources of the local educational agency.

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- (5) An individual who can interpret the instructional implications of the assessment results. The individual already may be a member of the IEP Team as described in items 2-4 or above or in item 6 below.
- (6) At the discretion of the parent, guardian, or the District, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate. The determination of whether the individual has knowledge or special expertise regarding the student shall be made by the party who invites the individual to be a member of the IEP Team.
- (7) Whenever appropriate, the student. The District shall invite the student to attend his or her IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals and the needed transition services for the student. If the student does not attend the IEP team meeting, the District shall take steps to ensure that the student's preferences and interests are considered by the IEP Team.
- (8) When the student is suspected of having a specific learning disability, at least one individual who is qualified to conduct individual diagnostic examinations of the student such as a school psychologist, speech language pathologist, or remedial reading teacher. In accordance with 34 C.F.R. section 300.310, at least one team member other than the student's general education teacher shall observe the student's academic performance and behavior in the areas of difficulty in the student's learning environment, including in the regular classroom setting. If the child is younger than five years or not enrolled in school, a team member shall observe the child in an environment appropriate for a child of that age. (Ed. Code, § 56341(c).) In addition, the IEP Team must include the child's regular teacher, or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age. (34 C.F.R. § 300.308(a).) For children who are less than school age, an individual qualified to teach a child of his or her age must be part of the IEP Team. (34 C.F.R. § 300.308(a).)
- (9) In the following circumstances, the District shall invite other specified individuals to an IEP team meeting:
  - (a) When the student has been placed in a group home by the juvenile court, a representative of the group home shall be invited to attend IEP team meetings. (Ed. Code, § 56341.2)
  - (b) Whenever the IEP team is meeting to consider the student's postsecondary goals and the transition services needed to assist the student in reaching the goals, the following individuals shall be invited to attend: (34 C.F.R §.300.321)

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- (i) The student, regardless of the student’s age. If the student does not attend the IEP team meeting, the District shall take other steps to ensure that the student’s preferences and interests are considered.
- (ii) To the extent appropriate, and with the consent of the parent/guardian or adult student, a representative of any other agency that is likely to be responsible for providing or paying for the transition services.
- (c) If the student was previously served under the Early Education for Individuals with Exceptional Needs or the California Early Intervention Services Acts, the District shall invite, upon request of the student’s parent/guardian, the Infant and Toddlers with Disabilities Coordinator or other representative of the early education or early intervention system to the initial IEP team meeting to assist with the smooth transition of services. (Ed. Code, § 56341; 20 U.S.C. 1414; 34 CFR 300.321)

(Ed Code, §§ 56341(b), (c), 56341.2; 34 C.F.R. § 300.321.)

**(B) IEP Team Member Excusal**

IEP Team Member's Area of Curriculum or Related Service **Not** Being Discussed

A member of the IEP Team shall not be required to attend an IEP team meeting, in whole or in part, if the parent of student and the District agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

IEP Team Member's Area of Curriculum or Related Service Being Discussed

A member of the IEP Team may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if both of the following occur:

- (1) The parent, in writing, and District consent to the excusal after conferring with the member; and
- (2) The member submits in writing, to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(Ed. Code, §§ 56341(f) and (g).)

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**(C) Parental Notice**

The District must take steps to ensure that at least one of the parents or guardians attends the IEP or are otherwise given the opportunity to participate by some other means. (Ed. Code, § 56341.5(a).)

The District must give the parents notice of the IEP Team meeting "early enough" to ensure an opportunity to attend. (Ed. Code, § 56341.5(b).)

The meeting must be scheduled at a mutually agreed-upon time and place. (Ed. Code, § 56341.5(c).)

The notice of the IEP Team meeting must be of sufficient detail to inform the parents of the purpose of the meeting and who will attend. In particular, the notice must indicate:

- (1) The purpose of the meeting;
- (2) The time and location of the meeting;
- (3) Who will attend the meeting (identified by title, not by name);
- (4) That parents have a right to bring other people to the meeting who have knowledge or special expertise regarding the disabled student;
- (5) For children previously served in an early education or early intervention program, that parents have a right to ask that the infants and toddlers with disabilities service coordinator or other representative of the early education or early intervention system be notified of the meeting;
- (6) For children aged 16 and older, one of the purposes of the meeting will be to discuss post-secondary transition planning.

(Ed. Code, §§ 56341.5(c) and 56345(a)(8).)

For English Learners, the notice must be in the parents' primary language and inform parents of their right to have an interpreter present at the IEP meeting.

**(D) If Parents Cannot Attend IEP Team Meeting**

If neither parent can attend the IEP Team meeting, other methods will be used to ensure parent participation, including individual or conference telephone calls. (Ed. Code, § 56341.5(g).)

If the parent cannot be contacted, or if the District is unable to convince the parents that they should attend, the IEP team meeting may be conducted without a parent in attendance. The District will keep a record of its attempts to arrange a mutually agreed on time and place, such as:

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- (1) A detailed record of phone calls made or attempted and the result of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; and
- (3) Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

(Ed. Code, § 56341.5(h).)

District Where a student with a disability lacks a parent or guardian under specified circumstances, the District must take steps to appoint a surrogate parent. The surrogate parent may represent the child in all matters relating to the identification, assessment, and educational placement of the child and the provision of FAPE to the child. (34 C.F.R. § 300.519(g); Ed. Code, § 56050(b); Govt. Code, § 7579.5(c).) *(Please refer to Chapter 9 of this Procedural Handbook for more information about surrogate parent procedures.)*

### **3.5. Placement**

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. (5 Cal. Code Regs. § 3042.)

The student’s placement shall be determined by the IEP team at least annually.

In determining the educational placement of a student with a disability, DISTRICT will ensure that the placement decision is made by an IEP team including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. (Ed. Code, § 56342.5.) The District further shall ensure that the placement decision is made in conformity with least restrictive environment (LRE) principles.

All placement decisions will be based on the individual needs of the student as determined by the IEP Team and not on the basis of the disability, configuration of service delivery, availability of staff, curriculum intent, or administrative experience. All placements will be made in the LRE. (34 C.F.R. § 300.114.)

A student with a disability may be placed at a specified school site other than the student’s home school to receive special education programs and/or services within the District consistent with the requirements of the students’ IEP when programs and services are not available at the student’s home school, or when the level of services at the student’s home school are not appropriate for the student to receive a FAPE.

A student may be placed in programs operated by other local educational agencies and non-public, nonsectarian schools or agencies as determined by the student’s IEP Team.

### 3.6. Least Restrictive Environment

#### (A) Definition

To the maximum extent appropriate, individuals with exceptional needs, including children in public or private institutions or other care facilities, are educated with children who are nondisabled.

Special classes, separate schooling, or other removal of individuals with exceptional needs from the general educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Ed. Code, § 56040.1)

#### (B) *Holland* Factors

In determining what constitutes the LRE for a specific student, the District must consider four factors (called the *Holland* factors after the name of the case in which they were first articulated):

- (1) The educational (academic) benefits of placement full time in a regular class, supplemented with appropriate aids and services;
- (2) The non-academic benefits of interacting with non-disabled peers;
- (3) The effect the child would have on the teacher and children in the regular class; and
- (4) The cost of main streaming the student in the regular classroom.

(*Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403.)

#### (C) Elements of LRE

Least restrictive environment requirements include the following:

- (1) The student's placement will be as close as possible to his/her home.
- (2) Unless the IEP requires some other arrangement, the student will be educated in the school that he or she would attend if not identified with special needs.
- (3) In selecting the LRE, consideration will be given to any potential harmful effect on the student or on the quality of services that he/she needs.
- (4) A student with a disability will not be removed from education in age-appropriate general education classrooms solely because of needed



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modifications in the general curriculum. (34 C.F.R. § 300.116; Ed. Code, § 56342(b).)

- (5) In providing or arranging for the provision of nonacademic and extracurricular services and activities, the District will ensure that the student with the disability participates with typically developing peers in those services and activities to the maximum extent appropriate to the needs of that student. The District will ensure that each eligible student has the appropriate supplementary aids and services necessary for the student to participate in nonacademic settings. (34 C.F.R. § 300.117.)
- (6) Special classes may enroll a student only when the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services, including curriculum modifications and behavioral support, cannot be achieved satisfactorily. These requirements also apply to separate schooling or other removal of students from the general education environment. (Ed. Code, § 56364.2; 34 C.F.R. § 300.114(a)(2)(ii).)

The IEP Team shall document its rationale for placement in other than the student's home school and classroom in which he/she would otherwise attend if he/she did not have a disability. The documentation shall indicate why the student's disability prevents his/her needs from being met in a regular classroom even with the use of supplementary aids and services. (Ed. Code, § 56345(a)(5); 5 Cal. Code Regs. § 3042; 34 C.F.R. § 300.320(a)(5).)

The IEP must state the percentage of time that the student will be in and out of the regular education environment and an explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular classes and activities. (34 C.F.R. § 300.320(a)(5); Ed. Code, 56345(a)(5).)

**(D) Placement: Continuum of Options**

The District shall ensure that a continuum of program options is available to meet the needs of eligible students. (Ed. Code, § 56360.) The continuum of options includes, but is not necessarily limited to, all of the following or any combination of the following:

- (1) Regular education classroom.
- (2) Regular education classroom with supplementary aids and services.
- (3) Regular education classroom with resource specialist services.
- (4) Regular education classroom with related services (known as “designated instruction and services” under California law).

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- (5) Regular education classroom with services from a special day class teacher and supports and/or related services.
- (6) Special classes.
- (7) Nonpublic, non-sectarian school services.
- (8) State special schools.
- (9) Residential schools.
- (10) Home/Hospital.
- (11) Instruction using telecommunication, and itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur.

(34 C.F.R. § 300.115; Ed. Code, § 56361.)

All special education and related services for children under the age of three must be provided pursuant to early intervention for individuals with exceptional needs. (Ed. Code, § 56361.2.) *(Please refer to Chapter 5 of this Procedural Handbook for more information about Early Childhood Education.)*

### 3.7. Special Education Descriptors

Specialized Academic Instruction (SAI) is defined as: “Adapting, as appropriate to the needs of the child with a disability, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability, and to ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.” (34 C.F.R. § 300.39(b)(3).)

The primary instructional service for most special education services will be listed as SAI on the IEP. As specialized academic instruction is identified, one must also identify the amount of service and the location. A student may have more than one line for this service when the locations are different. For example, you may have one line that indicates SAI in general education for 10 hours a week, and another line that indicates SAI in a separate class for 5 hours per week. Comments of the service box are used to further describe SAI. For example, the comment box can describe how much SAI when it is a combination of push-in and pull out service, describing the total minutes that are push-in and the total minutes that are pull-out.

Instruction may be delivered one-to-one or in a small group, as specified in an IEP, in order to enable the student(s) to participate effectively in the total school program. Indicate in the service comments how many minutes will be provided in each.

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**(A) Specialized Academic Instruction/Resource Specialist Program/Non-Intensive Services**

Description. The resource specialist program/non-intensive services shall provide, but not be limited to, all of the following:

- (1) Provision for a resource specialist or specialists who shall provide instruction and services for those students whose needs have been identified in an IEP developed by the IEP Team, and who are assigned to regular classroom teachers for a majority of a school day;
- (2) Provision of information and assistance to students with disabilities and their parent;
- (3) Provision of consultation, resource information, and material regarding students with disabilities to their parents and to regular staff members;
- (4) Coordination of special education services with the regular school programs for each student enrolled in the resource specialist program;
- (5) Monitoring of student progress on a regular basis, participation in the review and revision of IEPs, as appropriate, and referral of students who do not demonstrate appropriate progress to the IEP Team; and
- (6) Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.

(Ed. Code, § 56362(a).)

Staffing. The resource specialist program shall be under the direction of a resource specialist/mild to moderate specialist, who is a credentialed special education specialist, or who has a clinical services credential, with a special class authorization, who has had three or more years of teaching experience, including both regular and special education teaching experience, and who has demonstrated the competencies for a resource specialist, as established by the Commission on Teacher Credentialing. (Ed. Code, § 56362(b).)

Rules for resource specialists:

- (1) At least 80 percent of the resource specialists within a local plan shall be provided with an instructional aide.
- (2) No resource specialist shall have a case load that exceeds 28 students without a waiver.
- (3) No resource specialist shall simultaneously be assigned to serve as a resource specialist and to teach regular classes.

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- (4) Resource specialists shall not enroll a student for a majority of a school day without approval by the student’s IEP Team.

(Ed. Code, §§ 56362(c), (d), (e), and (f).)

**(B) Specialized Academic Instruction/Special Day Classes/Intensive Services**

Description. Placement in a special day class/intensive services shall not limit or restrict the consideration of other options, including services provided in a vocational education program or any combination of programs and placements as may be required to provide the services specified in a student’s IEP.

The following standards for special classes shall be met:

- (1) Special classes may enroll students only when the nature or severity of the disability of the student is such that education in the regular classes with the use of supplementary aids and services, including curriculum modification and behavioral support, cannot be achieved satisfactorily. These requirements also apply to separate schooling or other removal of individuals with disabilities from the general educational environment. (Ed. Code, § 56364.2(a); 5 Cal. Code of Regs. § 3053.)
- (2) Special classes shall be composed of individuals whose needs as specified in the IEP can be appropriately met within the class. (5 Cal. Code of Regs. § 3053(b)(1).)
- (3) Students in a special class shall be provided with an educational program in accordance with their individualized education programs for at least the same length of time as the regular school day for that chronological peer group. (5 Cal. Code of Regs. § 3053(b)(2).)
  - (a) When the IEP Team determines that a student cannot function for the period of time of a regular school day, and when it is so specified in the IEP, a student may be permitted to attend a specialclass for less time than the regular school day for that chronological peer group. (5 Cal. Code of Regs. § 3053(b)(2)((B).)
  - (b) When a student can benefit by attending a regular program for part of the day, the amount of time shall be written in the IEP. (5 Cal. Code of Regs. 3053(b)(2)((A).)

Staffing. The special day class shall be taught by a teacher whose responsibility is the instruction, supervision, and coordination of the educational program for those students enrolled in the special class. (5 Cal. Code of Regs. § 3053(c).)

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The special day class teacher must hold an appropriate special education credential and possess the necessary competencies to teach students assigned to the class. (5 Cal. Code of Regs. § 3053(c).)

Districts will assign Instructional Assistants to special education classes in accordance with the needs of the students. Instructional Assistants will also be assigned in accordance with provisions in individual student’s IEPs. (5 Cal. Code of Regs. § 3053(b)(3).)

**(C) Non-Public, Non-Sectarian School Services/Non-Public, Non-Sectarian Agency**

“Nonpublic, non-sectarian school” (NPS) means a private, non-sectarian school that enrolls individuals with exceptional needs pursuant to an IEP and is certified by the California Department of Education. (Ed. Code, § 56034.) 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 nonprofit corporation established or operated by a state or local agency, a public university or college, or public hospital. The NPS shall also meet standards prescribed by Superintendent of Public Instruction and the State Board of Education. (Ed. Code, § 56034.)

“Nonpublic, nonsectarian agency” (NPA) means a private, nonsectarian establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the student’s educational program pursuant to an IEP and that 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, a public university or college, or a public hospital. The NPA shall also meet standards as prescribed by the Superintendent and Board. (Ed. Code, § 56035.)

When a student whose educational needs cannot be met in a public educational program, NPS and/or NPA services shall be made available to the student through the IEP process.

NPS/NPA services shall be provided under contract with DISTRICT to provide the appropriate special education and related services when no appropriate public education program is available.

*(Please refer to Chapter 10 of this Procedural Handbook for complete information about nonpublic, nonsectarian schools and agencies)*

**(D) State Special Schools**

The California School for the Deaf is part of the public school system and educates deaf students who, because of their severe hearing loss and educational needs,

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cannot be provided an appropriate educational program and related services in the regular public schools. (Ed. Code, § 59001.)

The California School for the Blind also is part of the public school system and educates visually impaired, blind, and deaf-blind students who, because of their severe sensory loss and educational needs, cannot be provided an appropriate educational program and related services in the regular public schools. (Ed. Code, § 59101.)

These State special schools have referral and assessment processes to determine if a student meets the criteria set by the State Superintendent of Public Instruction. (See (Ed. Code, §§ 59000 et seq. and 59101 et seq.)

**(E) Residential Schools**

The IEP Team may determine that a student needs a residential placement.

**(F) Home and Hospital Instruction**

“Home and hospital services” means special education and related services provided in the home or hospital for school age students for whom the IEP team recommends such instruction or services. (5 Cal. Code of Regs. § 3051.4.)

Home or hospital services may be delivered as follows:

- (1) Instruction may be delivered individually, in small groups or by tele-class.
- (2) For disabled students having a medical condition such as those related to surgery, accidents, short-term illness or medical treatment for a chronic illness, the IEP Team shall review, and revise, if appropriate, the IEP whenever there is a significant change in the student's medical condition.
- (3) When recommending placement for home instruction, the IEP Team shall have in the assessment information a medical report from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the student from attending a less restrictive placement (home or hospital instruction is considered one of the most restrictive placements). The report shall include a projected calendar date for the student's return to school. It is the IEP Team's decision whether placement of a student on home hospital instruction is appropriate notwithstanding a doctor's recommendation. The IEP Team shall meet to reconsider the IEP prior to the projected calendar date for the student's return to school.
- (4) Instruction in the home or hospital shall be provided by a regular class teacher, the special class teacher or the resource specialist teacher, if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or

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specialist is feasible. If not, the appropriate related services specialist shall provide such instruction.

- (5) The teacher providing the home instruction shall contact the student's previous school and teacher to determine:
  - (a) the course work to be covered;
  - (b) the books and materials to be used;
  - (c) who is responsible for issuing grades and promoting the student when appropriate;
  - (d) for students in grades 7 to 12, the teacher shall confer with the school guidance counselor to determine:
    - (i) The hours the student has earned toward semester course credit in each subject included in the IEP and the grade as of the last day of attendance;
    - (ii) Who is responsible for issuing credits when the course work is completed;
    - (iii) Who will issue the diploma if the student is to graduate.(5 Cal. Code Regs. § 3051.4.)

*(See also 3.8.R for services for students with chronic illnesses or acute health problems.)*

### **3.8. Related Services**

The term “related services” (California law uses the term “designated instruction and services” or DIS) means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable an individual with exceptional needs to receive a FAPE as described in the IEP of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist an individual with exceptional needs to benefit from special education, and includes the early identification and assessment of disabling conditions in children. (34 C.F.R. § 300.34; Ed. Code, § 56363.)

Related services may be provided to individuals or to small groups in a specialized area of educational need, and throughout the full continuum of educational settings. Related services are determined by the IEP Team and documented in the IEP. All entities and individuals providing these services shall be qualified pursuant to 5 Cal. Code Regs §§

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3051-3053. Entities or individuals providing these services shall be employees of the District or Fresno County Superintendent of Schools, employed under contract with the District pursuant to Education Code §§ 56365-56366, employees, vendors, or contractors of the State Departments of Health Care Services or State Hospitals, or any designated local public health or mental health agency. (5 Cal. Code Regs. § 3051(a)(3).)

**(A) Transportation**

The related service of transportation means travel to and from school and between schools; transportation in and around school buildings; and specialized equipment (such as adapted buses, lifts, and ramps) if required to provide transportation for a child with a disability. (34 C.F.R. § 300.34(c)(16).) The IEP Team makes the determination of whether or not an individual student with disabilities should be provided special transportation. (*Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (OSERS 2009).)

Students with disabilities are entitled to access District-provided transportation to the extent the District provides transportation to the regular education students. (34 C.F.R. § 104.37(a)(2).) Beyond that, if a student has unique needs arising from his or her disability or otherwise needs special transportation to access or benefit from his or her educational program, then transportation is warranted. (*Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (OSERS 2009); *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46576 (Aug. 14, 2006).) Even if federal or state law does not prescribe transportation for a disabled student, if District policies require it, then transportation must be provided.

The District does not guarantee transportation for all of its students; therefore, the District is not required to guarantee transportation for all special education students. Instead, the District operates several school bus routes from designated points across the city and requires parents to sign up for school bus services. If a student does not ride one of these routes to school, then that student may ride public transportation or find another method of transportation to school. Students receiving special education and related services will ride the regular education busses unless the IEP Team determines that a student's unique needs warrant special transportation.

The District's school choice program also has implications for transportation. If a parent chooses to place the child in a different school due to personal choice (and there is no disability-related reason to do so), then the District is not obligated to provide transportation to that student unless District policies dictate otherwise.

IEP Teams should do the following when evaluating a student's transportation needs:

- (1) Discuss a student's transportation needs at each IEP meeting.



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- (2) When considering whether a student requires transportation as a related service, the IEP Team must evaluate whether the special education student's unique needs give rise to the need for transportation that is not otherwise offered to or used by general education students.

Like other related services, the IEP Team should discuss a student's transportation needs only AFTER an educational program/placement/service has been selected for the student. IEP Teams must be in possession of the details concerning the length and location of a student's educational program as well as the effect of the student's ability on his or her ability to access transportation before it can determine the logistics of an appropriate transportation program.

Not every disabled child will need transportation as a related service. The need for transportation, like all related services, must be determined on a case-by-case basis depending on whether the student needs the service to benefit from his/her education. Transportation is not dependent on category of eligibility or on special education placement. It also is not determined based on parent need.

After an IEP team has decided a student's educational placement and assessed his/her transportation needs, the IEP team should document how the student will get from home to school and back each day. Transportation options include:

- (1) Specialized transportation not required: If a student is capable of using the same options to get back-and-forth to school as are non-special education students (including walking, taking public transportation, and riding the general education school bus), then transportation does NOT need to be listed as a related service in the student's IEP.
- (2) Specialized transportation required: If the IEP team determines that—due to the student's disability (not, for example, due to the student's age, parent's work schedule, etc.) the student is not capable of using the same options to get back- and-forth to school as his or her non-disabled peers, then transportation should be listed on the IEP as a related service. Specify if the transportation is curb-to-curb or door-to door.

**(B) Language, Speech and Hearing Development and Remediation Services**

Language, speech, and hearing development and remediation services may include:

- (1) Referral and assessment of individuals suspected of having a disorder of language, speech, or hearing (these individuals are not considered part of a language, speech, and hearing specialist's "caseload" maximum of 55 students unless an IEP is developed and services are provided).
- (2) Specialized instruction and services for students with disorders of language, speech and/or hearing, including monitoring of student progress on a regular basis, providing information for the review, and when necessary participating in the review and revision of IEPs of students.

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- (3) Consultative services to students, parents, teachers, or other school personnel in the management of a student’s language, speech development, or hearing needs.
- (4) Coordination of speech and language services with a student’s regular and special education program.
- (5) Identification of children with speech or language impairments.
- (6) Diagnosis and appraisal of specific speech or language impairments.
- (7) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments.
- (8) Provision of speech and language services for the habilitation or prevention of communicative impairments.
- (9) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(34 C.F.R. § 300.34(c)(15); 5 Cal. Code Regs. § 3051.1(a).)

The person providing language and speech development and remediation services shall hold a license in Speech-Language Pathology issued by a licensing agency within the Department of Consumer Affairs, or hold a credential with authorization in language or speech services. (5 Cal. Code Regs. §3051.1(c).)

If specified in the IEP, services also may be provided by a speech/language pathology assistant (SLPA) working under the direct supervision of a speech/language pathologist. (5 Cal. Code Regs. § 3051.1(d).) The supervising speech/language pathologist must hold a valid and current license in Speech-Language Pathology; a valid, current, and professional clear (not issued per waiver or emergency permit) credential in language, speech, and hearing; or other credential authorizing service in language, speech and hearing (not issued per waiver or emergency permit). The supervising speech/language pathologist is responsible for the extent, kind, and quality of the services provided by the SLPA. (Cal. Bus. & Prof. Code, § 2530.3(i).)

Caseloads of full-time equivalent speech/language specialists shall not exceed a District, SELPA, or county-wide average of fifty-five (55) students unless prior written approval has been granted by the State Superintendent of Public Instruction. (Ed. Code, § 56363.3; 5 Cal. Code Regs. § 3051.1(d).) Caseloads shall not be increased by using a SLPA. (5 Cal. Code Regs. § 3051.1(d).)

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**(C) Audiological Services**

Audiological services may include the following:

- (1) Aural rehabilitation (auditory training, speech reading, language habilitation and speech conservation) and habilitation with individual students or groups and support for the hearing-impaired students in the regular classroom.
- (2) Monitoring hearing levels, auditory behavior, and amplification for all students requiring personal or group amplification in the instructional setting.
- (3) Planning, organizing and implementing an audiology program for individuals with auditory dysfunction, as specified in the IEP.
- (4) Consultative services regarding test findings, amplification needs and equipment, ontological referrals, home training programs, acoustic treatment of rooms, and educational management of the hearing-impaired individuals.
- (5) Identification of children with hearing loss.
- (6) Determination of range, nature, and degree of hearing loss, including referral for medical or professional attention for habilitation of hearing.
- (7) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing assessment, and speech conservation.
- (8) Creation and administration of programs for prevention of hearing loss.
- (9) Counseling and guidance of children, parents, and teachers regarding hearing loss.
- (10) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(34 C.F.R. 300.34(c)(1); 5 Cal. Code Regs. § 3051.2(a).)

The person providing audiological services shall hold a valid license in Audiology issued by a licensing agency within the Department of Consumer Affairs or a credential authorizing audiology services. (5 Cal. Code Regs § 3051.2.)

**(D) Orientation and Mobility Instruction**

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Related services in orientation and mobility services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community and may include the following:

- (1) Specialized instruction for individuals in orientation and mobility techniques, including teaching students:
  - (a) spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
  - (b) to use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
  - (c) to understand and use remaining vision and distance low vision aids;
  - (d) other concepts, techniques, and tools.
- (2) Consultative services to other educators and parents regarding instructional planning and implementation of the IEP relative to the development of orientation and mobility and independent living skills.

(5 Cal. Code Regs. § 3051.3.)

The person providing mobility instruction and services shall hold a credential that authorizes services in orientation and mobility instruction. (5 Cal. Code Regs. § 3051.3.)

**(E) Adapted Physical Education**

Adapted physical education (APE) is designed for students with disabilities who require developmental or corrective instruction and who are precluded from participating in the activities of the general physical education program, modified general physical education program, or in a specially designed physical education program in a special class due to their disability-related needs.

Consultative services may be provided to students, parents, teachers, or other school personnel for the purpose of identifying supplementary aids and services or modifications necessary for successful participation in the regular physical education program or specially designed physical education programs.

Persons providing APE services shall have a credential authorizing service in adapted physical education.

(5 Cal. Code Regs. 3051.5.)

**(F) Occupational Therapy and Physical Therapy**

Occupational therapy means services provided by a qualified occupational therapist which may include:

- (1) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
- (2) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
- (3) Preventing, through early intervention, initial or further impairment or loss of function.

(34 C.F.R. § 300.34(c)(6).)

As with other related services, occupational or physical therapists shall provide services based upon recommendation of the IEP Team. Physical therapy and occupational therapy services for infants (children aged birth to 3 years) are limited by Education Code section 56426.6. Physical therapy services may not exceed the services specified in the Business and Professions Code section 2620. Occupational therapy services may not exceed the services specified in Business and Professions Code section 2570.2(k). The District, SELPA, or county office shall assure that the therapist has available safe and appropriate equipment. (5 Cal. Code Regs. § 3051.6(a).)

Physical therapy shall be provided only by personnel who possess a valid license in Physical Therapy issued by a licensing agency within the Department of Consumer Affairs. Occupational therapy shall be provided only by personnel who possess a license in Occupational Therapy issued by a licensing agency within the Department of Consumer Affairs. Services provided by a Certified Occupational Therapist Assistant shall be supervised by a registered occupational therapist in accordance with professional standards outline by the American Occupational Therapy Association. (5 Cal. Code Regs. § 3051.6(b).)

**(G) Vision Services**

Related services for the students with visual impairments may include the following:

- (1) Adaptations in curriculum, media, and the environment, as well as instruction in special skills.
- (2) Consultative services to students, parents, teachers, and other school personnel.
- (3) An assessment of and provision for services to visually impaired students may be conducted by an eye specialist who has training and expertise in low

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vision disabilities and has available the appropriate low vision aide for the purpose of assessment. The eye specialist may provide consultation to the student, parents, teacher and other school personnel as may be requested by the IEP Team. (5 Cal. Code Regs. § 3051.7(b).)

- (4) An "eye specialist" means a licensed optometrist, ophthalmologist, or other licensed physician and surgeon who has training and expertise in low vision disabilities. (5 Cal. Code Regs. § 3051.7(d).)
- (5) Vision services shall be provided only by personnel who possess either a license as an Optometrist, Ophthalmologist, Physician or Surgeon, issued by a licensing agency within the Department of Consumer Affairs and authorizing the licensee to provide the services rendered, or a valid credential authorizing vision instruction or services. (5 Cal. Code Regs. § 3051.7(e).)
- (6) Procedures which may be utilized by qualified personnel are those authorized by federal and state laws and regulations and performed in accordance with those laws and regulations and standards of the profession. (5 Cal. Code Regs. § 3051.7(c).)

**(H) Vision Therapy**

Vision therapy may include remedial and/or developmental instruction provided directly by or in consultation with the optometrist, ophthalmologist, or other qualified licensed physician and surgeon provided ongoing care to the individual. (5 Cal. Code Regs. § 3051.75(a).)

Vision therapy shall be provided only by an optometrist, ophthalmologist, or by appropriate qualified school personnel when prescribed by a licensed optometrist, ophthalmologist, or other qualified licensed physician and surgeon. (5 Cal. Code Regs. § 3051.75(b).)

Procedures which may be utilized by qualified personnel are those procedures authorized by federal and state laws and regulations and performed in accordance with these laws and regulations and standards of the profession. (5 Cal. Code Regs. § 3051.75(c).)

**(I) Specialized Driver Training Services**

Specialized driver training instruction may include instruction to supplement the regular driver training program. The IEP Team shall determine the need for supplementary specialized driver training instruction. The need to supplement the regular program shall be based on an assessment of the pupil's health, physical, and/or educational needs which require modifications which cannot be met through a regular driver training program. (5 Cal. Code Regs. § 3051.8(a).)

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Driver training must be provided by qualified teachers as defined by Education Code sections 41906 and 41907. (5 Cal. Code Regs. § 3051.8(b).)

**(J) Counseling and Guidance Services**

Counseling and guidance services may be provided to a student who requires additional counseling and guidance services to supplement the regular guidance and counseling program. As with all related services, the IEP team shall determine the need for additional guidance and counseling services. (5 Cal. Code Regs. § 3051.9(a).) These services may include:

- (1) Educational counseling in which the student is assisted in planning and implementing his or her immediate and long-range educational program.
- (2) Career counseling in which the student is assisted in assessing his or her aptitudes, abilities, and interests in order to make realistic career decisions.
- (3) Personal counseling in which the student is helped to develop his or her ability to function with social and personal responsibility.
- (4) Counseling and consultation with parents and staff members on learning problems and guidance programs for students.

(34 C.F.R. § 300.34(b)(12); 5 Cal. Code Regs. § 3051.9(b).)

Counseling and guidance shall be provided only by the following personnel:

- (1) Licensed Marriage and Family Therapist, or Marriage and Family Therapist Registered Intern who is under the supervision of a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Professional Clinical Counselor, a Licensed Psychologist, or a Physician who is certified in psychiatry by the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or
- (2) Licensed Clinical Social Worker, or Associate Clinical Social Worker who is under the supervision of either a Licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
- (3) Individual licensed as an Educational Psychologist issued by a licensing agency within the Department of Consumer Affairs; or
- (4) Individual licensed in psychology, or who is working under supervision of a licensed psychologist, both regulated by the Board of Psychology, within the Department of Consumer Affairs; or

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- (5) Individual who possesses a Pupil Personnel Services Credential, which authorizes school counseling or school psychology; or
- (6) Individual who is licensed as a Licensed Professional Clinical Counselor, or a Professional Clinical Counselor Registered Intern who is under the supervision of a Licensed Professional Clinical Counselor, a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Clinical Psychologist, or a Physician who is certified in psychiatry by the American Board of Psychiatry and Neurology.

(5 Cal. Code Regs. § 3051.9(c).)

**(K) Psychological Services (other than assessment and IEP development)**

Related psychological services other than assessment and development of the IEP may include:

- (1) Counseling provided to an individual with disabilities by a credentialed or licensed psychologist or other qualified personnel.
- (2) Consultative services to parents, students, teachers and other school personnel.
- (3) Planning, managing and implementing a program of psychological counseling for eligible children and parents.
- (4) Assisting in developing positive behavioral intervention strategies.
- (5) Administering psychological and educational tests, and other assessment procedures;
- (6) Interpreting assessment results;
- (7) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- (8) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
- (9) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- (10) Assisting in developing positive behavioral intervention strategies. This term does not include assessment services and the development of an IEP. (34 C.F.R. § 300.34(c)(10); 5 Cal. Code Regs. § 3051.10(a).)



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Psychological services required by a student's IEP may be rendered by any of the following professionals who possess the credential or license required by law for the performance of particular psychological services by members of that profession:

- (1) Licensed Educational Psychologist pursuant to Business and Professions Code section 4989.14;
- (2) Licensed Marriage and Family Therapist pursuant to Business and Professions Code section 4980.02;
- (3) Licensed Clinical Social Worker pursuant to Business and Professions Code section 4996.9; or
- (4) Licensed Psychologist pursuant to Business and Professions Code section 2903; or
- (5) Pupil Personnel Services Credential that authorizes school psychology.(5 Cal. Code Regs. § 3051.10(b).)

