

Sonoma County SELPA
Special Education
Procedural Handbook

September 2017

Proposed Chapters for Sonoma County SELPA Procedural Handbook

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PURPOSE AND SCOPE

The purpose of this Special Education Procedural Handbook is to serve as a guideline for required, as well as best practices within the realm of special education. With the exception of language mandated by federal and state laws and regulations, the contents of this handbook are procedural suggestions intended to assist districts in meeting the requirements of the law. It provides district personnel clear and systematic procedures regarding student rights and responsibilities, in accordance with federal and state laws and regulations. It draws from the IDEA, Title V, the Education Code, and articulates with the Sonoma County Local Plan for Special Education.

Students who are eligible for special education and related services are afforded a free and appropriate public education, designed to meet their needs in the least restrictive environment. Procedural safeguards are available for every student. Each district is responsible for ensuring that the above mission is accomplished in a timely, thoughtful and thorough manner.

OVERVIEW OF SPECIAL EDUCATION

Special Education is defined by law as “specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability.”

In order to determine a student's eligibility for special education, a multi-disciplinary assessment is conducted. This assessment team determines if a student satisfies both parts of a two-part test. First, the student must meet the definition of one or more of the categories of disabilities specified under the IDEA. Second, the student must be shown to be in need of special education and related services as a result of his or her disability or disabilities. In general, a student is identified to be in need of special education and related services if he or she is unable to function satisfactorily in the general education classroom, even with accommodations and modifications to the curriculum. Students whose educational needs are due primarily to limited English proficiency, a lack of instruction in reading or mathematics, temporary physical disabilities, social maladjustment, environmental, cultural, or economic factors, do not qualify as students with disabilities.

Upon determination of eligibility, the Individualized Education Program (IEP) team develops the IEP, which is a document that describes the student's current level of educational performance, a statement of annual goals aligned to the general education standards, a statement of the special education and related services the student will receive, and the extent to which he or she will participate in general education. The IEP is reviewed and modified at least annually.

With certain exceptions, at least every three years a reevaluation of the student is conducted to determine if he or she continues to be eligible for special education and related services. If determined by the IEP team and other qualified professionals that additional data are not needed to make the determination and the parent agrees, a reevaluation is not necessary. A student may be dismissed from special education and related services if the IEP team, based on an assessment, determines that the student no longer meets the eligibility criteria for special education.

Students with disabilities and their parents are afforded certain procedural safeguards designed to provide them with meaningful involvement in the educational program. Parents may file a complaint if they believe that the school district has not complied with the laws and regulations governing special education. They may also request a due process hearing in the event they disagree with the district's decisions regarding their child's educational program.

ROLES AND RESPONSIBILITIES FOR SPECIAL EDUCATION TEACHERS

Special Education Teachers

The special education teacher who serves the student is the case manager for students assigned to the school site(s). The activities of a case manager are varied depending on the site, the program, and grade level(s) of students involved. The following list describes the roles and responsibilities of special education teachers:

1. Informs parents of the need to file a written request for assessment when a verbal request is made. Provides assistance in completing this written notice if necessary.
2. Completes the following form:
 - SEIS Form 21 Referral for Special Education and Related Services
3. Assists in the development of the Assessment Plan (SEIS Form 23A or 23 B). An Assessment Plan must be completed whenever an assessment for the development or revision of the IEP is to be conducted and must be signed by the parent/guardian prior to the testing. For initial referrals, the Assessment Plan must be given to the parent within 15 days of the referral for assessment, not counting days between the student's regular school sessions or terms or days of school vacation in excess of 5 school days from the date of the referral, unless the parent agrees, in writing to an extension. An Assessment Plan must be developed within 10 days after the beginning of the regular school year for any referral made 10 days or less prior to the end of the previous school year.
4. Ensures that the Notice of Procedural Safeguards is given to the parent along with the assessment plan.
5. Assists in the identification of student's individual needs through assessment. Provides results of academic achievement assessments to the school psychologist at least 10 days in advance of the IEP meetings, so that these results can be incorporated into the written psychological report prior to the IEP team meeting.
6. Arranges and coordinates IEP team meetings.
 - Completes the SEIS Form 25A (IEP Notice of Meeting) and sends it to the parent and all team members early enough to ensure an opportunity to attend.
 - Ensures that the following timelines are met:
 - Initial IEP meetings must be held within 60 days of the receipt of the signed assessment plan.

- Annual IEP reviews must be held before or on the date of the previous annual IEP review or initial/triennial.
 - Triennial reevaluations must be conducted within three years of the previous triennial or within three years of the initial assessment.
 - For administrative placements, complete SEIS Form 31 (Interim Special Education Services) form and send it to an appropriate administrator within 24 hours of placement. The administrative placement IEP team meeting must take place within 30 days of the placement.
7. Meets with site administrator/designee and other staff as needed, to calendar IEP meetings according to due dates.
 8. Participates in the development of IEPs.
 9. Provides direct instruction to students with IEPs, as designated in the IEP.
 10. Supervises the instructional assistant and contributes input to his/her evaluation, if appropriate.
 11. Provides in-service training for site school staff and community in order to promote a better understanding of students with disabilities as needed.
 12. Coordinates and consults with administrators, special education specialists, general education classroom teachers, psychologists, program specialists, other support staff, outside agencies, and parents regarding instructional planning for special education students.
 13. Notifies special education department and site administrator of accurate monthly caseload numbers.
 14. Provides resources, such as instructional materials and staff time to the regular classroom teacher as appropriate.
 15. Evaluates student progress, maintains necessary records indicating student performance and attendance, and recommends revisions of the IEP when appropriate. This includes grades, progress reports, and benchmark documentation of goals and objectives cited in students' IEPs.
 16. Assists parents in understanding their rights and the special education process and procedures.
 17. Attends district and site level meetings.

18. Provides the necessary information to the site/district testing coordinator for all state/district assessments.

ROLES AND RESPONSIBILITIES IN SPECIAL EDUCATION RELATED SERVICES SPECIALISTS

Related Services Specialists

The Related Services specialist is the case manager for students assigned to his/her caseload. The activities of a case manager are varied depending on the site, the program, and grade level(s) of students involved. The following list describes the roles and responsibilities of Related Services specialists:

1. Conducts screenings, when indicated and with consent as required.
2. Informs parents of the need to file a written request for assessment when a verbal request is made. Provides assistance in completing this written notice if necessary.
3. For Related Services only students, completes the following forms as appropriate:
SEIS Form 21 (Referral for Special Education and Related Services)
SEIS Form 22 (Notice of Receipt of Referral for Special Education Assessment)
SEIS Form 42A or 42B (Consent to Release or Exchange of Information)
4. For Related Services only students, develops the Assessment Plan (SEIS Form 23A or 23B). For all other students with IEPs, assists in the development of the Assessment Plan. An Assessment Plan must be completed whenever an assessment for the development or revision of the IEP is to be conducted and must be signed by the parent/guardian prior to the testing. For initial referrals, the Assessment Plan must be given to the parent within 15 days of the referral for assessment, not counting days between the student's regular school sessions or terms or days of school vacation in excess of 5 school days from the date of the referral, unless the parent agrees, in writing to an extension. An Assessment Plan must be developed within 10 days after the beginning of the regular school year for any referral made 10 days or less prior to the end of the previous school year.

Ensures that the Notice of Procedural Safeguards is given to the parent along with the assessment plan.
5. Conducts appropriate assessments in the areas of suspected disability.
6. For Related Services only students, arranges and coordinates IEP team meetings. Completes the SEIS Form 25A or 25B (Individualized Education Program Notice of Meeting and Intention to Participate) and sends it to the parent early enough to ensure opportunity to attend.

