

Instruction**AR 6164.4(a)****IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION**

The Superintendent or designee shall ensure that the district's child find process includes the collection of data and, at reasonable intervals, the screening of such data to determine if students are making adequate progress, as appropriate.

A student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and used where appropriate. (Education Code 56303)

However, the district shall ensure that evaluations of children suspected of having a disability are not delayed or denied because of the implementation of response to intervention strategies.

A parent/guardian or the district may initiate a request for an initial evaluation to determine if the student is a student with a disability. (34 CFR 300.301)

When a verbal referral is made, staff shall offer assistance to the individual to make the request in writing and shall assist the individual if the individual requests such assistance. (5 CCR 3021)

All referrals from school staff for an initial evaluation shall include a brief reason for the referral and description of the regular program resources that were considered and/or modified for use with the student, and, when appropriate, the results of intervention. This documentation shall not delay the timelines for completing the assessment plan or assessment. (5 CCR 3021)

Initial Evaluation for Special Education Services

Before the initial provision of special education and related services to a student with a disability, the district shall conduct an individual initial evaluation of the student's educational needs related to all areas of suspected disability. (Education Code 56320; 34 CFR 300.301)

Upon receipt of a referral of any student for special education and related services, a proposed evaluation plan shall be developed within 15 calendar days, not counting days between the student's regular school sessions or terms or calendar days of school vacation in excess of five school days, unless the parent/guardian agrees, in writing, to an extension. If the referral is made within 10 days or less prior to the end of the student's regular school year or term, the proposed evaluation plan shall be developed within 10 days after the beginning of the next regular school year or term. (Education Code 56043, 56321)

The proposed assessment plan shall meet all of the following requirements: (Education Code 56321)

1. Be in a language easily understood by the general public
2. Be provided in the native language of the parent/guardian or other mode of

Instruction
IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION

AR 6164.4(b)

communication used by the parent/guardian unless it is clearly not feasible

3. Explain the types of assessment to be conducted
4. State that no individualized education program (IEP) will result from the evaluation without parent/guardian consent

A copy of the notice of a parent/guardian's rights and procedural safeguards shall be attached to the evaluation plan. (Education Code 56321)

The proposed written evaluation plan shall include a description of recent assessments conducted, including available independent assessments and assessment information requested by the parent/guardian to be considered, as well as information indicating the student's primary language and the student's primary language proficiency as determined by Education Code section 52164.1. (5 CCR 3022)

Before conducting an initial evaluation, the district shall provide the parent/guardian with prior written notice in accordance with 34 CFR 300.503. In addition, as part of the assessment plan, the parent/guardian shall receive written notice that: (Education Code 56329; 34 CFR 300.304, 300.502, 300.504)

1. Upon completion of the administration of tests and other assessment materials, an IEP team meeting that includes the parent/guardian or the parent/guardian's representative shall be scheduled pursuant to Education Code 56341. At this meeting, the team shall determine whether or not the student is a student with disabilities as defined in Education Code 56026 and shall discuss the evaluation the educational recommendations and the reasons for these recommendations.
2. When making a determination of eligibility for special education, the district shall not determine that the student is disabled if the primary factor for such determination is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in 20 USC 6368, lack of appropriate instruction in mathematics or limited English proficiency if the student does not otherwise meet the eligibility criteria under 34 CFR 300.8.
3. A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent/guardian.
4. If the parent/guardian disagrees with an assessment obtained by the district, the parent/guardian has the right to obtain, at public expense, an independent educational evaluation (IEE) of the student from qualified specialists, in accordance with 34 CFR 300.502. The parent/guardian is entitled to only one such evaluation at public expense each time the district conducts an assessment with which the

Instruction
IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION

AR 6164.4(c)

parent/guardian disagrees.

If the district observed the student in conducting its evaluation, or if its evaluation procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to the 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.

5. The district may initiate a due process hearing pursuant to Education Code 56500-56508 to show that its evaluation is appropriate. If the final decision resulting from the due process hearing is that the evaluation is appropriate, the parent/guardian still has the right for an IEE but not at public expense.

If the parent/guardian obtains an IEE at private expense, the results of the IEE shall be considered by the district with respect to the provision of free, appropriate public education (FAPE) to the student, and may be presented as evidence at a due process hearing regarding the student. If the district observed the student in conducting its evaluation, or if its evaluation procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to an IEE of the student in the student's current educational placement and setting proposed by the district, regardless of whether the IEE is initiated before or after the filing of a due process hearing.