**(L) Parent Counseling and Training**

Parent counseling and training may include:

- (1) Assisting parents in understanding the special needs of their child; and
- (2) Providing parents with information about child development.
- (3) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(34 C.F.R § 300.34(c)(8); 5 Cal. Code Regs. § 3051.11(a).)

Parent counseling and training shall be provided only by personnel who possess a:

- (1) Credential that authorizes special education instruction; or
- (2) Credential that authorizes health and nursing services; or
- (3) License as a Marriage and Family Therapist, or Marriage and Family Therapist Registered Intern who is under the supervision of a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Professional Clinical Counselor, a Licensed Psychologist, or a Physician who is certified in psychiatry by the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or
- (4) License as a Clinical Social Worker, or Associate Clinical Social Worker who is under the supervision of either a Licensed Clinical Social Worker or

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a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or

- (5) License as an Educational Psychologist, issued by a licensing agency within the Department of Consumer Affairs; or
- (6) License as a Psychologist, or who are working under the supervision of a licensed Psychologist, both regulated by the Board of Psychology, within the Department of Consumer Affairs; or
- (7) Pupil Personnel Services Credential that authorizes school counseling or school psychology or school social work; or
- (8) License as a Licensed Professional Clinical Counselor, or a Professional Clinical Counselor Registered Intern who is under the supervision of a Licensed Professional Clinical Counselor, a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Clinical Psychologist, or a Physician who is certified in psychiatry by the American Board of Psychiatry and Neurology.

(5 Cal. Code Regs. § 3051.11(b).)

**(M) Health and Nursing Services and Specialized Physical Health Care Services**

Health and Nursing Services

School health services and school nurse services means health services that are designed to enable a child 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. (34 C.F.R. § 300.34(c)(13).)

Services may include the following:

- (1) Providing services by qualified personnel;
- (2) Managing the student's health problems on the school site;
- (3) Consulting with students, parents, teachers, and other personnel;
- (4) Providing group and individual counseling with the students and parents regarding health problems; and
- (5) Maintaining communication with health agencies providing care to students.

(5 Cal. Code Regs. § 3051.12(a).)

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Specialized Physical Health Care Services

Specialized physical health care may be provided as described in Education Code section 49423.5 and 5 Cal. Code Regs. section 3051.12(b) as follows: Specialized physical health care services means those health services prescribed by the child's licensed physician and surgeon requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the child to attend school. Any pupil who is required to have specialized physical health care services during the school day, prescribed for him or her by a licensed physician and surgeon, may be assisted by a qualified school nurse, qualified public health nurse, or other qualified school personnel, if the school district receives:

- (1) A written statement from the licensed physician and surgeon stating the procedure and time schedules by which such procedures are to be given; and
- (2) A written statement from the parent or guardian of the pupil, indicating the desire that the school district assist the pupil in the matters set forth in the licensed physician and surgeon's statement, and granting consent for the delivery of such services.

The written statements of a licensed physician and surgeon and parent requests and daily documentation shall be maintained in accordance with the requirements of confidentiality of pupil records, and are considered mandatory interim pupil records.

Written licensed physician and surgeon and parent requests, as well as the specific standardized procedures to be used if physical health care services are provided, shall be maintained for each student. Daily documentation of specific services which are provided shall be maintained on a District-approved form which shall include the signatures of the qualified designated school person(s) who performs the procedure.

In accordance with Education Code section 49423.5(a)(2), a qualified school nurse, qualified public health nurse, or qualified licensed physician and surgeon responsible for supervising the physical health care of an individual with exceptional needs in the school setting shall:

- (1) Coordinate the health care services to the individuals with exceptional needs on the school site.
- (2) Consult with appropriate personnel regarding management of health care services for individuals with exceptional needs.
- (3) Make appropriate referrals and maintain communication with health agencies providing care to individuals with exceptional needs.

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- (4) Maintain or review licensed physician and surgeon and parent requests and daily documentation records.

An student who requires specialized physical health care services, during the regular school day, may be assisted by any of the following individuals:

- (1) Qualified persons who possess an appropriate credential issued pursuant to Section 44267 or 44267.5, or hold a valid certificate of public health nursing issued by the Board of Registered Nursing.
- (2) Qualified designated school personnel trained in the administration of specialized physical health care if they perform those services under the supervision, as defined by Section 3051.12 of Title 5 of the California Code of Regulations, of a credentialed school nurse, public health nurse, or licensed physician and surgeon and the services are determined by the credentialed school nurse or licensed physician and surgeon, in consultation with the physician treating the pupil, to be all of the following:
  - (a) Routine for the pupil.
  - (b) Pose little potential harm for the pupil.
  - (c) Performed with predictable outcomes, as defined in the individualized education program of the pupil.
  - (d) Do not require a nursing assessment, interpretation, or decision making by the designated school personnel.

Persons providing specialized physical health care services shall also demonstrate competence in basic cardiopulmonary resuscitation and shall be knowledgeable of the emergency medical resources available in the community in which the services are performed.

Specialized health care or other services that require medically related training shall be provided upon written parent request and written instructions from the student's physician or surgeon or physician's assistant. (Ed. Code, §§ 49432.5, 49423.)

- (1) Definitions.

- (a) Specialized physical health care services means those health services prescribed by the child's licensed physician and surgeon requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the child to attend school. Specialized physical health care services include catheterization, gastric tube feeding, suctioning, or other services that require medically related training.

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- (b) Standardized procedures means protocols and procedures developed through collaboration among school or hospital administrators and health professionals, including licensed physicians and surgeons and nurses, to be utilized in the provision of the specialized physical health care services.
- (c) Qualified means the ability to demonstrate competence in Cardio-Pulmonary Resuscitation, current knowledge of community emergency medical resources, and skill in the use of equipment and performance of techniques necessary to provide specialized physical health care services for individuals with exceptional needs. In addition:
  - (i) “Qualified” for the professional school or public health nurse or licensed physician and surgeon shall mean trained in the procedures to a level of competence and safety which meets the objectives of the training.
  - (ii) “Qualified” for the designated school personnel shall mean trained in the procedures to a level of competence and safety which meets the objectives of the training as provided by the school nurse, public health nurse, licensed physician and surgeon, or other programs which provide the training.
- (d) Supervision means review, observation, and/or instruction of a designated school person's performance and of physical health care services, but does not necessarily require the immediate presence of the supervisor at all times.
  - (i) Immediate supervision means that the supervisor shall be physically present while a procedure is being administered.
  - (ii) Direct supervision means that the supervisor shall be present in the same building as the person being supervised and available for consultation and/or assistance.
  - (iii) Indirect supervision means that the supervisor shall be available to the qualified designated school person either in person or through electronic means to provide necessary instruction, consultation, and referral to appropriate care and services as needed. Supervision of designated school persons shall include review on-site by a qualified school nurse, qualified public health nurse, or qualified licensed physician and surgeon. Supervision shall also include review of the competence of that individual in performing the specialized health care service, maintenance of appropriate records, physical environment, and equipment.

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- (e) Training means preparation in the appropriate delivery and skillful performance of specialized physical health care services. In addition:
  - (i) Medically related training of credentialed school nurses or public health nurses shall be that training in an approved program which may be necessary to update or make current the nurse's professional skills and knowledge related to meeting pupils' needs for specialized physical health care services.
  - (ii) Medically related training of employed designated school personnel is that training in an approved program in standardized procedures provided by a qualified school nurse, qualified public health nurse, qualified licensed physician and surgeon, or other approved programs to enable the person to provide the specialized physical health care services necessary to enable the child to attend school.
- (f) Competence in Cardio-Pulmonary Resuscitation means possession of a current valid certificate from an approved program.

(2) Standards and Staffing.

- (a) Allocation of qualified designated school personnel shall be determined by the amount and type of supervision necessary to this regulation, and also the type and frequency of services needed by students in special classes and centers, and regular instructional settings.
- (b) Approved training for qualified personnel shall be provided in one or more of the following ways:
  - (i) By a qualified school nurse, qualified public health nurse, or qualified licensed physician and surgeon.
  - (ii) By career and continuing education programs, approved by the appropriate licensing board.
- (c) By training programs through public or private medical institutions, i.e., hospitals, public health agencies, Visiting Nurses Associations, and Red Cross.

(3) Organization and Administration.

- (a) Specific continuing specialized physical health care services required in order for the student to benefit from special education will be included in the IEP. If the parent elects to perform the

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service during the school day, a waiver shall be signed relieving the school of the responsibility.

- (b) Appropriate accommodations for safety and necessary physical care services for the student in the school setting shall be provided by the school. Personal privacy and dignity of an individual with exceptional needs shall be assured.
- (c) The school district shall not be required to purchase medical equipment for an individual pupil. However, the school district, SELPA, or county office is responsible for providing other specialized equipment for use at school that is needed to implement the IEP.

(Ed. Code, § 49423.5; 5 Cal. Code Regs. § 3051.12(b).)

**(N) Social Worker Services**

Social worker services in schools includes may include:

- (1) Individual and group counseling with the student and his or her immediate family.
- (2) Consulting with students, parents, teachers, and other personnel regarding the effects of family and other social factors on the learning and developmental requirements of individual students with disabilities.
- (3) Developing a network of community resources, making appropriate referral and maintaining liaison relationships among the school, the student with a disability, the family, and the various agencies providing social, income maintenance, employment development, mental health, or other developmental services.
- (4) Preparing a social or developmental history on a child with a disability;
- (5) Group and individual counseling with the child and family;
- (6) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- (7) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- (8) Assisting in developing positive behavioral intervention strategies (34 C.F.R. §300.34(c)(14); 5 Cal. Code Regs. § 3051.13(a).)

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Social worker services shall be provided only by personnel who possess a:

- (1) License as a Clinical Social Worker, or Associate Clinical Social Worker who is under the supervision of either a Licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
- (2) License as a Marriage and Family Therapist, or Marriage and Family Therapist Registered Intern who is under the supervision of a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Professional Clinical Counselor, a Licensed Psychologist, or a Physician who is certified in psychiatry by the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or
- (3) Credential authorizing school social work.
- (4) License as a Licensed Professional Clinical Counselor, or a Professional Clinical Counselor Registered Intern who is under the supervision of a Licensed Professional Clinical Counselor, a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Clinical Psychologist, or a Physician who is certified in psychiatry by the American Board of Psychiatry and Neurology.

(5 Cal. Code Regs. § 3051.13(b).)

**(O) Specially Designed Vocational Education and Career Development**

Personnel providing vocational education services shall be qualified.

Specially designed vocational education and career development for students with disabilities regardless of severity of disability may include:

- (1) Providing prevocational programs and assessing work-related skills, interest aptitudes, and attitudes;
- (2) Coordinating and modifying the regular vocational education program;
- (3) Assisting students in developing attitudes, self-confidence, and vocational competencies to locate, secure, and retain employment in the community or sheltered environment, and to enable such individuals to become participating members of the community;
- (4) Establishing work training programs within the school and community;
- (5) Assisting in job placement;
- (6) Instructing job trainers and employers as to the unique needs of the students;



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- (7) Maintaining regularly scheduled contact with all workstations and job-site trainers; and
- (8) Coordinating services with the Department of Rehabilitation, the Department of Employment Development and other agencies as designated in the IEP.

(5 Cal. Code Regs. § 3051.14.)

Specially designed vocational education and career development services shall be provided only by personnel who possess:

- (1) An adult education credential with a career development authorization; or
- (2) A credential that authorizes instruction in special education or vocational education; or
- (3) A Pupil Personnel Services Credential that authorizes school counseling.

(5 Cal. Code Regs. § 3051.14(b).)

**(P) Recreation Services**

Recreation services include, but are not limited to, the following:

- (1) Therapeutic recreation services which are those specialized instructional programs designed to assist students in becoming as independent as possible in leisure activities, and when possible and appropriate, facilitate the student's integration into regular recreation programs;
- (2) Recreation programs in schools and the community which are those programs that emphasize the use of leisure activity in the teaching of academic, social, and daily living skills; and, the provision of nonacademic and extracurricular leisure activities and the utilization of community recreation programs and facilities; and
- (3) Leisure education programs which are those specific programs designed to prepare the student for optimum independent participation in appropriate leisure activities, including teaching social skills necessary to engage in leisure activities, and developing awareness of personal and community leisure resources;
- (4) Assessment of leisure function.

(34 C.F.R. § 300.34(c)(11); 5 Cal. Code Regs. § 3051.15.)

**(Q) Specialized Services for Low-Incidence Disabilities**

Specialized services for low-incidence disabilities may include:

- (1) Specially designed instruction related to the unique needs of students with low-incidence disabilities.
- (2) Specialized services related to the unique needs of students with low-incidence disabilities provided by qualified individuals such as interpreters, note-takers, readers, transcribers, and other individuals who provide specialized materials and equipment.
- (3) Special interpreting services for children who are deaf-blind

(34 C.F.R. § 300.34(c)(4); 5 Cal. Code Regs. § 3051.16(a).)

An “educational interpreter” provides communication facilitation between students who are deaf or hard of hearing, and others, in the general education classroom and for other school-related activities, including extracurricular activities, as designated in a student's IEP. (5 Cal. Code Regs. § 3051.16(b).)

An educational interpreter shall be certified by the national Registry of Interpreters for the Deaf (RID), or equivalent; in lieu of RID certification or equivalent, an educational interpreter must have achieved a score of 4.0 or above on the Educational Interpreter Performance Assessment (EIPA), the Educational Sign Skills Evaluation-Interpreter and Receptive (ESSE-I/R), or the National Association of the Deaf/American Consortium of Certified Interpreters (NAD/ACCI) assessment. If providing Cued Language transliteration, a transliterator shall possess Testing/Evaluation and Certification Unit (TEC Unit) certification, or have achieved a score of 4.0 or above on the EIPA - Cued Speech. (5 Cal. Code Regs. § 3051.16(c).)

Specialized services for students with low-incidence disabilities shall be provided only by personnel who possess a credential that authorizes services in special education or clinical rehabilitation services in the appropriate area of disability. (5 Cal. Code Regs. § 3051.16(d).)

*(Please refer to Chapter 13 for more information about low incidence disabilities.)*

**(R) Services for Students with Chronic Illnesses or Acute Health Problems**

Specialized services for students with chronic illnesses or acute health problems include, but are not limited to:

- (1) Individual consultation;
- (2) Home or hospital instruction; and

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- (3) Other instructional methods using advanced communication technology.

For pupils whose medical condition is in remission or in a passive state, the IEP Team shall specify the frequency for monitoring the pupil's educational progress to assure that the illness does not interfere with that progress. When a pupil identified pursuant to 3030 of Title 5 of the Cal. Code Regs experiences an acute health problem which results in his or her non-attendance at school for more than five consecutive days, upon notification of the classroom teacher or the parent, the school principal or designee shall assure that an IEP Team is convened to determine the appropriate educational services. If there is a pattern of sporadic illness, the IEP Team shall convene to consider alternative means for the pupil to demonstrate competencies in the required course of study so that cumulative number of absences do not prevent educational progress. (5 Cal. Code Regs. § 3051.17.)

**(S) Services for Deaf and Hard of Hearing Students**

Services shall be provided by an individual holding an appropriate credential to provide services to the hearing impaired and who has training, experience and proficient communication skills for educating students with hearing impairments. (5 Cal. Code Regs. § 3051.18(a).) Related services for deaf and hard of hearing students may include, but need not be limited to:

- (1) Speech, speech reading and auditory training;
- (2) Instruction in oral, sign, and written language development;
- (3) Rehabilitative and educational services for hearing-impaired individuals to include monitoring amplification, coordinating information for the annual review, and recommending additional services;
- (4) Adapting curricula, methods, media, and the environment to facilitate the learning process;
- (5) Consultation to students, parents, teachers, and other school personnel as necessary to maximize the student's experience in the general education program;
- (6) Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and Type Well.

(34 C.F.R. § 300.34(c)(4); 5 Cal. Code Regs. §§ 3051.18(a) and (b).)

A specially trained instructional aide, working with and under the direct supervision of the credentialed teacher of the deaf and hard of hearing, may assist in the implementation of the student's educational program.

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**(T) Assistive Technology Services**

“Assistive technology service” means any service that directly assists a student with a disability in the selection or use of an assistive technology device that is educationally necessary. The term includes the evaluation of the needs of the student with a disability including a functional evaluation of the individual in the individual's customary environment; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education programs and rehabilitation plans and programs; training or technical assistance for a disabled student or, where appropriate, the family of a student with a disability; and training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of students with disabilities. (5 Cal. Code Regs. § 3051.19(a).)

Assistive technology services shall be provided only by personnel who possess one of the following:

- (1) License in Physical Therapy issued by a licensing agency within the Department of Consumer Affairs, where the utilization of assistive technology services falls within the scope of practice of physical therapy as defined in Business and Professions Code section 2620 and implementing regulations;
- (2) License in Occupational Therapy issued by a licensing agency within the Department of Consumer Affairs;
- (3) License in Speech-Language Pathology issued by a licensing agency within the Department of Consumer Affairs or a valid document, issued by the California CTC, where the function of the assistive technology service is augmentative communication;
- (4) Baccalaureate degree in engineering with emphasis in assistive technology;
- (5) Baccalaureate degree in a related field of engineering with a graduate certificate in rehabilitation technology or assistive technology;
- (6) Certification from the Rehabilitation Engineering and Assistive Technology Society of North America and Assistive Technology Provider (RESNA/ATP);
- (7) Certificate in assistive technology applications issued by a regionally accredited post-secondary institution; or
- (8) Credential that authorizes special education of physically impaired, orthopedically impaired, or severely impaired pupils.

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(5 Cal. Code Regs. § 3051.19(b).)

The IEP Team must consider whether a child requires assistive technology devices and services, including low-incidence equipment. (34 C.F.R. § 300.324(a)(2)(v); Ed. Code, §56341.1(b)(5).) The IEP Team shall provide for, on a case-by-case basis, the use of school-purchased assistive technology devices in a child’s home or in other settings if the IEP Team determines that the child needs access to those devices in order to receive a FAPE. (34 C.F.R. § 300.105; Ed. Code, § 56040.3(a).)

Further, the District is responsible for providing a student with a disability who requires the use of an assistive technology device with continued access to that device, or to a comparable device when that student, due to enrollment in another district or local educational agency, ceases to be enrolled in the District. The District must provide the device, or a comparable device, until alternative arrangements can be made or until two months have elapsed from the date that the student ceased to be enrolled in the District, whichever occurs first. (Ed. Code, § 56040.3(b).)

**(U) Music Therapy**

According to the Certification Board for Music Therapists, “Music therapy is the specialized use of music by a credentialed professional who develops individualized treatment and supportive interventions for people of all ages and ability levels to address their social, communication, emotional, physical, cognitive, sensory and spiritual needs.” (5 Cal. Code Regs. § 3051.21(a).)

Music therapy shall be provided only by personnel who hold a Music Therapist - Board Certified credential from the Certification Board for Music Therapists (CBMT) upon the completion of all academic and clinical training requirements and after successfully passing the CBMT National Board Certification Examination. (5 Cal. Code Regs. § 3051.21(b).)

**(V) Transcription Services**

Transcribers for visually impaired students shall have a certificate issued by the Library of Congress as a Braille Transcriber. (5 Cal. Code Regs. § 3051.22.)

**(W) Behavioral Intervention Services**

It is the intent of the Legislature that:

- (1) Children exhibiting serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions;
- (2) Assessments and positive behavioral interventions and supports be developed and implemented in a manner informed by guidance from the United States Department of Education (DOE) and technical assistance centers sponsored by the Office of Special Education Programs of the DOE;

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- (3) When behavioral interventions, supports, and other strategies are used, they be used in consideration of the student's physical freedom and social interaction, be administered in a manner that respects human dignity and personal privacy, and that ensure a student's right to placement in the least restrictive educational environment;
- (4) Behavioral intervention plans be developed and used, to the extent possible, in a consistent manner when the student is also the responsibility of another agency for residential care or related services; and
- (5) Training programs be developed and implemented in institutions of higher education that train teachers and that in-service training programs be made available as necessary in school districts and county offices of education to ensure that adequately-trained staff are available to work effectively with the behavioral intervention needs of disabled students.

(Ed. Code, § 56520(b).)

Behavioral Interventions

Research and experience indicate that the education of disabled children can be made more effective by providing positive behavioral interventions and supports to address the learning and behavioral needs of those children. (Ed. Code, § 56520(a)(3).) In the case of a child whose behavior impedes the child's learning or that of others, the IEP Team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (Ed. Code, § 56521.2(b).)

Emergency Interventions

Emergency interventions may be used only to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the student with a disability or to others and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior. (Ed. Code, § 56521.1(a).)

Emergency interventions shall not be used as a substitute for the systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. (Ed. Code, § 56521.1(b).)

No emergency intervention shall be employed longer than is necessary to contain the behavior. A situation that requires prolonged use of an emergency intervention shall require the staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation. (Ed. Code, § 56521.1(c).)

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Emergency interventions shall not include:

- (1) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room;
- (2) Employment of a device, material, or objects that simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in those procedures;
- (3) An amount of force that exceeds that which is reasonable and necessary under the circumstances.

(Ed. Code, § 56521.1(d).)

Notification Requirements

To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one school day if an emergency intervention is used or serious property damage occurs. A behavioral emergency report (BER) shall immediately be completed and maintained in the student's file. The BER shall include all of the following:

- (1) The name and age of the student with a disability;
- (2) The setting and location of the incident;
- (3) The name of the staff or other persons involved;
- (4) A description of the incident and the emergency intervention used, and whether the student with a disability currently has any systematic behavioral intervention plan (BIP);
- (5) Details of any injuries sustained by the student with a disability or by others, including staff, as a result of the incident

(Ed. Code, § 56521.1(e).)

All BERs shall immediately be forwarded to, and reviewed by, a designated responsible administrator. (Ed. Code, § 56521.1(f).)

If a BER is written regarding a student with a disability who does not have a BIP, the designated responsible administrator shall, within two (2) days, schedule an IEP Team meeting to review the BER, to determine the necessity for an FBA, and to determine the necessity for an interim plan. The IEP Team shall document the reasons for not conducting the FBA, not developing an interim plan, or both. (Ed. Code, § 56521.1(g).)

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If a BER is written regarding a student with a disability who has a BIP, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP Team to review and determine if the incident constitutes a need to modify the BIP. (Ed. Code, § 56521.1(h).)

Prohibited Interventions

Prohibited interventions include the following or any other similar such interventions:

- (1) Any intervention that is designed to, or likely to, cause physical pain, including, but not limited to, electric shock.
- (2) An intervention that involves the release of noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the student.
- (3) An intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.
- (4) An intervention that is designed to subject, used to subject, or likely to subject, the individual to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.
- (5) Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention.
- (6) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.
- (7) An intervention that precludes adequate supervision of the student.
- (8) An intervention that deprives the student of one or more of his or her senses.

(Ed. Code, § 56521.2(a).)

In the case of a student whose behavior impedes the student's learning or the learning of other students, the IEP Team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (Ed. Code, § 56521.2(b).)

FBA and Behavioral Interventions: Personnel



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A person recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst may conduct behavior assessments and provide behavioral intervention services, but a District is not required to use a Board Certified Behavior Analyst. (Ed. Code, § 56525.) However, behavioral interventions shall be designed or planned only by personnel who have one of the following qualifications:

- (1) Pupil Personnel Services Credential that authorizes school counseling or school psychology;
- (2) Credential authorizing the holder to deliver special education instruction;
- (3) License as a Marriage and Family Therapist certified by the Board of Behavioral Sciences, within the Department of Consumer Affairs;
- (4) License as a Clinical Social Worker by the Board of Behavioral Sciences, within the Department of Consumer Affairs;
- (5) License as an Educational Psychologist issued by a licensing agency within the Department of Consumer Affairs;
- (6) License in psychology regulated by the Board of Psychology, within the Department of Consumer Affairs; or
- (7) 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.

(5 Cal. Code Regs. § 3051.23(a).)

To provide behavioral intervention, including implementation of BIPs, the District shall deliver those services using personnel who:

- (1) possess the qualifications set forth above; or
- (2) are under the supervision of a person qualified as set forth above; and
- (3) possess a high school diploma or its equivalent; and
- (4) receive the specific level of supervision required in the pupil's IEP.

*(Please refer to Chapter 6 of this Procedural Handbook regarding discipline.)*

**(X) Rehabilitation Counseling Services**

Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational

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rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

**(Y) Other Related Services**

Other related services shall be provided only by staff who possess a:

- (1) license to perform the service issued by an entity within the Department of Consumer Affairs or another state licensing agency; or
- (2) credential issued by the California Commission on Teacher Credentialing authorizing the service.

(5 Cal. Code Regs. § 3051.24.)

**(Z) Exceptions: Services That Apply to Children with Surgically Implanted Devices, Including Cochlear Implants**

- (1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.
- (2) Nothing in paragraph (1) of this section:
  - (a) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP Team to be necessary for the child to receive FAPE.
  - (b) Limits the responsibility of the District 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 or is at school; or
  - (c) (iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required by 34 C.F.R. § 300.113(b).

**3.9. Supplementary Aids and Services**

"Supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings and in extracurricular and nonacademic settings to enable students with exceptional needs to be educated with nondisabled children to the maximum extent appropriate. (34 C.F.R. § 300.42; Ed. Code, § 56033.5.) Supplementary aids and services are often necessary elements in supporting the education of students with disabilities in regular classes and in their participation in a range of other school activities.

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Some services that are "related services" can also be "supplementary aids and services" depending on the method and location of service delivery. For example, behavior intervention as a "related service" means service delivered directly to the student to enable the student to benefit from special education. If, however, direct behavior intervention service is not needed, but the IEP Team decides that behavior intervention consultation services to the regular education teacher are required, those consultation services would be considered "supplementary aids and services."

Supplementary aids and services can include accommodations and modifications to the curriculum, the manner in which that content is presented, or how a student's progress is measured. Supplementary aids and services can also include direct services and supports to the child as well as support and training for staff who work with that child. Because the definition is broad, it is important to determine what supplementary aids and services are appropriate for a particular student based on that student's individual, specific needs.

### **3.10. Extended School Year**

ESY services are individualized extensions of special education and related services that are provided to a student with a disability beyond the regular school year. ESY is provided by the District at no cost to the parents so that students may maintain the specific skills they have learned during the school year. ESY services vary in intensity, location, type of service, and length of time, depending upon each student's needs.

Not every student with a disability is entitled to receive ESY services. Rather, the IEP Team determines on an individualized basis whether a specific student has unique needs that require special education and related services in excess of the regular academic year. Such students shall have disabilities that are likely to continue indefinitely or for a prolonged period, and interruption of the student's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the student will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. The lack of clear evidence of such factors may not be used to deny an individual an ESY program if the IEP Team determines the need for such a program and includes ESY in the IEP. (34 C.F.R. § 300.106; 5 Cal. Code Regs. § 3043.)

The IEP Team must consider on an annual basis whether a student needs ESY programming as part of the consideration of the continuum of programming options in order to make a legally-defensible offer of FAPE. (34 C.F.R. §§ 300.106(a)(2), 300.115; Ed. Code, § 56345(b)(3).) The IEP Team meeting at which ESY services are addressed should take place a reasonable time prior to the commencement of the ESY session. When an IEP Team determines that a student needs ESY, ESY must be included in the student's IEP. (Ed. Code, § 56345(b)(3); 5 Cal. Code of Regs. § 3043(e).) The IEP Team then must determine whether and which related services, accommodations, modifications, and supplementary aids and services are needed during ESY.

ESY shall be the same length of time as the school day for pupils of the same age level attending summer school in the District, but not less than the minimum school day for that

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age unless otherwise specified in the IEP to meet the student’s unique needs. (5 Cal. Code of Regs. § 3043(f)(1).) Special education and related services offered during the extended year period must be comparable in standards, scope and quality to the special education program offered during the regular academic year. (5 Cal. Code of Regs. § 3043(f)(2).)

Except for schools offering a continuous, year-round program, if during the regular academic year an student’s IEP specifies integration in the regular classroom, the District is not required to meet that component of the IEP if no regular summer school programs are being offered by the District. (Please note: there is pending legislation that may change this provision.)

The District must not limit ESY to particular categories of disability or unilaterally limit the type, amount or duration of those services based solely on a student’s category of disability. (34 C.F.R. § 300.106(a)(3).) The ESY program must be provided for a minimum of 20 instructional days, including holidays. (5 Cal. Code Regs. §3043(d).)

### **3.11. Deaf or Hard-of-Hearing Students**

In determining the services that constitute an appropriate education to meet the unique needs of a deaf or hard-of-hearing student, the IEP Team must consider the related services and program options that provide the student with an equal opportunity for communication access. (Ed. Code, § 56345(d).) Pursuant to the IDEA, the IEP Team must consider and accommodate the student’s “preferred mode of communication.”

The IEP Team shall specifically discuss the communication needs of the student consistent with "Deaf Students Education Services Policy Guidance"(57 Fed. Reg. 49274 (October 1992)), including all of the following:

- (1) The student's primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both.
- (2) The availability of a sufficient number of age, cognitive, and language peers of similar abilities, which may be met by consolidating services into a local plan area wide program or providing placement.
- (3) Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the pupil's primary language mode and language consistent with existing law regarding teacher training requirements.
- (4) Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities.

(Ed. Code, § 56345(d)(1)-(4).)

The District must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (34 C.F.R. § 300.113(a); Ed. Code, § 56345(d)(5).)

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The District must ensure that external components of surgically implanted medical devices are functioning properly. (34 C.F.R. § 300.113(b); Ed. Code, § 56345(d)(6).) However, for a child with a surgically implanted medical device who is receiving special education and a related service, a District is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted, or of an external component of the surgically implanted medical device. (34 C.F.R. § 300.113(b); Ed. Code, § 56345(d)(7).)

Any assistive technology, devices, or equipment needed by a deaf or hard-of-hearing student that is required by law must be documented on the Special Factors page of the IEP. (Ed. Code, § 56345(b)(5).)

*(See also section 3.12 for addressing the communication needs of students with hearing, vision, or speech disabilities.)*

### **3.12. Placement: Visually Impaired Students**

The District must provide opportunities for braille instruction for students who, due to a prognosis of visual deterioration, may be expected to have a need for braille as a reading medium. (Ed. Code, § 56351.)

The District must adhere to braille math and reading standards developed by the State. (Ed. Code, §§ 56351.8 and 56351.9.) An assessment must be conducted for functionally blind students who have the ability to read in order to determine the appropriate reading medium, including braille. (Ed. Code, § 56352.)

A functional vision assessment shall be used as one criterion to determine the appropriate reading medium or media for the student. An assessment of braille skills pursuant to CDE guidelines is required for functionally blind students who have the ability to read. (Ed. Code, § 56352.)

Any assistive technology, devices, or equipment needed by a visually impaired student that is required by law must be documented on the Special Factors page of the IEP. (Ed. Code, § 56345(b)(5).)

### **3.13. Review and Revision of the IEP**

#### **(A) Annual Review**

The IEP will be reviewed periodically, but not less than annually to determine whether the annual goals for the child are being achieved, and to revise the IEP as appropriate to address, among other things, the following: (Ed. Code, § 56341.1.)

- (1) The results of any reevaluation;
- (2) Information about the child provided to, and by, the parent as required in the evaluation process;

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- (3) The child’s anticipated needs;
- (4) Any other relevant matters; and
- (5) Any lack of expected progress toward the annual goals and in the general curriculum where appropriate.

(Ed. Code, § 56341.1(d).)

The IEP Team will review progress toward previous annual goals, benchmarks (short-term objectives), if appropriate, and progress in the general curriculum when developing new goals and benchmarks, if appropriate.

The general education teacher of the child as a member of the IEP Team shall participate in reviews or revisions of the IEP, unless excused from the IEP team meeting in accordance with the law.

**(B) Review Upon Request**

In addition, the IEP Team shall meet whenever the parent or teacher requests a meeting to develop, review, or revise the IEP. The IEP Team meeting shall be held within 30 calendar days (not counting days between the student’s regular school sessions or terms or days of school vacation in excess of five school days) of the District’s receipt of a written request from the parent or teacher. If a parent makes an oral request, the District shall notify the parent of the need for a written request and the procedure for filing such a request. (Ed. Code, §§ 56043, 56343.5.)

**(C) Making Changes and Amendments to the IEP**

In making changes to a child’s IEP after the annual IEP team meeting for a school year, the parent of the student and District may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document signed by the parent and by a representative of District to amend or modify the student’s existing IEP. (34 C.F.R. § 300.324(a)(4).) If changes are made to the IEP, District must ensure that the student’s IEP Team is informed of those changes. (34 C.F.R. § 300.324(a)(4).) Changes to the IEP may be made by the entire IEP Team or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated. (34 C.F.R. § 300.324(a)(6).)

**(D) IEP Team Meetings Required**

An IEP Team shall meet whenever any of the following occurs:

- (1) A student has received an initial formal assessment. The IEP Team shall meet when a student receives any subsequent formal assessment.
- (2) The student demonstrates a lack of anticipated progress.