- Ensures that the following timelines are met:
 - Initial IEP meetings must be held within 60 days of the receipt of the signed Assessment Plan.
 - Annual IEP reviews must be held before or on the date of the previous annual IEP review or initial/triennial.
 - Triennial reevaluations must be conducted within three years of the previous triennial or within three years of the initial assessment.
 - For administrative placements, complete SEIS Form 31 (Interim Special Education Services) form and send it to an appropriate administrator within 24 hours of placement. The administrative placement IEP team meeting must take place within 30 days of the placement.
7. Provides a written report of all assessment conducted.
 8. Provides assessment information at IEP meetings, and makes program and/or service recommendations when appropriate.
 9. Participates in the development of the IEP.
 10. Provides direct services as indicated in the IEP.
 11. Serves as consultant to administrators, psychologists, other special education support staff, regular classroom teachers, and parents.
 12. Meets with site administrator/designee and other staff as needed, to calendar IEP meetings in accordance with due dates.
 13. Provides in-service training for site school staff and community in order to promote a better understanding of students with disabilities as needed.
 14. Notifies special education department and site administrator of accurate monthly caseload numbers.
 15. Provides resources, such as instructional materials and staff time to the regular classroom teacher as appropriate.
 16. Evaluates student progress, maintains necessary records indicating student performance and attendance, and recommends revisions of the IEP when appropriate. This includes grades, progress reports, and benchmark documentation of goals and objectives cited in students' IEPs.

17. Assists parents in understanding their rights and the special education process and procedures.
18. Attends district and site level meetings.
19. Provides the necessary information to the site/district testing coordinator for all State/district assessments.
20. Submits a monthly list of student adds/drops to the MIS operator.

EARLY START INFANT PROGRAM

CONTENT OF THE INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

The IFSP shall include the following:

(1) With the agreement of the parent, a statement of the family's resources, priorities, and concerns related to enhancing the development of the infant or toddler;

(2) A statement, based on evaluation and assessment information, of the infant's or toddler's present levels of:

(A) Physical development including fine and gross motor development, vision, hearing, and health status;

(B) Cognitive development;

(C) Communication development;

(D) Social or emotional development; and,

(E) Adaptive development;

(3) The statement of present levels of development required in subsection (b)(2) of this section shall be based on evidence that can be measured or observed by a qualified professional;

(4) A statement of the developmental outcomes expected for the infant or toddler and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving outcomes is being made. Such outcomes shall be based on the identified needs of the infant or toddler and family pursuant to assessment;

(5) 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;

(6) Statements of the specific early intervention services necessary to meet the unique needs of the infant or toddler and the family to achieve the outcomes including:

(A) The frequency, intensity, and method of delivering the services;

(B) The location where the services will be delivered;

1. The statements of location shall specify the natural environments such as home,

child care, school program, or private program where early intervention services shall be provided; and

2. The statement shall include a justification of the extent, if any, to which the services will not be provided in a natural environment.

3. The provision of early intervention services may be provided outside of a natural environment, as determined by the parent and the IFSP team, only when early intervention cannot be achieved in a natural environment.

(C) The projected date for initiation of each service;

(D) The anticipated duration of the services;

(E) 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; and

(F) The name of the regional center, LEA or service provider providing each early intervention service;

(7) The funding source for other or non-required services provided by any entity other than regional centers or LEAs including the procedures that will be followed to obtain such funding;

(8) The name of the service coordinator; and,

(9) 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:

(A) Preschool services under Part B of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1400-1420, if the toddler with a disability is eligible; or

(B) Other public and private services that may be needed by the toddler pursuant to Section 52112 of these regulations .

(c) Regional centers and LEAs shall not place an infant or toddler on a waiting list for early intervention services required by the IFSP.

(d) Regional centers and LEAs shall arrange, provide or purchase early intervention services required by the IFSP as soon as possible.

PROCEDURES FOR THE IFSP

(a) An initial IFSP shall be developed by the regional center and/or LEA for each eligible infant or toddler, who has been evaluated and assessed, within 45 days of the receipt , by either the regional center or LEA, of the oral or written referral except as provided for in Section 52107 of these regulations .

(b) A periodic review of the IFSP for an infant or toddler and the infant's or toddler's family shall be conducted every six months, or more frequently if service needs change, or if the parent requests such a review.

(c) Documentation of each periodic review of the IFSP by the service coordinator shall include:

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) All modifications or revisions of the outcomes or services as necessary.

(d) The periodic review of the IFSP may be carried out by a meeting or by another means that is acceptable to the parent and other participants.

(e) An annual meeting to review the IFSP shall be conducted to document the infant's or toddler's progress and revise its provisions and shall include team members as specified in Section 52104 of these regulations .

(f) Information obtained from ongoing assessment shall be used in reviewing and revising outcomes and determining the appropriate services that will be provided or continued.

(g) All IFSP meetings shall be conducted:

(1) In settings and at times or by means that are reasonably convenient to the parent; and

(2) In the language of parent's choice unless it is clearly not feasible to do so.

(h) Meeting arrangements shall be made with, and written notice provided to, the parent and other members of the multidisciplinary team in a timely manner to ensure attendance at the IFSP meeting pursuant to the general notice requirements contained in Section 52161 of these regulations .

(i) The contents of the initial and 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 as required in Section 52162 (a) of these regulations.

(j) 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.

IDENTIFICATION, REFERRAL AND ASSESSMENT

PURPOSE AND SCOPE

All individuals with suspected disabilities from birth through age 21 will be identified and referred for assessment. Each individual will receive an appropriate and individualized evaluation to identify potential disability, determine eligibility and identify educational needs.

The assessment information will provide for an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) to ensure the individual receives a free and appropriate public education (FAPE).

CHILD FIND

Each local educational agency shall actively and systematically seek out all individuals with exceptional needs, ages 0 through 21, including (1) children in private, including religious schools, (2) highly mobile individuals with exceptional needs such as children who are migrant or homeless, (3) children who are advancing from grade to grade even though they are suspected of being an individual with exceptional needs and in need of special education and related services, and (4) children not enrolled in public school programs, who reside in a district or are under the jurisdiction of a SELPA or a county office. All districts have adopted policies for notifying parents of their rights and for initiating a referral for assessment to identify individuals with exceptional needs. Identification procedures shall include utilization of referrals from teachers, parents, agencies, appropriate professional persons, and from other members of the public.

The child find process shall ensure the equitable participation of parentally placed private school children with disabilities, including an accurate count of such children and comparable timelines to that for public school children.

School site procedures and identification procedures are coordinated to provide referral of pupils with needs that cannot be met with modification of the regular instructional program.

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.

All referrals for special education shall be documented. When a verbal referral is made, staff of the school district, county office or SELPA shall offer assistance to the individual making the request, and shall assist the individual if he/she requests such assistance. It is recommended that SEIS Form -21 (Special Education Referral) be used to document the referral.

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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 childcare facilities;
7. Communication with hospitals, pediatricians, obstetricians and health professionals;
8. Coordination with parent resource centers and support groups;
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.).
(EC 56300, 56301; 20 USC 1412(a)(3); 34 CFR 300.111(a).)

SOURCES OF REFERRALS

The referral of a pupil to for a special education assessment may be initiated or submitted by, or as a result of:

1. School screening programs, such as vision, hearing, and speech and language screenings.
2. Student Study Teams (SST).
3. Direct referrals from agencies or individuals having knowledge of an individual with exceptional needs.
4. Direct referral from parents.

Parents shall be given a copy of their rights and procedural safeguards upon initial referral for assessment.

ACKNOWLEDGEMENT OF REFERRAL

When a complete and appropriate referral is received by a member of the assessment team for the assessment of a student for special education purposes, an appropriate team member will notify parents/guardians that a referral was made.

1. If the parent participated in a Student Study Team meeting when the decision was made to refer the student for an assessment, the notification requirement will have been met.
2. The formal written notification of parent is necessary when referrals have been initiated without parental involvement.
3. Notification shall be in writing. A designated member of the assessment team shall immediately send or deliver a completed Receipt of Referral form SEIS Form -22) to the parent.
4. Personal contact in the parent's primary language to provide an explanation of the referral/assessment process and the forms is strongly recommended.

BEST PRACTICES FOR SCHOOL SITE REFERRALS

The following is a sequence of activities that reflects best practices in addressing a possible referral for a special education assessment:

1. An individual at the school site has a concern about a student's academic progress. That individual begins to access resources available at the school and/or consults with persons knowledgeable about the individual student or available resources.
2. The student's parent/guardian is contacted for support, information, and sharing of ideas.
3. Attempts are made to modify the student's educational program in order to address the original concerns. If the concerns remain after such attempts have been made, a referral is initiated to the Student Study Team.
4. A Student Study Team meeting is scheduled, involving the parent, the pupil, and any necessary community resources. Documentation of regular education interventions is maintained.
5. Should the interventions be determined inadequate in meeting the student's needs, the Student Study Team, with participation by the parent, submits a referral for a special education assessment is warranted. The parent gives informed consent and the assessment process is initiated.