6. If a parent/guardian proposes a publicly financed placement of the student in a nonpublic school, the district shall have an opportunity to observe the proposed placement and, if the student has already been unilaterally placed in the nonpublic school by the parent/guardian, the student in the proposed placement. Any such observation shall only be of the student who is the subject of the observation and may not include the observation or assessment of any other student in the proposed placement unless that student's parent/guardian consents to the observation or evaluation. The results of any observation or assessment of another student in violation of Education Code 56329(d) shall be inadmissible in any due process or judicial proceeding regarding the free appropriate public education of that other student.

Parent/Guardian Consent for Evaluations

Consent means that the parent/guardian: (Education Code 56021.1; CFR 300.9)

1. Has been fully informed, in the parent/guardian's native language or other mode of communication, of all information relevant to the activity for which consent is sought

Instruction**AR 6164.4(d)****IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION**

2. Understands and agrees in writing to the carrying out of the activity for which parent/guardian 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 the parent/guardian's part and may be revoked at any time
4. Understands that if the parent/guardian revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). The district shall make reasonable efforts to obtain the informed consent of the parent/guardian for an initial evaluation or reevaluation of a student. The district shall maintain a record of its attempts to obtain consent, including: (Education Code 56321, 56341.5; 34 CFR 300.300, 300.322).

Upon receiving the proposed evaluation plan, the parent/guardian shall have at least 15 days to decide whether to consent to the initial evaluation. The district shall not interpret parent/guardian consent for initial evaluation as consent for initial placement or initial provision of special education services. (Education Code 56321; 34 CFR 300.300)

The district shall make reasonable efforts to obtain the consent of the parent/guardian for an initial evaluation or reevaluation of a student. (Education Code 56321; 34 CFR 300.300, 300.322)

The district shall maintain a record of its attempts to obtain consent, such as: (Education Code 56341.5)

1. Detailed records of telephone calls made or attempted and the results of those calls
2. Copies of correspondence sent to the parent/guardian and any responses received
3. Detailed records of visits made to the parent/guardian's home or place of employment and the results of those visits

If a parent/guardian refuses to consent to the initial evaluation or fails to respond to a request to provide consent, the district may, but is not required to, pursue an evaluation by utilizing the procedural safeguards, including the mediation and due process procedures pursuant to 20 USC 1415 and 34 CFR 300.506-300.516. (Education Code 56321; 34 CFR 300.300)

For a student who is a ward of the state and is not residing with the student's parents/guardians, the district shall make reasonable efforts to obtain the consent from the parent/guardian of the student for an initial evaluation to determine whether the student is a student with a disability. The district may conduct an initial evaluation without obtaining consent if any of the following situations exists: (Education Code 56321.1; 20 USC 1414; 34 CFR 300.300)

Instruction**AR 6164.4(e)****IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION**

1. Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent/guardian of the student
2. The rights of the parent/guardian of the student have been terminated in accordance with California law
3. The rights of the parent/guardian 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 student

The district need not obtain parent/guardian consent before reviewing existing data as part of an evaluation or reevaluation that is administered to all students, unless consent is required from the parents/guardians of all students. (Education Code 56321; 34 CFR 300.300)

Conduct of the Evaluation

Within 60 calendar days of receiving parental consent for the initial assessment of a student, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five schooldays, a determination whether the student is eligible for special education and the educational needs of the student shall be made, an IEP team meeting shall occur, and an IEP shall be developed, unless the parent/guardian agrees in writing to an extension, pursuant to Education Code 56344. If the 60-day time is interrupted by a student school vacation, the 60-day time shall recommence on the date that student schooldays reconvene and a meeting to develop an IEP for the student shall be conducted within 30 days of a determination that the student needs special education and related services. (Education Code 56043, 56344)

However, when a referral has been made for a student 30 days or less prior to the end of the regular school year, an IEP required as a result of an assessment of the student shall be developed within 30 days after the commencement of the subsequent regular school year. (Education Code 56043, 56344; 34 CFR 300.301, 300.323)

The evaluation shall be conducted by qualified personnel who are competent to perform the assessment as determined by the district. (Education Code 56320, 56322)

In addition, evaluations and reevaluations shall be administered by qualified personnel who are competent in the oral or sign language skills and written skills of the student's primary language or mode of communication and have a knowledge and understanding of the cultural and ethnic background of the student. If it is clearly not feasible to do so, an interpreter shall be used, and the assessment report shall document this condition and note that the validity of the assessment may have been affected. 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 CCR 3023)

Instruction**AR 6164.4(f)****IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION**

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (34 CFR 300.302)

In conducting the evaluation, the district shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. The district shall also use any information provided by the parent/guardian that may assist the district in making the determination as to whether the student is a student with a disability and, if so, the necessary components of the student's IEP when the IEP is developed, including information related to enabling the student to be involved in and to progress in the general education curriculum. (34 CFR 300.304)