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- (3) The parent or teacher requests a meeting to develop, review, or revise the IEP.
- (4) At least annually, to review the student's progress, the IEP, including whether the annual goals for the student are being achieved, and the appropriateness of placement, and to make any necessary revisions. The IEP Team conducting the annual review shall consist of the required members. Other individuals may participate in the annual review if they possess expertise or knowledge essential for the review.
- (5) A regular education or special education teacher may request a review of the classroom assignment of a student with a disability by submitting a written request to the District which shall consider the request within 20 days of receiving it, not counting days when school is not in session. If the review indicates a need for change in the student's placement, instruction, and/or related services, the District shall convene an IEP Team meeting, which shall be held within 30 days of the District's review, not counting days when school is not in session, unless the student's parent consents in writing to an extension of time.
- (6) If a participating agency other than the District fails to provide the transition services described in the student's IEP, the IEP Team shall reconvene to identify alternative strategies to meet the transition service objectives set out for the student in the IEP.
- (7) If a student with a disability residing in a licensed children's institute or foster family home has been placed by the District in a nonpublic, nonsectarian school, the Superintendent or designee shall conduct an annual evaluation as part of the IEP process of whether the placement is the least restrictive environment that is appropriate to meet the student's needs.

(Ed. Code, §§ 56157, 56341.1, 56343.)

**(E) Consolidation of IEP Meetings**

To the extent possible, DISTRICT shall encourage consolidation of reevaluation meetings for the child and other IEP team meetings for the child. (34 C.F.R. § 300.324(a)(5); Ed. Code, § 56381(j).)

**(F) Audio Recording of IEP Team Meetings**

Parents and the District shall have the right to audio record the proceedings of IEP Team meetings, provided members of the IEP Team are notified of this intent at least 24 hours before the meeting. If the District gives notice of intent to audio record a meeting and the parent objects or refuses to attend because the meeting would be audio recorded, the meeting shall not be audio recorded. Parents also have the right to:

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- (1) Inspect and review the audio recordings.
- (2) Request that an audio recording be amended if they believe it contains information that is inaccurate, misleading, or in violation of the student's privacy rights or other rights.
- (3) Challenge, in a hearing, information that the parent believes is inaccurate, misleading, or in violation of the student's privacy rights or other rights.

(Ed. Code, § 56341.1.)

**(G) Right to Review Records**

Parents shall have the right and opportunity to examine all of the student's school records upon request and to receive complete copies, within 5 business days after parents make an oral or written request. The District shall comply with a request for records without unnecessary delay before an IEP team meeting, due process hearing, or resolution session, but in no event more than 5 business days after the request was made, orally or in writing. The District may charge no more than the actual cost of reproducing the records, but if this cost effectively prevents the parent from exercising the right to receive the copy or copies, the copy or copies shall be reproduced at no cost. (Ed. Code, §§ 56043, 56504.)

**(H) Interpreter**

The District shall take any action necessary to ensure that parents understand the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is not English. (Ed. Code, § 56341.5.)

**(I) Right to Present Information**

Parents shall have the right to present information to the IEP Team in person or through a representative and the right to participate in meetings that relate to eligibility for special education and related services, recommendations, and program planning. (Ed. Code, § 56341.1.)

**3.14. IEP Meeting Process**

**(A) Organization is Key**

A well-run, meaningful and effective IEP Team meeting can be a satisfying experience that results in the provision of necessary special education and related services to a disabled student. In addition, the District must structure IEP Team meetings in such a way as to ensure that parents are engaged as full participants; preventing parents from meaningfully participating in the IEP formulation violates state and federal law. The following are elements of an effective IEP Team meeting:



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- (1) Giving timely and effective notice to the disabled student's parents and to other team members. The law requires that districts notify parents "early enough" to ensure their opportunity to attend. (Ed. Code, § 56043(e).) Many districts construe the "early enough" requirement to mean ten days. In addition, the District must take any action necessary to ensure that the parents understand the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is not English. (34 C.F.R. § 300.322(e); Ed. Code, § 56341.5(i).)
- (2) Advanced planning, not to be confused with predetermination. The law is clear that discussions among teachers and service providers about assessment results, possible programming and service options, and other issues in anticipation of an IEP Team meeting do not constitute predetermination as long as team members arrive at the IEP meeting with an open mind and a willingness to discuss all options, including those presented by the parents.
- (3) Drafting in advance at least some proposed goals as a starting point for discussion, refinement, addition, and revision. Stamp "draft" at the top of the pages to make it clear there has been no predetermination; record in the notes that draft goals were presented for consideration, review and revision by the team.
- (4) Use of an agenda that is organized and that allows for all team members to participate, that takes special care to seek concerns of the parents and to address those concerns, and that covers all components of making a determination of eligibility, determining strengths and needs of the student, developing appropriate goals and, where necessary, short-term objectives, and considering all relevant placement options, related services, supports, accommodations, and modifications.
- (5) Designation of one team member to facilitate the meeting by keeping the agenda flowing smoothly. This individual could be the special education teacher, the case manager, or the program specialist.
- (6) Accurate and thorough note taking. Most IEP Teams prefer to separate the roles of facilitator from note taker. Every detail of the meeting neednot be recorded, but certainly at a minimum the following should be documented:
  - (a) the purpose of the meeting;
  - (b) the attendees;
  - (c) whether the meeting is being recorded;
  - (d) the provision of procedural rights to the parents and any questions the parents have;

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- (e) any concerns of the parents and how those concerns are addressed;
- (f) assessment results, if any;
- (g) teacher and service provider reports;
- (h) questions the parents have of the general education teacher;
- (i) for initials or triennials, how the assessment results lead to a determination of eligibility or non-eligibility;
- (j) the specific needs of the student as determined by the assessment results;
- (k) what, if any, special factors exist (e.g. behavior, English Learner, blind or visual impairment, deaf or hard of hearing, assistive technology, low incidence equipment) and how they will be addressed;
- (l) presentation of progress on goals and notes about any particular difficulties and how those difficulties will be addressed;
- (m) the rationale for proposed goals, how they address the student's needs, and revisions made to the as a result of parent input;
- (n) whether parents approve of proposed goals and, if not, why not;
- (o) the options considered for programing including placement, instruction, related services, supports, accommodations, and modifications;
- (p) how the determination of ESY eligibility or non-eligibility is made;
- (q) if the student is 16 or older, key elements of the transition plan;
- (r) if transportation is offered as a related service, from what point to what point will that transportation occur;
- (s) if the student will need accommodations, modifications, or alternatives to statewide testing, on what basis those decisions are made;
- (t) the District's offer of FAPE spelled out by type of service, amount, and location.
- (u) if the parents refuse to sign the IEP, the reasons why and attemptsto address those reasons.
- (v) any items that are controversial should be documented thoroughly.

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**(B) Development of IEP by IEP Team**

There are many items to be covered in an IEP Team meeting; there will be more items to cover in initials, annuals, and triennials than in meetings called for the purpose of addressing only one specific issue such as behavior.

- (1) Introductions and Purpose of IEP Meeting. The meeting should begin with all team members introducing themselves and the purpose of the meeting clearly stated.
- (2) Procedural Rights. Parents should be given written procedural rights and asked if they would like them explained.
- (3) Parent Concerns. Parents should be asked if they have any concerns they would like to be sure are addressed during the meeting. These concerns should be written on the Present Levels page, and the team's response should be documented in the notes.
- (4) Assessment Results and Present Levels of Academic and Functional Performance.

The present levels of performance should include a description of how the student's disability impacts his or her involvement and progress in the general curriculum. (34 C.F.R. § 300.320(a)(1)(A) ; Ed. Code, § 56345(a)(1)(A).)

Ideally, at any IEP Team meeting for which one or more assessments were conducted, the results of the assessments should be presented by the individuals administering them; however, if the actual assessor cannot be present, then an individual who can adequately interpret the instructional implications of the assessment results must present them. (34 C.F.R. § 300.321(a)(5); Ed. Code, § 56341(b)(6).) The presentation should include conclusions as to the student's present levels of performance, strengths, areas of need and proposals for how those needs can be met through specific services, and whether the student needs special education and related services, supports, accommodations or modifications. The IEP Team should discuss the results and also consider any private assessment reports provide by parents when determining eligibility, goals, placement, and services.

All teachers and service providers should describe student's academic, social, emotional, behavioral, communication, gross and fine motor, adaptive, and vocational functioning (the present levels of academic achievement and functional performance) and offer suggestions for how to meet the student's needs.

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(5) Individual Transition Plan and Transition Services.

Beginning not later than the first IEP to be in effect when the child is 16 (or younger based on District policy or determination by the IEP Team), and updated annually thereafter, students with disabilities must have an individual transition plan that sets forth the following:

- (a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
- (b) The transition services (including course of study) needed to assist the child in reaching these goals.

(34 C.F.R. § 300.320(b); Ed. Code, § 56345(a)(8).)

The student should attend his or her IEP Team meeting at which transition planning will be discussed. If the student cannot attend, the District must take steps to ensure that the student's preferences and interests are considered by the IEP Team. (34 C.F.R. § 300.321(b); Ed. Code, § 56341(d).) If the student is under 18, the parents have the right not to permit the student to attend. Depending on the age of the student and nature of the disability, the Case Manager should attempt to address the parents' concerns in order to encourage them to allow the student to attend.

With the permission of the parents, or the student if he or she is 18 or older, the District must invite a representative of a participating agency that is likely to be responsible for providing or paying for transition services. (34 C.F.R. § 300.321(b)(3); Ed. Code, § 56341(d)(3).) These agencies should be an integral part of the IEP Team in order to facilitate a smooth transition for the student from secondary school to his or her postsecondary environment. Failure to have these representatives could be a procedural violation of IDEA and related state law.

If a participating agency (other than the District) fails to provide the transition services described in the IEP, the IEP Team will reconvene to identify alternative strategies to meet the transition objectives for the student. (34 C.F.R. § 300.324(c); Ed. Code, § 56345.1(c).)

Beginning not later than one year before the child reaches the age majority (age 18), the IEP must contain a statement that the child has been informed of the child's rights that will transfer to the child when reaching age 18. (34 C.F.R. § 300.324(c); Ed. Code, §§ 56041.5 and 56345(g).)

*(Please refer to Chapter 4 of this Procedural Handbook for more detailed information about transition planning.)*

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(6) Consideration of Special Factors.

The IEP Team must consider the following special factors:

- (a) Behavior. If the student has behavior issues that are impeding his ability to learn or the ability of other students to learn, these issues should be addressed. An assessment plan may need to be developed and approved by the parent in order to authorize specific behavioral assessment. One or more behavior goals may need to be developed, strategies, including positive behavioral interventions, and supports may need to put into place, and a behavior plan may need to be written and included in the IEP. (34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1(b)(1).)
- (b) Students with Limited English Proficiency. In the case of a child with limited English proficiency, the team must consider the language needs of the child and include one or more goals that are linguistically appropriate as well as any necessary services, supports, accommodations, and modifications. (34 C.F.R. § 300.324(a)(2)(ii); Ed. Code, § 56341.1(b)(2).)
- (c) Blind or Visually Impaired Students. In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines that the use of Braille is not appropriate for the child. The IEP Team will make this decision after an assessment of the child’s reading and writingskills, needs, and appropriate reading and writing media (including an assessment of the child’s future needs for instruction in Braille or the use of Braille) is conducted. (34 C.F.R. § 300.324(a)(2)(iii); Ed. Code, § 56341.1(b)(3).)
- (d) Deaf and Hearing Impaired. The team must consider the language and communication needs of a student who is deaf or has a hearing impairment. The IEP Team will consider opportunities for direct communication 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 inthe child’s language and communication mode. (34 C.F.R. § 300.324(a)(2)(iv); Ed. Code, § 56341.1(b)(4).) Please see section 3.11 for more information.
- (e) Assistive Technology. The team must consider whether a child requires assistive technology devices and services, including low-incidence equipment. (34 C.F.R. § 300.324(a)(2)(v); Ed. Code, § 56341.1(b)(5).) The IEP Team shall provide for, on a case-by-case basis, the use of school-purchased assistive technology devices in a child’s home or in other settings if the IEP Team determines that the

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child needs access to those devices in order to receive a FAPE. (34 C.F.R. § 300.105; Ed. Code, § 56040.3(a).)

Further, the District is responsible for providing a student with a disability who requires the use of an assistive technology device with continued access to that device, or to a comparable device when that student, due to enrollment in another district or local educational agency, ceases to be enrolled in the District. The District must provide the device, or a comparable device, until alternative arrangements can be made or until two months have elapsed from the date that the student ceased to be enrolled in the District, whichever occurs first. (Ed. Code, § 56040.3(b).)

If, in considering the above special factors, the IEP Team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive a FAPE, the IEP Team must include a statement to that effect in the child's IEP. (34 C.F.R. § 300.324(a)(2); Ed. Code, § 56341.1(c).)

(7) Progress on Current Goals.

Teachers and service providers must state how the student is doing on his or her goals, note any particular difficulties, and make suggestions as to how to resolve those difficulties (i.e. revise goal; put into place additional supports; etc.). How the student is progressing on goals can yield important information about the student's needs and whether any supports, accommodations or modifications need to be put in place. The ability to give an accurate report obviously presupposes that accurate data has been collected throughout the year in order to support the provider's conclusion that the student did or did not meet the goal.

(8) Proposal of New Goals.

Teachers and service providers must propose new goals that are measurable and that address the student's specific needs. Providers should not be reluctant to make revisions to their proposed goals at the IEP Team meeting, especially in response to reasonable input from the parents. It should be made clear to parents that the goals are in draft form and are open for discussion and revision. Parents should be expressly asked if they approve the goals or if they have any concerns or changes. This should be documented in the notes.

There must be a minimum of one goal for every area of identified need. (34 C.F.R. §§ 300.320(a)(2)(A) and (B); Ed. Code, §§ 56345(a)(2)(A) and (B).) In addition, short-term objectives or benchmarks are required for students

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who participate in an alternate statewide assessment. (34 C.F.R. § 300.320(a)(2)(C); Ed. Code, § 56345(a)(2)(C).)

Academic goals must be aligned to the relevant state standard for the grade the student is currently in (or, the next grade if the annual review occurs toward the end of the school year) regardless of ability. (34 C.F.R. § 300.320(a)(2)(i)(A); Ed. Code, § 56345(a)(2)(A).) The goals themselves must be scaffolded to what is reasonable to expect the student to achieve by the next annual review.

In addition, for English Learners, there must be goals that are linguistically appropriate for the student. (Ed. Code, § 56345(b)(2).)

Goals must contain the following components:

- (a) Baseline (related to goal);
- (b) Who (the child);
- (c) Does what (measurable behavior);
- (d) When (reporting date);
- (e) Given what (conditions);
- (f) How much (mastery criteria); and
- (g) How measured (performance data or assessment).

The IEP must indicate how frequently progress on goals will be reported to parents and in what manner. (34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345(a)(3).)

(9) Discussion of Continuum of Options.

Prior to determining the actual special education and related services, the IEP Team must discuss and document all options that are considered. The IEP Team must document the special education and related services, supplementary aids and services, and program modifications and supports to be provided to the student. (34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345(a)(4).) The team also must specify the projected date when these will begin and also their frequency, location, and duration. (34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345(a)(7).)

(10) Placement.

What are the options for placement (the continuum of placement choices), and how does the option or blend of options selected address the student's

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needs and enable the student to make adequate progress on goals and access the regular curriculum? To what extent will student not participate in the regular education curriculum and activities, and why? Why does the team believe the selected placement is the least restrictive environment?

The IEP Team must document the placement decision, including the amount of time in and out of the regular classroom. (34 C.F.R. § 300.320(a)(5); Ed. Code, § 56345(a)(5).)

(11) Related Services

What, if any, related services are selected, and how do they address the student's needs and enable the student to benefit from special education? If transportation is warranted, clearly describe the geographic contours of that transportation (i.e. door-to-door, school-to-school, etc.).

(12) Supplementary Aids and Services

What, if any, supplementary aids and services are needed to enable the student to be educated with nondisabled children to the maximum extent appropriate? A student cannot be removed from the regular education class unless the nature or severity of the disability prevents education in the regular class even with the use of supplementary aids and services.

For all options selected, the IEP Team must specify the frequency of delivery, by whom and in what location.

(13) Statewide Assessments.

The IEP Team must consider whether and to what extent the student needs accommodations, if available, on statewide assessments. If the student needs to take an alternate assessment, the team must document the reason(s) why the student cannot participate in the regular assessment and the reason(s) why the particular alternate assessment is appropriate for the student. (34 C.F.R. § 300.320(6); Ed. Code, § 56345(a)(6).)

(14) Alternative Means of Completion.

For students in grades 7 to 12, the IEP must document what, if any, alternative means and modes are necessary for the student to complete the District's prescribed course of study and to meet or exceed proficiency standards for graduation. (Ed. Code, § 56345(b)(1).)

(15) Students Attaining Age of Majority.

Beginning not later than one year before the student turns 18 years old, the IEP must include a statement that the student has been informed of his or



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her rights under the law that will transfer to the student upon his or her 18th birthday. (34 C.F.R. § 300.320(c); Ed. Code, § 56345(g.)

(16) Extended School Year (ESY).

The IEP team must determine if the student needs ESY services based on that student's unique needs, not based on the student's category of disability. Part of the determination includes whether the student has a history of regression and poor recoupment during other periods of extended absence. The ultimate question the team needs to ask is: does this student, based on his or her unique needs, need ESY in order to receive a FAPE?

(17) Transition Plan.

If the student will be transferring from a special class or a nonpublic school into a regular class in a public school, returning to campus instruction from home instruction or independent studies, returning from a disciplinary setting, or making any other change the IEP Team determines requires one or more transition activities, the IEP must include a transition plan to effectuate this transfer. (Ed. Code, § 56345(b)(4).) The transition plan must include activities that will support and integrate the student into the regular education program and describe the nature of the activity and the time spent on the activity.

(18) Emergency Circumstances.

The IEP must describe the means by which the IEP will be provided under emergency circumstances, as described in Education Code section 46392, in which instruction or services, or both, cannot be provided to the student either at the school or in person for more than 10 school days. The description shall include all of the following:

- (a) Special education and related services;
- (b) Supplementary aids and services;
- (c) Transition (post-secondary) services;
- (d) ESY services.

Public health orders shall be taken into account in making these determinations.

(Ed. Code, § 56345(a)(9).)

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(19) Low-Incidence Disabilities.

For students with low-incidence disabilities, the IEP shall include a description of specialized services, materials, and equipment. (Ed. Code, § 56345(b)(5).)

(20) District's Offer of FAPE.

The District should clearly set forth its offer of FAPE in the IEP and document that offer in the meeting notes. Of course, all elements of the offer should appear in the actual IEP document. They need not appear in more than one place. (34 C.F.R. § 300.320(d)(2); Ed. Code, § 56345(h).)

(21) Signatures, Parent Consent, and IEP Documents.

All members of the team present at the meeting must sign as attendees. In addition, the parents (or adult student) must sign in several places to indicate their agreement or disagreement with all or parts of the IEP, including eligibility determination, choice to place child in private school, and receipt of procedural safeguards and any assessments. Before providing special education and related services to any student, the District shall obtain informed written consent of the student's parent. (Education Code 56346.)

To the extent the District wishes to seek reimbursement for Medi-cal activities and referrals, the District must give a separate written notice to parents, which parents must either approve or deny. In addition, while not required, it is useful to have the parents indicate whether the District facilitated their participation in the IEP process.

Parents are to be provided a copy of the IEP as well as documentation of the determination of eligibility at no cost to them. (34 C.F.R. § 300.306(a)(2); Ed. Code, § 56341.5(j).) Upon parents' request, the District shall provide a copy of the IEP in their primary language. (5 Cal. Code of Regs. § 3040(a).)

(22) Closing the Meeting.

Thank parents for attending and participating in the IEP meeting. Encourage them to contact the school or other District staff if they have questions or concerns at any time.

- (a) Provide parents with the names and telephone numbers of school or other District personnel to contact if they have questions or concerns.
- (b) Parents whose primary language is not English or who use another mode of communication must be fully informed of all information,

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in the parents' native language or other mode of communication for which consent is required. (34 C.F.R. § 300.9; Ed. Code, § 56021.1.)

- (c) Document the distribution of copies of the IEP to all staff who will be implementing it.

**(C) Best Practices**

In addition to the foregoing, the District also should follow certain best practices in order to ensure that IEP Team meetings run smoothly. They are as follows:

- (1) Ensure that the concerns of parents and the information they provide regarding the student are considered in developing and reviewing the student's IEP. This may be achieved by asking questions throughout the meeting such as, "Tell us about your child," and "From your perspective, what can we do to help?"
- (2) Throughout the meeting, invite parent comments and questions, and check for parent understanding.
- (3) Whenever possible, use language comprehensible to the general public and limit the use of educational jargon.
- (4) Ensure that parent information and IEEs are received, considered, and documented in the IEP.
- (5) Specify a time in the future when the parent will receive a response if a concern or question cannot be addressed at the meeting. Then, follow up!
- (6) Take every opportunity to make parents feel part of the IEP Team.
- (7) IEPs for all students receiving special education and related services in the District must be entered and maintained within the Web-based IEP system.

**3.15. Individualized Education Program: Transitions**

**(A) Transition from Preschool to Elementary School**

Prior to transitioning a child with disabilities from a preschool program to kindergarten, or first grade as the case may be, an appropriate reassessment of the child shall be conducted to determine if the child is still in need of special education and services.

As part of the transition process, a means of monitoring the continued success of the child who is determined to be eligible for less intensive special education programs shall be identified by the IEP Team.

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As part of the exit process from special education, the present performance levels and learning style shall be noted by the IEP Team. This information shall be made available to the assigned general education teacher upon the child’s enrollment in Kindergarten or first grade as the case may be.

(Ed. Code, § 56445.)

**(B) Secondary Transition.**

*Please see Chapter 4 of this Procedural Handbook for information about secondary transitions, including exit from special education.*

**3.16. Students Moving Out of the District**

The District is responsible for providing a student with a disability who requires the use of an assistive technology device with continued access to that device, or to a comparable device when that student, due to enrollment in another district or local educational agency, ceases to be enrolled in the District. The District must provide the device, or a comparable device, until alternative arrangements can be made or until two months have elapsed from the date that the student ceased to be enrolled in the District, whichever occurs first.

(Ed. Code, § 56040.3(b).)

**3.17. Interim Placements—Students Moving Into the District**

**(A) Transfers from District to District within the State**

If the child has an IEP and transfers into the District from another district the rules applicable to transfers between SELPAs apply because the District is a single-district SELPA. The District shall provide the student with a FAPE, including services comparable to those described in the previously approved IEP (“interim IEP”), in consultation with the parents, for a period not to exceed 30 days, by which time the District shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law. (Ed. Code, § 56325(a)(1).)

**(B) Transfers from District to District from Outside of State**

If the child has an IEP and transfers from an educational agency outside the state to the District within the same academic year, the District shall provide the student with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with the parents, until the District conducts an assessment, if determined to be necessary by the District and develops a new IEP, if appropriate.

(Ed. Code, § 56325(a)(3).)

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**(C) Transfer of Student Records**

In order to facilitate the transition of an individual with exceptional needs, the new school in which the student enrolls shall take reasonable steps to promptly obtain the student's records including the IEP and supporting documents and any other records relating to the provision of special education and related services to the student.

Upon receipt of a request from an educational agency where an individual with exceptional needs has enrolled, a former educational agency shall take reasonable steps to promptly respond to the request from the new school. (Ed. Code, § 56325(b).) *(Please refer to Chapter 11 of this Procedural Handbook for more information about student records.)*

**(D) Transfers from District to District in a Different SELPA/Residential Placement Payment**

If, whenever a student was placed and residing in a residential nonpublic, nonsectarian school, prior to transferring to a district in another special education local plan area, and this placement is not eligible for funding pursuant to Education Code section 56836.16, the special education local plan area that contains the district that made the residential nonpublic, nonsectarian school placement is responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends. (Ed. Code, 56325(c).)

## **Chapter 4**

### **Secondary Transition**

#### **4.1. Purpose and Scope**

Transition services are designed to assist the student in moving from secondary education to post-secondary education, employment, and social independence. The goal of transition services is planned movement from secondary education to adult life that provides opportunities which maximize economic and social independence in the least restrictive environment for individuals with exceptional needs. Planning for transition from school to postsecondary environments should begin in the school system well before the student leaves the system. (Ed. Code, § 56460(e).) Transition services must be included in the IEP of the student not later than in the year in which he/she turns 16 years of age, or younger if determined by the IEP Team, and updated annual thereafter. (Ed. Code, § 56345(a)(8).)

Transition is all about planning for a student's postsecondary future and how academic courses, functional curriculum, and vocational activities help move a student towards the student's postsecondary goals. Discussion about transition or future planning should be addressed at the beginning of the IEP team meeting so that the IEP Team is focused throughout the meeting on developing an IEP that assists the student in working toward his or her future postsecondary goals. The goal of transition is to provide the student with all the skills, knowledge, and support necessary to make their postsecondary goals a reality.

#### **4.2. Definition of Transition Services**

The term "transition services" means a coordinated set of activities for the individual with exceptional needs that does all of the following:

- (A) Is designed within a results-oriented process that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the student from school to post-school activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, and/or community participation;
- (B) Is based upon the individual needs of the student, taking into account the strengths, preferences, and interests of the student;
- (C) Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation;
- (D) Transition services for students with special needs may be special education, if provided as specially designed instruction, or a designated instruction and services ("related service"), if required to assist a student to benefit from special education; and

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- (E) 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 provision of a functional vocational evaluation. (34 C.F.R. 300.43; Ed. Code, § 56345.1(a).)

**4.3. Timeline for Developing Individual Transition Plan**

Beginning not later than the first IEP to be in effect when the child is 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the following shall be included:

- (A) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
- (B) The transition services (including course of study) needed to assist the child in reaching those goals; and
- (C) Beginning not later than one year before the child reaches the age of majority (age 18), a statement that the child has been informed of the child’s rights that will transfer to the child when reaching age 18.

(Ed. Code, § 56345(a)(8) and (g).)

**4.4. Other Agency Involvement**

To the extent appropriate, and with parental consent or consent of an adult student, as the case may be, a representative from any agency that is likely to be responsible for providing or paying for transition services shall be invited to the IEP Team meeting beginning when the student is 16 or younger. (Ed. Code, § 56341(d)(3).)

If a participating agency (other than the District) fails to provide the transition services described in the IEP, the IEP Team will reconvene to identify alternative strategies to meet the transition objectives for the student. (Ed. Code, § 56345.1(c).)

If an invited agency representative cannot attend the IEP Team meeting to develop transition services, the District will obtain agency participation in planning for these services by some other means.

**4.5. IEP Team Participants for Secondary Transition**

The District shall invite the student with a disability to attend his or her IEP team meeting if the purpose of the meeting will be to consider postsecondary goals for the student and the needed transition services for that student to assist in reaching his or her postsecondary goals. (Ed. Code, § 56340(d).) The IEP Team meeting notice shall indicate that a purpose of the meeting will be the consideration of the student’s postsecondary goals and transition services, and the notice will indicate that the student is invited to attend. (Ed. Code, §

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56341.5(e.) The Student’s role as a participant is to communicate preferences, interests, strengths, and take part in the IEP development.

Comments to the 2006 IDEA Regulations indicate that if the student is a minor, the parents (unless education rights have been limited or extinguished) have the authority to determine whether the student should attend the IEP Team meeting. (71 Fed. Reg. (August 15, 2006) at 46671.) If the student is not in attendance, the District must take steps to ensure that the student’s preferences and interests are considered.

(34 C.F.R. § 300.321(b)(1); Ed. Code, § 56341(d)(2).)

The IEP Team meeting where transition services are discussed must comply with the mandatory members of an IEP Team. *(Please refer to Chapter 3 of this Procedural Handbook regarding IEP team members.)*

#### **4.6. Post-Secondary Goals**

The IEP for students 16 years of age or younger, if appropriate, must contain appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and the transition services (including courses of study) needed to assist the child in reaching those goals. (Ed. Code, § 56345(a)(8).)

#### **4.7. Exit from Special Education: Summary of Academic Achievement And Functional Performance**

##### **(A) Conditions Resulting in Exit**

A student is exited from special education if the student ceases to meet eligibility requirements.

A student is exited from special education if parents revoke consent to special education and related services.

A student also is exited from special education when the student obtains a regular high school diploma or turns 22, whichever occurs first. (Ed. Code, §§ 56026(c)(4) and 56026.1(a).) For a student whose eligibility terminates for either of these reasons, the District shall provide the student with a summary of his/her academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting his/her post-secondary goals. (Ed. Code, § 56381(i)(2).)

##### **(B) No Exit**

Until the student turns 22 years of age, the District cannot exit a student who receives any kind of diploma or certificate that is not reflective of the student's meeting all local and State high school graduation requirements, including an alternative degree that is not fully aligned with the academic standards of the State,



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such as a General Educational Development (GED) credential and the diploma issued to students with the most significant cognitive disabilities pursuant to Education Code section 51225.31. (Ed. Code, §§ 56026.1(b) and (c).) Although the Education Code states that a certificate of proficiency is "equivalent to a high school diploma," the Office of Administrative Hearings has held that it is not a "regular high school diploma" that allows a district to exit a student from special education. (Ed. Code, § 48412(b); *Clovis Unified School District* (OAH 2014), Case No. 2014010199.)

Thus, the District is responsible for providing a student who has received anything other than a regular high school diploma with a FAPE until the student turns 22 years old or otherwise ceases meeting eligibility requirements.

**4.8. Transfer of Rights At Age Of Majority**

The District is required to notify the student and family that educational rights transfer to the student upon reaching the age of majority, which is 18 years old in California. Beginning not later than one year before the student reaches the age of majority under state law, the District shall notify the student that his/her rights will transfer upon the student's reaching the age of majority and include a statement to this effect in the IEP. (Ed. Code, § 56345(g).)

**4.9. Post-Secondary Follow Up**

The state requires districts to seek information from students who have graduated from high school to collect data on post-school outcomes.

**4.10. Students between 19 and 22 Years of Age**

The District is required to serve students between the ages of 19 and 21, inclusive, if the student is enrolled in, or eligible for, a program under IDEA or other special education program prior to his or her 19th birthday, and has not yet completed his or her prescribed course of study or who has not met proficiency standards or has not graduated from high school with a regular high school diploma, as follows:

Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a special education program may continue his or her participation in the program for the remainder of the current fiscal year, including any ESY program for individuals with exceptional needs.

Any person otherwise eligible to participate in a special education program shall not be allowed to begin a new fiscal year in the program if he or she becomes 22 years of age in July, August, or September of that new fiscal year.

Any person 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

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program on December 31 of the current fiscal year, unless the person would otherwise complete his or her IEP at the end of the current fiscal year.

(Ed. Code, § 56026(c)(4).)

**Chapter 5**  
**Early Childhood Education:**  
**Birth to Age Three Years; Ages Three to Five Years**

**5.1 Purpose and Scope**

Early intervention services are available for infants and toddlers from birth up to three years of age, and early childhood special education services are available for preschool children between the ages of three and five years of age, who have disabilities or who are at risk of having disabilities and for whom a need for such services is documented by means of assessment.

An Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP), as applicable, will be developed by a multidisciplinary team to identify the child's needs and plan appropriate services for the child and the family. The District will work cooperatively with the Central California Regional Center (CVRC) and other appropriate public agencies to provide all necessary services.

The District and CVRC will actively and systematically seek out all children with disabilities from birth to age five to refer, assess, and determine eligibility for special education services.

**5.2 Identification and Referral**

- (A) The District and CVRC will conduct Child Find activities to locate children who may be eligible for special education services. Child Find activities may include:
- (1) Assigning liaisons to local hospitals and hospitals with neonatal intensive care units;
  - (2) Contacting local parent organizations and support groups;
  - (3) Distributing early intervention materials to agencies and individuals providing medical, social, and educational services in the community;
  - (4) Community-wide health and developmental screening;
  - (5) Producing and distributing public service announcements;
  - (6) Producing pamphlets, brochures, and other written communication; and
  - (7) Making presentations to local professional groups, philanthropic organizations, and other organizations established to inform and/or to serve culturally diverse populations. (17 Cal. Code Regs. § 52040(b).)
  - (8) The District and CVRC shall coordinate local Child Find activities with each other and other public agencies. (17 Cal. Code Regs. § 52040(c).)

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Primary referral sources include, but are not limited to, hospitals, including prenatal and postnatal care facilities, physicians, parents, childcare programs, districts, public health facilities, other social services agencies and other health care providers. (17 Cal. Code Regs. § 52040(d).)

- (B) The District and CVRC shall inform primary referral sources of the following:
  - (1) Eligibility criteria for early-intervention services;
  - (2) Types of early intervention services available through the Early Start Program;
  - (3) Contact persons and telephone numbers for CVRC and the Districts; and
  - (4) Federal requirement that a referral shall be made to the regional center or district within two (2) working days of identification of an infant or toddler who is in need of early intervention services. (17 Cal. Code Regs. § 52040(e).)
- (C) When the District or CVRC receives an oral or written referral for early-intervention services, the agency shall ensure that:
  - (1) The date of the referral is documented in the infant’s or toddler’s record;
  - (2) A service coordinator is assigned; and
  - (3) Written notice is provided and consent is requested.(17 Cal. Code Regs. § 52060.)

### **5.3. Early Intervention Services Program Description**

Early Intervention Services are available for eligible infants and toddlers, and their families, from birth up to three years of age, who have disabilities or who are at risk of having disabilities, and for whom a need for early-intervention services is documented by means of assessment and evaluation. The primary purpose of an early education program is to enhance development of the infant in the context of his or her family. To meet this purpose, the program shall focus upon both the infant and his or her family, and shall include home visits, group services, family involvement, and/or parent education activities. Services shall be provided in the natural (home, community) environment whenever possible. (Ed. Code, § 56426 et seq..)

Early Start Programs shall include, as program options, home-based services and group services. Home-based and group services will be provided through a transdisciplinary team consisting of the parent and a group of professionals from various disciplines.