PRE-REFERRAL ACTIVITIES

1.3.A. Pre-Referral Activities

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

1.3.B. Student Study Team and Multi-Tiered Systems of Supports (MTSS)

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 classroom.

Special Education specialists, such as school psychologists, speech/language pathologists, and related services personnel may be involved in the SST process. However, the SST is not a special education function and the general education team should be the primary holders of the Student Success Team.

The Student Study Team (SST), or the referring instructional personnel, shall document that accommodations/modifications of the regular program have been attempted and that the results of those modifications have not been effective in meeting the student's need for an appropriate education. In most cases, two SST meetings should be convened to assess baseline performance and develop and monitor interventions. Each cycle of intervention generally may be of six to eight weeks duration with progress monitoring.

Prior to a referral for special education evaluation, an SST meeting should be convened to identify the child's areas of behavioral and/or academic difficulty. An SST meeting should be convened to (1) identify the child's area of behavioral, emotional or academic difficulty; (2) establish a baseline level of performance and (3) develop interventions, which generally will be conducted for 6 to 8 weeks.

The following is a sequence of activities that reflects best practices in addressing a student's needs prior to a referral for a special education assessment:

1. An individual at the school site has a concern about a student's academic progress. That individual begins to access resources available at the school and/or consult with persons knowledgeable about the individual student or available resources

2. The student's parent/guardian is contacted for support, information, consultation and sharing of ideas
3. Attempts are made to accommodate the environment and curriculum, and to modify the student's education program in order to address the original concerns. If concerns remain after such attempts have been made, a referral is initiated to the Student Success Team (SST).
4. A Student Study Team meeting is held, involving the parent/guardian, the pupil, the general education teacher and any necessary school or community resources. Documentation of targeted academic and/or behavioral interventions maintained. Generally, intervention should be implemented for not less than 6-8 weeks.
5. Should interventions not produce desired outcomes, a follow-up SST should be held to modify current interventions.
6. After two SSTs and two intervention rounds resulting in progress that does not meet desired outcomes, a referral to special education may be considered.

NOTE: Timelines related to special education assessment apply even if a student is engaged in the SST or MTSS process. Applicable timelines commence any time an evaluation request is received by the LEA. Parents and the LEA may mutually agree to extend the timeline for special education assessment, if it is determined that the IEP team requires additional time to evaluate the student. However, such agreement must be in writing signed by the parent and the LEA. (34 CFR 300.309(c)); 71 Fed. Reg. 46657-46659

Referral Procedure

1.4.B. Referral Procedure

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 Student Study Team or other student intervention team to review the referral and document interventions attempted prior to referral.
3. All requests for assessments will be submitted in writing. If a parent makes the request verbally, the principal or designee will assist the parent in making the request in writing.
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, the school site administrator or designee will initiate the assessment process, including notification of parent.

5. The LEA must respond to all requests for assessment with a Prior Written Notice that indicates the proposed action within 15 days of the LEA's receipt of the referral for assessment.
6. In most instances, an Assessment Plan will be developed and provided to the parents along with the Prior Written Notice.
7. No assessment will be conducted without written parent consent.

1.5 PARENTAL CONSENT

The LEA shall conduct an initial evaluation in every area of suspected disability before the initial provision of special education and related services to a child with a disability.

1.5.A. Request for Initial Evaluation

A parent, LEA, agency, appropriate professional person, and/or other member of the public may initiate a request for an initial evaluation to determine if a child is a child with a disability.

1. The initial evaluation shall assess the child in all areas of suspected disability to determine whether the child is a child with a disability. The assessment and IEP team meeting must be held within 60 calendar days of receiving parental consent for the evaluation.
2. Exception: The relevant timeframe shall not apply to a LEA if:
 - a. A child enrolls in a school served by the LEA after the relevant timeframe has begun and prior to a determination by the child's previous LEA as to whether the child is a child with a disability but only if the subsequent LEA is making sufficient progress to ensure prompt completion of the evaluation, and the parent and the subsequent LEA agree to a specific time when the evaluation will be completed; or
 - b. The parent of a child repeatedly fails or refuses to produce the child for the evaluation.

1.5.B. Parental Consent for Initial Evaluation

1. The LEA proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability shall obtain informed consent from the parent of a child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement or for provision of special education and related services.

2. Consent for Services: The LEA is responsible for making a free appropriate public education (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.
3. Absence of Consent for Initial Evaluation: If the parent of a child does not provide consent for an initial evaluation or the parent fails to respond to a request to provide the consent; the LEA may pursue the initial evaluation through due process.
4. Absence of Consent for Initial Services: If the parent of a child does not provide consent to the initial provision of services, the LEA shall **not** provide special education and related to the child and the child will remain a general education student.
5. Effect on LEA Obligation: If the parent of a child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent:
 - a. The LEA shall not be considered to be in violation of the requirement to make a free appropriate public education available to the child or for the failure to provide such child with the special education and related services for which the LEA requests such consent; and
 - b. The LEA shall not be required to develop an IEP for the special education and related services for which the LEA requests such consent.
6. If the child is a ward of the State and not residing with the child's parent, the LEA shall make reasonable efforts to obtain such consent from the parent of the child for the initial evaluation to determine whether the child is a child with a disability. (EC 56346)

1.6 ASSESSMENT PROCESS

1.6.A. Initial Assessments

Prior to any action taken with respect to the initial placement of a student with disabilities, an individual assessment of the student's educational needs must be conducted by qualified staff in accordance with requirements specified by the Education Code. No assessment will be conducted without a signed completed Assessment Plan unless the district has prevailed in a due process hearing regarding assessment.

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.

Once a student has been referred for initial assessment, the student will be assessed in all areas of suspected disability. An individualized education program (IEP) meeting shall occur, within 60 calendar days of receiving written parental consent for the assessment, which begins the day the signed assessment plan is received and date stamped by a staff member.

An IEP meeting 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 each LEA's school calendar for each pupil for whom a referral was made 30 days or less prior to the end of the regular school year. In the case of school vacations, the 60-day timeline shall recommence on the date that student school days reconvene. A meeting to develop an IEP for a student shall be conducted within **30 days** of a determination that the student needs special education and related services. (EC 56344; 34 CFR 300.323(c).)

Case managers are responsible for educating staff regarding the time sensitivity of assessment timelines to all site staff. The case manager is responsible for distributing copies of the signed Assessment Plan to all persons named as assessors on the plan. (This should be done within 24 hours to allow all assessors ample time to evaluate the student).

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

1. The student enrolls in a school served by the LEA after the relevant time period has commenced but prior to determination by his or her previous LEA of whether the student has a disability. This exemption applies only if the subsequent LEA is making sufficient progress to ensure a prompt completion of the assessment, and the parent and subsequent LEA agree to a specific date by which the assessment shall be completed.

NOTE: New guidance from CDE indicates that LEAs should, to the extent practicable, continue and complete the 60 day time period for any student that is considered "highly mobile". This means students who are migrant, foster youth, wards of the State, homeless or otherwise impacted by high levels of instability and mobility.

2. The parent of a child repeatedly fails or refuses to produce the child for assessment. All attempts made by the LEA to assess the student should be documented in writing.

1.6.B. Assessment Plan

After a review of the referral, pupil records and/or other immediately available material, the assessment team will meet to develop a proposed assessment plan.

A *proposed assessment plan* shall be developed within 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. The appropriate IEP assessment team member(s) shall prepare and mail or personally deliver to the parent/guardian the following:

1. The completed Assessment Plan;
2. Prior Written Notice of Proposed Action; and page #
3. A copy of the Notice of Procedural Safeguards and Parent's Rights. page #

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

1. The *proposed Assessment Plan* given to the parents or guardians shall meet all the following requirements:

- A. Be in language easily understood by the general public
- B. 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.
- C. Explain the types of assessments to be conducted.
- D. State that no individualized education program will result from the assessment without the consent of the parent.

The LEA shall not be required to obtain informed consent from the parent of a child for an initial assessment to determine whether the child is an individual with exceptional needs under any of the following circumstances:

- Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child.
- The rights of the parent have been terminated in accordance with state law. Whereby a surrogate parent should be assigned to represent the student.
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for initial assessment has been given by an individual appointed by the judge to represent the child.