The district's evaluation shall not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining the appropriate educational program for the student. The assessment shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. (34 CFR 300.304)

The district shall also ensure that assessments and other evaluation materials provide relevant information that assists in determining the student's educational needs and are: (Education Code 56320; 34 CFR 300.304)

1. Selected and administered so as not to be discriminatory on a racial, cultural, or sexual basis
2. Provided and administered in the student's native language or other mode of communication and in the 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 so provide or administer
3. Used for the purposes for which the assessments or measures are valid and reliable
4. Administered by trained and knowledgeable personnel except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist
5. Administered in accordance with any instructions provided by the producer of the assessments
6. Tailored to assess specific areas of educational need and not merely designed to provide a single general intelligence quotient
7. If administered to a student with impaired sensory, manual, or speaking skills, selected

Instruction**AR 6164.4(g)****IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION**

and administered to best ensure that the results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

Students shall be assessed in all areas related to the suspected disability, including, if appropriate, health and development, vision (including low vision), hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. When appropriate, a developmental history shall be obtained. The district shall ensure that the evaluation is sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified. (Education Code 56320; 34 CFR 300.304)

As part of the initial evaluation and any reevaluation, the IEP team and other qualified professionals shall, if appropriate, review existing evaluation data on the student, including evaluations and information provided by the parents/guardians, 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/guardian, the team shall identify what additional data, if any, are needed to determine: (Education Code 56381; 34 CFR 300.305)

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 the student's IEP and to participate, as appropriate, in the general education curriculum

If a student has transferred from another district in the same school year or leaves this district, the district shall coordinate with the student's prior or subsequent district as necessary and as expeditiously as possible to ensure prompt completion of full evaluations. (34 CFR 300.304)

Evaluation Report

The personnel who evaluate the student shall prepare a written report of the results of each evaluation. The report shall include, but not be limited to, the following: (Education Code 56327)

Instruction
IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION

AR 6164.4(h)

1. Whether the student may need special education and related services
2. The basis for making the determination
3. The relevant behavior noted during the observation of the student in an appropriate setting
4. The relationship of that behavior to the student's academic and social functioning
5. The educationally relevant health, developmental, 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
8. The need for specialized services, materials, and equipment for students with low incidence disabilities, consistent with Education Code 56136

Eligibility Determination

Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent/guardian shall determine whether the student is a student with a disability as defined in 5CCR 3030 and 34 CFR 300.8 and, if so, ~~his/her~~ the student's educational needs. In interpreting the data, the group shall draw information from a variety of sources, including aptitude and achievement tests, parent/guardian input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior. The group shall ensure that the information obtained from these sources is documented and carefully considered. (34 CFR 300.306)

When making a determination of eligibility for special education and related services, the district shall not determine that a student is disabled if the primary factor for such determination is a lack of appropriate instruction in reading, including the essential components of reading instruction pursuant to 20 USC 6368, lack of instruction in mathematics, limited English proficiency, or that the student does not otherwise meet the eligibility criteria. (Education Code 56329; 34 CFR 300.306)

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 CCR 3023)

Instruction
IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION

AR 6164.4(i)

Independent Educational Evaluation

An *independent educational evaluation* is defined as an evaluation conducted by a qualified examiner who is not employed by the district. (34 CFR 300.502)

Public expense means that the district either pays for the full cost of the IEE or ensures that the evaluation is otherwise provided at no cost to the parent/guardian. (34 CFR 300.502)

The parents/guardians of a student with a disability have the right to obtain an IEE at public expense under the same criteria, including the location of the evaluation and the qualifications of the examiner, that the district uses for a district-initiated evaluation. (34 CFR 300.502)

The parent/guardian is entitled to only one IEE at public expense each time the district conducts an evaluation with which the parent/guardian disagrees. (Education Code 56329; 34 CFR 300.502)

If a parent/guardian has requested an IEE, the district may ask for the reason that he/she objects to the district's evaluation. However, the parent/guardian is not required to provide an explanation and the district may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation. (34 CFR 300.502)

Upon receiving the request for an IEE, the district shall, without unnecessary delay, either: (34 CFR 300.502)

1. File a due process complaint to request a hearing to show that its evaluation is appropriate
2. Ensure that an IEE is provided at public expense, unless the district can later demonstrate at a hearing that the evaluation obtained by the parent/guardian did not satisfy the district's criteria

If a due process hearing decision determines that the district's evaluation is appropriate, then the parent/guardian may obtain an IEE but not at public expense. (34 CFR 300.502)