The frequency of home-based services shall be weekly, bi-weekly, or monthly, depending on the needs of the infant and the family. (Ed. Code, § 56426.1(b).) If the transdisciplinary team determines that home-based and group early education services are appropriate, but

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the parent chooses not to receive home-based services, group services shall be made available to the infant. Similarly, the choice not to participate in family involvement activities shall not limit the availability to the infant and his/her family of home-based services or home-based and group services as determined appropriate by the IFSP team. (Ed. Code, § 56426.5.)

Early intervention services also may be provided through both home visits and group settings with other infants. The frequency of group services shall not exceed three hours a day for up to, and including, two days a week, and shall be determined on the basis of the needs of the infant and the family. (Ed. Code, § 56426.2(c).)

Parent involvement/education activities are provided in conjunction with home-based and group services. (Ed. Code, § 56426.2.)

In addition to home-based or home-based and group early education services, related services shall be available to infants and their families and may be provided in the home or at the center according to the needs of the infant and the family. (Ed. Code, § 56426.3.) Medically necessary occupational therapy and physical therapy shall be provided to the infant when warranted by medical diagnosis and contained in the IFSP. (Ed. Code, § 56426.7.)

**(A) Assessment to Determine Eligibility**

Each infant or toddler referred for evaluation for early-intervention services shall have a timely, comprehensive, multidisciplinary evaluation of his or her needs and level of functioning in order to determine eligibility.

The determination of eligibility for an infant or toddler residing within the District, shall be made by qualified personnel of the District as per the Memorandum of Understanding and contract between the District and CVRC. The determination shall be made with the participation of the multidisciplinary team, including the parent. Evaluation and assessment shall be based on informed clinical opinion and include:

- (1) A review of pertinent records related to the infant's or toddler's health status and medical history provided by qualified health professionals who have evaluated or assessed the child;
- (2) A review of educational or other early intervention records;
- (3) Gathering information from other sources such as family members, other care-givers, medical providers, social workers, and educators as necessary to understand the full scope of the infant's or toddler's unique strengths and needs;
- (4) Information obtained from parental observation and report;

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- (5) Evaluation by qualified personnel of the child’s level of functioning in each of the following areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; and adaptive development.
- (6) No single procedure shall be used as the sole criterion for determining a child’s eligibility.
- (7) In no event may informed clinical opinion by itself be used to negate the results of the evaluation instruments used to establish eligibility.
- (8) Standardized tests or instruments may be used as part of the evaluation. If such tests are used, they shall be selected to ensure that, when administered to an infant or toddler with impaired sensory, motor, or speaking skills, the tests produce results that accurately reflect the infant’s or toddler’s aptitude, developmental level, or any other factors the test purports to measure and not the infant’s or toddler’s impaired sensory, motor or speaking skills unless those skills are the factors the test purports to measure. The tests must be validated for the specific purpose for which they are used.
- (9) If standardized, normed, or criterion-referenced instruments are used as part of the evaluation, a significant difference between an infant's or toddler's current level of functioning and the expected level of development for his or her age shall be established when an infant's or toddler's age equivalent score falls one-third below age expectation.
- (10) Procedures and materials for evaluation and assessment of infants and toddlers shall be selected and administered so as not to be racially or culturally discriminatory.
- (11) Infants or toddlers with solely low-incidence disabilities shall be evaluated and assessed by qualified personnel of the SELPA whose professional preparation, license, or credential authorization are specific to the suspected disability.
- (12) Regional Centers, LEA’s, and multidisciplinary teams shall not presume or determine eligibility, including eligibility for medical services provided through the Department of Health Services, for any other state or local government program or service when conducting evaluations or assessments of an infant or toddler or their family.
- (13) Evaluations for eligibility shall be conducted in natural environments whenever possible.

(Cal. Code Regs. § 52082; Govt. Code § 95016.)

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Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child. (34 C.F.R. § 303.321.)

**(B) Assessment for Service Planning**

Assessment for service planning for eligible infants or toddlers shall identify all of the following:

- (1) The child’s unique strengths and needs in the areas of cognitive development, physical and motor development (including vision and hearing), communication development, social or emotional development, and adaptive development.
- (2) Early intervention and other services appropriate to meet the identified needs; and
- (3) If the family consents to a family assessment, the resources, priorities and concerns of the family and the supports and services necessary to enhance the family’s capacity to meet the developmental needs of an infant or toddler with a disability. (17 Cal. Code Regs. § 52084(a).)

For purposes of service planning, CVRC and the District may use existing evaluation materials if the multidisciplinary team agrees that the existing materials adequately describe the levels of development and service needs for the infant or toddler. (17 Cal. Code Regs. § 52084(b).)

Assessment for service planning shall be based on age-appropriate methods and procedures that may include any of the following:

- (1) A review of information related to the child’s health status and medical history provided by qualified health professionals who have evaluated or assessed the child.
- (2) Developmental observations by qualified personnel and the parent.
- (3) Other procedures used by qualified personnel to determine the presence of a developmental delay, established risk condition, or high risk for a developmental disability.
- (4) Standardized tests or instruments. (17 Cal. Code Regs. § 52084(c).)

Assessments of family resources, priorities, and concerns related to enhancing the development of the infant or toddler shall be voluntary on the part of the family. The family assessment shall:

- (1) Be conducted by qualified personnel trained to utilize appropriate methods and procedures;

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- (2) Be based on information provided by the family through a personal interview;
- (3) Incorporate the family’s description of its resources, priorities, and concerns related to enhancing the development of the child; and
- (4) Be conducted in the language of the family’s choice or other mode of communication unless it is not feasible to do so. (17 Cal. Code Regs. § 52084(d); ); 34 C.F.R. § 303.321.)

Evaluations and assessments for service planning shall be conducted in natural environments whenever possible. (17 Cal. Code Regs. § 52084(e).)

**(C) Timeline for Completion of Evaluation and Assessment**

Except as provided below, the evaluation and assessment for eligibility for each child shall be completed and the initial IFSP meeting shall be held within 45 days of the date that the District or CVRC received the referral. (17 Cal. Code Regs. § 52086(a).)

In the event of exceptional circumstances or lack of parent consent for the initial evaluation and assessment (despite documented repeated attempts to obtain consent), which make it impossible to complete the initial evaluation for eligibility and assessments (child and family) and IFSP meeting within 45 days of receiving a referral, the service coordinator shall document the exceptional family circumstances or lack of consent in the infant’s or toddler’s record; and, complete the evaluation and assessment as soon as possible after the documented exceptional family circumstances no longer exist or parental consent is obtained. (17 Cal. Code Regs. § 52086(b); 34 C.F.R. § 303.310.)

If an infant or toddler has been determined eligible, but the assessment has not been completed within 45 days of receiving a referral because of exceptional family circumstances , the service coordinator shall document the exceptional family circumstances in the infant’s or toddler’s record; develop an interim IFSP, and provide the services agreed upon in the interim . The interim IFSP will include the name of the service coordinator and timelines for completing assessments. (17 Cal. Code Regs. § 52086(c).)

**(D) Initial IFSP Meeting**

Each initial IFSP meeting shall include the following participants:

- (1) The parent of the infant or toddler;
- (2) The service coordinator who has been working with the family since the initial referral of the infant or toddler for evaluation and assessment or who



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has been designated by the regional center or LEA to be responsible for implementation of the IFSP; and,

- (3) The person(s) who conducted the evaluations or assessments.

If requested by the parent, each initial IFSP meeting shall include the following participants:

- (1) Other family members; and
- (2) An advocate or person outside of the family.

Each IFSP meeting shall include persons who will be providing services to the infant or toddler and family, as appropriate.

If either the evaluators or assessors are unable to attend an initial IFSP meeting, arrangements shall be made for the person's involvement through other means, including:

- (1) Participating in a telephone conference call;
- (2) Having a knowledgeable representative attend an IFSP meeting; and
- (3) Making pertinent records available at the IFSP meeting.

**(E) Eligibility**

The term “eligible infant or toddler with a disability” means infants and toddlers from birth through 2 years of age inclusive (Govt Code 95014(a)) for whom a need for early intervention services is documented by means of assessment and evaluation and who meet one of the following criteria:

- (1) Developmental Delay. Infants and toddlers with a developmental delay in one or more of the following five areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development.

Developmentally delayed infants and toddlers are those who are determined to have a "significant difference" between the expected level of development for their age and their current level of functioning. This determination shall be made by qualified personnel who are recognized by, or part of, a multidisciplinary team, including the parents. A "significant difference" is defined as a 33-percent delay in one or more developmental areas.

(Govt. Code, § 95014(a)(1); 17 Cal. Code Regs. § 52022(a); 5 Cal. Code Regs. § 3031(a).)

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- (2) Established Risk. Infants and toddlers with "conditions of known etiology" or "conditions with established harmful developmental consequences" which have a high probability of resulting in developmental delay; or, infants and toddlers who have solely a low- incidence disability. (Govt. Code, § 95014(a)(2); 17 Cal. Code Regs. §52022(b).)
- (3) High Risk for Developmental Disability. Infants or toddlers with a combination of two or more of the following factors that require early intervention services based on evaluation and assessment:
  - (a) Prematurity of less than 32 weeks gestation and/or low birth weight of less than 1,500 grams.
  - (b) Assisted ventilation for 48 hours or longer during the first 28 days of life.
  - (c) Small for gestational age: below the third percentile on the National Center for Health Statistics growth charts.
  - (d) Asphyxia neonatorum associated with a five-minute Apgar score of 0 to 5.
  - (e) Severe and persistent metabolic abnormality, including, but not limited to, hypoglycemia, acidemia, and hyperbilirubinemia in excess of the usual exchange transfusion level.
  - (f) Neonatal seizures or non-febrile seizures during the first three years of life.
  - (g) Central nervous system lesion or abnormality.
  - (h) Central nervous system infection.
  - (i) Biomedical insult including, but not limited to, injury, accident, or illness which may seriously or permanently affect developmental outcome.
  - (j) Multiple congenital anomalies or genetic disorders which may affect developmental outcome.
  - (k) Prenatal exposure to known teratogens.
  - (l) Prenatal substance exposure, positive infant neonatal toxicology screen or symptomatic neonatal toxicity or withdrawal.
  - (m) Clinically significant failure to thrive, including, but not limited to, weight persistently below the third percentile for age on standard growth charts or less than 85 percent of the ideal weight for age

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and/or acute weight loss or failure to gain weight with the loss of two or more major percentiles on the growth curve.

- (n) Persistent hypotonia or hypertonia, beyond that otherwise associated with a known diagnostic condition.

(Gov. Code, § 95014(a)(3); 17 Cal. Code Regs. § 52022(c)(1)); 5 Cal.Code Regs. §3031(a.)

High risk for a developmental disability also exists when a multidisciplinary team determines that the parent of the infant or toddler is a person with a developmental disability and the infant or toddler requires early-intervention services based on evaluation and assessment. (17 Cal. Code Regs. § 52022(c)(2).)

A developmental delay shall not be determined based on:

- (a) Temporary physical disability;
- (b) Cultural or economic factors;
- (c) The normal process of second language acquisition; or
- (d) Manifestation of dialect and sociolinguistic variance. (17 Cal.Code Regs. § 52022(d).)

- (4) Additional State Eligibility Criteria. A child shall qualify as an individual with exceptional needs (pursuant to Education Code section 56026(c)(1) and Government Code section 95014) if the IFSP Team determines that the child meets the following criteria:

- (a) Is identified as a student with a disability pursuant to 5 Cal. Code of Regulations section 3030, and
- (b) Requires intensive special education and services by meeting one of the following:
  - (i) The child has a developmental delay as determined by a significant difference between the expected level of development for their age and their current level of functioning in one or more of the following five developmental areas: cognitive development, physical and motor development, including vision and hearing, communication development, social or emotional development, and adaptive development.
  - (ii) A "significant difference" means a 33% delay in one developmental area before 24 months of age, or, at 24

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months of age or older, either a delay of 50% in one developmental area or a 33% delay in two or more developmental areas.

- (iii) The child has a disabling medical condition or congenital syndrome which the IFSP Team determines has a high predictability of requiring intensive special education and service.

(5 Cal. Code Regs. § 3031.)

- (5) Additional Federal Eligibility Criteria. A child between ages three through nine (or any subset of that age range, including ages three through five), may be found to have a "disability," subject to the state adopting a definition of "developmental delay," if the child:

- (a) Is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

- (b) By reason thereof, needs special education and related services.(34 C.F.R. § 300.8(b).)

**(F) Finding of Non-Eligibility**

If the District the District or CVRC determines that a child is not eligible for services, the entity that makes this determination must provide the parent with prior written notice and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms, such as requesting a due process hearing or mediation or filing a State complaint. (34 C.F.R. § 303.322; Ed. Code, § 56500.4.)

**(G) Interim IFSP**

An interim IFSP may be developed for an infant or toddler, who has been determined eligible for early intervention services. The early intervention services may begin before the completion of the assessment if there is an immediate need to provide services and the infant's or toddler's parent has given written consent. The interim IFSP shall include:

- (1) Timelines for completing assessments;
- (2) The name of the service coordinator responsible for completion of evaluation and assessment within the 45 day timeline and implementation of the interim IFSP;

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- (3) The services agreed upon at the interim IFSP meeting as necessary for the infant or toddler.

(17 Cal. Code Regs. § 52107; 34 C.F.R. § 303.345.)

An interim IFSP meeting shall provide for the participation of the parent and the service coordinator and the persons responsible for the assessment at a minimum. Provisions shall be made for the participation of other family members, an advocate or person outside of the family at the parent's request.

The immediate need, the early intervention services needed and the name of the service coordinator must be documented in the infant's or toddler's interim IFSP.

The existence of an interim IFSP does not absolve the District or CVRC from complying with the 45 day time period to complete the initial assessment in all five areas of development. Except as provided in section 5.3(C), an interim IFSP developed to meet an immediate need shall be followed by an IFSP meeting within the 45-day period that commenced with the referral.

An interim IFSP may be developed for an infant or toddler who has been determined eligible when exceptional circumstances prevent the completion of assessment within 45 days.

(17 Cal. Code Regs. § 52107.)

**(H) Development of the IFSP**

Early intervention and related services shall be based on the needs of the infant and the family as determined by the IFSP team and shall be specified in the IFSP, including the frequency and duration of each type of service. The IFSP shall be developed in consultation with the infant's physician in order to ensure that the services specified in the IFSP do not conflict with the infant's medical needs. (Ed. Code, § 56426.8.)

Except as described in section 5.3(C), an initial IFSP shall be developed by CVRC and/or the District for each eligible infant or toddler within 45 days of receipt, by either CVRC or the District, of the oral or written referral, except when an interim IFSP is required pursuant to title 17 of California Code of Regulations, section 52107. The assessment results and determination of eligibility may be shared in a meeting with the family prior to the individualized family service plan. Govt. Code, § 95020(b); 17 Cal. Code Regs. § 52102(a); 34 C.F.R. § 303.342.)

All IFSP meetings shall be conducted in settings and at times or by means that are reasonably convenient to the parent and in the language of the parent's choice unless it is clearly not feasible to do so. (17 Cal. Code Regs. § 52102(g).)

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Meeting arrangements shall be made in collaboration with the parent. A written notice of the meeting shall be provided to the parent and other members of the multidisciplinary team in a timely manner to ensure attendance at the IFSP meeting. (17 Cal. Code Regs. § 52102(h).)

Each initial IFSP meeting and each annual IFSP meeting shall include the following participants:

- (1) The parent of the infant or toddler;
- (2) The service coordinator; and,
- (3) The person(s) who conducted the evaluations or assessments.

If requested by the parents, each initial IFSP meeting and each annual IFSP meeting shall include the following participants:

- (1) Other family members;
- (2) An advocate or person outside of the family.
- (3) As appropriate, persons who will be providing early intervention services under this part to the child or family

Each IFSP meeting shall include persons who will be providing services to the infant or toddler and family, as appropriate.

(34 C.F.R. § 303.343(a); 17 Cal. Code Regs. §52104.)

If either the evaluators or assessors are unable to attend an initial, or annual IFSP meeting, arrangements shall be made for the person's involvement through other means, including:

- (1) Participating in a telephone conference call;
- (2) Having a knowledgeable representative attend an IFSP meeting; and
- (3) Making pertinent records available at the IFSP meeting.

(17 Cal. Code Regs. § 52104(e).)

**(I) Content of the IFSP**

The IFSP must be in writing and contain:

- (1) A statement that can be measured or observed by a qualified professional of the infant's or toddler's present levels of development in the following

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areas: Physical development, cognitive development, communication development, social or emotional development, and adaptive development.

- (2) With agreement of parent, a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability.
- (3) A statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcome is being made, and whether modifications or revisions of the outcomes or services are necessary.
- (4) A statement about the outcomes for the family when services for the family are related to meeting the special developmental needs of the infant or toddler.
- (5) A statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services.
- (6) A statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment.
- (7) The projected dates for initiation of services and the anticipated duration of the services.
- (8) The scheduled days when services/programs will not be available when the service provider operates a program which has a fixed schedule which includes breaks in service for periods such as holidays or vacations.
- (9) The name of CVRC, SELPA, or service provider providing each early intervention service.
- (10) The funding source for other or non-required services provided by any entity other than CVRC or SELPA including the procedures that will be followed to obtain such funding.
- (11) The name of the service coordinator.
- (12) When dually eligible, the service provider will be a CVRC social worker. If the eligibility is a solely low-incidence, the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's family needs (or who is otherwise qualified to carry out all applicable responsibilities), will be responsible for the implementation of the plan and coordination with other agencies and persons.

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- (13) A statement of the transition steps, which are initiated when the toddler is two years nine months, or at the discretion of all parties, up to six months before the toddler turns three years old, that are necessary to ensure the transition of the toddler to preschool services under Part B of the IDEA, other private and public services, or a referral to a nonrequired service.

(Gov. Code, § 95020; 17 Cal. Code Regs. § 52106.)

The contents of the IFSP must be fully explained to the parents, and a legible copy shall be provided to the parents. Informed written consent from the parents must be obtained before early intervention services can be provided. If the parents do not provide consent with respect to a particular early intervention service, then the only early intervention service to which consent is obtained shall be provided. (17 Cal. Code Regs. §§ 52102(i) and (j).)

If a toddler is older than two years and six months on the date of the initial IFSP, the IFSP shall include steps to ensure transition to Special Education Services under Part B of the Individuals with Disabilities Education Act or other services that may be appropriate. (17 Cal. Code Regs. § 52112(e).)

Each IFSP service shall be designated as one of the following:

- (1) A required early intervention service. These services shall be provided, purchased or arranged by a regional center or LEA; or
- (2) Other public programs providing services that may benefit the infant, toddler and/or family which the eligible infant or toddler or his or her family may be eligible to receive, subject to the statutory, regulatory and other program criteria of those programs or agencies. These services may include but not be limited to: residential care; family reunification services, Head Start, Supplemental Security Income; Supplemental Security Programs; Temporary Assistance to Needy Families and food stamps; Medi-Cal; or
- (3) A referral to a community service that may be provided to an eligible infant or toddler or his or her family but is not required under the California Early Intervention Services Act, Government Code Sections 95000-95030.
  - (a) A non required service includes but is not limited to: employment; child care; housing; medical services such as surgery, or medication, hospitalization, medical devices necessary to control or treat a medical condition, or immunizations, well-baby care, income support, family or marital counseling unrelated to the infant or toddler's development, and substance abuse counseling.
  - (b) The IFSP shall, to the extent appropriate, include the steps and time lines for the service coordinator to assist the parent to secure those services through public or private sources.



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The receipt of required early intervention services listed on the IFSP from other state or federal agencies such as California Children Services, is dependent on the infant or toddler and the infant's or toddler's parent meeting the statutory, regulatory, and other program criteria of the agency and/or program that provides those services. These criteria may include financial eligibility and medical condition eligibility as diagnosed by program certified personnel, and on the availability of funding for the program.

In the event that the infant or toddler or infant's or toddler's parent is not eligible to receive those agency services, or funding for the program is unavailable, the required early intervention services shall be provided by the regional center or the LEA.

The parent shall be informed in writing of this provision during the initial 45 day evaluation and assessment period and/or during the IFSP meeting.

(17 Cal. Code Regs. § 52108.)

**(J) Implementation of the IFSP**

Each eligible infant or toddler and family shall be provided a service coordinator who will be responsible for providing notice to and obtaining consent from parents, facilitating the implementation of the IFSP and coordinating with other agencies and persons providing services to the family.

Service coordinators must meet federal and state requirements governing qualifications, competency, responsibilities, and functions and must be trained to work with infants and their families.

(Gov. Code, § 95018; 17 Cal. Code Regs. §§ 52121, 52122.)

**(K) Review of the IFSP**

Periodic Review

A periodic review of the IFSP shall be conducted every six months, or more frequently if service needs change or if the parent requests such a review. The periodic review may be carried out by a meeting or by another means that is acceptable to the parent and other participants. (17 Cal. Code Regs. §§ 52102(b) and (d).)

Each periodic review of the IFSP shall include the following participants:

- (1) The parent;
- (2) The service coordinator;
- (3) Service providers as appropriate; and,

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- (4) Other family members, an advocate or person outside of the family upon parent request.

(17 Cal. Code Regs. § 52104(d).)

At each periodic review, the IFSP Team will review the degree to which progress toward achieving the outcome is made and document all modifications and revisions of the outcomes or services as necessary. (17 Cal. Code Regs. § 52102(c).)

(17 Cal. Code Regs. § 52102(e).) Information obtained from ongoing assessment shall be used in reviewing and revising outcomes and determining the appropriate services that will be provided or continued. (17 Cal. Code Regs. § 52102(f).)

The contents of the annual IFSP and changes to the IFSP resulting from the periodic review shall be fully explained and a legible copy of the document given to the parent. Written consent from the parent shall be obtained prior to the provision of early intervention services described in the IFSP. (17 Cal. Code Regs. § 52102(i).)

If the parent does not provide consent with respect to a particular early- intervention service listed in the IFSP or withdraws consent after first providing it, that service shall not be provided. The early-intervention services to which parental consent is obtained shall be provided. (17 Cal. Code Regs. § 52102(j).)

#### Annual Review

Each annual IFSP meeting shall include the following participants:

- (1) The parent of the infant or toddler;
- (2) The service coordinator who has been working with the family since the initial referral of the infant or toddler for evaluation and assessment or who has been designated by the regional center or LEA to be responsible for implementation of the IFSP; and,
- (3) The person(s) who conducted the evaluations or assessments.

If requested by the parent, each annual IFSP meeting shall include the following participants:

- (1) Other family members; and
- (2) An advocate or person outside of the family.

Each IFSP meeting shall include persons who will be providing services to the infant or toddler and family, as appropriate.

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If either the evaluators or assessors are unable to attend an annual IFSP meeting, arrangements shall be made for the person's involvement through other means, including:

- (1) Participating in a telephone conference call;
- (2) Having a knowledgeable representative attend an IFSP meeting; and
- (3) Making pertinent records available at the IFSP meeting.

**(L) Procedural Safeguards**

Prior to the initial evaluation and assessment to determine eligibility and annually thereafter, service coordinators shall give written notice to the parent, which shall include:

- (1) The personally identifiable information maintained by the District;
- (2) The types of information used in the evaluation, assessment and IFSP development; and,
- (3) The methods that the District use to protect the confidentiality of personally identifiable information including:
  - (a) The sources from whom personally identifiable information is gathered;
  - (b) The uses to be made of the personally identifiable information;
  - (c) The policies and procedures which the District follows regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information as required in Title 34 Code of Federal Regulations, Sections 300.572 through 300.573; and,
  - (d) The rights of parents and infants and toddlers regarding access to information, including the rights accorded to families in these regulations and the rights under the Family Education Rights and Privacy Act of 1974, Title 20, United States Code, Section 1232(g) and implementing regulations in Title 34 Code of Federal Regulations, Section 99.

(17 Cal. Code Regs. § 52160.)

Additionally, written notice shall be given to the parent of an infant or toddler, eligible or suspected to be eligible to receive early intervention services, a reasonable time before the District proposes, or refuses, to initiate or change:

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- (1) The identification, evaluation, assessment or placement of the infant or toddler; or
- (2) Early intervention services to the infant or toddler and the infant's or toddler's family.

The notice shall be in sufficient detail to inform the parent about:

- (1) The action that is being proposed or refused;
- (2) The reasons for taking the action; and
- (3) All procedural safeguards that are available under Title 34 Code of Federal Regulations, Sections 303.400 through 303.460.

The notice shall be:

- (1) Written using words that are understandable to the general public; and
- (2) Provided in the language of the parent's choice, unless it is clearly not feasible to do so. The regional center or LEA shall take steps to ensure that:
  - (a) The notice is translated;
  - (b) The parent understands the notice; and
  - (c) There is written evidence that the requirements of this subsection have been met.

(17 Cal. Code Regs. § 52161.)

**(M) Consent**

The service coordinator shall obtain written parental consent before:

- (1) The initial evaluation and assessment of an infant or toddler is conducted; and
- (2) Early intervention services are initiated.

The infant's or toddler's record shall contain written evidence that the parent has been informed:

- (1) Of information relevant to the evaluation, assessment, early intervention service, or exchange of records for which consent is sought, in the language of the parent's choice, and agrees to the completion of the evaluation or assessment and the provision of early intervention services;
- (2) That consent is voluntary and may be revoked at any time;

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- (3) That he/she may accept or decline any early intervention service and may decline such service after first accepting it, and continue to receive other early intervention services; and,
- (4) About who will receive the records and a listing of the records to be exchanged.

If consent is not given or is withdrawn, the service coordinator shall ensure:

- (1) That the parent has been informed of the nature of the evaluation and assessment or the early intervention services that would have been provided;
- (2) That the parent has been informed that the infant or toddler will not receive the evaluation and assessment or early intervention services unless consent is given; and,
- (3) That the infant's or toddler's record contains documentation of the attempts to obtain consent.

(17 Cal. Code Regs. § 52162.)

**(N) Transfer**

Regional centers and LEAs shall use existing information whenever possible to determine continued eligibility and to minimize delay in the provision of appropriate early intervention services when an eligible infant's or toddler's residence changes to another regional center or LEA.

The procedures contained in Education Code section 56325, pertaining to an IEP, shall apply instead for an infant or toddler with an existing IFSP who moves from an area where he or she received early intervention services from an LEA into another LEA that provides early intervention services and the LEA is operating below the funded capacity, or for an infant or toddler with a solely low incidence disability.

For an infant or toddler, with an existing IFSP, who is receiving early intervention services from an LEA:

- (1) Who has not been determined eligible for regional center services; and,
- (2) Who moves from an area where an LEA provides early intervention services to an area where there are no services available for the infant or toddler through the LEA.
  - (a) With parent consent, the sending LEA, if informed about the move by the family, shall notify the receiving regional center as soon as

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possible of a move to the new area and transmit the infant or toddler's record to expedite service delivery in the new area; or

- (b) With parent consent, the LEA shall transmit the infant or toddler's record upon request of the receiving regional center if the LEA was not previously informed of the move by the family.

(17 Cal. Code Regs. § 52111.)

**(O) Transition Requirements for Early Intervention**

At age three, an eligible child shall be served under part B of the IDEA by the District. (Ed. Code, § 56426.9.) the District is required to have an IEP or IFSP developed and being implemented for a child by the child's third birthday. This means that significant planning and coordination must take place prior to the child's third birthday. The District shall participate in the transition planning activities. (17 Cal. Code Regs. § 52112(a).)

To ensure a smooth transition for eligible toddlers receiving early intervention services to preschool or other appropriate services, the following requirements must be met:

- (1) The families of such toddlers will be included in the transition plans.
- (2) At two years, six months of age, the CVRC service coordinator will notify:
  - (a) The parent of the toddler who may be eligible for special education and related services under Part B of the IDEA that transition planning will occur within the next three to six months; and
  - (b) the District that there will be an IFSP meeting before the toddler is two years, nine months, or at the discretion of all parties, up to six months before the toddler turns three years old to specify necessary Part B transition steps.
- (3) Within 30 days of the above notification of the parent and the District, all parties shall agree on the date of the Part B transition IFSP. (17 Cal. Code Regs. § 52112(b).)

For all toddlers with an IFSP, the transition steps contained in the IFSP at two years, nine months or earlier shall include all of the following:

- (1) Discussion with and providing parents information regarding:
  - (a) The toddler's transition to special education for a toddler with a disability who may be eligible for special education under Part B of the IDEA; and

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- (b) Steps to prepare the toddler for changes in service delivery, including steps to help the toddler adjust to and function in a new setting.
- (2) Provide information about community resources such as Head Start, Child Development Preschools, private or public preschool for toddler who will not be eligible for special education services after three years of age.
- (3) A projected date for conducting a final review of the IFSP to review the early-intervention services and the transition outcomes by age three.

(17 Cal. Code Regs. § 52112(c).)

For toddlers who may be eligible for preschool services from the District under Part B of the IDEA, the Part B transition steps necessary will be written at the IFSP meeting before the toddler is two years, nine months (or at the discretion of all parties up to six months before the toddler's third birthday) shall include the following:

- (1) With parent consent, the transmission of information about the toddler to the District including assessment information and copies of developed and implemented IFSPs;
- (2) Identified needed assessments to determine continued CVRC and IDEA eligibility, responsibility, and associated timelines for completion of assessments;
- (3) Statements of the steps necessary to ensure that the referral is received by the District in a timely manner that ensures that assessments and an IEP are completed by the toddler's third birthday;
- (4) A referral for assessment no later than the time in which the toddler is two years, nine months or before the District school break if the toddler will turn three during the school break.
- (5) The transition IFSP shall contain steps necessary to satisfy the referral and IEP development requirements contained in Education Code sections 56321 and 56344.
- (6) Identification of people responsible for convening an IEP and final IFSP meeting, and the person responsible for convening an individualized program plan (IPP) meeting, if necessary, for the toddler by age three to:
  - (a) Review the progress toward meeting the early intervention services outcomes identified in the IFSP;
  - (b) Determine the eligibility for special education and develop the IEP; and

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- (c) Develop an IPP if the toddler is eligible also under the Lanterman Developmental Disabilities Services Act (as required in Welfare and Institutions Code section 4646).

The District will hold an IEP Team meeting before the child's third birthday that ensures smooth and effective transition to a preschool program so that the child is in his/her preschool program on his/her third birthday.

The IFSP transition planning meeting will be convened with the service coordinator, the family, and the District transition coordinator at least 90 days (and at the discretion of all parties, up to six months) before the child is eligible for the preschool services. The purpose of the meeting is to discuss the transition steps, as outlined above, and the timelines, dates for transition activities, and any such services that the child may receive.

In the case of a child who may not be eligible for preschool services under Part B of the IDEA, with the approval of the family, reasonable efforts will be made to convene a conference among the lead agency, the family, and providers of other appropriate services for the child.

An invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the service coordinator or other representatives of the early education or early intervention system to assist with the smooth transition of services.

(Ed. Code, § 56341(i).)

#### **5.4. Preschool Children (Age Three to Five)**

##### **(A) Identification and Referral**

Preschool children age three to five with disabilities will be identified through:

- (1) Child Find activities listed in previous sections.
- (2) Direct referrals from parents, preschools, physicians, members of the community, and kindergarten teachers.
- (3) Children who are in transition from the Early Start Program.
- (4) Children who have been participating in the Early Start Program and are eligible to participate in a preschool program will experience a smooth transition to preschool programs in the District. Representatives of the District will participate in all transition planning conferences to ensure a smooth transition.



**(B) Evaluation and Assessment**

Assessment procedures, as described in Chapter 1, are applicable to preschool children from three to five years of age.

In addition, the assessments will be conducted by a transdisciplinary team including early childhood specialists, speech and language pathologists, school psychologists, and other professionals, as appropriate. (Ed. Code, §§ 56441.6 and 56426.6.)

The team will use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent that may assist in determining whether the child has a disability.

Special attention will be given to:

- (1) Assessing children with developmentally appropriate assessments.
- (2) Assessing children in natural environments.
- (3) Assessing children to identify participation in appropriate preschool activities.
- (4) Involving preschool personnel in observing and assessing children.
- (5) When standardized tests are considered invalid for children between the ages of three and five years, alternative means will be utilized (e.g., scales, instruments, observations, and interviews) as specified in the Assessment Plan. (Ed. Code, § 56441.11(e).)

**(C) Eligibility**

The special education eligibility criteria listed in Chapter 1 shall apply to preschool children between the ages of three and five years. A child between the ages of three and five years old qualifies as a child with a disability who needs early childhood special education services if the child meets the following criteria:

- (1) Is identified as having one of the following disabling conditions:
  - (a) Autism,
  - (b) Deaf-blindness,
  - (c) Deafness,
  - (d) Hearing impairment,
  - (e) Intellectual disability,

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- (f) Multiple disabilities,
  - (g) Orthopedic impairment,
  - (h) Other health impairment,
  - (i) Serious emotional disturbance,
  - (j) Specific learning disability,
  - (k) Speech or language impairment in one or more of voice, fluency, language and articulation,
  - (l) Traumatic brain injury,
  - (m) Visual impairment, or
  - (n) Established medical disability (defined as a disabling medical condition or congenital syndrome that the IEP Team determines has a high predictability of requiring special education and services).
- (2) Needs specifically designed instruction or services.
  - (3) Has one or more needs that cannot be met with modification of a regular environment in the home or school, or both, without ongoing monitoring or support as determined by the IEP Team. (Ed. Code, §§ 56441.11(b)(1)(N) and 56441.11(d).)
  - (4) Meets eligibility criteria set forth in Title 5 California Code of Regulations section 3030. (Ed. Code, § 56441.11(b).)