Parental consent is not required before *reviewing existing data* as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children unless before administration or reassessment, or before administration of that test or assessment, consent is required of the parents of all children.

The *screening* of a pupil by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an assessment for eligibility for special education and related services. (EC 56321(e); 34 CFR 300.302.)

As part of the assessment plan, the parents will be provided with a prior written notice that upon completion of the administration of tests and other assessment material, an Individualized Education Program (IEP) team meeting will be convened. The IEP team will discuss the assessment results, review any additional information, discuss the educational recommendations, and the reasons for these recommendations. Parents will receive a copy of the assessment report.

The parents will be informed that they have a right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists, if the parent disagrees with an assessment completed by the LEA.

No assessment will be conducted unless the written consent of the parent is obtained prior to the assessment. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of the signed consent. The assessments will be completed and an IEP meeting scheduled within 60 calendar days from the date of the receipt of the parent's consent for assessment.

Parent consent for assessment shall not be construed as consent for placement or for receipt of special education and related services. Personal contact with the parents to explain the process and forms is strongly recommended.

If a parent refuses to sign permission for an assessment, the school district may file for mediation/due process hearing. If the district prevails in a due process hearing, the assessment may be conducted without parent consent. (EC 56321)

1.6.C. 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 pupil knows and can do academically, developmentally, and functionally, unless 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 pupil with impaired sensory, manual, or speaking skills produces test results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual or speaking skills unless those skills are the factors that the test purports to measure.
6. No single measure or assessment is used as a sole criterion for determining whether a pupil is an individual with exceptional needs or determining an appropriate educational program for the pupil.
7. The pupil 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, social and emotional status. A developmental history shall be obtained when appropriate. For pupils with residual vision, a low vision assessment shall be provided.
8. The assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the

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

9. As part of an initial evaluation the IEP team will review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and observations by teachers and related services providers. (EC 56320, 56324)

1.6.D. Assessment of African American Children under Larry P Decision

The Larry P v. Riles (1979) court case is the basis for law 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 with their African American students. 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. Are materials selected and administered that are not racially or culturally discriminatory?
 - b. Do assessment procedures ensure that IQ tests are not administered to African American students?
 - c. Do assessments result in a written report which includes the findings of each assessment and contain required information?
3. To what extent is the assessment varied from standard conditions?
4. What effects do environmental, cultural, or economic conditions have on the child's performance?

1.6.E. Assessment Report

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

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. A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.
7. The need for specialized services, materials, and equipment for pupils with low incidence disabilities.

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. (EC 56327)

1.7 REASSESSMENTS

A reassessment of a pupil shall occur not more frequently than once a year, unless the parent and the LEA agree otherwise in writing, and shall occur at least once every three years, unless the parent and the LEA agree in writing, that a reassessment is unnecessary. (EC 56381)

Reassessment may also be conducted whenever conditions warrant a reassessment including the following:

1. If a parent or teacher requests a reevaluation;
2. When a preschool child with a disability transitions to kindergarten or first grade; or
3. Before determining a child is no longer eligible for special education.

1.7.A. Three Year Reassessments

The three-year reassessments will consider the following in determining the need for additional information:

1. A review of existing data including evaluations and information proved by the parents of the pupil.
2. Current classroom-based assessments and data provided by teachers and related services providers.
3. Observations by teachers and related service providers.

On the basis of that review, and input from the pupil's parents, the team will identify what additional data, if any, are needed to determine, including

1. Whether the pupil continues to have a disability;
2. The present levels of performance and educational needs of the pupil;
3. Whether the pupil continues to need special education and related services; and
4. Whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the IEP of the child and to participate as appropriate in the general curriculum.

If the 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. An assessment plan will be developed and presented to the parent for consent. When a parent does not respond to a request for consent to conduct the triennial assessment, it is possible to proceed with the assessment after the following documented steps are completed:

Make three attempts to obtain parent consent to proposed Assessment Plan.

- The first attempt is through whatever communication method you usually use (keep a dated copy of the assessment plan).
- The second and third attempts are both done using the Parental Notice of Triennial Assessment Plan letter template. (Keep a copy of each dated assessment plan)
- Allow at least five school days between each attempt.
(EC 56506(e))

Initial assessment plans always require affirmative parent/guardian consent.

If the IEP team, including the parent, determines no additional data is needed, the LEA will notify the parents of that determination and the reason for it and the right of the parents to request an assessment. The LEA is not required to conduct the assessment unless requested to do so by the pupil's parents. (EC 56381(d); 34 CFR 300.305)

1.7.B. Federally Mandated Behavioral Assessments

Following are descriptions of behavioral assessments that are required for specific students under federal regulations or that may be recommended by an IEP team for students with significant behavioral needs. A functional behavioral assessment

(FBA) is required by federal law and is part of the disciplinary process and may also be utilized by an IEP team for students with severe behavior not yet responsive to previous plans to address behavior that impedes learning.

Functional Behavioral Assessment (FBA)

A functional behavior assessment may utilize review of records, interviews, behavior assessment scales, and may include observation of pupil behavior and/or environmental conditions. A functional behavior assessment shall be conducted under the following circumstances.

1. The pupil's behavior has resulted in disciplinary suspension beyond 10 cumulative days in a school year.
2. An interim alternative educational setting or involuntary change in placement is being considered in a disciplinary context.
3. A manifestation determination in response to a violation of a rule or code of conduct is occurring.

Following the functional behavior assessment the IEP team will develop a behavior intervention or behavior support plan. This behavior intervention plan shall be part of the pupil's IEP and shall specify environmental instructional changes and other techniques and strategies including positive behavioral interventions, strategies and supports.

If a behavior intervention plan is not effective, the IEP team may request a more evidenced based and intensive review of behavior or continue modifications to the behavior intervention plan until success is attained. (34 CFR 300.530)

A functional and behavioral assessment may be conducted when an IEP team determines that the instructional/behavioral approaches specified in the student's IEP have been ineffective and the student is exhibiting severe behaviors. A parent may request that a functional and behavioral assessment be performed.

The assessment should be conducted by, or be under the supervision of a person who has appropriate training in behavioral assessments with an emphasis in positive behavioral interventions.

Functional and behavioral assessment personnel shall gather information from multiple sources, which may include: direct observation, interviews with significant others, and review of available data such as assessment reports prepared by other professionals and other individual records. Prior to conducting the assessment, parent notice shall be given and parental consent obtained.

To maintain evidence based alignment, a functional and behavioral assessment procedure may include the following:

1. Systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration, and intensity;
2. Systematic observation of the immediate antecedent event associated with each instance of the display of the targeted inappropriate behavior;
3. Systematic observation and analysis of the consequences following the display of the behavior to determine the function the behavior serves for the individual;
4. An analysis of the settings in which the behavior occurs most frequently;
5. Review of records for health and medical factors which may influence behaviors; and,
6. Review of the history of the behavior to include the effectiveness of previously used behavioral interventions.

Following the assessment, a report of the assessment results shall be prepared and a copy shall be provided to the parent. The report shall include all of the following:

1. A description of the nature and severity of the targeted behavior(s) in objective and measurable terms;
2. A description of the targeted behavior(s) that includes baseline data and an analysis of the antecedents and consequences that maintain the targeted behavior, and a functional analysis of the behavior across all appropriate settings in which it occurs; and
3. Recommendations for consideration by the IEP team which may include a proposed

Behavioral Intervention Plan.

PROCEDURES FOR A DIRECT PARENT REFERRAL

The following is a sequence of activities addressing a direct referral from a parent:

1. A school site member is approached by a parent/guardian who requests that his/her child be assessed for special education. If the staff member has adequate knowledge of the school's procedures and the parent's concerns, the staff member

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- establishes the basis for the request and informs the parent of the option to participate in a Student Study Team.
2. If the parent elects not to participate in the Student Study Team, the staff member assists the parent in putting the request for assessment in writing, and the request is submitted to an appropriate member of the assessment team. If the staff member does not have adequate knowledge of school identification procedures, he/she may refer the parent to other personnel, such as a site administrator, school psychologist, or Student Study Team chairperson.
 3. The parent gives informed consent and the assessment process is initiated. However, if the school district believes that an assessment for special education is not appropriate, it may refuse to conduct the assessment. In such cases, the district must complete the SEIS Form- 28 form (Prior Written Notice) explaining why they are refusing to conduct an assessment.