In any decision made with respect to providing FAPE to a student with a disability, the result of any IEE obtained by the student's parent/guardian shall be considered by the district if it meets district criteria. Any such result also may be presented as evidence at a hearing on a due process complaint. (34 CFR 300.502)

Coordinating Transitions

The district designates the individual listed below as the main point of contact for coordinating and completing, with other agencies and persons, the transition of a child and family from infant/toddler programs to preschool (Part C to Part B of the federal Individuals with Disabilities

Instruction
IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION

AR 6164.4(j)

Education Act), including establishing practices to educate and support families during the transition: (Government Code 95008)

Joseph Dana (Assistant Superintendent, Educational Services)

500 Dyer Street, Orcutt, CA 93455 (Address)

805-938-8934 (Telephone Number)

jdana@orcutt-schools.net (email)

Reevaluation

A reevaluation shall be conducted when the district determines that the educational or related service needs of the student, including improved academic achievement and functional performance, warrant a reevaluation or if the student's parent/guardian or teacher requests reevaluation. Such reevaluations shall occur every three years, unless the parent/guardian and district agree in writing that a reevaluation is unnecessary. A reevaluation may not occur more than once a year, unless the parent/guardian and the district agree otherwise. (Education Code 56043, 56381; 34 CFR 300.303)

The district shall ensure that any reevaluations of the student are conducted in accordance with the evaluation procedures pursuant to 34 CFR 300.304-300.311. (34 CFR 300.303)

Before entering kindergarten or first grade, as the case may be, children with disabilities who are in a preschool program shall be reevaluated to determine if they still need special education and services. IEP teams shall identify a means of monitoring the continued success of children who are determined to be eligible for less intensive special education programs (Education Code 56445)

The district's point of contact for coordinating and completing the transition of a child and family from infant/toddler programs to preschool, may coordinate the reevaluation and monitoring as described above for kindergarten or first grade.

State

34 CFR 303.1-303.734: Early Intervention Program for Infants and Toddlers with Disabilities

5 CCR 3021-3029: Identification, referral and assessment

5 CCR 3030-3031: Eligibility criteria

Ed. Code 44265.5: Professional preparation for teachers of impaired students

Ed. Code 56000-56885: Special education programs

Ed. Code 56043: Special education; timelines

Ed. Code 56195.8: Adoption of policies

Ed. Code 56300-56305: Identification of individuals with disabilities

Ed. Code 56320-56330: Assessment

Ed. Code 56333-56338: Eligibility for specific learning disabilities

Ed. Code 56340-56347: Individualized education program teams

Instruction
IDENTIFICATION OF INDIVIDUALS FOR SPECIAL EDUCATION

AR 6164.4(k)

Ed. Code 56381: Reassessment of students
Ed. Code 56425-56432: Early education for individuals with disabilities
Ed. Code 56441.11: Eligibility criteria; children ages 3-5
Ed. Code 56445: Transition to grade school; reassessment
Ed. Code 56500-56509: Procedural safeguards
Gov. Code 95000-95029.5: California Early Intervention Services Act

Federal

20 USC 1232g : Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1400-1482: Individuals with Disabilities Education Act
20 USC 1412: State eligibility
20 USC 1415: Procedural safeguards
34 CFR 104.35: Evaluation and placement
34 CFR 104.36: Procedural safeguards
34 CFR 300.1-300.818: Individuals with Disabilities Education Act
34 CFR 300.301-300.306: Evaluations and reevaluations
34 CFR 300.323: When IEPs must be in effect
34 CFR 300.502: Independent educational evaluation of student with disability

Management Resources

California Department of Education Publication: California Practitioners' Guide for Educating English Learners with Disabilities, 2019
Court Decision: N.B. and C.B v. Hellgate Elementary School District (9th Cir. 2008) 541 F.3d 1202
Court Decision: Compton Unified School District v. Addison (9th Cir. 2010) 598 F.3d 1181
Court Decision: Timothy O. v. Paso Robles Unified School District (9th Cir. 2016) 822 F.3d 1105
Court Decision: M.M. v. Lafayette School District (9th Cir. 2014) 767 F.3d 842
Court Decision: Hood v. Encinitas Union School District (2007) 486 F.3d 1099
Federal Register: Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845
U.S. Department Of Education Publication: Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families, July 2021
U.S. Department Of Education Publication: Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act, August 2021
U.S. Department of Education Publication: A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA): Memorandum 11-07, January 2011
Website: CSBA District and County Office of Education Legal Services
Website: California Department of Education, Special Education
Website: U.S. Department of Education, Office of Special Education Programs
Website: CSBA

Regulation Approved: 3/8/2023

ORCUTT UNION SCHOOL DISTRICT
Orcutt, California