A child is not eligible for special education and related services if the child does not otherwise meet the eligibility criteria and his or her educational needs are due primarily to:

- (1) Unfamiliarity with the English language;
- (2) Temporary physical disabilities;
- (3) Social maladjustment; or,
- (4) Environmental, cultural, or economic factors.(Ed. Code, § 56441.11(c).)

Additional Federal Eligibility Criteria. A child between ages three through nine (or any subset of that age range, including ages three through five), may be found to have a "disability," subject to the state adopting a definition of "developmental delay," if the child—

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- (1) Is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
- (2) By reason thereof, needs special education and related services.(34 C.F.R. § 300.8(b).)

**(D) Individualized Education Program**

The requirements for developing, implementing, and reviewing IEPs described in Chapter 3 are applicable to preschool children, ages three to five.

An early special education program for preschool children with disabilities shall include specially designed instruction and related services to meet the unique needs of preschool children and their families. To meet this purpose, the program focus is on the young child and his or her family and shall include both individual and small group services, which shall be available in a variety of typical age-appropriate environments for young children, including the home, and shall include opportunities for active parent involvement. (Ed. Code, § 56441.2.)

A preschool teacher, who has observed the child in an appropriate preschool environment, will be a member of the IEP Team. (Ed. Code, § 56341(c).)

The IEPs of preschool children will describe how the disability affects the child's participation in appropriate activities. (Ed. Code, § 56345(a)(1)(B).)

Any child who becomes three years of age while participating in early childhood special education services may continue until June 30 of the current program year, if the IEP team determines that the preschooler is eligible for Part B services under the IDEA pursuant to Section 56441.11, develops an IEP, and determines that the early childhood special education services remain appropriate. No later than June 30 of that year, the IEP team shall meet to review the preschooler's progress and revise the IEP accordingly. Representatives of the early childhood special education program shall be invited to that meeting. If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin. (Ed. Code, § 56426.9(d); 34 C.F.R. § 300.101(b).)

**(E) Services for Preschool Children with Disabilities**

- (1) Services for preschool children with disabilities and their families shall be provided in coordination with other state and local agencies. (Ed. Code, § 56441.1(a).)
- (2) Services will be provided at public expense, under public supervision, and without cost to the parents. (Ed. Code, § 56040.)

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- (3) Early special education services for preschool children may be provided to individuals or small groups and shall include:
- (a) Observing and monitoring the child’s behavior and development in his or her environment.
  - (b) Presenting activities that are developmentally appropriate for the preschool child and are specially designed, based on the child’s exceptional needs, to enhance the child’s development. Those activities shall be developed to conform to the child’s IEP and shall be developed so that they do not conflict with his or her medical needs.
  - (c) Interacting and consulting with the family members, regular preschool teachers, and other service providers, as needed, to demonstrate developmentally appropriate activities necessary to implement the child’s IEP in the appropriate setting, and necessary to reinforce the expansion of his or her skills in order to promote the child’s educational development. These interactions and consultations may include family involvement activities.
  - (d) Assisting parents to seek and coordinate other services in their community that may be provided to their child by various agencies.
  - (e) Providing opportunities for young children to participate in play and exploration activities, to develop self-esteem, and to develop pre-academic skills.
  - (f) Providing access to various developmentally appropriate equipment and specialized materials.
  - (g) Providing related services that include parent counseling and training to help parents understand the special needs of their children and their children’s development.

(Ed. Code, §§ 56441.2, 56441.3.)

- (4) Appropriate settings for these services include any of the following:
- (a) The regular public or private nonsectarian preschool program;
  - (b) The child development center or family day-care home;
  - (c) The child’s regular environment, that may include the home;
  - (d) A special site where preschool programs for both children with disabilities and children who are not disabled, are located close to each other and have an opportunity to share resources and program;

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- (e) A special education preschool program with children who are not disabled attending and participating for all or part of the program; or,
- (f) A public school setting which provides an age-appropriate environment, materials, and services.

(Ed. Code, § 56441.4.)

- (5) Early special education services shall be provided by a transdisciplinary team. Responsibilities of early education staff shall include consultation with regular preschool program providers, consultation with other specialists, assessment services, and direct services. (Ed. Code, § 56441.6.)
  - (a) Services may be provided by any of the following methods:
    - (b) Directly by the District;
    - (c) Through an interagency agreement between a local educational agency and another public agency;
    - (d) Through a contract with another public agency;
    - (e) Through a contract with a nonpublic, nonsectarian school or nonpublic, nonsectarian agency; or
    - (f) Through a contract with a nonsectarian hospital. (Ed. Code, § 56441.8.)
  - (6) The duration of group services shall not exceed four hours per day unless determined otherwise by the individualized education program team. (Ed. Code, § 56441.3(b).)

**(F) Instructional Adult-to-Child Ratio**

Appropriate instructional adult-to-child ratios for the group services shall be dependent on the needs of the child.

Appropriate instructional adult-to-child ratios for group services shall be dependent on the needs of the child. However, because of the unique needs of individuals with exceptional needs between the ages of three and five years, inclusive, who require special education and related services, the number of children per instructional adult shall be less than ratios set forth in subsection (b) of section 18204 of title 5 of the California Code of Regulations, as it read on May 1, 1987, for young children in a regular preschool program.

Group services provided to individuals with exceptional needs between the ages of three and five years, inclusive, identified as severely disabled pursuant to Education

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Code section 56030.5 shall not exceed an instructional adult-to-child ratio of one to five. (Ed. Code, § 56441.5.)

**(G) Transition from Preschool to Kindergarten**

As the preschool age child approaches the age to enter the elementary school environment, the child's preparation is geared toward readiness for kindergarten and later school success. (Ed. Code, § 56441.1(b).)

Prior to transitioning a child with disabilities from a preschool program to Kindergarten or first grade, as the case may be, an appropriate reassessment of the child shall be conducted to determine if the child is still in need of special education and services. (Ed. Code, § 56445.)

As part of the transitioning process, the IEP Team shall identify a means of monitoring continued success of children of kindergarten or first grade equivalency who are determined to be eligible for less intensive special education programs. (Ed. Code, § 56445(c).)

As part of the exit process from special education, the IEP Team shall note the child's present levels of performance and learning style. This information shall be made available to the assigned regular education teacher upon the child's enrollment in kindergarten or first grade, as the case may be. (Ed. Code, § 56445(d).)

## **Chapter 6**

### **Removals: Suspension and Expulsion**

#### **6.1. Purpose and Scope**

A student identified as an individual with disabilities pursuant to the IDEA and related state law is subject to the same grounds for suspension and expulsion that apply to students without disabilities as long as specific legal protections and procedures applicable to students with disabilities are implemented. (34 C.F.R. § 300.530; Ed. Code, § 48915.5.)

The removal (including suspensions and expulsion) of students with disabilities from the current educational placement may require that special education and related services continue to be provided in order for the student to participate in the general curriculum and make progress on IEP goals; moreover, under certain circumstances, a functional behavioral assessment (FBA) may need to be conducted, a behavioral intervention plan (BIP) be developed or modified, and an interim alternative education setting (IAES) be provided. When considering removing, including suspending or expelling, a disabled student, the District must follow specific procedural safeguards.

#### **6.2 Removals Including Suspension and Expulsion**

The California Education Code provides that the superintendent or designee may suspend any student for up to five (5) consecutive school days for a single incident of misconduct and up to 20 (twenty) school days in a school year. An additional ten (10) days is allowed for reassignment for purposes of readjustment. (Ed. Code §§ 48903(a) and 48911(a).) Further, students may be expelled for violating certain codes of student conduct. However, special considerations must be made when removing, including suspending or expelling, a special education student from the student's current educational placement as a result of a violation of a code of student conduct. When removing special education students for more than ten (10) days in a school year, an examination must be made as to whether the removal constitutes a change in placement because a change in placement triggers a manifestation determination meeting and other protections.

A change in placement occurs if, in one school year:

- (A) The removal is for more than ten (10) consecutive days;
- (B) The student has had a series of removals that constitutes a pattern, defined as (i) a series of removals totaling more than ten (10) school days, (ii) the behavior is substantially similar to the previous incidents that resulted in the series of removals, and (iii) because of such additional factors 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.

The District determines on a case-by-case basis whether a pattern of removals constitutes a change in placement. (34 C.F.R. § 300.536(b).)

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If the removal constitutes a change in placement, then within ten (10) school days of the decision to change the placement, a manifestation determination must be held.

The principal or designee shall monitor the number of days, including portions of days, that students with IEPs have been removed from the student's educational placement due to a violation of a code of student conduct during the school year.

### **6.3. Services during Removals**

- (A) For students who are removed from their current educational placement for more than ten (10) school days in a school year because the behavior has been determined not to be a manifestation of the student's disability or because the student has been removed to an IAES, the student shall continue to receive educational services to enable the student to participate in the general curriculum, although in a different setting, and to progress toward meeting the goals in his or her IEP. (34 C.F.R. § 300.530(d)(1).) The student's IEP Team determines the appropriate services to enable the student to participate in the general curriculum and to make progress toward the IEP goals. (34 C.F.R. § 300.530(d)(5).) The educational services are not necessarily the same as those in the IEP nor do they have to be the same.
- (B) The District shall provide services during removals of ten (10) school days or less only if the District provides services to students without disabilities who are similarly removed. (34 C.F.R. § 300.530(d)(3).)
- (C) After a student has been removed from his or her current placement for ten (10) school days in the same school year, if the current removal is for not more than ten (10) consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. (34 C.F.R. § 300.530(d)(4).)

### **6.4. Transportation during Suspension**

If a student with a disability is excluded from transportation, the student is entitled to be provided with an alternative form of transportation at no cost to the student or parent/guardian, provided that transportation is specified on the IEP. (Ed. Code, § 48915.5(c).)

### **6.5. Procedural Safeguards**

On the date on which the decision is made to make a removal that constitutes a change in placement because of a violation of a code of student conduct, the District will notify the parents of that decision and provide the parents with their procedural safeguards. (34 C.F.R. § 300.530(h).)



## 6.6. Manifestation Determination

Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, a manifestation determination meeting will be held. Participants in the meeting are the District, the parent, and relevant members of the IEP Team (as determined by the parent and the District) who shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- (1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (2) If the conduct in question was the direct result of the District's failure to implement the IEP.

(34 C.F.R. § 300.530(e).)

The District may opt to have all IEP team members present for this meeting.

If the student is a foster child as defined in Education Code section 48853.5 and the District has proposed a change in placement due to an action for which a decision to recommend expulsion is at the discretion of the principal or District Superintendent, then the attorney for the student and an appropriate representative of the county child welfare agency shall be invited to the manifestation determination meeting. (Ed. Code, § 48915.5(d).)

If the student is a homeless child or youth as defined by Title 42 of the United States Code section 11434a (2) and the District has proposed a change in placement due to an action for which a decision to recommend expulsion is at the discretion of the principal or District Superintendent, then the liaison for homeless children and youth shall be invited to the manifestation determination meeting. (Ed. Code, § 48915.5(e).)

If the manifestation team determines that either (1) or (2) is applicable to the student, the conduct shall be determined to be a manifestation of the student's disability. (34 C.F.R. § 300.530(e).) If the team determines that the student's IEP was not implemented, DISTRICT must take immediate steps to remedy the deficiencies. (34 C.F.R. § 300.530(e).)

If the manifestation team determines that neither (1) nor (2) applies, then the student can be disciplined in the same manner and for the same duration as is his or her non-disabled peers. (34 C.F.R. § 300.530(c).) If parents disagree with the decision regarding the manifestation determination, the parents have the right to file for a request for an expedited due process hearing with the Office of Administrative Hearings for review by an Administrative Law Judge (ALJ). (34 C.F.R. § 300.532.)

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**(A) Determination that Behavior is a Manifestation of the Disability**

- (1) In determining that the behavior was a manifestation of the student's disability, the IEP Team must either:
  - (a) Conduct a functional behavioral assessment (FBA), unless an FBA had been conducted prior to the behavior that gave rise to the change in placement, and implement a behavioral intervention plan; or
  - (b) In the situation where a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and
- (2) Except under special circumstances described below, return the student to the placement from which the student was removed unless the parent and the District agree to a change of placement as part of the modification of the behavioral intervention plan.

(34 C.F.R. § 530 (f).)

**(B) Determination that Behavior is NOT a Manifestation of the Disability**

If the manifestation team determines that the behavior was not a manifestation of the student's disability:

- (1) The student can be disciplined in the same manner and for the same duration as is his or her non-disabled peers. (34 C.F.R. § 300.530(c).)
- (2) The student shall continue to receive educational services to enable the student to participate in the general curriculum, although in a different setting, and to progress toward meeting the goals in his or her IEP. (34 C.F.R. § 300.530(d)(1).) The student's IEP Team determines the appropriate services to enable the student to participate in the general curriculum and to make progress toward the IEP goals. (34 C.F.R. § 300.530(d)(5).) The educational services are not necessarily the same as those in the IEP nor do they have to be the same.
- (3) If appropriate, the student must receive a functional behavioral assessment and behavioral intervention services and/or modifications that are designed to address the behavior so that it does not recur. (34 C.F.R. § 530 (d)(1).)

**6.7. 45–School Day Removal to Interim Alternative Education Setting (IAES) (Special Circumstances)**

School personnel may remove a student to an interim alternative educational setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability (but a manifestation determination meeting must be held), in cases where a student:

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- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the District;
- (2) 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 the District; or
- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state or the District. (34 C.F.R. § 300.530(g).)
- (4) The IAES shall be determined by the IEP Team. (34 C.F.R. § 300.531.)

Definitions:

"Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

"Illegal drug" means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal law.

"Weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length. (18 U.S.C. § 930(g).)

"Serious bodily injury" means bodily injury which involves:

- (a) A substantial risk of death;
- (b) Extreme physical pain;
- (c) Protracted and obvious disfigurement; or
- (d) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18 U.S.C. § 1365(h)(3).)

(34 C.F.R. § 300.530(i).)

**6.8. Services during 45–School Day IAES Placement**

A student who is removed from his or her current placement to a 45-school day IAES placement must:

- (1) Continue to receive educational services to enable the student to participate in the general curriculum, although in a different setting, and to progress toward meeting

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the goals in his or her IEP. (34 C.F.R. § 300.530(d)(1).) The student’s IEP Team determines the appropriate services to enable the student to participate in the general curriculum and to make progress toward the IEP goals. (34 C.F.R. § 300.530(d)(5).) The educational services are not necessarily the same as those in the IEP nor do they have to be the same.

- (2) Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and/or modifications that are designed to address the behavior so that it does not recur.

### **6.9. Disciplinary Appeal Process**

If the parents disagree with any decision regarding a disciplinary placement or manifestation determination, they may request an expedited due process hearing with the Office of Administrative Hearings for review by an ALJ. (34 C.F.R. § 300.532.) If the District believes that maintaining the current placement is substantially likely to result in injury to the child or to others, the District also may request an expedited due process hearing. (34 C.F.R. § 300.532.)

### **6.10. Placement during Appeal Process**

When an appeal has been requested by the parent, the student shall remain in the IAES pending the decision of the administrative law judge (ALJ) or until the expiration of the 45-day school day placement, whichever occurs first, unless the parent or the District agree otherwise.

### **6.11. Expedited Hearing**

In cases where a challenge to a disciplinary decision is being made, an expedited hearing shall occur within 20 school days of the date the complaint requesting the hearing is filed, and shall result in a determination within 10 school days after the hearing. (34 C.F.R. § 300.532(c)(2).)

### **6.12. Authority of Administrative Law Judge (ALJ)**

The ALJ shall hear and make a determination regarding an appeal request. In making the determination, the ALJ may:

- (1) Return the student to the placement from which he/she was removed if the removal violated 34 C.F.R. section 300.530 or if the student’s behavior was a manifestation of his or disability; or
- (2) Order a change in placement of the student to an appropriate interim alternative educational setting for not more than 45 school days, if the current placement of the student is substantially likely to result in injury to self or to others.

(34 C.F.R. § 300.532(b).)

### **6.13. Protections for Children Not Yet Eligible for Special Education and Related Services**

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct may assert any of the protections provided under IDEA if the District had knowledge (“basis of knowledge”) that the student had a disability before the behavior that precipitated the disciplinary action occurred. (34 C.F.R. § 300.534(a).)

#### **(A) Basis of Knowledge**

DISTRICT shall be deemed to have knowledge that a child is a child with a disability if before the behavior precipitating the disciplinary action occurred:

- (1) The parent of the child had expressed concern in writing to District supervisory or administrative personnel, or to a teacher of the child, that the child was in need of special education and related services;
- (2) The parent of the child had requested an evaluation of the child for special education; and/or
- (3) The teacher of the child, or other District personnel, had expressed specific concerns about a pattern of behavior demonstrated by the child directly to the District's director of special education or to other supervisory personnel of the District.

(34 C.F.R. § 300.534(b).)

#### **(B) Exception**

The District shall not have been deemed to have knowledge that the child is a child with a disability if:

- (1) The parent of the child has not allowed an evaluation of the child, or has refused services if the child has been evaluated and it was determined that the child was not a child with a disability; or
- (2) The child has been evaluated and determined not to be a child with a disability.

(34 C.F.R. § 300.534(c).)

### **6.14. Conditions that Apply if No Basis of Knowledge**

If the District does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities, who engage in comparable behaviors. (34 C.F.R. § 300.534(d)(1).)

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If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the District and information provided by the parents, the District shall provide special education and related services.

Pending the results of the evaluation, the child shall remain in the educational placement determined by authorities, which can include suspension or expulsion without educational services. (34 C.F.R. § 300.534(d)(2)).

## **Chapter 7**

### **Identification and Assessment of English Learners**

#### **7.1. Purpose and Scope**

This chapter was developed to provide the District staff members with a concise, practical, and sequential approach to the identification, assessment, and programs for students with disabilities who are English learners (EL). When determining whether an EL student may have a disability that requires special education and related services, extreme care must be taken to avoid the over-identification of EL students as having a disability when their deficits are caused primarily by challenges associated with learning a second language, as well as the exclusion of English learners who may have a disability notwithstanding the natural processes of acquiring a second language. With this in mind, three specific challenges are presented to educators:

- (1) To utilize appropriate assessment tools and procedures
- (2) To provide services in the least restrictive environment.
- (3) To incorporate language and culture into a special education curriculum.

#### **7.2. Identification and Referral of English Learners Suspected of Having a Disability**

Procedures for identification and referral for assessment for special education and related services for all students are described in Chapter 1.

In addition, all English learners must be properly identified, and the primary language of each new student shall be determined upon enrollment. (Ed. Code, § 52164.1.) Identification includes the completion of the state-mandated Home Language Survey (HLS), a form administered by the District to be completed by the parent or guardian at the time of first enrollment in a California public school, indicating language use in the home. (5 Cal. Code Regs. § 11510(k).)

#### **7.3. Special Considerations for EL Students Prior to Referral**

Unless the student has a severe disability, including, but not limited to, severe vision and hearing impairments, severe physical impairment, intellectual disability, severe autism, or severe health impairment, the student should be allowed sufficient time to acquire English proficiency and receive appropriate academic instruction in English language arts and math. It is critical to differentiate between a student who is not achieving in the classroom because English is not his/her primary language and a student who is not achieving due to a disability.

Following are some relevant sections of state and federal laws that are particularly important in determining eligibility for special education instruction and services:

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A pupil shall be referred for special education instruction and services only after the resources of the regular education program have been considered, and where appropriate, utilized.” (Ed. Code, § 56303.)

The normal process of second language acquisition, as well as manifestations of dialect and sociolinguistic variance shall not be diagnosed as a disabling condition. (5 Cal. Code Regs. § 3023(b).)

A student shall not be made eligible for special education solely because the student manifests the challenges associated with learning a second language.

A child must not be determined to be eligible a child with a disability (1) if the determinant factor for that determination is . . . limited English proficiency . . . and (2) the child does not otherwise meet the eligibility criteria under 300.8(a). (34 C.F.R. § 300.306(b); Ed. Code, § 56329(a)(2).)

#### **7.4. Assessment of English Proficiency**

##### Initial Assessments

Any student whose primary language is other than English as determined by the home language survey and who has not previously been identified as an English learner by a California public school or for whom there is no record of results from an administration of an English language proficiency test, shall be assessed for English language proficiency with the English Language Proficiency Assessments for California (ELPAC) within 30 (thirty) calendar days after the date of first enrollment in a California public school, or within 60 (sixty) calendar days before the date of first enrollment, but not before July 1 of that school year. (5 Cal. Code Regs. § 11511 (a).)

##### Annual Assessments

Districts reporting the presence of English learners shall conduct an annual assessment of the English language development and academic progress of those students. (5 Cal. Code Regs. § 11306.)

The English language proficiency of all currently enrolled English learners shall be assessed by administering the ELPAC during the annual assessment window, which begins on July 1 and ends on October 31 of each school year. (5 Cal. Code Regs. §§11511(b), 11510(e).)

For each student assessed using the ELPAC, the District shall notify parents or guardians of the student’s results within 30 calendar days following receipt of results of testing from the test contractor. The notification shall comply with the requirements of Education Code section 48985.

(5 Cal. Code Regs. § 11511.5.)



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Test Variations

A “variation” is a change in the manner in which the ELPAC is presented or administered, or in how the student is allowed to respond, and includes, but is not limited to, accommodations and modifications. (5 Cal. Code Regs. § 11510(x).)

The District may provide all students with the following variations:

- (1) Test directions that are simplified or clarified in English for the reading and writing sections;
- (2) Sufficient time to complete the test as provided in the directions for test administration.

(5 Cal. Code Regs. § 11516(a).)

The District may provide all students the following variations if regularly used in the classroom:

- (1) Special or adaptive furniture;
- (2) Special lighting or acoustics, visual magnifying, or audio amplification equipment;
- (3) An individual carrel or study enclosure;
- (4) Covered overlay, masks, or other means to maintain visual attention to the test consistent with contractor's test directions;
- (5) Testing of an individual student in a separate room provided that the student is directly supervised by an employee of the District who has signed the Test Security Affidavit; and
- (6) Manually Coded English or American Sign Language to present directions for administration (does not apply to test questions).

(5 Cal. Code Regs. § 11516(b).)

Test Accommodations:

An “accommodation” is any variation in the assessment environment or process that does not fundamentally alter what the test measures or affect the comparability of scores. “Accommodations” may include variations in scheduling, setting, aids, equipment, and presentation format. (5 Cal. Code Regs. § 11510(a).)

Students with disabilities shall be permitted to take the ELPAC with the accommodations listed below if specified in the student's IEP or Section 504 plan for use on the test, standardized testing, or for use during classroom instruction and assessments.

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Presentation accommodations:

- (1) Braille transcriptions provided by the test contractor;
- (2) Large print versions reformatted from regular print version;
- (3) Test items enlarged through electronic means;
- (4) Audio or oral presentation of questions or items for the writing section;
- (5) Use of Manually Coded English or American Sign Language to present test questions for the writing section;
- (6) Test over more than one day for a test or test part to be administered in a single setting;
- (7) Supervised breaks within a section of the test; and
- (8) Administration of the test at the most beneficial time of day to the student.

Response accommodations:

- (1) For grades 3-12, listening, reading and writing sections, student marks responses in test booklet and the responses are transferred to the answer document by a District employee who has signed the Test Security Affidavit;
- (2) For grades 2-12, listening, reading and writing sections, responses dictated to a scribe for selected response items or multiple-choice items;
- (3) For kindergarten and grades 1-12, speaking section, responses dictated to a scribe for selected response items or multiple-choice items;
- (4) For the writing section, responses dictated to a scribe, audio recorder or speech to text converter, and the student indicates all spelling and language conventions; and
- (5) For the writing section, use of word processing software with the spell and grammar check tools turned off.
- (6) For the writing section, use of an assistive device that does not interfere with the independent work of the student.
- (7) Setting accommodations include testing at home or in a hospital by a test examiner.

(5 Cal. Code Regs. § 11516.5.)

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Test Modifications

A “modification” is any variation in the assessment environment or process that fundamentally alters what the test measures or affects the comparability of scores. (5 Cal. Code Regs. § 11510(m).) Students with disabilities shall be permitted to take the ELPAC with the following modifications if specified in the student's IEP for use on the test, standardized testing, or for use during classroom instruction and assessments. These are modifications because they fundamentally alter what the examination measures or affect the comparability scores.

Modifications include but are not limited to the following procedures:

- (1) For the reading section, questions or items read aloud to the student or audio presentation;
- (2) For the listening/speaking and reading section, use of Manually Coded English or American Sign Language to present test questions;
- (3) For the writing section, essay responses dictated orally, in Manually Coded English, or in American Sign Language to a scribe, audio recorder, or speech to test converter (scribe provides spelling, grammar, and language conventions);
- (4) Use of a dictionary;
- (5) For the writing section, use of word processing software with spell and grammar check tools enabled on the essay responses;
- (6) For the writing section, use of an assistive device that interferes with the independent work of the student, including mechanical or electronic devices that are not used solely to record the student's responses, including but not limited to transcribers, scribes, voice recognition or voice to text software, and that identify a potential error in the pupil's response or that correct spelling, grammar, or conventions.
- (7) A student who takes the test with one or more modifications shall receive a scored marked “not valid” for the sections of the test on which modifications were used accompanied by the notation that a score marked “not valid” was obtained through use of alternate procedures which may affect the validity of the test.

(5 Cal. Code Regs. § 11516.6.)

Alternate Assessments

An “alternate assessment” is an alternate means to measure the English language proficiency of students with disabilities whose IEP Team has determined that they are

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unable to participate in the ELPAC even with accommodations, variations, or modifications. (5 Cal. Code Regs. § 11510(c).)

Students with disabilities who are unable to participate in the entire ELPAC or a section of the test with variations, accommodations or modifications shall be administered alternate assessments for English language proficiency as set forth in the student's IEP. Students who participate in the Test Program using alternate assessment procedures shall receive a score marked not valid for the sections of the test in which alternate assessments were administered. (5 Cal. Code Regs. § 11516.7.)

Approval for Additional Variations, Accommodations, or Modifications

If the District proposes the use of a variation, accommodation, or modification on the ELPAC not specified above, the District may submit a request to the California Department of Education for review and approval. (5 Cal. Code Regs. §§ 11516(c), 11516.5(f), and 11516.6(d).)

**7.5. Assessments to Determine Eligibility for Special Education**

If, after regular education interventions and programmatic changes have occurred, where appropriate, a student continues to display signs of a possible disability, the student should be referred for a special education assessment. Special assessment requirements for students whose primary language is other than English are included in this section.

**(A) Assessment Requirements**

Assessment requirements important to English learners include the following:

- (1) Assessments of students of limited English proficiency shall be administered in the child's native language or mode of communication, unless clearly not feasible to do so. (Ed. Code, §§ 56001(j), 56320(a).)
- (2) Assessments shall be administered by qualified personnel who are competent in both the oral or sign language skills and written skills of the individual's primary language or mode of communication and have a knowledge and understanding of the cultural and ethnic background of the student. If it clearly is not feasible to do so, an interpreter must be used, and the assessment report shall document this condition and note that the validity may have been affected. (5 Cal. Code Regs., § 3023.)
- (3) Materials shall be selected and administered so as not to be racially, culturally or sexually discriminatory. (Ed. Code, §§ 56001(j), 56320(a).)
- (4) Tests and other assessment materials shall be provided and administered in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so. (Ed. Code, § 56320(b)(1).)

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- (5) A variety of assessment tools and strategies will be used to gather relevant functional and developmental information, including information provided by the parent. (Ed. Code, § 56320.)
- (6) No single procedure is used as the sole criterion for determining an appropriate educational program for an individual child. (Ed. Code, §§ 56001(j), 56320(e).)

Assessment team members may include, but are not limited to:

- (1) School psychologist.
- (2) Speech/language pathologist.
- (3) Regular education teacher(s).
- (4) Special education specialist.
- (5) School nurse.
- (6) Bilingual specialist.
- (7) Principal/vice principal/counselor.
- (8) Parent and student (where appropriate) (for input, completion of rating scales, etc., but not to dictate the assessment process or participate in drafting the assessment report).

**(B) Procedures for Gathering Information about EL Students**

It is necessary to review existing procedures and their applicability for appropriate identification and instructional planning. Appropriate standardized tests are often not available in all languages. A broader variety of methods are necessary to determine if the referred EL student is, in fact, an individual with a disability.

Following is a brief overview of four assessment procedures.

Norm-Referenced Tests. The norm-referenced test measures an individual's performance in relation to others on the same instrument. Key words often associated with this type of testing include: reliability, validity, and standardization. It is critically important that the student being tested comes from a background (e.g., language, socioeconomic status) similar to that of the students on which the norms were derived. This often is the case with English learners.

Criterion-Referenced Tests. The criterion-referenced test breaks down an area and measures what a student can do on each task in that area. No comparison of one student's performance with the performance of the group can be made. This type of testing gives yes/no answers to instructional questions (e.g., can the student tell

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time by the ½ hour?). With this information, curricular suggestions can be made leading to specific goals and objectives.

Systematic Observation. This alternative assessment encourages the direct study of the referred student in a wide variety of settings. In systematic observation, one selects a specific behavior to observe, selects an appropriate measuring technique, depicts what is seen in the observation, and makes interpretations. Since the student is in his/her natural environment, it is possible to obtain a better picture of what the student is actually doing while using his/her own peer group as a backdrop. Indeed, observation in of the student in an appropriate setting is a required element of any assessment. (Ed. Code, § 56327(c).) However, care must be taken to minimize the impact that the presence of an observer may have on the environment which could affect the validity of the observed behavior.

Structured Interview. This alternative assessment technique provides for a broad range of information collection. It is designed to incorporate the expectations and concerns of all those who are associated with the referral. Additionally, interview-based assessments allows for the funneling of information and expectations into the formal assessment system.

**(C) Additional Assessment Guidelines.**

Following are additional guidelines to consider when assessing a student with limited English proficiency:

- (1) Assess language dominance at time of referral or evaluation by regular education personnel.
- (2) Whenever possible use two language dominance tests to establish functioning information.
- (3) Assess using non-language measures (e.g., performance).
- (4) Use a trained interpreter whenever needed.
- (5) Assess achievement in both primary language and English.
- (6) Do not accept scores on translations of tests as valid; use other, non-biased or non-test-based measures to support the scores. (Document!)
- (7) Assess adaptive behavior, being mindful of different cultural norms.
- (8) When considering the presence of a language disability, consider whether primary language is deficient when compared to peers and school population. Is language generally depressed (common in low socioeconomic populations) or are there significant peaks and valleys? Is there evidence of a true language disability?

## 7.6. Record Keeping

The District shall maintain a record of all students who participate in each administration of the ELPAC. This record shall include the following information for each administration:

- (1) The name of each student who took the test.
- (2) The grade level of each student who took the test.
- (3) The date on which the administration of the test was completed for each student.
- (4) The test results obtained for each student.(5 Cal. Code Regs. §§ 11512(a)(1)-(4).)

The District shall enter in each student’s record the following information for each administration of the test:

- (1) The date on which the administration of the test was completed
- (2) The student’s test results.

(5 Cal. Code Regs. § 11512(b)(1)-(2).)

The record required above shall be created and the information it must contain shall be entered in each student’s record prior to the subsequent administration of the test. (5 Cal. Code Regs. § 11512(c).)

Whenever a student transfers from one school district to another, the student’s ELPAC records including the information required above shall be transferred by the sending district within 20 calendar days upon a request from the receiving district where the student is now enrolled. (5 Cal. Code Regs. § 11512(d).)

## 7.7. Student Study Team (SST)

The Student Study Team (SST) is designed to offer immediate assistance and suggestions for teachers, parents and support staff for an individual student who is not making progress or exhibiting various types of problems in the classroom and/or school.

Through effective utilization of this team, many identification errors can be avoided. The SST serves as a group of professionals and parents who will discuss student strengths, problems, and possible interventions.

### Suggested Members of an SST for an EL Student

Members of the team may include the following, depending on the circumstances:

- (1) Regular education teacher.
- (2) Bilingual personnel.

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- (3) Principal or administrator.
- (4) Parent.
- (5) Special education specialist.
- (6) School psychologist.
- (7) School nurse.
- (8) Counselor or specialist.
- (9) Speech/language pathologist.
- (10) Interpreters (as needed).
- (11) Student (as appropriate).
- (12) Others.

SST Responsibilities

Referrals for special education assessment may be processed through the SST. A parent can request that a special education assessment be conducted. If a parent request for a special education assessment is processed through an SST, then the SST will:

- (1) Meet within 15 calendars days of receipt of the referral;
- (2) Review the student’s strengths, concerns, prior interventions and modifications that have been considered, and/or utilized; and
- (3) Decide within that same 15-day period whether to provide parents with an assessment plan.

The results of the interventions will be documented. A plan will be developed, listing additional interventions, and the individuals responsible for implementing them, with a follow-up date to review the student’s progress. Interventions should not delay assessment of a student whom the District suspects might have a disability.

If an assessment plan is not developed as a result of the SST to assess the student for special education eligibility, then the District shall:

- (1) Provide written notice to the parents of the student of the denial of the request for an assessment, in accordance with title 34, Code of Federal Rules, Part 300.503 (Prior Written Notice), which shall include a copy of Procedural Safeguards, or
- (2) Document in writing the parents’ withdrawal of their request for the special education assessment.