Note: The assessment of a student may be conducted without a Student Study Team or similar intervention team meeting if the parent so requests or if the school does not utilize a formal process. However, the school must have in place some mechanism for documenting that the resources of the regular education program have been considered and, where appropriate, utilized.

PROCEDURES FOR NON-ENGLISH SPEAKING PARENTS

Parents whose primary language is not English will be informed of the need to file a written request when a verbal request is made. They will be informed both verbally and in writing in their primary language, unless to do so is clearly not feasible. The district will make every effort to provide a translator who speaks the parents' native language to ensure the parents' full participation in the referral process.

REFERRAL TO INFANT PROGRAM/ EARLY START

The Sonoma County SELPA coordinates programs for infants with low incidence disabilities (deaf and hard of hearing, visually impaired and orthopedically impaired). Referrals to the program should be directed to the Sonoma County SELPA Early Start Coordinator, 5340 Skylane Blvd., Santa Rosa, CA 95403-1082, (707) 524-2763.

Except for exceptional circumstances which make it impossible to complete the initial evaluation, the initial evaluation and assessment for eligibility for each infant or toddler shall be completed within 45 days of the date that the regional center or LEA received the referral.

REFERRAL TO PRESCHOOL PROGRAM

All referrals for preschool age children shall follow the above procedures and shall be made to the district's special education program coordinator.

In the event that the district determines that it does not have an appropriate program for special education preschool children, a referral may be made to the Sonoma County Office of Education.

The following procedures shall apply:

The administrator, or designee of the district of residence shall:

1. Ensure that all of the following data is accurate and present for review:

Student Name
Birth Date
Parent Names
Address
Phone Number(s)

All medical and/or health and developmental assessment information must be current. Academic assessments will have been conducted within the previous 12 months and a psychological evaluation within two years. If a student is due for a three-year evaluation within five months of the impending transfer, the district of residence must have completed all psychological and academic assessments prior to the student's entry into the district of service's program, unless otherwise agreed in writing by the districts.

2. Notify the administrator or designee of the potential district of service of the request to consider a student for placement, and provide an opportunity for a staff member from the potential district of service to observe the pupil in question.
3. Provide copies of all assessment reports and IEPs to appropriate staff of the district of service at least three days in advance of the scheduled joint IEP team meeting.
4. Coordinate the opportunity for parents to visit potential program placements. This opportunity and option should only be discussed with the parent/guardian after the potential district of service has consented to such potential option.
5. At the appropriate time, coordinate the scheduling and notification of parents and staff members of both districts of the joint IEP team meeting.
6. Coordinate with the district of service, the arrangements for the transportation of the student to the new school. In all cases, the district of residence is financially responsible for all transportation costs.

7. Conduct the joint IEP team meeting and assume all of the duties described for IEP team meetings.
8. Forward all relevant student records to the district of service as soon as possible after the joint IEP team meeting.
9. Attend annual IEP meetings when significant issues regarding service needs and/or change of placement are being considered. Also attend when specifically requested by either the parent or the district of service. Parents will be notified in writing that upon placement in another district, the district of service will generally be the designated representative of the district of residence and therefore a representative of the district of residence will not typically attend IEP meetings except as noted above. However, parents will be notified that they may request attendance of the district of residence at IEP meetings.

2. PRIOR WRITTEN NOTICE

Written notice must be given to parents of a child with a disability within a reasonable time before the district:

Proposes to initiate or change the identification, evaluation or education placement of the child or the provision of FAPE to the child; or

Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

The notice must include:

A description of the action proposed or refused by the district;

An explanation of why the district proposes or refuses to take the action;

A description of any other options that the district considered and the reasons why those options were rejected;

A description of each evaluation procedure, test, record, or report the district used as a basis for the proposed or refused action;

A description of any other factors that are relevant to the district's proposal or refusal;

A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

Examples of common instances where a PWN is required:

ending services
assessment plan
graduation from high school
declining to assess
proposing services

The notice must be:

Written in language understandable to the general public; and

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.

If the native language or 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 to the parent in his or her native language or other mode of communication;

That the parent understands the content of the notice; and

That there is written evidence that these requirements have been met.

Written notice shall be given to the parent or a pupil who has attained the age of majority prior to graduation from high school with a regular diploma.

PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

4.1 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 appropriate public education (FAPE).

Parents can obtain assistance in understanding their rights and procedural safeguards from the Special Education Director of their child's district of attendance, the Senior SELPA Administrator, or the California Department of Education (CDE).

4.2 PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

4.2.A. The Notice of Procedural Safeguards

Parents shall be given a copy of their rights and procedural safeguards at least one time a school year, except that a copy also shall be given to the parents:

1. The first time a student is referred for a special education assessment.
2. Each time an assessment plan is provided to parents.
3. Upon receipt of the first state complaint in a school year.
4. Upon receipt of the first due process hearing request in a school year.
5. When a decision is made to make a removal that constitutes a change of placement.
6. When parents request a copy.

(20 USC 1415(d); 34 CFR 300.504; EC 56301(d)(2); EC 56321; and EC 56341.1(g).)

4.2.B. The "Parental Rights and Procedural Safeguards for Special Education" document is at the end of this chapter (Appendix A).

4.3 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

When a student with a disability reaches age 18 (unless determined to be incompetent by appropriate authorities), the school district must provide any required notice of procedural safeguards to both the individual with disabilities and the parents. All other rights accorded to the parent transfer to the child at the age of majority. (EC 56041.5)

The school district must notify the individual and the parents of this transfer at least one year prior to the student's 18th birthday. (EC 56043((g)(3); EC 56345(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 LEA shall follow the state procedures for appointing an appropriate individual to represent the educational interests of the child. (34 CFR 300.520)

Regardless of age, all rights of youth incarcerated in adult or juvenile federal, state, or local correctional institutions transfer to the child. (34 CFR 300.520)

4.4 PARENT REVOCATION OF CONSENT

Effective December 31, 2008, parents may revoke consent for the provision of special education and related services and LEAs may not challenge the decision through mediation or due process procedures. Clarified as part of these regulatory changes:

- (1) If parents revoke consent for special education, the LEA is not required to amend the child's educational records to delete all references to the child's prior receipt of special education services (34 C.F.R. 300.9(c)(3)); and
- (2) If parents revoke consent for special education, the LEA 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)).

U.S. Department of Education 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.

SPECIAL EDUCATION ELIGIBILITY CRITERIA

6.1 PURPOSE AND SCOPE

The purpose of this chapter is to define the specific processes and procedures involved in determining a student's need to receive special education and related services. It is not meant to determine instructional setting or placement. The IEP team makes the determination of placement and setting.

The determination of eligibility must be based on the findings of a multi-disciplinary assessment where no single test or single observer is the sole determining factor. The IEP Team must assure that the student's academic needs cannot be met through accommodations or modifications of the regular education program and that the disability, even with accommodations and/or modifications, adversely affects the individual's educational performance. The IEP team must also assure that all areas of suspected disability have been assessed. There needs to be documentation that race, cultural differences, economic disadvantage, language background, limited school experience and poor attendance are not primary contributing factors to the results of the assessment. The IEP team will determine eligibility, present levels of performance, areas of need and goals that address each area of need. Goals and (objectives if required) will be supported by appropriate services in the least restrictive environment as determined by the IEP Team for the child to receive educational benefit.

6.2 PRIOR TO REFERRAL FOR SPECIAL EDUCATION

The Student Study Team (SST), or the referring instructional personnel, shall document that accommodations/modifications of the regular education program have been attempted and that the results of those modifications have not been effective in meeting the student's need for an appropriate education. 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. 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 specialists, such as school psychologists, speech/language pathologists, and resource specialists may be involved in the SST process, the SST is not a special education function and is not subject to the associated restrictions and timelines. It is recommended that LEAs allow at least two, 8 week cycles to give the SST opportunity to identify with specificity the student's need, implement targeted interventions, measure their

effectiveness and revise as needed. A special education referral may be appropriate after interventions have been implemented, reviewed and revised.

NOTE: Timelines related to special education assessment apply even if a student is engaged in the SST or RtI process. Applicable timelines commence any time an evaluation request is received by the LEA. Parents and the LEA may mutually agree to extend the timeline for special education assessment, if it is determined that the IEP team requires additional time to evaluate the student. However, such agreement must be in writing signed by the parent and the LEA. (34 CFR 300.309(c); 71 Fed.Reg. 46657-46659 (August 14, 2006).)

6.3 REFERRAL

When a verbal referral for assessment is made, district staff shall offer to assist the individual to make a request in writing, and shall assist the individual if the individual requests such assistance.

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 pupil. If it clearly is not feasible to do so, an interpreter must be used, and the assessment report shall:

1. Document this condition and note that the validity may have been affected and;
2. The normal process of second-language acquisition, as well as manifestations of dialect and sociolinguistic variance shall not be diagnosed as a disabling condition.

The assessment of a student, including a student with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment. (EC 56136)

6.5 ELIGIBILITY CRITERIA

A student qualifies as an individual with exceptional needs, if the results of the assessment demonstrate that the student meets eligibility criteria as an individual with a disability and degree of the student's impairment requires special education and related services. The decision as to whether or not the student qualifies for special education and related services 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. (EC 56220 (a) 56026, 56320, 5CCR 3030 (a-j) 56361 56341 (d))

Eligibility Criteria are separated into thirteen federal classifications. Students need only to meet eligibility under one of these federal classifications. (34 C.F.R., Part 300.7.)

6.5.A. Three Primary Factors Must Be Considered

Three primary factors must be met when 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 student require special education and services to achieve a free appropriate public education?

6.5.B. Special Rule for Eligibility Determination

In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determinant factor for such determination is:

1. Lack of appropriate instruction in reading, including the essential components of reading instruction.
2. Lack of instruction in math; or
3. Limited English proficiency (EC 56333-56339; 5 CCR 3030; 34CFR 300.27, 300.534)

6.5.C. Evaluations before Change in Eligibility

The district shall evaluate a student with a disability before determining that the student is no longer a child with a disability and before exiting him/her from special education services.

Exception: 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 a free appropriate public education. However a Prior Written Notice is required in these situations.

6.6 SEVERE DISABILITIES AND NON-SEVERE DISABILITIES

Students 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 pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, severe mental retardation, and those individuals who would have been eligible for enrollment in a development center for handicapped pupils under Chapter 6 (commencing with Section 56800) of this part, as it read on January 1, 1980. (E.C., Sec. 56030.5)

6.7 ELIGIBILITY CATEGORIES

6.7.A. AUTISM (AUT):

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

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

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

IMPLEMENTATION PROCEDURES

A multi-disciplinary team shall assess a student. Relevant information includes all of the following:

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

6.7.B DEAF-BLINDNESS (DB): A severely disabling condition.

Definition:

C.C.R., Title 5, Sec. 3030

Combination of which causes severe communication, developmental, and educational problems.

C.F.R. 300.7 (c)(2)

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

IMPLEMENTATION PROCEDURES

A multi-disciplinary team shall assess a student. Relevant information includes all of the following:

- The effect of the disability on communication, social, emotional, physical, educational, and other areas of development.
- Current audiological measures of auditory functioning which documents a hearing loss, with and without amplification, as determined by a qualified audiologist.
- Performance which reveals significant dysfunction directly related to the physical impairment.
- 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 Assessment of receptive and expressive communication skills and current education 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.

6.7.C. DEAFNESS (D):

Definition:

C.C.R., Title 5, Sec. 3030

A pupil has a hearing impairment whether, permanent or fluctuating, which impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination.

C.F.R. 300.7(c)(3)

Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or

without amplification, that adversely affects a child's education performance.

Deafness: This hearing impairment is so severe that an individual is impaired in processing linguistic information through hearing with or without amplification. This condition adversely affects expressive or receptive communication or both, developmental growth, and/or educational performance.

IMPLEMENTATION PROCEDURES

A multi-disciplinary team shall assess a student. Relevant information to be considered includes:

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

6.7.D. HEARING IMPAIRMENT (HI):

Definition:

C.C.R., Title 5, Sec. 3030

A pupil has a hearing impairment, whether permanent or fluctuating, which impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination.

C.F.R. 300.7 (c)(5)

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

Hard of hearing: This hearing impairment, whether permanent or fluctuating, adversely affects an individual's expressive and/or receptive communication, developmental growth, and/or educational performance and makes difficult,

but does not preclude, the processing of linguistic information through hearing, with or without amplification.

IMPLEMENTATION PROCEDURES

A multi-disciplinary team shall assess a student. Relevant information to be considered includes:

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

6.7.E. INTELLECTUAL DISABILITY (ID):

Definition:

C.C.R., Title 5, Sec. 3030

A pupil has significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affect a pupil's educational performance.

C.F.R. 300.7(c)(6)

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

IMPLEMENTATION PROCEDURES

A student shall be assessed by a multi-disciplinary team. Relevant information to be considered shall include all of the following:

- The determination of a significant discrepancy (minimum of two standard deviations) between chronological age and ability level, as determined by a credentialed school psychologist.
- An adaptive behavior measure administered by a school psychologist.
- A report by a school psychologist of an observation of the student in the home and/or school situations 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.

- A developmental history and current medical history including vision and hearing testing.
- The cumulative results, from the multi-disciplinary 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 which emphasizes, but is not limited to, the development of some or all of the following:
 - Self-help skills
 - Environmental awareness
 - Survival skills
 - Self sufficiency
 - Communication/language
 - Economic usefulness (work skills, vocational education)
 - Independent or semi-independent living skills

The IEP Team shall document that other factors such as racial, cultural, and language background are not major contributing factors to the results of the assessments.

6.7.F. MULTIPLE DISABILITIES (MD):

Definition:

34 C.F.R. 300.7 (c)

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

IMPLEMENTATION PROCEDURES

A pupil shall be defined as having multiple disabilities when the IEP team determines that the pupil 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.

6.7.G. ORTHOPEDIC IMPAIRMENT (OI):

Definition:

C.C.R., Title 5, Sec 3030 (e)

A pupil has a severe orthopedic impairment which adversely affects the pupil's educational performance. Such orthopedic impairments include impairments caused by congenital anomaly, impairments caused by disease, and impairments from other causes.

C.F.R. 300.7(c)(8)

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

IMPLEMENTATION PROCEDURES

A student shall be assessed by a multi-disciplinary team. Relevant information to be considered includes:

- Observation/assessment by a person with knowledge of orthopedic disabilities, who is trained to select, administer and interpret assessments that accurately measure the abilities of the student.
- A review of medical records which document a diagnosis of physical impairment which may adversely affect educational performance, such as any of the following:
 - Cerebral Palsy
 - Poliomyelitis
 - Infections, including but not limited to, bone and joint tuberculosis and osteomyelitis

- Congenital anomalies including, but not limited to, amputation, clubfoot, dislocations, or spinal bifida
- Birth injury, including but not limited to, Erb's palsy and fractures
- Trauma, including but not limited to, amputations, burns or fractures
- Tumors, including but not limited to, bone tumors or bone cysts
- Developmental diseases, including but not limited to, coxaplane or spinal osteochondritis
- Other conditions, including but not limited to, fragile bones, muscular atrophy, muscular dystrophy, Perthe's disease, or juvenile rheumatoid arthritis

6.7.H OTHER HEALTH IMPAIRMENT (OHI):

Definition:

C.C.R., Title 5, Sec 3030

A pupil has limited strength, vitality or alertness, due to chronic or acute health problems which adversely affects a pupil's educational performance. In accordance with Section 56026 (e) of the Education Code, such physical disabilities shall not be temporary in nature as defined by Section 3001 (v).

C.F.R. 300.8 (c)(9): Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that –

- (i) 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, and sickle cell anemia; and
- (ii) adversely affects a child's educational performance.

IMPLEMENTATION PROCEDURES

Student shall be assessed by a multi-disciplinary team. Relevant information includes the following:

- The school nurse shall provide the IEP team with specific medical information related to physical limitations and their projected duration.
- Qualified assessors shall include in reports the results of observations within the regular program.
- For students with OHI/diabetes, a written statement from the child's physician as well as a written statement from the child's parent are required before either a school nurse or other designated personnel may assist a child with the administration of medication. Therefore decisions about what health care services a student will receive, including treatment while at school, such as the timing and dosage of insulin to be administered usually are based on the treating physician's written orders.

6.7.I EMOTIONAL DISTURBANCE (ED):

Definition:

C.C.R., Title 5, Sec. 3030

Because of a emotional disturbance, a pupil exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affect educational performance:

- (1) An inability to learn which 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 undernormal circumstances exhibited in several situations.
- (4) A general pervasive mood of unhappiness or depression.
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems.