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When a student who is an English learner is referred to the school site’s SST, the first step is to gather information regarding the specific difficulty the student is experiencing. The second step is to look at why the student is having this difficulty. When gathering information about the specific difficulty an English learner is experiencing, staff may have a tendency to describe general performance behaviors, such as, “The student is not making progress,” “The student is below grade level,” or “The student is having problems reading,” etc. Statements such as these do not describe the specific difficulty that has been observed, which then makes it difficult to design appropriate interventions. In addition, not knowing the specific difficulty an English learner is experiencing makes it a challenge to determine if the perceived weakness is due to extrinsic factors (e.g., inappropriate instruction, normal process of second language acquisition, lack of formal education, etc.) or a possible intrinsic factor (such as a learning disability, language disorder, etc.).

When describing the specific difficulty that the English learner is experiencing, staff needs to use descriptors that are measurable and observable. In addition, data needs to be collected about the identified difficulty across different contexts (such as different subject areas), in different environments (such as home and school), and in both the primary language and English.

After identifying what specific difficulty the student is experiencing, the SST needs to find out why the student is having this difficulty. If an English learner is experiencing difficulties only in English, but not in the primary language, then the problem could be due to extrinsic factors rather than an intrinsic disability.

### **7.8. Program Options**

All students in need of special education and related services, including students identified as English learners, are to be served under the IDEA and related California law.

*(Please refer to Chapter 3 of this Procedural Handbook regarding programming and related services options.)*

### **7.9. IEP Development for English Learners with Disabilities**

IEP Teams should ensure that:

- (1) IEPs include linguistically appropriate goals, objectives, programs, and services (Ed. Code, § 56345(b)(2));
- (2) Necessary documentation and translation services are provided to parents as needed and as required by law; and
- (3) Teachers providing the students the District’s core curriculum are appropriately certified.

Other requirements include:

- (1) Qualified teachers.

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- (2) Sufficient and appropriate basic and supplemental resources to ensure access to the District's core curriculum.
  - (3) When required, translation of parent notifications/documents, including IEP parent rights to inform and involve parents of EL students, and translation services as required by state and federal laws.
  - (4) Opportunities for parents to become members of the District and/or school advisory committees.
- (A) Linguistically Appropriate Goals, Objectives, and Programs**

"Linguistically appropriate goals, objectives, and programs" mean:

- those activities which lead to the development of English language proficiency;
- those instructional systems, either at the elementary or secondary level, which meet the language development needs of the English language learner.

For individuals whose primary language is other than English, and whose potential for learning a second language, as determined by the IEP Team, is severely limited, the Team may determine that instruction may be provided through an alternative program pursuant to a waiver under Education Code section 311(c) provided that the IEP Team periodically, but not less than annually, reconsider the individual's ability to receive instruction in the English language.

(5 Cal. Code Regs. § 3001(m).)

The CDE has developed and revised the California English Language Development Standards (November 2012). These standards have been aligned to the California Common Core State Standards for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects.

Linguistically-appropriate goals should align to these standards.

The California English Language Development Standards are available for downloading at [www.cde.ca.gov](http://www.cde.ca.gov).

The CDE EL Standards Book further clarifies that "students who enter California schools in those grade levels not literate in their primary language need to be taught the ELD literacy standards for earlier grade levels, including those standards related to phonemic awareness, concepts of print and decoding skills."

**(B) IEP Accommodations and Modifications**

The IEP should include appropriate accommodations and/or modifications that may be needed to assist the student who is an English learner to be successful in a regular education setting.

Examples of accommodations that may be appropriate to consider for students learning English may be, but are not limited to, the following:

- (1) Primary language support to assist with academics,
- (2) Translation devices,
- (3) Extra time on tests and assignments,
- (4) Use of reference materials with visuals to aide comprehension,
- (5) Bilingual dictionary if applicable to second language.

Examples of modifications that may be appropriate to consider for students learning English may be, but are not limited to, the following:

- (1) Tests provided or adapted to be more “comprehensible,”
- (2) Tests and assignments modified in length and content,
- (3) Alternative testing formats such as use of visuals, drawings, etc.

The IEP Team decides, based on the EL student's needs, what accommodations and/or modifications, if any, are necessary; these should be included in the student's IEP. Modifications may prevent a student from graduating with a regular high school diploma.

## **Chapter 8**

### **Parental Rights and Procedural Safeguards**

#### **8.1. Purpose and Scope**

Students with disabilities, and their parents, are afforded rights and procedural safeguards to ensure that all individuals with disabilities are provided a free and appropriate public education (FAPE).

Parents can obtain assistance in understanding their rights and procedural safeguards from the SELPA Administrator, the Special Education Director, and/or the California Department of Education.

#### **8.2. The Notice of Procedural Safeguards**

Parents shall be given a copy of their rights and procedural safeguards only one time a school year, with the exception that a copy also shall be given to the parents:

- (1) Upon initial referral or parental request for assessment;
- (2) Upon receipt of the first state complaint in a school year;
- (3) Upon receipt of the first due process hearing request in a school year;
- (4) When a decision is made to make a removal that constitutes a change of placement of an individual with exceptional needs because of a violation of a code of student conduct; or
- (5) Upon request by a parent.
- (6) Accompanying prior written notice letters.
- (7) Accompanying assessment plans.

(34 C.F.R. § 300.504; Ed. Code, §§ 56301(d)(2), 56321(a), and 56500.4(a), (b)(4).)

The parents/guardians of a student with a disability shall be provided written notice of their rights in language easily understood by the general public and in their native language or other mode of communication used by them, unless to do so is clearly not feasible. (Ed. Code, §§ 56341, 56506; 34 C.F.R. §§ 300.503, 300.504)

If the native language of other mode of communication of the parent is not a written language, the District shall take steps to ensure that the notice is translated orally or by other means in the parent's native language or other mode of communication and that the parent understands the contents of the notice. (34 C.F.R. § 300.503)

### **8.3. Parental Rights and Procedural Safeguards**

The Parental Rights and Procedural Safeguards for Special Education is attached at the end of this chapter as Appendix A.

### **8.4. Transfer of Parental Rights at Age of Majority**

When a student with a disability reaches 18 years of age (unless determined to be incompetent by appropriate authorities), the District must provide any required notices to both the student and the parents. All educational rights transfer to the student at the age of majority, and the District must notify the student and the parent of this transfer of rights. (Ed. Code., § 56041.5.)

The District must notify the student and the parents of this transfer at least one year prior to the student's 18th birthday. (Ed. Code, § 56045(g).)

If a student with a disability has reached age 18 and has not been determined to be incompetent, but is determined not to have the ability to provide informed consent, the District shall follow the state procedures for appointing an appropriate individual to represent the educational interests of the child. (34 C.F.R. § 300.520 (b).)

### **8.5. Parent Revocation of Consent**

Parents have the right to revoke consent for their child's receipt of special education and related services, and the District may not challenge the decision through mediation or due process. (34 C.F.R. § 300.300(b)(4)(ii); Ed. Code, § 56346 (d)(1).) However, if the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the District is not required to amend the child's education records to remove references to the child's receipt of special education and related services because of the revocation of consent. (34 C.F.R. § 300.9(c)(3).) Also, if parents revoke consent for special education, the District will not be considered to be in violation of its obligation to provide FAPE to the child during the period of time when the parents refuse to consent to services (34 C.F.R. § 300.300(b)(4)(iii)), and is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of services. (34 C.F.R. § 300.300(b)(4)(iv).)

CDE officials emphasize that when parents revoke consent for special education and related services, they must do so in writing, and although school officials cannot delay in ceasing to provide special education and related services to the child, they must provide the parent with prior written notice (and a copy of procedural safeguards) prior to stopping services.

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**8.6 Parent Access and Classroom Visits**

Under state law, parents have a right, within a reasonable period of time following their request, to observe the classroom or classrooms in which their child is enrolled. (Ed. Code, § 51101(a)(2); Board Policy/Administrative Regulation 1250.)

The District is committed to protecting student privacy and confidentiality rights. All students, including special education students, have a legally-protected expectation and right to privacy and confidentiality regarding any personal identifiable information about them, especially information contained in their confidential files and other student records. This includes all information in assessment reports, IEPs, meeting notes etc., and anything that is considered part of the student record. This information may be shared only with other educational staff on a “need to know” basis. The fact that a student is receiving special education, implementation of the IEP, Behavior Support Plan, etc. is all confidential information. Parents have an absolute right to access the education records of their child. (Ed. Code, § 49069.7.) *(For more information on student records and confidentiality, see Chapter 11 of this Procedural Handbook.)*

Due to the nature of special education programs and services and our special education students’ rights to privacy and confidentiality (34 C.F.R. 300.610-.627, Ed. Code, § 56515 and Family Educational Right and Privacy Act (“FERPA”) (20 U.S.C. 1232g and 34 C.F.R. Part 99)), Clovis USD SELPA has established the following procedures for visitations, observations, and volunteering in special education programs and services.

**(A) Visitations and observations of programs and services shall be considered under the following circumstances:**

- (1) Parent wishes to observe a program recommended by their child’s IEP team.
- (2) Parent has requested to observe their child in his/her current special education program and/or service(s).
- (3) Parent has requested that a representative, private consultant or agency observe their child in current programs.

**(B) Parameters for parents and others during visitations/observations:**

- (1) Program specialist shall coordinate all parent visitations/observations to programs.
- (2) Program specialist or designee shall accompany parent(s)/other(s) during visitations/observations.
- (3) Program specialist should request and receive a release of information from parent for private consultant/agency to observe prior to visitation.

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- (4) Program specialist and teacher will agree on and provide possible dates for visitation/observation.
- (5) Parents/others may visit for up to 30 minutes unless other arrangements have been made in advance.
- (6) Parents/others must stay in designated area during visitation/observation.
- (7) Parents/others may take notes, but may not use a camera, electronically record, or interrupt the staff or students during the visitation/observation.
- (8) Parents/others shall leave upon request by teacher if their presence is perceived to interfere with student's education needs.
- (9) Parents/others may not bring others to the visitation/observation unless previously agreed to by the program specialist and the teacher.
- (10) Visitors must comply with all applicable Board Policies and Administrative Regulations including but not limited to 1250 (School Visitors/Public Attendance at District Events), 6020 (Parent Involvement), and 1250.1 (Civility Policy).

**(C) Participation of parent or community volunteers in special education programs and services:**

- (1) Board Policy and Administrative Regulation 6020 (Parent Involvement) and 1240 (Volunteer Assistance) applies to all requests to volunteer in special education programs and services.
- (2) Special education teachers determine a need for volunteers to support their program or services.
- (3) Volunteers may assist teachers with tasks that can be done outside the classroom during the instructional day or in the classroom before or after school.
- (4) Parent volunteers may participate in field trips, other activities off campus and classroom parties when appropriate.
- (5) When volunteers are present, every effort should be made to insure students' right to privacy and confidentiality. No personal information or characteristics may be shared regarding special education students outside of the paid professional staff working with the student.

**APPENDIX A**  
**Notice of Procedural Safeguards**

**Special Education Rights of Parents and Children Under the Individuals with Disabilities Education Act, Part B, and the California Education Code.**

**October 2022**

Note: The term school district is used throughout this document to describe any public education agency responsible for providing your child’s special education program. The term assessment is used to mean evaluation or testing. Federal and state laws are cited throughout this notice using English abbreviations, which are explained in a glossary at the end of this notification.

**What is the Notice of Procedural Safeguards?**

This information provides you as parents, legal guardians, and surrogate parents of children with disabilities from 3 years of age through age 21 and students who have reached age 18, the age of majority, with an overview of your educational rights or procedural safeguards.

The Notice of Procedural Safeguards is required under the Individuals with Disabilities Education Act (IDEA) and must be provided to you:

- When you ask for a copy
- The first time your child is referred for a special education assessment
- Each time you are given an assessment plan to evaluate your child
- Upon receipt of the first state or due process complaint in a school year, and
- When the decision is made to make a removal that constitutes a change of placement

(20 *United States Code* [USC] Section 1415[d]; 34 *Code of Federal Regulations* [CFR] Section 300.504; California *Education Code* [EC] Section 56301[d] [2], EC Section 56321, and EC Section 56341.1[g] [1])

**What is the IDEA?**

IDEA is a federal law that requires school districts to provide a “free appropriate public education” (FAPE) to eligible children with disabilities. A free appropriate public education means that special education and related services are to be provided as described in an individualized education program (IEP) and under public supervision to your child at no cost to you.

**May I participate in decisions about my child’s education?**

You must be given the opportunity to participate in any decision-making meeting regarding your child’s special education program. You have the right to participate in IEP team meetings about the identification (eligibility), assessment, or educational placement of your child and other matters



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relating to your child’s FAPE. (20 *USC* Section 1414[d] [1]B–[d][1][D]; 34 *CFR* Section 300.321; *EC* Section 56341[b], and *EC* Section 56343[c])

The parent or guardian, and the local educational agency (LEA), has the right to participate in the development of the IEP and to initiate their intent to electronically audiotape the proceedings of the IEP team meetings. At least 24 hours prior to the meeting, the parent or guardian shall notify the members of the IEP team of their intent to record a meeting. If the parent or guardian does not consent to the LEA audiotape recording an IEP meeting, the meeting shall not be recorded on an audiotape recorder.

Your rights include information about the availability of FAPE, including all program options, and all available alternative programs, both public and nonpublic. (20 *USC* sections 1401[3], and 1412[a][3]; 34 *CFR* Section 300.111; *EC* sections 56301, 56341.1[g][1], and 56506)

**Where can I get more help?**

When you have a concern about your child’s education, it is important that you contact your child’s teacher or administrator to talk about your child and any problems you see. Staff in your school district or special education local plan area (SELPA) may answer questions about your child’s education, your rights, and procedural safeguards. Also, when you have a concern, this informal conversation often solves the problem and helps to maintain open communication.

You may also want to contact one of the California parent organizations such as the Family Empowerment Centers on Disability (FECs) or the Parent Training and Information Centers (PTICs) located across the state. These organizations were established to increase collaboration between parents and educators to improve the educational system and provide information, training, and additional resources for families of students and young adults with disabilities. Contact information for these organizations is found on the California Department of Education (CDE) Special Education California Parent Organizations web page at <https://www.cde.ca.gov/sp/se/qa/caprntorg.asp>.

Additional resources are listed at the end of this document to help you understand the procedural safeguards.

**What if my child is deaf, hard of hearing, blind, visually impaired, or deaf-blind?**

The State Special Schools provide services to students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind at each of its three facilities: the California Schools for the Deaf in Fremont and Riverside and at the California School for the Blind in Fremont. Residential and day school programs are offered to students from infancy to age 21 at both State Schools for the Deaf. Such programs are offered to students aged 5 through 21 at the California School for the Blind. The State Special Schools also offer assessment services and technical assistance. For more information about the State Special Schools, please visit the CDE, State Special Schools web page at <https://www.cde.ca.gov/sp/ss/index.asp>, or ask for more information from the members of your child’s IEP team.

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**Notice, Consent, Assessment, Surrogate Parent Appointment, and Access to Records**

**Prior Written Notice**

**When is a notice needed?**

This notice must be given when the school district proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child with special needs or the provision of a FAPE. (20 USC sections 1415[b][3] and (4), 1415[c][1], and 1414[b][1]; 34 CFR Section 300.503; EC sections 56329 and 56506[a])

The school district must inform you about proposed evaluations of your child in a written notice or an assessment plan within 15 days of your written request for evaluation. The notice must be understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so. (34 CFR Section 300.304; EC Section 56321)

**What will the notice tell me?**

The prior written notice must include the following:

1. A description of the actions proposed or refused by the school district
2. An explanation of why the action was proposed or refused
3. A description of each assessment procedure, record, or report the agency used as a basis for the action proposed or refused
4. A statement that parents of a child with a disability have protection under the procedural safeguards
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part
6. A description of other options that the IEP team considered and the reasons those options were rejected; and
7. A description of any other factors relevant to the action proposed or refused. (20 USC sections 1415[b][3] and [4], 1415[c][1], and 1414[b][1]; 34 CFR Section 300.503)

**Parental Consent**

**When is my approval required for assessment?**

You have the right to refer your child for special education services. You must give informed, written consent before your child's first special education assessment can proceed. The parent has at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent and must be completed and an IEP developed within 60 days of your consent.

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**When is my approval required for services?**

You must give informed, written consent before your school district can provide your child with special education and related services.

**What are the procedures when a parent does not provide consent?**

If you do not provide consent for an initial assessment or fail to respond to a request to provide the consent, the school district may pursue the initial assessment by utilizing due process procedures.

If you refuse to consent to the initiation of services, the school district must not provide special education and related services and shall not seek to provide services through due process procedures.

If you consent in writing to the special education and related services for your child but do not consent to all of the components of the IEP, those components of the program to which you have consented must be implemented without delay.

If the school district determines that the proposed special education program component to which you do not consent is necessary to provide a FAPE to your child, a due process hearing must be initiated. If a due process hearing is held, the hearing decision shall be final and binding.

In the case of reevaluations, the school district must document reasonable measures to obtain your consent. If you fail to respond, the school district may proceed with the reevaluation without your consent. (20 *USC* sections 1414[a][1][D] and 1414[c]; 34 *CFR* Section 300.300; *EC* sections 56506[e], 56321[c] and [d], and 56346).

**When may I revoke consent?**

If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

1. May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 34 *CFR* Section 300.503 before ceasing such services
2. May not use the procedures in subpart E of Part 300 34 *CFR* (including the mediation procedures under 34 *CFR* Section 300.506 or the due process procedures under 34 *CFR* Sections 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child
3. Will not be considered to be in violation of the requirement to make a FAPE available to the child because of the failure to provide the child with further special education and related services

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4. Is not required to convene an IEP team meeting or develop an IEP under 34 *CFR* sections 300.320 and 300.324 for the child for further provision of special education and related services

Please note, in accordance with 34 *CFR* Section 300.9 (c)(3), that if the parents revoke consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.

### **Surrogate Parent Appointment**

#### **What if a parent cannot be identified or located?**

School districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability 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. (20 *USC* Section 1415[b][2]; 34 *CFR* Section 300.519; *EC* Section 56050; *Government Code* Section 7579.5 and 7579.6)

### **Nondiscriminatory Assessment**

#### **How is my child assessed for special education services?**

You have the right to have your child assessed in all areas of suspected disability. Materials and procedures used for assessment and placement must not be racially, culturally, or sexually discriminatory.

Assessment materials must be provided and the test administered in your child’s native language or mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer.

No single procedure can be the sole criterion for determining eligibility and developing FAPE for your child. (20 *USC* sections 1414[b][1]–[3], 1412[a][6][B]; 34 *CFR* Section 300.304; *EC* sections 56001[j] and 56320)

### **Independent Educational Assessments**

#### **May my child be tested independently at the district’s expense?**

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for an independent educational assessment for your child from a person qualified to conduct the assessment at public expense. The school district must respond to your request for

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independent educational evaluation and provide you information about where to obtain an independent educational evaluation. If the school district disagrees that an independent evaluation is necessary, the school district must request a due process hearing to prove that its assessment was appropriate. If the district prevails, you still have the right to an independent assessment, but not a public expense. The IEP Team must consider the results from any independent assessments.

The parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

District assessment procedures allow in-class observation of students. If the school district observes your child in his or her classroom during an assessment, or if the school district would have been allowed to observe your child, an individual conducting an independent educational assessment must also be allowed to observe your child in the classroom.

If the school district proposes a new school setting for your child and an independent educational assessment is being conducted, the independent assessor must be allowed to first observe the proposed new setting. (20 *USC* sections 1415[b][1] and [d][2][A]; 34 *CFR* Section 300.502; *EC* Section 56329[b] and [c])

### **Access to Educational Records**

#### **May I examine my child's educational records?**

You have a right to inspect and review all of your child's education records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing. The school district must provide you access to records and copies, if requested, within five **business** days after the request has been made orally or in writing. (*EC* sections 49060, 56043[n], 56501[b][3], and 56504)

### **How Disputes Are Resolved**

#### **Due Process Hearing**

##### **When is a due process hearing available?**

You have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of your child or the provision of FAPE. The request for a due process hearing must be filed within two years from the date you knew or should have known about the alleged action that forms the basis of the due process complaint. (20 *USC* Section 1415[b][6]; 34 *CFR* Section 300.507; *EC* sections 56501 and 56505[l])

#### **Mediation and Alternative Dispute Resolution**

##### **May I request mediation or an alternative way to resolve the dispute?**

A request for mediation may be made either before or after a request for a due process hearing is made.

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You may ask the school district to resolve disputes through mediation or alternative dispute resolution (ADR), which is less adversarial than a due process hearing. The ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing.

**What is a pre-hearing mediation conference?**

You may seek resolution through mediation prior to filing a request for a due process hearing. The conference is an informal proceeding conducted in a non adversarial manner to resolve issues relating to the identification, assessment, or educational placement of a child or to a FAPE.

At the prehearing mediation conference, the parent or the school district may be accompanied and advised by non attorney representatives and may consult with an attorney prior to or following the conference. However, requesting or participating in a prehearing mediation conference is not a prerequisite to requesting a due process hearing.

All requests for a prehearing mediation conference shall be filed with the Superintendent of the Office of Administrative Hearings (OAH). The party initiating a prehearing mediation conference by filing a written request with the Superintendent of the OAH shall provide the other party to the mediation with a copy of the request at the same time the request is filed.

The prehearing mediation conference shall be scheduled within 15 days of receipt by the Superintendent of the OAH of the request for mediation and shall be completed within 30 days after receipt of the request for mediation unless both parties agree to extend the time. If a resolution is reached, the parties shall execute a legally binding written agreement that sets forth the resolution. All discussions during the mediation process shall be confidential. All prehearing mediation conferences shall be scheduled in a timely manner and held at a time and place reasonably convenient to the parties. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a due process hearing. (*EC* sections 56500.3 and 56503)

**Due Process Rights**

**What are my due process rights?**

You have a right to:

1. Have a fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings (20 *USC* sections 1415[f][1][A], and 1415[f][3][A]-[D]; 34 *CFR* Section 300.511; *EC* Section 56501[b][4])
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (*EC* Section 56505 [e][1])
3. Present evidence, written arguments, and oral arguments (*EC* Section 56505[e][2])

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4. Confront, cross-examine, and require witnesses to be present (*EC* Section 56505[e][3])
5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (*EC* Section 56505[e][4])
6. Have your child present at the hearing (*EC* Section 56501[c][1])
7. Have the hearing be open or closed to the public (*EC* Section 56501[c][2])
8. Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony within five (5) business days before a hearing (*EC* sections 56505[e][7] and 56043[v])
9. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing (*EC* Section 56505[e][6])
10. Have an interpreter provided (*California Code of Regulations*, Title 5 (5 *CCR*) Section 3082[d])
11. Request an extension of the hearing timeline (*EC* Section 56505[f][3])
12. Have a mediation conference at any point during the due process hearing (*EC* Section 56501[b][2]), and
13. Receive notice from the other party at least ten days prior to the hearing that the other party intends to be represented by an attorney (*EC* Section 56507[a]). (20 *USC* Section 1415[e]; 34 *CFR* sections 300.506, 300.508, 300.512 and 300.515)

### **Filing a Written Due Process Complaint**

#### **How do I request a due process hearing?**

You need to file a written request for a due process hearing. You or your representative needs to submit the following information in your request:

1. Name of the child
2. Address of the residence of the child
3. Name of the school the child is attending
4. In the case of a homeless child, available contact information for the child and the name of the school the child is attending, and
5. A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s)

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Federal and state laws require that either party filing for a due process hearing must provide a copy of the written request to the other party. (20 *USC* sections 1415[b][7], and 1415[c][2]; 34 *CFR* Section 300.508; *EC* Section 56502[c][1])

Prior to filing for a due process hearing, the school district shall be provided the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. (20 *USC* Section 1415[f][1][B]; 34 *CFR* Section 300.510)

**What does a resolution session include?**

Resolution sessions shall be convened within 15 days of receiving notice of the parents' due process hearing request. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request.

The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing issue within 30 days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement. (20 *USC* Section 1415[f][1][B]; 34 *CFR* Section 300.510)

**Does my child's placement change during the proceedings?**

The child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission of your child to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. (20 *USC* Section 1415[j]; 34 *CFR* Section 300.518; *EC* Section 56505[d])

**May the decision be appealed?**

The hearing decision is final and binding on both parties. Either party may appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. (20 *USC* sections 1415[i][2] and [3][A], and 1415[l]; 34 *CFR* Section 300.516; *EC* Section 56505[h] and [k], *EC* Section 56043[w])

**Who pays for my attorneys' fees?**

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys' fees may also be made following the conclusion of the administrative hearing, with the agreement of the parties. (20 *USC* Section 1415[i][3][B]–[G]; 34 *CFR* Section 300.517; *EC* Section 56507[b])

Fees may be reduced if any of the following conditions prevail:



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1. The court finds that you unreasonably delayed the final resolution of the controversy
2. The attorneys' hourly fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience
3. The time spent and legal services provided were excessive, or
4. Your attorney did not provide to the school district the appropriate information in the due process request notice.

Attorneys' fees will not be reduced, however, if the court finds that the State or the school district unreasonably delayed the final resolution of the action or proceeding or that there was a violation of this section of law. (20 *USC* Section 1415[i][3][B]-[G]; 34 *CFR* Section 300.517)

Attorneys' fees relating to any meeting of the IEP team may not be awarded unless an IEP team meeting is convened as a result of a due process hearing proceeding or judicial action. Attorneys' fees may also be denied if you reject a reasonable settlement offer made by the district/public agency 10 days before the hearing begins and the hearing decision is not more favorable than the offer of settlement. (20 *USC* Section 1415[i][3][B]-[G]; 34 *CFR* Section 300.517)

**To obtain more information or to file for mediation or a due process hearing, contact:**

[Office of Administrative Hearings  
Attention: Special Education Division  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833-4231  
Phone: 916-263-0880  
Fax: 916-263-0890]

The OAH can also be contacted by email using the Secure e-File Transmission (SFT) system. The SFT may be found on OAH's website at <https://www.applications.dgs.ca.gov/OAH/oahSFTWeb>

School Discipline and Placement Procedures for Students with Disabilities

**School Discipline and Alternative Interim Educational Settings**

**May my child be suspended or expelled?**

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct from his or her setting to:

- An appropriate interim alternative education setting, another setting, or suspension for not more than 10 consecutive school days
- Additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct

### **What occurs after a removal of more than 10 days?**

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to enable the child to continue to participate in the general education curriculum and progress toward meeting the goals set out in the child's IEP. Also, a child will receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.

If a child exceeds 10 days in such a placement, an IEP team meeting must be held to determine whether the child's misconduct is caused by the disability. This IEP team meeting must take place immediately, if possible, or within 10 days of the school district's decision to take this type of disciplinary action.

As a parent you will be invited to participate as a member of this IEP team. The school district may be required to develop an assessment plan to address the misconduct or, if your child has a behavior intervention plan, review and modify the plan as necessary.

### **What happens if the IEP team determines that the misconduct is not caused by the disability?**

If the IEP team concludes that the misconduct was not a manifestation of the child's disability, the school district may take disciplinary action, such as expulsion, in the same manner as it would for a child without a disability. (20 *USC* Section 1415[k][1] and [7]; 34 *CFR* Section 300.530)

If you disagree with the IEP team's decision, you may request an expedited due process hearing, which must occur within 20 school days of the date on which you requested the hearing. (20 *USC* Section 1415[k][2]; 34 *CFR* Section 300.531[c])

Regardless of the setting the school district must continue to provide FAPE for your child. Alternative educational settings must allow the child to continue to participate in the general curriculum and ensure continuation of services and modifications detailed in the IEP. (34 *CFR* Section 300.530; *EC* Section 48915.5[b])

### **Children Attending Private School**

#### **May students who are parentally placed in private schools participate in publicly funded special education programs?**

Children who are enrolled by their parents in private schools may participate in publicly funded special education programs. The school district must consult with private schools and with parents to determine the services that will be offered to private school students. Although school districts have a clear responsibility to offer FAPE to students with disabilities, those children, when placed by their parent 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* Section 1415[a][10][A]; 34 *CFR* sections 300.137 and 300.138; *EC* Section 56173)

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If a parent of an individual with exceptional needs who previously received special education and related services under the authority of the school district enrolls the child in a private elementary school or secondary school without the consent of or referral by the local educational agency, the school district is not required to provide special education if the district has made FAPE available. A court or a due process hearing officer may require the school 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 school district had not made FAPE available to the child 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* Section 1412[a][10][C]; 34 *CFR* Section 300.148; *EC* Section 56175)

**When may reimbursement be reduced or denied?**

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an assessment upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district, including stating your concerns and intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

- At the most recent IEP team meeting you attended before removing your child from the public school, or
- In writing to the school district at least 10 business days (including holidays) before removing your child from the public school. (20 *USC* Section 1412[a][10][C]; 34 *CFR* Section 300.148; *EC* Section 56176)

**When may reimbursement not be reduced or denied?**

A court or hearing officer must not reduce or deny reimbursement to you if you failed to provide written notice to the school district for any of the following reasons:

- The school prevented you from providing notice
- You had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of the requirement to notify the district
- Providing notice would likely have resulted in physical harm to your child
- Illiteracy and inability to write in English prevented you from providing notice, or
- Providing notice would likely have resulted in serious emotional harm to your child

(20 *USC* Section 1412[a] [10] [C]; 34 *CFR* Section 300.148; *EC* Section 56177)

**State Complaint Procedures**

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**When may I file a state compliance complaint?**

You may file a state compliance complaint when you believe that a school district has violated federal or state special education laws or regulations. Your written complaint must specify at least one alleged violation of federal and state special education laws. The violation must have occurred not more than one year prior to the date the complaint is received by the CDE. When filing a complaint, you must forward a copy of the complaint to the school district at the same time you file a state compliance complaint with the CDE. (34 *CFR* Section 300.151–153; 5 *CCR* Section 4600)

Complaints alleging violations of federal and state special education laws or regulations may be mailed to:

[California Department of Education  
Special Education Division  
Complaint Support Unit  
1430 N Street, Suite 2401  
Sacramento, CA 95814]

You may also email your complaint to [speceducation@cde.ca.gov](mailto:speceducation@cde.ca.gov)

For complaints involving issues not covered by federal or state special education laws or regulations, consult your district’s uniform complaint procedures.

To obtain more information about dispute resolution, including how to file a complaint, contact the CDE, Special Education Division, Complaint Support Unit, by telephone at 800-926-0648; by fax at 916-327-3704; or by visiting the CDE, Special Education web page at <https://www.cde.ca.gov/sp/se/index.asp>.

**Senate Bill 511, Family Empowerment Centers**

**Background**

The Family Empowerment Centers (FECs) were established in 2001 by enactment of Chapter 690 of the Statutes of 2001 (Senate Bill 511, Alpert), enacted as *Education Code (EC)* 56400-56415. The FECs provide services to families with children with disabilities ages three to twenty-two. The intent of the legislature is to ensure that parents, guardians, and families of children and young adults with disabilities have access to accurate information, specialized training, and peer-to-peer support.