C.F.R. 300.7(c)(4)

Emotional disturbance is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's education performance:

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

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

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

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

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

(ii) The term includes schizophrenia.

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

IMPLEMENTATION PROCEDURES

A multi-disciplinary team shall assess a student. Relevant information includes the following:

- A report written by a credentialed school psychologist documenting the presence of a serious emotional disturbance. The report shall include a summary of previous and current assessments of educational and emotional status, educational history, home and school observations, health and developmental history, and attempted interventions.
- 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).
- The IEP Team must document the following in order to find that a student has a serious emotional disturbance:

- The disturbance is of such severity that the student's educational needs cannot be met in the regular classroom.
- The presenting educational difficulties are not the result of social maladjustment (E.C. Section 56026 (e)).
- The presenting educational difficulties are not the result of a behavior disorder.
- The behavior has been observed for a period of time longer than six months.
- The inability to learn cannot be explained by intellectual or sensory factors or by limited school experience or poor attendance.

Additional considerations:

- Eligibility is based on a multi-disciplinary assessment of the student's needs.
- The least restrictive environment shall be considered when determining placement.

6.7. J SPECIFIC LEARNING DISABILITY (SLD):

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

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

1. When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the intellectual ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate.

2. When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.

3. If the standardized tests do not reveal a severe discrepancy as defined in subdivisions 1. or 2. above, the IEP team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:

- (i) Data obtained from standardized assessment instruments;
- (ii) Information provided by the parent;
- (iii) Information provided by the pupil's present teacher;
- (iv) Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;
- (v) Consideration of the pupil's age, particularly for young children; and
- (vi) Any additional relevant information.

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

(C) Whether or not a pupil exhibits a severe discrepancy as described in subdivision (b)(10)(B) above, a pupil may be determined to have a specific learning disability if:

1. The pupil does not achieve adequately for the pupil's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the pupil's age or State-approved grade-level standards:

- (i) Oral expression.
 - (ii) Listening comprehension.
 - (iii) Written expression.
 - (iv) Basic reading skill.
 - (v) Reading fluency skills.
 - (vi) Reading comprehension.
 - (vii) Mathematics calculation.
 - (viii) Mathematics problem solving, and
- 2.(i) The pupil does not make sufficient progress to meet age or State-approved grade- level standards in one or more of the areas identified in subdivision (b)(10)(C)(1) of this section when using a process based on the pupil's response to scientific, research- based intervention; or
- (ii) The pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 C.F.R. sections 300.304 and 300.305; and
3. The findings under subdivisions (b)(10)(C)(1) and (2) of this section are not primarily the result of:
- (i) A visual, hearing, or motor disability;
 - (ii) Intellectual disability;
 - (iii) Emotional disturbance;
 - (iv) Cultural factors;
 - (v) Environmental or economic disadvantage; or
 - (vi) Limited English proficiency.
4. To ensure that underachievement in a pupil suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group making the decision must consider:
- (i) Data that demonstrate that prior to, or as a part of, the referral process, the pupil was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - (ii) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the pupil's parents.
5. In determining whether a pupil has a specific learning disability, the public agency must ensure that the pupil is observed in the pupil's learning environment in accordance with 34 C.F.R. section 300.310. In the case of a child of less than school age or out of school, a qualified professional must observe the child in an environment appropriate for a child of

that age. The eligibility determination must be documented in accordance with 34 C.F.R. section 300.311.

IMPLEMENTATION PROCEDURES

Required Factors in Determining Eligibility

The IEP Team must verify that the following two requirements have been met in order to state that a student is eligible for special education as a child with a specific learning disability:

- There is a severe discrepancy between ability and achievement, or
- The pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments.
- There is documented evidence of a processing disorder in one or more of the following areas:
 - Attention
 - Visual processing
 - Auditory processing
 - Sensory-motor skills
 - Cognitive abilities including association, conceptualization, and expression

NOTE: In order for the student to be eligible for special education program and services the team must find that the student's needs cannot be met in the regular program (including categorical services) without special education support.

***Determination of a Severe Discrepancy**

A multi-disciplinary team shall assess a student in one or more of the following areas of academic instruction:

- Oral expression
- Listening comprehension
- Written expression
- Basic reading skills
- Reading comprehension
- Mathematics calculation

- Mathematics reasoning
- Reading fluency

A report written by a credentialed school psychologist shall document that the pupil demonstrates a severe discrepancy between his ability and achievement.

The determination of a severe discrepancy necessitates the use of a standardized achievement test and a test of intellectual ability.-

*NOTE: When standardized tests are considered to be invalid for a specific pupil the discrepancy shall be measured by alternative means as specified on the assessment plan. This determination may be based on such data as the results of informational or criterion-referenced assessments, analysis of pupil work samples, classroom performance and observations.

Additional Considerations:

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 pupil's academic deficits should be clearly established and become the basis for instructional planning and development of specific objectives for the student's IEP.

The IEP Team shall ensure that neither the documented psychological processing disorder nor the discrepancy is due to factors of environment, cultural differences or economic disadvantage. Also, neither the documented psychological processing disorder nor the discrepancy may be the result of visual, hearing or motor disabilities, mental retardation, limited school experience or poor attendance, limited English proficiency or lack of appropriate instruction in reading and math.

6.7.K SPEECH OR LANGUAGE IMPAIRMENT: (SLI):

Definition:

E.C.56333. A pupil shall be assessed as having a language or speech disorder which 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. 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:

- (a) Articulation disorders, such that the pupil's production of speech significantly interferes with communication and attracts adverse attention.
- (b) Abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness. An appropriate medical examination shall be conducted, where appropriate.
- (c) Fluency difficulties which result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the pupil and listener.
- (d) Inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the pupil's language performance level is found to be significantly below the language performance level of his or her peers.
- (e) Hearing loss which results in a language or speech disorder and significantly affects educational performance.

C.F.R. 300.7 (11)

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.

C.C.R., Title 5, Sec. 3030

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

C.C.R., Title 5, Sec. 3030 (c)

(1) Articulation Disorder.

- (A) The pupil displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the pupil's production of single or multiple speech sounds on a developmental

scale of articulation competency is below that expected for his or her chronological age or developmental level, and which adversely affects educational performance.

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

(1) ARTICULATION

IMPLEMENTATION PROCEDURES

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

- A preschool child between the ages of three and five years must have one or more sound articulation errors delayed by a minimum of six months according to a developmental scale of articulation competency.
- Upon entering kindergarten and up to age eight, a student must have one or more sound articulation errors delayed by a minimum of one year according to a developmental scale of articulation competency. An exception to this year delay would be lateralization of sibilant sounds. Students who produce lateralized s, z, sh, ch, or j, should receive therapy as soon as the sound in error goes beyond the developmental scale.
- Students age eight and above must have one or more misarticulations and demonstrate one or more of the following:
 - Lack of stimulability in syllables/words.
 - Consistency of error in two or more speaking situations.
 - Reduced intelligibility in conversational speech.

(2) ABNORMAL VOICE

C.C.R., Title 5, Sec. 3030 (c)

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

IMPLEMENTATION PROCEDURES

- A student shall be assessed by a multi-disciplinary team as having abnormal voice when the disorder adversely affects educational performance. When indicated, vocal assessment shall include a medical laryngeal examination.
- The IEP team documents that the abnormal voice is noticeable to both familiar and unfamiliar listeners, interferes with communicating, is noticeable over a long period of time and is inappropriate for the student's age and/or sex.

(3) FLUENCY DISORDER

C.C.R., Title 5, Sec. 3030 (c)

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

IMPLEMENTATION PROCEDURES

- A student shall be assessed by a multi-disciplinary 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.
- 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

C.C.R., Title 5, Sec. 3030 (c)

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

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

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

IMPLEMENTATION PROCEDURES

A multi-disciplinary team shall assess a student. Relevant information shall include the following:

- Assessment in one or more of the following areas of language development:
 - Morphology
 - Syntax
 - Semantics
 - Pragmatics

Scores on standardized tests shall meet the requirements set forth in Title 5 quoted above.

Scores from analysis of a language sample must also meet the requirement set forth in Title 5 quoted above.

When standardized tests are considered to be invalid for a specific pupil, the language disorder shall be assessed by alternative means as specified on the assessment plan.