**Clovis Unified Contact and Service Information**

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<b>Organization</b>	<b>District Served</b>	<b>Website</b>
Clovis Unified Family Resource Center	Clovis Unified	<a href="https://www.cusd.com/Parent%20Resources-FamilyResourceCenter.aspx">https://www.cusd.com/Parent%20Resources-FamilyResourceCenter.aspx</a>

**FEC Contact and Service Information**

<b>Organization</b>	<b>Counties Served</b>	<b>Website</b>
Ability Path's Family Resource Center of San Mateo County	San Mateo	<a href="https://www.smcfrc.org/">https://www.smcfrc.org/</a>
Alpha Family Resource Center	Santa Barbara	<a href="https://alphasb.org/">https://alphasb.org/</a>
Exceptional Family Resource Center (EFRC)	Imperial, San Diego	<a href="https://efrconline.org/">https://efrconline.org/</a>
Exceptional Parents Unlimited (EPU)	Fresno, Kings	<a href="https://www.epuchildren.org/">https://www.epuchildren.org/</a>
Exceptional Parents Unlimited (EPU)	Madera	<a href="https://www.epuchildren.org/">https://www.epuchildren.org/</a>
Family Focus Resource and Empowerment Center	North Los Angeles (San Fernando, Santa Clarita, Antelope Valley)	<a href="https://csun.edu/family-focus-resource-center">https://csun.edu/family-focus-resource-center</a>
Family Resource Navigators	Alameda	<a href="https://familyresourcenavigators.org/">https://familyresourcenavigators.org/</a>
Family SOUP	Colusa, Sutter, Yuba	<a href="http://www.familysoup.org/">http://www.familysoup.org/</a>
H.E.A.R.T.S. Connection Family Resource Center	Kern	<a href="http://www.heartsfrc.org/">http://www.heartsfrc.org/</a>

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Organization	Counties Served	Website
and Empowerment Center		
Heluna Health/Eastern Los Angeles Family Resource Center	Los Angeles (Alhambra, Arcadia, Boyle Heights, City Terrace, Commerce, East Los Angeles, East Pasadena, El Sereno, Eagle Rock/Highland Park, La Habra Heights, La Mirada, Lincoln Heights, Montebello, Monterey Park, Mount Washington, Pico Rivera, Rosemead, San Gabriel, San Marino, South Pasadena, Santa Fe Springs, Temple City, Whittier)	<a href="https://www.helunahealth.org/partners/eastern-los-angeles-regional-family-resource-center/">https://www.helunahealth.org/partners/eastern-los-angeles-regional-family-resource-center/</a>
Matrix Parent Network & Resource Center	Napa, Solano, Sonoma	<a href="https://www.matrixparents.org/">https://www.matrixparents.org/</a>
Matrix Parent Network	Marin	<a href="https://www.matrixparents.org/">https://www.matrixparents.org/</a>
Parents Helping Parents, Inc.	Santa Clara	<a href="https://www.php.com/">https://www.php.com/</a>
Parents Helping Parents San Luis Obispo	San Luis Obispo	<a href="http://www.phpslo.org/">http://www.phpslo.org/</a>
The Parents' Place Family Resource Center	Los Angeles (San Gabriel Valley, Pomona)	<a href="http://www.parentsplacefrc.com/">http://www.parentsplacefrc.com/</a>
Plumas Rural Services, Inc.	Lassen, Modoc, Plumas, Sierra	<a href="https://www.plumasruralservices.org/">https://www.plumasruralservices.org/</a>
Rowell Family Empowerment of Northern California (RFENC)	Butte, Glenn, Shasta, Siskiyou, Tehama, Trinity	<a href="https://rfenc.org/Home/">https://rfenc.org/Home/</a>

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<b>Organization</b>	<b>Counties Served</b>	<b>Website</b>
South Central Los Angeles Regional Center (McClaney Family Resource Center)	Los Angeles (South Los Angeles including: Watts, Leimert Park, Florence/Firestone, West Adams, Bell, Bell Gardens, Compton, Cudahy, Downey, Huntington Park, Lynwood, Maywood, Vernon, South Gate, North Carson, Gardena, Paramount)	<a href="https://sclarc.org/">https://sclarc.org/</a>
Special Kids Connect	Monterey	<a href="https://specialkidsconnect.org/">https://specialkidsconnect.org/</a>
Special Parents Information Network (SPIN)	San Benito, Santa Cruz	<a href="https://www.spinsc.org/">https://www.spinsc.org/</a>
Support for Families of Children with Disabilities	San Francisco	<a href="https://www.supportforfamilies.org/">https://www.supportforfamilies.org/</a>
Team of Advocates for Special Kids, Inc. (TASK)	Orange	<a href="https://taskca.org/">https://taskca.org/</a>
Team of Advocates for Special Kids, Inc. (TASK)	Los Angeles (Artesia, Avalon, Bellflower, Carson, Cerritos, Harbor City, Harbor Gateway, Hawaiian Gardens, Hermosa Beach, Lakewood, Lomita, Long Beach, Manhattan Beach, Norwalk, Palos Verdes Estates, Rancho, Palos Verdes, Rolling Hills, San Pedro, Signal Hill, Torrance, Wilmington)	<a href="https://taskca.org/">https://taskca.org/</a>
Team of Advocates for Special Kids, Inc. (TASK)	Los Angeles (Signal Hill, Long Beach, Catalina Island)	<a href="https://taskca.org/">https://taskca.org/</a>

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<b>Organization</b>	<b>Counties Served</b>	<b>Website</b>
Team of Advocates for Special Kids, Inc. (TASK)	Los Angeles (Lakewood, East Lakewood, Hawaiian Gardens, Bellflower, Norwalk/Little Lake, Artesia, Cerritos)	<a href="https://taskca.org/">https://taskca.org/</a>
Warmline Family Resource Center	Alpine, El Dorado, Nevada, Placer, Sacramento, Yolo	<a href="http://www.warmlinefrc.org/">http://www.warmlinefrc.org/</a>
Westside Family Resource Center	West Los Angeles	<a href="http://wfrec.org/">http://wfrec.org/</a>

**Glossary of Abbreviations Used in This Notification**

ADR: Alternative Dispute Resolution

*CFR: Code of Federal Regulations*

*EC: California Education Code*

FAPE: Free Appropriate Public Education

FEC: Family Empowerment Center on Disability

IDEA: Individuals with Disabilities Education Act

IEP: Individualized Education Program

PTIC: Parent Training and Information Center

OAH: Office of Administrative Hearings

SELPA: Special Education Local Plan Area

*USC: United States Code*



## **Chapter 9**

### **Surrogate Parent Procedures**

#### **9.1 Purpose and Scope**

Where a student with a disability lacks a parent or guardian under specified circumstances, the District must take steps to appoint a surrogate parent. The surrogate parent may represent the child in all matters relating to the identification, assessment, and educational placement of the child and the provision of FAPE to the child. (34 C.F.R. § 300.519(g); Ed. Code, § 56050(b); Govt. Code, § 7579.5(c).)

#### **9.2 Basic Criteria for Appointing a Surrogate Parent**

The Surrogate Parent role on the IEP Team is to represent the rights of a student with special needs in all educational matters related to the provision of a FAPE. It is the responsibility of the District to ensure that the rights of a child are protected in determining the need for, and assigning, a surrogate parent whenever the child is referred or eligible for special education under one or more of the following circumstances:

- (1) No parent for the student can be identified.
- (2) The District, after reasonable efforts, cannot locate a parent.
- (3)
  - a) The student is adjudicated a ward or dependent of the court pursuant to Welfare and Institutions Code sections 300, 601, or 602 upon referral of the child for special education and related services, or if the student already has an IEP;
  - b) The court specifically has limited the right of the parent or guardian to make educational decisions for the student; and
  - c) The student has no responsible adult to represent him or her pursuant to sections 361 or 726 of the Welfare and Institutions Code or section 56055 of the Education Code.
- (4) The student is an unaccompanied homeless youth, as defined in the McKinney-Vento Homeless Assistance Act. (42 U.S.C. § 11434(a).)

(34 C.F.R. § 300.519(a); Gov. Code, § 7579.5(a).)

#### **9.3 Recruitment of Volunteers**

The Administrator SELPA and Legal Compliance and designees work with community agencies and organizations, both public and private, to secure applicants for the position of surrogate parent volunteer. (Govt. Code § 7579.5; District Board Policy/Administrative Regulation Nos. 1240 and 6159.3.)

Each volunteer interested in the surrogate parent position must complete a surrogate parent application form.

#### **9.4 Timeline for Appointment of Surrogate Parent**

The District shall make reasonable efforts to appoint a surrogate parent within thirty (30) days of a determination by the District that the child needs a surrogate parent. (34 C.F.R. § 300.519(h); Govt. Code, § 7579.5(a).)

#### **9.5 Selection of Surrogate Parent**

The District may select a surrogate parent in any way permitted under State law. (34 C.F.R. § 300.519.)

As a first preference, the District shall appoint a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals are available and willing and able to serve. If none of these individuals are available and willing and able to serve as a surrogate parent, the District shall select a surrogate parent of its choice, in accordance with the requirements described in Part 9.7, below. If the student is moved from the home of the relative caretaker or foster parent who was appointed as surrogate parent, the District shall appoint a new surrogate parent if necessary to ensure adequate representation of the student. (Gov. Code, § 7579.5(b).)

In the case of a child who is a ward of the state, the surrogate parent, alternatively, may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements set out in applicable law. In this situation, the District is not responsible for selecting a surrogate parent. (34 C.F.R. § 300.519(c).)

The District must ensure that the person selected as a surrogate person is not an employee of the State education agency, the District, or any other agency that is involved in the education or care of the child, except that in the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate parent can be appointed to meet the requirements. (34 C.F.R. § 300.519(f).)

Except for individuals who have a conflict of interest in representing the child, other individuals who can act as a surrogate include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of the State Department of Education, the District, or any other agency involved in the education or care of the child. An employee of a nonpublic agency that provides only noneducational care for the child may be appointed as a surrogate. (Gov. Code, § 7579.5(j).)

#### **9.6 Rights and Duties of Surrogate Parent**

The surrogate parent shall serve as the student's parent and have all rights relative to the student's education that a parent has pursuant to the IDEA and related State law. The surrogate parent may represent the child in all matters relating to special education and related services, including, identification, assessment, instructional planning and development, educational placement of the child; review and revision of the child's IEP;

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and all other matters relating to the provision of a FAPE to the child. In addition, the surrogate parent shall represent the child with regard to the provision of written consent to the IEP, including non-emergency medical services, mental health treatment services, and occupational or physical therapy services. (34 C.F.R. § 300.519(g); Gov. Code, §§ 7570 - 7587 and 7579.5(c); Ed. Code, § 56050(b).)

The surrogate parent shall also be responsible for fulfilling all of the duties and obligations of a surrogate parent as described in Government Code section 7579.5, including but not limited to: meeting with the child at least the required one time and additional times if needed; reviewing the child's educational records; attending the child's IEP Team meetings; consulting with persons involved in the child's education; signing any consent relating to IEP purposes; and complying with Federal and State laws pertaining to confidentiality of student records and other information. As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child. (Gov. Code, §§ 7579.5(d), (e), and (f).)

Surrogate parents shall volunteer their services to the District and serve without compensation.

### **9.7 Identification and Appointment of Surrogate Parent**

The recruitment, training and assignment of surrogate parents shall be the responsibility of the District's Administrator SELPA and Legal Compliance.

In accordance with Government Code section 7579.5 and District Administrative Regulation No. 6159.3, a person appointed as a surrogate parent shall have all of the following qualifications:

- (1) Be an adult 18 years of age or over;
- (2) Have no personal or professional interests that conflict with the child's educational interests as defined in Government Code section 7579.5, subdivision (i);
- (3) Be committed to learning about the child's educational needs and about the special education system in which the child is enrolled;
- (4) Have knowledge, special training, and skills to ensure adequate representation of the child;
- (5) To the extent practicable, be culturally sensitive to his or her assigned child (Gov. Code, § 7579.5 (e))
- (6) Pass a fingerprint screening and comply with the District's Volunteer Policy (BP/AR No. 1240);
- (7) Submit evidence that the person is free of active tuberculosis;

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- (8) Submit the District's "Volunteer Application Form" which can be accessed through the District's website;
- (9) If the surrogate will be transporting the student, submit Form 3541.1(1) "Vehicle Driver Application" and comply with the requirements of the District's Transportation of Students by Private Vehicle Policy (BP/AR No. 3541.1).

The surrogate parent cannot be:

- (1) an employee of the California Department of Education, the District, or any other agency that is involved in the education or care of the child except in the case of unaccompanied homeless youth as described above
- (2) an agency involved with the care of the child, such as a county probation or welfare department, group home, residential treatment facility or Licensed Children's Institution. (34 C.F.R. § 300.519(d).)

### **9.8 Resignation or Termination of Appointment**

A surrogate parent may resign his or her position only after he or she gives notice to the District. (Gov. Code, § 7579.5 (g).)

Pursuant to District Administrative Regulation No. 6159.3, the District shall terminate the appointment of a surrogate parent under the following circumstances:

- (1) The surrogate parent is not properly performing the duties of a surrogate parent; (Gov. Code, § 7579.5 (h).)
- (2) The surrogate parent has an interest that conflicts with the educational interests of the child; (Gov. Code, §§ 7579.3(i), 7579.5 (h).)
- (3) When the student is no longer in need of special education; (Gov. Code, § 7579.5 (k).)
- (4) When the student reaches 18 years of age, unless the student chooses not to make educational decisions for himself or is deemed by a court to be incompetent; (Gov. Code, § 7579.5 (k).)
- (5) When another responsible adult is appointed to make educational decisions for the student; or (Gov. Code, § 7579.5 (k).)
- (6) When the right of the parent or guardian to make educational decisions for the child is fully restored. (Gov. Code, § 7579.5 (k).)

See Government Code section 7579.5 for further clarification of persons who may serve as surrogate parents and their duties.

### **9.9 Access to the Student**

The surrogate parent must meet with the student under the supervision of the student's group home provider, foster parent, person with whom the student resides, placing agency representative, or designated school staff. Exceptions to this procedure are made by the Administrator SELPA and Legal Compliance or designee.

School personnel shall make every reasonable effort to ensure that the surrogate parent has access to the student as it relates to the student's educational needs.

### **9.10 Access to Student Records**

The surrogate parent retains the same rights as a parent/legal guardian to access student records. He or she must request copies of school records and other records in the same manner that is required by the parent/legal guardian.

Due to the continual need for confidentiality, when a surrogate parent discontinues representing a specific student, he or she must return to the District all copies of the student's records in his or her possession.

### **9.11 Conflict Resolutions and Appeals**

It is District policy that conflicts must be brought to the attention of the SELPA Administrator, who will work with all parties involved to bring resolution to the conflict. The SELPA Administrator will have the final authority in all appeals and conflicts.

### **9.12 Hold Harmless**

It is District policy that the SELPA and the surrogate parent shall enter into a signed agreement with a hold-harmless clause.

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APPENDIX B:  
CLOVIS UNIFIED SCHOOL DISTRICT  
APPOINTMENT OF SURROGATE PARENT

[IS THIS CURRENT?]

I appoint [PRINT NAME] \_\_\_\_\_ to act as surrogate parent in matters involving the education of [PRINT NAME] \_\_\_\_\_. This representative shall have parental authority in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the Individualized Family Service Plan (IFSP) or the Individualized Education Plan (IEP) including non-emergency medical services, mental health services and occupational or physical therapy services as relating to the IFSP/IEP, and in other matters relating to the provision of a FAPE for the individual.

This appointment shall remain in effect until any of the following occur:

- (1) The student's parent is located and/or appoints an educational representative.
- (2) The surrogate parent is unwilling or unable to carry out his/her responsibilities to the best interest of the child.
- (3) The surrogate parent is in a position with a conflict of interest in the above matter.
- (4) The student is no longer in need of special education.
- (5) The student reaches 18 years of age, unless the student chooses not to make educational decisions for himself or herself.
- (6) Another responsible adult is appointed to make education decisions for the student.

\_\_\_\_\_  
[PRINT NAME] District Special Education Administrator [SIGN NAME]

Date: \_\_\_\_\_ Telephone: \_\_\_\_\_

ACCEPTANCE OF APPOINTMENT

I, [PRINT NAME] \_\_\_\_\_, hereby accept the above appointment. At such time as I am unable or unwilling to continue this appointment, I will notify the District Special Education Administrator designated above. I understand that I shall be held harmless by the state of California when acting in my official capacity except for acts or omissions which are found to have been wanton, reckless, or malicious.

I acknowledge that [PRINT NAME] \_\_\_\_\_ has been provided information/training regarding the laws applicable to surrogate parent responsibilities and the continuum of education program placements and opportunities available for individuals with disabilities.

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I agree to maintain all student records and information in a confidential manner. Upon the termination of this agreement, I will return all such records to\_\_\_\_\_.

\_\_\_\_\_  
[SIGN NAME] Surrogate Parent

\_\_\_\_\_  
Date

Address: \_\_\_\_\_

City: \_\_\_\_\_ ZIP: \_\_\_\_\_ Telephone: \_\_\_\_\_

**Chapter 10**  
**Non-Public Schools and Non-Public Agencies**

**10.1 Purpose and Scope**

The role of a non-public, nonsectarian school (NPS) or non-public, nonsectarian agency (NPA) certified by the State of California is to provide special education services in situations where no appropriate public education program or service is available. The decision to place a student in an NPS or to acquire services from an NPA is made on a case-by-case basis by the IEP Team.

**10.2 Non-Public School/Agency Placement Process**

Before the District places a student with a disability in, or refers a student to, an NPS or obtains services from an NPA, the District shall hold an IEP team meeting to review the IEP and consider what placement and related services are appropriate for the student. (Ed. Code, §56342.1)

The IEP Team may recommend an NPS placement when a public school placement cannot be identified which will appropriately meet the student's needs. The IEP Team shall take steps to find an appropriate placement in a public program operated by another LEA or the District special education programs before recommending an NPS. Following determination by the IEP Team that the student requires an NPS placement, the IEP Team, including, if applicable, other public agencies (which may have financial responsibilities for the placement of the student), will determine an appropriate NPS in which to place Student.

For any student to be placed in an NPS/A, the District shall develop an individual services agreement (ISA) that specifies the length of time the NPS/A shall provide services to the special education student as specified by the student's IEP, not to exceed one year. Changes in a student's educational instruction, services, or placement shall be made only on the basis of revisions to the student's IEP. (Ed. Code, § 56366.)

At least once each year, the District shall do all of the following and, to the extent possible, the following shall be conducted as part of the development and provision of an IEP:

- (1) Evaluate the educational progress of each student placed in an NPS/A, including a review of state assessment results.
- (2) During the annual meeting held to review the student's IEP, consider whether the student's needs continue to be best met at the NPS/A and whether changes to the student's IEP are necessary, including whether the student may be transitioned to a public school setting. Each student's IEP and ISA shall specify the schedule for such review. (5 Cal. Code of Regs. § 3068)

(Ed. Code § 56366.)



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When a special education student meets the district requirements for completion of the prescribed course of study as designated in the student's IEP, the district shall award the student a diploma of graduation. (5 Cal. Code of Regs. § 3070.)

### **10.3 Out-of-State Non-Public Placements**

Before contracting with an NPS or NPA outside of California, the District shall document its efforts to utilize public schools or to locate an appropriate NPS or NPA, or both, within the State. (Ed. Code, § 56365(e).)

If the District decides to place a student in an NPS or NPA outside of this State, DISTRICT shall indicate the anticipated date for the return of the student to a public school or NPS, or a combination thereof, located in the State and shall document efforts during the previous placement year to return the student. (Ed. Code, § 56365(g).)

If the District places a student with an NPS or NPA outside of this State, the student's IEP Team shall submit a report to the Superintendent of Public Instruction within 15 days of the placement decision. The report shall include information about the special education and related services provided by the out-of-state program placement and the costs of the special education and related services provided, and shall indicate the efforts of the District to locate an appropriate public school or NPS or NPA, or a combination thereof, within the State. The Superintendent of Public Instruction shall submit a report to the State Board of Education on all placements made outside of this State. (Ed. Code, § 56365(f).)

### **10.4 Change of Student Residence**

#### **(A) Transfer of Student Receiving Services in Non-Public School**

When a student receiving services in an NPS moves outside of the boundaries of the District, the parent shall immediately report the change of residence to the administrator of both the former and new public school and the NPS. As agreed by the terms of the contract, the contracting NPS shall immediately notify the district in both the former and new residence areas. The District must immediately notify the new local district of the transfer and provide a copy of the student's records, including the IEP, and the contract for services with the NPS. The fiscal responsibility of the District shall terminate on the last day of the student's residence in the District unless the provisions of Education Code section 56325(c), discussed below, apply, in which case the fiscal responsibility terminates on the last day of the school year including extended school year.

When a student moves into the District's boundaries, within 15 (fifteen) working days of receiving the student's records, the District shall conduct a review of the student's IEP to determine whether or not the NPS placement may still be appropriate. The following factors shall be considered in determining the appropriateness of the student's current placement:

- (1) No appropriate public education program is available;

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- (2) To move the student at the time of change of residence would be harmful to the health, welfare, or educational progress of the individual;
- (3) The NPS continues to be within a reasonable distance and/or travel time from the home of the student; and
- (4) Other contingencies that necessitate the individual remaining at the NPS as determined by the IEP Team.

If the child has an IEP and transfers into the District from another district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the rules applicable to transfers between SELPAs apply because the District is a single-district SELPA. The District shall provide the student with a FAPE, including services comparable to those described in the previously approved IEP (“interim IEP”), in consultation with the parents, for a period not to exceed 30 days, by which time the District shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law. (Ed. Code, § 56325(a)(1).) If the student’s NPS placement is considered appropriate in keeping with the federal mandate of the least restrictive environment, the District shall negotiate a new contract for services with the NPS.

**(B) Transfer of Student in a Residential Non-Public School**

When a student was placed and residing in a residential NPS prior to transferring from a school district in another SELPA to the District and this placement is not eligible for funding pursuant to Education Code section 56836.165/.168, the SELPA that contains the district that made the residential NPS placement shall continue to be responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends. (Ed. Code, § 56325(c).)

**10.5 Out-of-Home Placements**

Determining the responsibility for payment for residential and NPS costs for students in out-of-home placements requires consideration of two factors:

- (1) Which agency placed the student (i.e., the purpose of the placement); and
- (2) Where the student was placed.

**(A) Students Placed in a Residential Placement**

If the District places a student in a residential placement within or outside of the State of California, the District will be responsible for the residential and educational costs of that placement.

**(B) Out-of-Home Placements by Courts, Social Services, Regional Center and Other Public Agencies**

Placements made by courts, social services, and regional centers instead of districts are not necessary for the student to receive a FAPE; in most of these cases, the student's district of residence (i.e., the district in which their parents or legal guardians reside) is not financially responsible for the costs associated with the residential placement.

In those cases where an educational agency did not make the placement decision, the court, regional center for the developmentally disabled, or public agency (other than an educational agency) placing the individual in the institution or home will be responsible for the residential and other non-educational costs. (Ed.Code, §§ 56155, 56159.)

Prior to placing an eligible student, or a student suspected of being eligible, in a residential facility outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the SELPA in which the residential facility is located. The administrator of the SELPA shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the SELPA where the residential facility is located. (Gov. Code, § 7579(a).) The involvement of the SELPA administrator in the placement discussion shall in no way obligate a public education agency to pay for the residential costs and the costs of non-educational services for the student placed in an LCI or foster family home. (Gov. Code, § 7579(b).)

Any public agency other than a district that places an eligible student, or a student suspected of being eligible, in a facility out of state without the involvement of the school district, SELPA, or county office of education in which the parent or guardian resides shall assume all financial responsibility for the child's residential placement, special education program, and related services in the other state unless the other state or its local agencies assume responsibility. (Gov. Code, § 7579(d).)

## **10.6 On-Site Visits**

The Superintendent or designee shall conduct an on-site visit to an NPS/A before the placement of a student at the school or agency, if the District does not have any other students currently enrolled at the NPS/A. (Ed. Code, § 56366.1.)

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At least once per year, the Superintendent or designee shall conduct an on-site monitoring visit to each NPS/A at which the District has a student attending and with which it maintains a master contract. The monitoring visit shall include, but is not limited to: (Education Code 56366.1)

- (1) A review of services provided to the student through the ISA.
- (2) A review of progress the student is making toward the goals set forth in the student's IEP.
- (3) A review of progress the student is making toward the goals set forth in the student's behavioral intervention plan, if applicable.
- (4) An observation of the student during instruction.
- (5) A walkthrough of the facility.

The District shall report the findings resulting from the monitoring visit to CDE within 60 calendar days of the on-site visit. (Ed. Code, § 56366.1.)

### **10.7 Annual Review**

After a student with a disability who resides within the District's boundaries has been placed in an NPS, the District must review the IEP at least annually and ensure that review schedules are specified in the IEP and in the contract for the student. (Cal. Code Regs. § 3069.) However, at the District's discretion, any meetings to review and revise the student's IEP may be conducted by the NPS. (Ed. Code, § 56383.) The District must ensure that the parents and District representative are involved in any decisions about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented. (34 C.F.R. § 300.325(b)(2).)

Even if the NPS implements the student's IEP, the District remains responsible for complying with the IDEA and related state law. (34 C.F.R. § 300.325(c); Ed. Code, § 56383.)

### **10.8 Diploma**

When a disabled student who is placed in an NPS meets District requirements for completion of the prescribed course of study designated in the IEP, the District shall award the diploma. (5 Cal. Code Regs. § 3070.)

### **TRAVEL REIMBURSEMENT GUIDELINES FOR OUT OF DISTRICT RESIDENTIAL NON-PUBLIC SCHOOLS**

Pursuant to your child's IEP, your child with special needs will soon be enrolled in a residential school outside of Clovis Unified School District. You and your child's travel associated with the child's initial placement, subsequent therapeutic visits by you to meet your child and his/her therapist at the residential nonpublic school and/or your child's therapeutic visits home may be reimbursable by the District. The determination of the number of funded round trips (up to four) per fiscal year (July 1 - June 30) is determined by your child's Individual Education Plan (IEP) team, in collaboration with the therapeutic staff at the RTC. The reimbursement is provided when procedures are followed as set forth below, documentation requirements are met, and approval is given by the SELPA Administrator.

In accordance with Administrative Regulation 6159.2, the parent/guardian may receive reimbursement for certain costs associated with the parent/guardian's or student's travel necessitated by the following:

- (1) Parent/guardian travel and/or student's travel associated with student's initial placement.
- (2) Therapeutic visits by parent/guardian to meet with the student and the student's therapist at the NPS.
- (3) Student's therapeutic visits home.

Reimbursement for up to four trips per fiscal year (July 1 – June 30) may be provided in accordance with the following procedures:

- (1) Reimbursement will be provided only for two parents/guardians per trip to the NPS if the purpose of the visit is directly related to the student's education and/or reunification and is documented in the student's IEP. "Parent" means a natural or adopted parent. The number of round trips reimbursed by the District per fiscal year up to four is determined by the student's IEP in collaboration with the therapeutic staff at the NPS.
- (2) Parent/guardian and the NPS must notify the SELPA Administrator at least 21 calendar days in advance of the proposed trip.
- (3) 3. The NPS must provide written documentation to the SELPA Administrator of the exact date(s) of therapy session(s) before travel approval may be granted. If more than one day of family therapy is requested, sessions must be on consecutive calendar days only (two days maximum). The cost of additional visitations that are not included in the student's IEP and approved by the SELPA Administrator will be at the sole cost of the parent/guardian.
- (4) The SELPA Administrator or designee will notify the parent/guardian if the proposed trip has been approved in its entirety or if only parts of the trip have

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been approved. If the proposed trip has been denied in whole or in part, the SELPA Administrator or designee shall provide parent/guardian with a written explanation.

- (5) If the proposed trip is approved by the SELPA Administrator, the parent/guardian and/or NPS is responsible for making all travel arrangements.
- (6) Parent/guardian must submit original, itemized receipts for allowable expenditures as defined below along with a District claim form. The receipts and claim form must be submitted to the SELPA Administrator within 15 days after the expense was incurred.

A parent/guardian may be reimbursed only for the following expenditures:

- (1) Airfare or Train Fare: Airfare/train fare must be for coach or economy (not business or first) class travel. If a trip is postponed, the parent/guardian must cancel reservations immediately. Maximum reimbursable cost for airfare or train tickets is \$400.00 without prior authorization.
- (2) Airport/Train Station Parking: Parking at the departing airport or train station will be reimbursed at a rate not to exceed \$15.00 per day.
- (3) Ground transportation to/from the departing airport or train station and to/from the destination airport or train station not to exceed \$25.00 one way will be reimbursed with submission of original receipts indicating the date, passenger name, destination, and cost. When an NPS provides ground transportation from the airport to their facility, parent/guardian is expected to use such transportation.
- (4) Automobile Mileage: Mileage must be for transportation by private automobile to and from the residence of the student and the NPS at the SELPA-approved rate of .575/mile. However, the total reimbursement for mileage travelled shall not exceed the cost of economy airfare to the NPS.
- (5) Hotel: The SELPA may reimburse a standard hotel accommodation at the rate determined by the U.S. Government Service Administration for the area in which the NPS is located. Maximum reimbursement is \$90.00 per night for two nights maximum without prior approval. Itemized original payment documentation must be submitted to the SELPA.
- (6) Rental Car and Fuel: The car must be a mid-size or smaller. Itemized original payment documentation and receipts for fuel purchased on the trip must be submitted to the SELPA.
- (7) Meals: Reimbursement shall not exceed a maximum of \$36.00 per adult per day of travel. Itemized original payment documentation indicating the date, name, and location of the restaurant must be submitted to the SELPA.

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Unless an expense is expressly permitted in this administrative regulation, it will not be reimbursed. Non-allowable expenditures include, but are not limited to:

- (1) First class/business class airfare/train fare.
- (2) Travel expenses for family members (e.g. siblings, etc.).
- (3) Luxury hotels/accommodations, amenities, luxury vehicle rentals.
- (4) Student meals.
- (5) Meals in Fresno County.
- (6) Entertainment (e.g. amusement parks, sporting events, movies, etc.).
- (7) Alcoholic beverages, snacks, tips, etc.
- (8) Room service, in-room personal expenses.
- (9) Phone calls.

Any altered or falsified receipts constitute fraud; therefore, all reimbursement requests shall be null, void, and denied.

## Chapter 11 Student Records

### 11.1 Purpose and Scope

The District has established policies and procedures that ensure the protection of parents' rights related to access to and confidentiality of student records. (Ed. Code, § 49060 et seq.; 5 Cal. Code Regs. § 430 et seq.) DISTRICT policies and procedures regarding student records can be found at Board Policy and Administrative Regulation 5125 and 5125.1. These policies and procedures are consistent with State and federal laws and regulations, including the Family Educational Rights and Privacy Act of 1974 (FERPA) and corresponding California statutes and regulations, including sections 49060 et seq., 56504, and 56515 et seq. of the California Education Code and sections 430 et seq., of Title 5 of the California Code of Regulations. Procedures describe the required notice to parents, right to access student records, record-keeping procedures, retention and destruction of student records, and requests for amendment of student records.

The District is committed to protecting the privacy and confidentiality of student records. All personally identifiable information (PII) about students is confidential and covered by the rules of access set forth in the District's Board Policies and Administrative Regulations, and federal and State law. The District adheres to these rules. Unless otherwise required or permitted by law, the District shall allow access to student records only to persons for whom the parent of the student has executed written consent specifying the records to be released and identifying the persons to whom the records may be released.

### 11.2 Definitions

A "student record" is information directly related to an identifiable student (except for "directory information) gathered within or without the school system and maintained within the school system or required to be maintained by a District employee in the performance of the employee's duties, regardless of the physical form in which it is maintained. (Ed. Code § 49061(b); 5 Cal. Code Regs. § 430(d).) For example, a student record could be handwritten, in print, tapes, film, or microfilm, or other means. (Ed. Code § 49061(b).) Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record. (5 Cal. Code Regs. § 430(d).)

A student record does not include informal notes related to a student compiled by a school officer or employee that remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute. (Ed. Code, § 49061(b).) A "substitute" means a person who performs the duties of the individual who made the notes on a temporary basis and does not refer to a person who permanently succeeds the maker of the notes in his or her position. (Ed. Code, § 49061(b).)

Email correspondence is not a student record unless it is printed out and maintained in the student's file. a unique form of record. (*S.A. v. Tulare Co. Office of Educ.* (E.D. Cal. 2009) Case No. CV F 08-1215 LJO GSA.)



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“Directory information” means one or more of the following items: student’s name, address, telephone number, date of birth, email address, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the student. (Ed. Code, § 49061(c).)

"Access" means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record. (Ed. Code, §§ 49061(e), 56504.)

### **11.3 Parent Right to Access Student Records**

Unless the disclosure of a particular category of student records is specifically exempted by statute, parents have the right to inspect and review all student records that relate to their child, including those that address the identification, assessment, and educational placement of the child and the provision of a FAPE, which are collected and maintained by the District for second party review, and including information obtained from social media. (Ed. Code, §§ 49069.7 and 49073.6.)

The District shall permit parents access to records without unnecessary delay and, in no event, more than five (5) business days after the request has been made either orally or in writing. The District shall comply with a request for school records without unnecessary delay before any meeting regarding an IEP, a due process hearing, or resolution session and in no case no later than (5) five business days after the request is made orally or in writing. The parent shall have the right to a response from the District to reasonable requests for explanations and interpretations of the records. If a school record includes information on more than one student, the parents of those students have the right to inspect and review only the information relating to their child or to be informed of that specific information. (Ed. Code, §§ 49069 and 56504.)

The District may not charge a fee for retrieval of information. (Ed. Code, § 49065.) The agency may, however, charge a fee for copies of records, which are made for parents, if the fee reflects the actual cost of reproducing the records and does not prevent the parents from exercising their right to inspect and review these records. (Ed. Code, § 49065; 56504.) In order for the fee to be waived for the actual costs of copying the records, the District may require evidence to substantiate waiver of such a fee.

(5 C.C.R. 49061(e).)

### **11.4 Notice to Parents**

Parents must be notified, in writing, of their rights to inspect and review the school records of their children at the time of initial enrollment and annually thereafter. To the extent practicable, this notice should be in the home language of the student and should include information on policies, procedures, and rights related to record keeping including the

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Family Educational Rights and Privacy Act of 1974 (FERPA). The notice will contain the following specific information:

- (1) The types of records and information contained therein that are directly related to students and maintained by the District.
- (2) The position of the official responsible for the maintenance of each type of record.
- (3) The location of the log or record required to be maintained.
- (4) Criteria used by the District to define “school officials and employees” and in determining “legitimate educational interest.”
- (5) The policies of the District for reviewing and expunging records.
- (6) The right of the parent to access student records.
- (7) The procedures for challenging the content of student records.
- (8) The cost, if any, charged to the parent for reproducing copies of records.
- (9) The categories of information which the institution has designated as directory information.
- (10) Any other rights stated in the California Education Code and the right to file a complaint with United States Department of Education concerning an alleged failure by the District to comply with the law governing student records and access to those records.
- (11) The availability of the prospectus of the school curriculum.

(Ed. Code, § 49063.)

See also Part 11.10 for notice about destruction.

### **11.5 Safeguards**

The District must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages. (Ed. Code, § 49062.)

### **11.6 Consent to Release Student Records**

In order to for an individual other than a parent or guardian to have access to student records, the parent or guardian must provide written authorization for that access, unless an exception applies. The following includes the requirements for written authorization of a parent or guardian, and also some of the exceptions that are listed in California Education Code § 49076.

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- (1) The District may permit access to pupil records to any person for whom a parent of the student has executed written consent specifying the records to be released and identifying the party or class of parties to whom the records may be released. The recipient must be notified that the transmission of the information to other without the written consent of the parent is prohibited. The consent notice shall be permanently kept with the record file. (Ed. Code, § 49075.)
- (2) The District has the right to share information internally among its employees and contractors (including a volunteer aide age 18 or older who assists the school attendance review board in providing follow up services to students) who have a legitimate educational interest in the information, without parent consent. (Ed. Code, § 49076(a)(1)(A).)
- (3) Officials and employees of other public school or school systems, including local, county, or state correctional facilities where educational programs leading to a high school graduation are provided or where the pupil intends to or directed to enroll may have access to student records, without consent of the parent. (Ed. Code, § 49076(a)(1)(B).) A public school requesting a transfer of a record pursuant to this section shall notify the parent of his or her right to receive a copy of the record and a right to a hearing to challenge the content of the record.
- (4) Parents of a pupil 18 years of age or older who is a dependent of the parents, as defined in federal law, may have access to student records, without consent of student. (Ed. Code, § 49076(a)(1)(E).)
- (5) A pupil 16 years of age or older or having completed 10th grade who requests access may have such access, without parent consent. (Ed. Code, § 49076(a)(1)(F).)
- (6) A district attorney in truancy proceedings may have access to student records, without parent's consent. (Ed. Code, § 49076(a)(1)(G).)
- (7) A district attorney for consideration against a parent or guardian for failure to comply with compulsory education laws does not need parent consent to have access to student records. (Ed. Code, § 49076(a)(1)(H).)
- (8) A probation officer, district attorney, or counsel of record for a minor for the purposes of conducting a criminal investigation or an investigation in regards to declaring a person award of the court or involving a violation of a condition of probation does not need parent consent prior to having access to student records. (Ed. Code, § 49076(a)(1)(I).)
- (9) A judge or probation officer for purposes of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition does not need parent consent to access student records. The judge or probation officer shall certify in writing to the school district that the information will only be used for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant this paragraph shall inform, or provide written

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notification to, the parent or guardian of the pupil within 24 hours of the release of the information. (Ed. Code, § 49076(a)(1)(J).)

- (10) A student 14 years of age or older who is a homeless child or youth and who is an unaccompanied youth as defined under the McKinney-Vento Homeless Assistance Act. (Ed. Code, § 49076(a)(1)(L).)
- (11) A person who completes a Caregiver's Authorization Affidavit and signs it for the purpose of enrolling the student in school may access student records without parent consent. (Ed. Code, § 49076(a)(1)(M).)
- (12) Unless otherwise judicially instructed, the school district must, prior to the disclosure of any student records pursuant to a court order or lawfully issued subpoena, make reasonable efforts to notify the parent or legal guardian and the pupil that the records are being disclosed. Once a court order or lawfully issued subpoena is issued to obtain a pupil's contact information, the school district shall make a reasonable effort to enter into an agreement with the entity that obtained the court order or subpoena requiring that the pupil contact information be maintained in a confidential manner. (Ed. Code, § 49077.)
- (13) Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons. Schools or school districts releasing information pursuant to this subparagraph shall comply with the documentation requirements set forth in Section 99.32(a)(5) of Title 34 of the Code of Federal Regulations.
- (14) Whenever a student reaches the age of 18 years or is attending an institution of post-secondary education, the permission or consent required of, and the rights accorded to, the parents or guardian of the student shall thereafter only be required of, and accorded to, the student. (Ed. Code, § 49061.)

### **11.7 Directory Information**

The District determines which individuals, officials, or organizations may receive directory information. However, no information may be released to a private profit making entity other than employers, prospective employers, and representatives of the news media, including, but not limited to, newspapers, magazines, and radio and television stations. The names and addresses of pupils enrolled in grade 12 or who have terminated enrollment before graduation may be provided to a private school or college, under certain conditions. The District may limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of pupils.

Directory information may be released according to local policy as to any pupil or former pupil. However, notice shall be given at least on an annual basis of the categories of information that the school district plans to release and of the recipients. Directory

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information shall not be released regarding a pupil if a parent of that pupil has notified the school district that the information shall not be released.

Directory information shall not be released regarding a pupil identified as a homeless child or youth pursuant to the McKinney-Vento Homeless Assistance Act unless a parent, or pupil accorded parental rights has provided written consent that directory information may be released.

### **11.8 Log of Requests for Information**

All requests of individuals or agencies, except as outlined in the next paragraph, must be recorded in a record or log of requests for information and the legitimate interest thereof, except for directory information recipients. (Ed. Code § 49064; 49073.) The log or record must be open to the inspection by a parent, and certain school officials, and other limited entities. (Ed. Code § 49064.)

The log or record must list all persons, agencies, or organizations requesting or receiving information from the record and the legitimate interests therefor. (Ed. Code § 49064.) In addition, it is District policy that the log contain the following information: the name of the requesting party and, with certain exceptions, the legitimate interest of the party, the date access was given, and the purpose for which the party is authorized to use the records. The log required to be maintained does not have to include the following: (1) parents or pupil access; (2) parties to whom directory information is released; (3) parties to whom written consent has been executed by the parent; and (4) school officials and employees having legitimate educational interest.

### **11.9 Challenging the Content of Records**

If parents desire to challenge the content of student records, they must establish that one of the specific grounds set forth in the Education Code exists and provide a written request to correct or remove the information. (Ed. Code § 49070.) If the District declines to amend the student record in question, the parents may appeal this decision to the District's governing board. (Ed. Code § 49070.) District's Board Policy and Administrative Regulation 5125 provides the process by which a parent can challenge the content of student records.

Grounds for amendment include:

- (1) Inaccurate information.
- (2) Information is an unsubstantiated personal conclusion or inference.
- (3) Information is a conclusion or inference outside the observer's area of competence.
- (4) Information is not based on personal observation of a named person with the time and place of the observation noted.
- (5) Misleading information.

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- (6) Information in violation of the privacy or other rights of the student.

(Ed. Code, § 49070.)

### **11.10 Parent Notice of Destruction of Student Records**

There are three types of records: mandatory permanent (“MP”), mandatory interim (“MI”), and permitted (“P”). As discussed in the following sections, whether a record may be destroyed and, if so, timelines for destruction are based on the type of record as discussed below. (5 Cal. Code Regs. §437 and § 16020 et seq.)

Prior to destruction of special education records for students with disabilities, the District first must contact, or attempt to contact, the parent/guardian to inform them that the records are no longer needed for educational services and will be destroyed, unless the parent wants to keep them. (34 C.F.R. § 300.624.)

Parents have the right under the IDEA to request that a district destroy personally identifiable information; when a district receives such a request, the district must destroy that information. (34 C.F.R. § 300.624(b).) Even if the information must be destroyed, a district nevertheless may maintain a permanent record of the following without time limitation: student’s name, address, and phone number; student’s grades; attendance record; classes attended; grade level completed, and year completed. (34 C.F.R. § 300.624(b).)

### **11.11 Mandatory Permanent Records**

Mandatory Permanent Records are those records which the District shall maintain indefinitely for every student who was enrolled in a school program within the District. Such records shall include:

- (1) Legal name of student;
- (2) Name and address of parent of minor student; address of minor student if different; and annual verification of the parent’s name and address and the student’s residence;
- (3) Date of birth;
- (4) Method of verification of birth date;
- (5) Sex of student;
- (6) Place of birth;
- (7) Entering and leaving date of each school year and for any summer session or other extra session;
- (8) Subjects taken during each year, half-year, summer session, or quarter;

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- (9) If marks or credit are given, the mark or number of credits toward graduation allows for work taken;
- (10) Verification of or exemption from required immunizations;
- (11) Date of high school graduation or equivalent;
- (12) Records of enrollment and scholarship of each student;
- (13) All records pertaining to any accident or injury involving a minor for which a claim of damages has been filed, including related liability insurance (these records cease to be permanent records one year after the claim has been settled or the statute of limitations has run).

These mandatory permanent records must be forwarded to a requesting school in which the student has enrolled or intends to enroll, but the original or exact copy must be retained permanently.

(5 Cal. Code Regs. §§ 430, 432, 16023.)

#### **11.12 Mandatory Interim Records**

Mandatory Interim 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:

- (1) Access logs or records identifying those persons (except authorized school personnel) or organizations requesting information from the record;
- (2) Health information including Child Health Developmental Disabilities Prevention Program verification or waiver;
- (3) Participation in special education programs including required tests, case studies, authorizations and actions necessary to establish eligibility or discharge;
- (4) Language training records;
- (5) Progress slips and/or notices as required by Education Code sections 49066 and 49067;
- (6) Parental restrictions regarding access to directory information or related stipulations;
- (7) Parent or adult student rejoinders to challenged records and to disciplinary action;
- (8) Parental authorizations or prohibitions of student participation in specific programs; and

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(9) Results of standardized tests administered within the preceding three years.

(5 C.C.R. §§ 430, 432)

### 11.13 Permitted Records

Permitted Records are those student records which districts may maintain for appropriate educational purposes. They have clear importance only to the current educational process. Such records may include:

- (1) Objective counselor and/or teacher ratings;
- (2) Standardized test results older than three years;
- (3) Routine discipline data;
- (4) Verified reports of relevant behavioral patterns;
- (5) All disciplinary notices; and/or
- (6) Attendance records not covered in California Code of Regulation, Title 5 section 400.

(5 Cal. Code Regs. §§ 430, 432, 437, 16027.)

### 11.14 Destruction Timelines and Procedures

The District is required to inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the student prior to any destruction. The information must be destroyed at the request of the parent; however, a permanent record of student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained by the District without time limitation. (34 C.F.R. § 300.624(b).)

Destruction of Mandatory Permanent Records. Mandatory permanent records shall be preserved in perpetuity by the district. (5 Cal. Code Regs. § 432(b).)

Destruction of Mandatory Interim Records. Mandatory interim student records may be adjudged to be disposable when the student leaves the district or when their usefulness ceases and may be destroyed three school years after classification of such records as disposable. (5 C.C.R. §§437(c), 16027.)

Destruction of Permitted Records. Permitted student records may be destroyed when their usefulness ceases. (5 Cal. Code Regs. §§, 430(d)(3), 432(b)(3) 437(d), 16027.) They may be destroyed after six months following the student's completion of, or withdrawal from, the educational program. (5 Cal. Code Regs. § 437(d).)



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**11.15 Destruction Procedures**

Destruction of student records must be done in such a manner that the records are not available for possible public inspection in the process of the destruction. (5 Cal. Code of Regs. § 437(d).)

Destruction of student records stored electronically must be done in such a way that the data cannot be recovered. For example, file deletion, disk formatting, and “one way” encryption are thought to be ineffective because these methods leave the majority of the data intact and vulnerable to being retrieved. (“Best Practices for Data Destruction” (USDOE May 2014).)

The District may not destroy any educational record if there is an outstanding request to inspect or review them. (34 C.F.R. § 99.10(c).)

## **Chapter 12**

### **Low Incidence Purchasing**

#### **12.1 Purpose and Scope**

Students with low incidence disabilities typically require highly-specialized services, equipment, and materials. (Ed. Code, § 56000.5(a)(2).)

As part of the Local Plan submitted to the state, each SELPA shall describe how specialized books, materials, equipment, and services will be distributed within the SELPA. This policy has been developed to provide a summary of legal and local requirements and guidelines for students with low-incidence disabilities. In addition to this policy, all requirements outlined under the Annual State Low Incidence Funding Update will be observed.

#### **12.2 Summary of Legal Requirements**

##### **(A) Definition of Low Incidence Disability**

"Low incidence disabilities" are severe disabling conditions with an expected incidence rate of less than one percent of the total statewide enrollment in kindergarten throughout grade 12 and are specified as hearing impairments, vision impairments, severe orthopedic impairments, or any combination thereof. (Ed.

Code, § 56026.5.) For purposes of this definition, "vision impairments" do not include learning disabilities within the function of vision which result in visual perceptual or visual motor dysfunction. (Ed. Code, §§ 56026.5 and 56339.)

- (1) "Visual impairment" including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (5 Cal. Code Regs. § 3030(b)(13).)
- (2) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures. (5 Cal. Code Regs. § 3030(b)(8).)
- (3) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance. (5 Cal. Code Regs. §§ 3030(b)(3), (b)(5).)

**(B) Provision of Funding**

Education Code section 56836.22 provides for State funds to purchase “specialized” books, materials, and equipment as required under the student’s IEP for students with low-incidence disabilities.

Funds may be used for all students with low incidence disabilities whether the disability constitutes a primary or secondary eligibility of the student. Some students counted as having an orthopedic impairment may not be eligible for low-incidence equipment because they do not have a “severe” orthopedic impairment. (5 Cal. Code Regs. § 3030(b)(8).) Students with low incidence disabilities require highly specialized services, equipment, and materials. (Ed. Code, § 56000.5(a)(2).

Special supplies and equipment purchased with State funds are the property of the State and shall be available for use by individuals with exceptional needs throughout the State. The Clearinghouse for Specialized Media and Technology (“CSMT”) is available to facilitate the distribution of unused materials and equipment. (See <http://www.cde.ca.gov/re/pn/sm/cefcsmt.asp>.)

In addition to the equipment fund, the State Budget Act may appropriate funds annually which shall be used to provide specialized services to students with low-incidence disabilities.

**(C) Specialized Services**

Specialized services for low-incidence disabilities may include:

- (1) Specially designed instruction related to the unique needs of students with low-incidence disabilities provided by appropriately credentialed teachers.
- (2) Specialized services related to the unique needs of students with low-incidence disabilities provided by qualified individuals such as interpreters, note takers, readers, transcribers, and other individuals who provide specialized materials and equipment.

(Ed. Code, § 56363(b)(16); 5 Cal. Code Regs. §3051.16(a).)

An “educational interpreter” provides communication facilitation between students who are deaf or hard of hearing, and others, in the general education classroom and for other school-related activities, including extracurricular activities, as designated in a student's IEP. (5 Cal. Code Regs. §3051.16(b).)

An educational interpreter shall be certified by the national Registry of Interpreters for the Deaf (RID), or equivalent; in lieu of RID certification or equivalent, an educational interpreter must have achieved a score of 4.0 or above on the Educational Interpreter Performance Assessment (EIPA), the Educational Sign Skills Evaluation-Interpreter and Receptive (ESSE-I/R), or the National

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Association of the Deaf/American Consortium of Certified Interpreters (NAD/ACCI) assessment. If providing Cued Language transliteration, a transliterator shall possess Testing/Evaluation and Certification Unit (TEC Unit) certification, or have achieved a score of 4.0 or above on the EIPA - Cued Speech. (Cal. Code Regs. §3051.16(c).)

Specialized services for students with low-incidence disabilities shall be provided only by personnel who possess a credential that authorizes services in special education or clinical rehabilitation services in the appropriate area of disability. (5 Cal. Code Regs. §3051.16(d).)

### **12.3 Responsibility**

Low incidence funding is legally the responsibility of the SELPA, including accountability for how the funds are used and reassignment of specialized books, materials, and equipment within the SELPA and sharing with other SELPAs. To meet this responsibility, a group of educators knowledgeable about low incidence disabilities establishes and follows procedures and guidelines for purchases through the Low Incidence fund.

Knowledgeable individuals may include:

- (1) Specialist for the visually impaired
- (2) Specialist for the orthopedically impaired
- (3) Specialist for the hard of hearing or deaf
- (4) Speech/language pathologist
- (5) Audiologist
- (6) Teacher or specialist knowledgeable in assistive technology
- (7) Special Education administrator

### **12.4 Assessment/Eligibility**

Education Code section 56320(g) requires that persons knowledgeable of that disability shall conduct the assessment of a student with a suspected Low Incidence disability. A Low Incidence disability does not guarantee the use of Low Incidence funds. The IEP Team reviews assessment data and determines the most appropriate items or services needed to address the student's unique educational needs. These may or may not be "specialized" requiring the use of low incidence funds. Items which are found in most classrooms would not be acquired through Low Incidence funds.

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(A) **Procedures**

- (1) Assessment. Appropriate personnel conduct an assessment that complies with Education Code section 56320. *(Please refer to Chapter 1, Identification, Referral, and Assessment, which applies to students suspected of having a low incidence disability.)*
- (2) Assessment Report. The personnel who assess the student shall prepare a written report, or reports as appropriate, of the results of each assessment. The report shall include, but not be limited to, a statement indicating whether the student may need special education and related services and the basis for that determination, and a determination of the need for specialized services, materials, and equipment for students with Low Incidence disabilities consistent with guidelines published by the Superintendent of Public Instruction. (Ed. Code, § 56327(h).)
- (3) Determine Eligibility. The IEP Team reviews the assessment report(s) and determines whether a student meets eligibility criteria for a Low Incidence disability. The Low Incidence eligibility must be documented on the IEP as a primary or secondary disability.
- (4) Determine Student Needs. The IEP Team determines the student's educational needs, including whether the student needs low-incidence specialized services, materials, and equipment, by reviewing and considering the results of the educational assessment.
- (5) IEP Documentation. The need for low-incidence specialized services, materials, and equipment must be written into the IEP. These services, materials, and equipment shall include, but not be limited to, the following:
  - (a) How the item will assist the student's instruction in accordance with the IEP;
  - (b) How the item facilitates participation in the classroom;
  - (c) Justification statement that is related to the student's unique educational needs as identified in the assessment information;
  - (d) Assessment, goals, and objectives that are correlated to the justification statement of need;
  - (e) Present level that reflects assessment information and need for support;
  - (f) Identification of personnel who will provide support to the student and will monitor and inventory adapted equipment and FM System (list position).

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- (g) Attach Current Annual IEP. The IEP must be signed and legible. Attach amendment IEPs as appropriate.

**(B) Student Movement**

If a student moves out of the District, and “if the books, materials and equipment are still needed by other students with Low Incidence disabilities, then there is no requirement to send these books, materials or equipment with the student who moved. (*CDE FAQs on Low Incidence Funding.*) Providing these resources is the responsibility of the SELPA where the student now resides. If, however, books, materials and equipment purchased with Low Incidence funds are unused, SELPAs are encouraged to make arrangements with other SELPAs to share the unused equipment, books, and materials. The California Department of Education may be contacted for assistance in locating another SELPA that has need of the unused equipment, books, or materials.”

A graduating high school student who has a Low Incidence disability cannot use the specialized equipment purchased for him by his SELPA through Low Incidence funds in college. (*CDE FAQs on Low Incidence Funding.*) To do so would be a gift of public funds which is a violation of law. Books, materials and equipment purchased with Low Incidence funds remain the property of the state. If the student needs similar equipment upon graduating or aging out, he/she should contact the Department of Rehabilitation.

**(C) Equipment**

Item No Longer Needed. If the item(s) has been purchased for one student and is no longer being used by that student, the item can be reassigned to another student in the SELPA who is Low Incidence eligible. The IEP for that student must indicate the need for the Low Incidence equipment.

IEP teams may want to recommend a trial basis on a piece of equipment. This can be accomplished through a lease agreement with the vendor prior to purchase.

**(D) Management Information Documentation**

Team member will ensure that the student is listed with a Low Incidence disability on the Special Education Information System (“SEIS”) through SELPA.

**(E) Guidelines for Home Use of Low Incidence Equipment**

- (1) The student must be eligible for special education and related services as a student with a low incidence disability.
- (2) The IEP Team, which must include the Specialist, determines the need for home use and documents a strong rationale for the determination.

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- (3) Duplication of equipment to provide for both home and school use is not seen as appropriate.
- (4) Parents/Guardians will be responsible for the loss of or damage to equipment.
- (6) Equipment will be returned to the school when the school is not in session.
- (7) Parents/Guardians will agree in writing to:
  - (a) Secure the equipment and supervise proper use;
  - (b) Provide necessary and safe transportation of the equipment between home and school;
  - (c) Acknowledge that the equipment was purchased for District use with students through state funds and that duplication of equipment for both home and school is not seen as appropriate (if applicable);
  - (d) Assume responsibility for the loss or damage of equipment;
  - (e) Receive training in the use of the equipment before it can be sent home;
  - (f) Borrow the equipment for a specified period of time. The loan may be renewed for additional intervals;
  - (g) Acknowledge that the equipment may be returned at any time if the item is no longer needed or not being used properly; and,
  - (h) Return the equipment to the school should they move out of the District OR get permission to take the equipment to the new location.

**Chapter 13**  
**Foster Youth, Youth Placed in Licensed Children's Institutions,  
Incarcerated Minors, and Incarcerated Adults**

**13.1. Purpose**

Eligible disabled students are entitled to receive special education and related services as well as the protections given by the IDEA and related State law. This is true for disabled youth placed in foster family homes, licensed children's institutions, and correctional facilities and, with exceptions explained below, also for disabled adults(18-22 years old) in correctional facilities.

**13.2. Licensed Children's Institutions and Foster Family Homes**

**(A) Licensed Children's Institutions**

The responsibility for providing special education and related services to youth placed by a court, regional center, or public agency other than an educational agency in a licensed children's institution (LCI) lies with:

- (1) The SELPA in which the LCI is located;
- (2) The agency designated in a written agreement, if any, between districts and the county located in multidistrict and district and county SELPAs;
- (3) If no agreement, the county office in the county in which the LCI is located if the county is part of the SELPA; if the county office is not part of the SELPA, then the responsible local agency or other administrative entity of the SELPA in which the LCI is located.

(Ed. Code, §§ 56156.4(a) and (b).)

**(B) Foster Family Homes**

The responsibility for providing special education and related services to youth placed by a court, regional center, or public agency other than an educational agency in a foster family home lies with:

- (1) The SELPA in which the home is located;
- (2) The agency designated in a written agreement, if any, between districts and the county located in multidistrict and district and county SELPAs;
- (3) If no agreement, the district in which the home is located.

(Ed. Code, § 56156.4(a) and (b).)



### **13.3. Minors Incarcerated in Juvenile Facilities**

The Education Code establishes juvenile court schools for the education of students under the age of 18 who are incarcerated in juvenile correctional facilities. (Ed. Code, § 48645.1.) Disabled students in juvenile correctional facilities are entitled to special education and related services the same as they would be if they were not incarcerated. (*See Dear Colleague Letter* (OSEP and OSERS 2014) 64 IDELR 249.)

The responsibility for administering and operating juvenile court schools in juvenile correctional facilities lies with the county board of education. (Ed. Code, § 48645.2.) The county board of education may provide services through the county superintendent of schools or through a "contract with the respective governing boards of the elementary, high school, or unified school district in which the juvenile court school is located." (Id.)

Special education and related services, along with general education, must be provided in juvenile court schools. (Ed. Code, § 56150.) Therefore, unless a county board of education has contracted with a school district to provide special education to students incarcerated in juvenile facilities, the provision of special education and related services remains the responsibility of the county board of education.

### **13.4. Minors Incarcerated in Adult Correctional Facilities**

Minors are subject to the State's compulsory education requirements even if incarcerated in adult facilities. (Ed. Code, § 48200 et seq.) Disabled incarcerated minors in adult facilities are entitled to receive special education and related services, except as described below. (20 U.S.C. §§ 1412(a)(1) and 1414(d)(7); 34 C.F.R. § 300.324(d).)

The IDEA sets forth limits on a LEA's responsibility to provide a FAPE to disabled *minors* who were convicted as adults under State law and who are incarcerated in adult prisons. By virtue of the student's incarceration:

- (1) the IDEA requirements relating to the participation of disabled students in State and District wide assessments do not apply;
- (2) the requirements relating to transition planning do not apply to a student whose eligibility for special education will end due to the student's aging out before the student is released from incarceration;
- (3) the IEP team may modify the student's IEP or placement the State has determined a bona fide security or compelling penological interest exists that cannot otherwise be accommodated; and

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- (4) the requirements of 34 C.F.R. § 300.320 (relating to IEPs), and § 300.114 (relating to LRE), do not apply with respect to the modifications described in the preceding paragraph.

(20 U.S.C. § 1414(d)(7); 34 C.F.R. § 300.324(d).)

### **13.5 Incarcerated Adult Students (18-21 years old)**

#### **(A) Adult Students Who Did Not Previously Qualify for Special Education**

The general definition of a disabled student excludes students who were not eligible for special education prior to his or her 19th birthday. (Ed. Code, § 56026(c)(4).)

In addition, an incarcerated student between the ages of 18 and 21 years old who, in the educational placement prior to his or her incarceration, was not identified as a disabled student or who did not have an IEP is not entitled to a FAPE during the incarceration. (20 U.S.C. § 1412(a)(1)(B)(ii); Ed. Code, § 56040(b).)

#### **(B) Adult Students Who Previously Qualified**

Incarcerated adult students who qualified for special education and related services, or had an IEP, prior to their incarceration and who have not yet received a regular high school diploma are entitled to continue receiving special education and related services. (20 U.S.C. § 1412(a)(1)(A) and (B)(ii); Ed. Code, § 56040(b).)

Determining the responsible LEA for providing special education and related services to eligible adult students incarcerated in adult correctional facilities is a matter of state law. (20 U.S.C. § 1412(a)(11)(C); Ed. Code, §§ 56026(c)(4) and 56040(b).) The California Supreme Court as well as the Ninth Circuit Court of Appeals have stated unequivocally that this determination is made by applying the terms of Education Code section 56041. This means that, for no conserved incarcerated adults, the agency responsible for providing special education and related services is the district where the student's parents reside as long as and until the parents relocate to a new district of residence. (*Los Angeles Unified School District v. Garcia* (58 Cal.4th 175 (2013), *aff'd Los Angeles Unified School District v. Garcia* (9th Cir. 2014) 741 F.3d 922.) For conserved students, the agency responsible for providing special education and related services is the district in which the conservator resides as long as and until the conservator relocates or a new conservator is appointed.

## **Chapter 14**

### **Disproportionality and Medical Prescription Use**

#### **14.1 Prohibition of Mandatory Medication Use**

It is the policy of Clovis Unified School District to prohibit personnel from requiring a child with a disability to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving a special education evaluation, or receiving special education and services. (20 U.S.C. § 1412 (a)(25); Ed. Code, § 56040.5(a).)

However, this prohibition does not create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, his or her behavior in the class or school, or the need for assessment for special education and related services. (Ed. Code, § 56040.5(b).)

#### **14.2 Over-Identification & Disproportionality**

It is the policy of the District to prevent the inappropriate disproportionate representation by race, sex, and ethnicity of students with disabilities.

- The District shall ensure that prior to children being referred for an evaluation to determine eligibility for special education services, all general education program options and services have been considered and, where appropriate, utilized. General education programs and services include structured, research-based intervention programs for both academics and behavior.
- In accordance with California Education Code Sections 56320(a) and 56324(a) all evaluation materials and procedures are selected and administered so as not to be racially, culturally, or sexually discriminatory. Any psychological assessment shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed.
- As IEP Teams review evaluation results, the effects of cultural, economic, and environmental factors and the effects of the student being a second language learner shall be considered in determining whether the student actually has a disability.
- The District shall conduct internal monitoring activities that may include, but not limited to: periodic review of IEP documents developed by the IEP teams, analysis of the LEA State Performance Plan (SPP) data, review and analysis of California Special Education Management Information System (CASEMIS) and/or California Longitudinal Pupil Achievement Data System (CALPADS) data, participation in the state's Quality Assurance Process (i.e. Self-reviews, Verification Reviews, and follow-up corrective action activities), participation in selected IEP Team meetings, and review of selected District assessment reports. (Ed. Code, § 56205(a) and 20 U.S.C. § 1412(a)(24).)

## Chapter 15

### Special Education Local Plan Area Local Educational Agency Assurances

#### 15.1 Free Appropriate Public Education—20 USC Section 1412(a)(1)

It shall be the policy of this LEA that a free appropriate public education is available to all children with disabilities residing in the LEA between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

#### 15.2 Full Educational Opportunity—20 USC Section 1412(a)(2)

It shall be the policy of this LEA that all children with disabilities have access to educational programs, non-academic programs, and services available to non-disabled children.

#### 15.3 Child Find 20 USC Section 1412(a)(3)

It shall be the policy of this LEA that all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated. A practical method has been developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

#### 15.4 Individualized Education Program and Individualized Family Service Plan—20 USC Section 1412(a)(4)

It shall be the policy of this LEA that an IEP, or an IFSP that meets the requirements of 20 U.S.C. § 1436 (d), is developed, implemented, reviewed, and revised for each child with a disability who requires special education and related services in accordance with 20 U.S.C. § 1414 (d). It shall be the policy of this LEA that an IEP Team meeting will be conducted on at least an annual basis to review a student's progress and make appropriate revisions.

#### 15.5 Least Restrictive Environment—20 USC Section 1412(a)(5)

It shall be the policy of this LEA that 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 not disabled. Special classes, separate schooling, or other removal of children with disabilities from the general educational environment, occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

#### 15.6 Procedural Safeguards—20 USC Section 1412(a)(6)

It shall be the policy of this LEA that children with disabilities and their parents shall be afforded all procedural safeguards according to state and federal laws and regulations.

**15.7 Evaluation—20 USC Section 1412(a)(7)**

It shall be the policy of this LEA that a reassessment of a child with a disability shall be conducted at least once every three years or more frequently, if appropriate. It shall be the policy of this LEA that children with disabilities shall be evaluated in accordance with the law.

**15.8 Confidentiality—20 USC Section 1412(a)(8)**

It shall be the policy of this LEA that the confidentiality of personally identifiable data, information, and records maintained by the LEA relating to children with disabilities and their parents and families shall be protected pursuant to the Family Educational Rights and Privacy Act and related California law.

**15.9 Part C to Part B Transition—20 USC Section 1412(a)(9)**

It shall be the policy of this LEA that children participating in early intervention programs under the Individuals with Disabilities Education Act (IDEA), Part C, and who will participate in preschool programs, experience a smooth and effective transition to preschool programs in a manner consistent with 20 USC Section 1437(a)(9). The transition process shall begin prior to the child's third birthday.

**15.10 Private Schools—20 USC Section 1412(a)(10)**

It shall be the policy of this LEA to assure that children with disabilities voluntarily enrolled by their parents in private schools shall receive appropriate special education and related services pursuant to LEA coordinated procedures. The proportionate amount of federal funds will be allocated for the purpose of providing special education services to children with disabilities voluntarily enrolled in private school by their parents.

**15.11 Local Compliance Assurances—20 USC Section 1412(a)(11)**

It shall be the policy of this LEA that the local plan shall be adopted by the appropriate local board(s) (district/county) and is the basis for the operation and administration of special education programs, and that the agency(ies) herein represented will meet all applicable requirements of state and federal laws and regulations, including compliance with the IDEA; the Federal Rehabilitation Act of 1973, Section 504 of Public Law; and the provisions of the California Education Code, Part 30.

**15.12 Interagency—20 USC Section 1412(a)(12)**

It shall be the policy of this LEA that interagency agreements or other mechanisms for interagency coordination are in effect to ensure services required for free appropriate public education are provided, including the continuation of services during an interagency dispute resolution process.

**15.13 Governance—20 USC Section 1412(a)(13)**

It shall be the policy of this LEA to support and comply with the provisions of the governance bodies and any necessary administrative support to implement the local plan. A final determination that an LEA is not eligible for assistance under this part will not be made without first affording that LEA with reasonable notice and an opportunity for a hearing through the State Education Agency.

**15.14 Personnel Qualifications**

It shall be the policy of this LEA to ensure that personnel providing special education related services are appropriately and adequately prepared and trained, and that those personnel have the content knowledge and skills to serve children with disabilities. This policy shall not be construed to create a right of action on behalf of an individual student for the failure of a particular LEA staff person to be highly qualified or to prevent a parent from filing a State complaint with the California Department of Education (CDE) about staff qualifications.

**15.15 Performance Goals and Indicators—20 USC Section 1412(a)(15)**

It shall be the policy of this LEA to comply with the requirements of the performance goals and indicators developed by the CDE and provide data as required by the CDE.

**15.16 Participation in Assessments—20 USC Section 1412(a)(16)**

It shall be the policy of this LEA that all students with disabilities shall participate in state and district-wide assessment programs described in 20 USC Subsection 6311. The IEP team determines how a student will access assessments with or without accommodations, or access alternate assessments where necessary and as indicated in their respective IEPs.

**15.17 Supplementation of State, Local, and Federal Funds – 20 USC Section 1412(a)(17)**

It shall be the policy of this LEA to provide assurances that funds received from Part B of the IDEA will be expended in accordance with the applicable provisions of the IDEA, and will be used to supplement and not to supplant state, local, and other federal funds.

**15.18 Maintenance of Effort—20 USC Section 1412(a)(18)**

It shall be the policy of this LEA that federal funds will not be used to reduce the level of local funds and/or combined level of local and state funds expended for the education of children with disabilities except as provided in federal laws and regulations.

**15.19 Public Participation—20 USC Section 1412(a)(19)**

It shall be the policy of this LEA that public hearings, adequate notice of the hearings, and an opportunity for comments are available to the general public, including individuals with disabilities and parents of children with disabilities, and are held prior to the adoption of any policies and/or regulations needed to comply with Part B of the IDEA.

**15.20 Suspension and Expulsion—20 USC Section 1412(a)(22)**

The LEA assures that data on suspension and expulsion rates will be provided in a manner prescribed by the CDE. When indicated by data analysis, the LEA further assures that policies, procedures, and practices related to the development and implementation of the IEPs will be revised.

**15.21 Access to Instructional Materials—20 USC Section 1412(a)(23)**

It shall be the policy of this LEA to provide instructional materials to blind students or other students with print disabilities in a timely manner according to the state-adopted National Instructional Materials Accessibility Standard.

**15.22 Overidentification and Disproportionality—20 USC Section 1412(a)(24)**

It shall be the policy of this LEA to prevent the inappropriate over identification or disproportionate representation by race and ethnicity of children as children with disabilities.

**15.23 Prohibition on Mandatory Medicine—20 USC Section 1412(a)(25)**

It shall be the policy of this LEA to prohibit school personnel from requiring a student to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school or receiving a special education assessment and/or services.