Language Disorder does not include:

- Students who have atypical patterns resulting from lack of familiarity with English, cultural differences, race, or environmental deprivation.

- Students whose language is commensurate with his/her general cognitive functioning.

6.7.L TRAUMATIC BRAIN INJURY (TBI):

Definition:

C.F.R. 300.7 (C)

"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. 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. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

IMPLEMENTATION PROCEDURES

A multi-disciplinary team shall assess a student. Relevant information includes the following:

- A review of medical records, which document a diagnosis of traumatic, brain injury.
- A written report by a school psychologist which shall include a summary of previous and current educational performance, cognitive functioning, home and school observations and attempted interventions.
- Assessment by persons knowledgeable in the following areas:
 - Post trauma academic functioning
 - Language and speech production
 - Perceptual and motor abilities
 - Judgment and psychosocial behavior
 - Health and physical functions
 - Adaptive behaviors
 - The IEP Team shall determine that the traumatic brain injury adversely affects educational performance.

- The least restrictive environment shall be considered when determining placement.

6.7.M VISUAL IMPAIRMENT INCLUDING BLINDNESS (VI): A
severe or non-severe disabling condition.

Definition:

C.F.R. 300.7 (13)

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

IMPLEMENTATION PROCEDURES

A multi-disciplinary team shall assess a student. Relevant information to be considered includes a written report of an eye examination by either a physician or optometrist and a functional vision assessment by a person credentialed to serve the visually impaired. One of the following descriptions should apply:

- Partially Sighted: The student's visual acuity in the better eye, after the best correction, is between 20/70 and 20/200.
- Legally Blind: Central visual acuity of 20/200 or less in the better eye after best correction with conventional spectacle lenses, or visual acuity 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.

Blind: The student's visual impairment is so severe that for education purposes, vision cannot be used as a major channel of learning and the visual impairment, even with correction, adversely affects the individual's education.

INDIVIDUALIZED EDUCATION PROGRAM

7.1 PURPOSE AND SCOPE

The Individualized Education Program (IEP) is a written plan that is developed by an IEP team that results in an offer of a free appropriate public education (FAPE) that provides educational benefit for a student with a disability. The IEP document describes the student's present levels of academic achievement and functional performance, identifies area of need, sets annual goals and describes the special education program and related services needed to meet those goals.

The SELPA and the LEA will provide a continuum of program options to meet the needs of students with disabilities to ensure a free appropriate public education (FAPE).

The IEP team determines the program or combinations of programs that can meet the student's needs in the least restrictive environment (LRE), allowing for maximum interaction with typically developing peers and access to the general curriculum.

Once a student has been found eligible for special education and related services, placement is based upon the specific needs of the student in the least restrictive environment. Related services are provided only if necessary for the student to benefit from their special education program.

The IEP shall show a direct relationship between the present levels of performance, the goals (and objectives if appropriate) and the specific educational services to be provided. (C.C.R., Title 5, Sec. 3040 (c))

7.2 INDIVIDUALIZED EDUCATION PROGRAM REQUIREMENTS

7.2. A Development of IEP

An IEP shall be developed within a total time not to exceed 60 calendar days, not counting days between the student's 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. (EC 56344(a))

An LEA 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.

All efforts will be made to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate. The parent will be notified of the meeting early enough to ensure that they will have an opportunity to attend. The meeting will be scheduled at a mutually agreed upon time and place.

When developing each student's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child. The IEP team will consider the results of the initial or most recent evaluation of the child, and as appropriate, the results of the child's performance on any general State or district wide assessment program. (EC 56342)

7.2.B Parent Consent to IEP

Parents who attend the IEP team meeting are always asked to sign the IEP document for attendance and they also are asked to sign to give their approval and consent to the IEP.

If the parent agrees to only portions of the offer of FAPE, encourage the parent to sign the consent with exceptions.

Implement the services to which the parent consents. For any services proposed in the new IEP for which the parent does not consent, continue to implement the related components from the previous IEP. It is important to set up another IEP team meeting as soon as possible to continue to resolve issues related to the parts of the IEP to which the parent did not give consent.

7.2.C IEP CONTENT

The term “individualized education program” (IEP) means a written statement or plan for each child with a disability that is developed, reviewed, and revised and includes:

- (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 age and developmentally 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 toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with issuance of report cards) 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/or extracurricular and nonacademic activities;
- (6) a statement of any individual appropriate 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:
- (a) the child cannot participate in the regular assessment; and
 - (b) 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 durations of those services and modifications.
- (8) Beginning not later than the first IEP to be in effect when the child is 16, 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;
 - (b) the transition services (including course of study) needed to assist the child in reaching those goals; and

- (c) beginning not later than 1 year before the child reaches the age majority (age 18), a statement that the child has been informed of the child's rights that will transfer to the child when reached age 18.

When appropriate, the IEP will also include other necessary services, such as extended school year (ESY), transportation, type of physical education, prevocational, vocational and career education. (30 EC 56345)

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

7.3 IEP TEAM MEMBERS

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

The IEP team shall include all of the following:

- (1) One or both of the student's parents, a representative selected by a parent, or both
- (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 LEA 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 individualized education program, 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.

- (2) 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 LEA who meets all of the following:
 - (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.
 - (c) is knowledgeable about the availability of resources of the LEA.
- (5) An individual who can interpret the instructional implications of the assessment results. The individual may be a member of the team.
- (6) At the discretion of the parent, guardian, or the LEA, 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 LEA 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 meeting, the LEA shall take steps to ensure that the student's preferences and interests are considered. (30 EC 56341)

The general education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP. The teachers will assist in the determination of appropriate positive behavioral interventions and strategies for the child, and

supplementary aids and services, program modifications or supports for school personnel that will be provided for the child.

7.3. A IEP Team Member Excusal

IEP Team - Area of Curriculum 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 LEA agree 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. (EC 56341(f))

IEP Team - Area of Curriculum or Related Services Being Discussed

A member of the individualized education program 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 and the LEA consent to the excusal after conferring with the member.
 - (2) The member **submits in writing to the parent and the IEP team**, input into the development of the IEP prior to the meeting. A parent's agreement shall be in writing. (30 EC 56341(g))
1. The parent and the LEA consent in writing to the excusal after conferring with IEP team member.
 2. The IEP team member submits to the parent and the IEP team, input into the development of the IEP prior to the meeting. A parent's agreement shall be in writing. (30 EC 56341)

NOTE: Refer to the IEP Manual for the Excusal Form

7.3. B Parents Cannot Attend IEP Meeting

If neither parent can attend, other methods will be used to ensure parent participation, including individual or conference telephone calls.

Parent Participation and Consent Procedures

Document three separate attempts to contact parent/guardian. Contact methods include certified letter, in person, letter (mail or email) and phone.

1. One contact must be the *Notice of Meeting* form.
2. Document any other two contacts.

After three documented attempts to schedule the IEP team meeting, and if the parent/guardian makes no attempt to reschedule the IEP team meeting, the meeting can be held, with or without parent/guardian participation. It is always recommended that the IEP team members call the parent during the time of the proposed IEP meeting in an attempt to allow parental participation via phone.

When an IEP team meeting is held without parent/guardian participation, the case manager should send a letter with a copy of the new proposed IEP to the parent/guardian.

Parent Participation and Consent is always required for:

- Initial IEPs
- Exit IEPs
- Change in Placement IEPs

When no parent can be located or if the court has specifically limited the rights of the parent or guardian to make educational decisions for the child, a surrogate parent will be appointed.

7.4 LEAST RESTRICTIVE ENVIRONMENT

Definition:

1. 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.
2. 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. (30 EC 56040.1)

Least restrictive environment (LRE) 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 least restrictive environment, 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 modifications in the general curriculum.
- (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.
- (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. (EC 56364, 56364.2; 5 CCR 3042; CFR 300.550)

The IEP team shall document its rationale for placement in other than the student's 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 less restrictive environment, even with the use of supplementary aids and services.

In determining the educational placement of a student with a disability, the LEA will ensure that the placement decision is made by an IEP team

including the parents, and other persons knowledgeable about the student.

All placement decisions will be based on the individual needs of the student pursuant to the IEP 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 least restrictive environment.

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 individualized education program, in any one or a combination of public, private, home and hospital, or residential settings. (C.C.R., Title 5, Sec. 3042)

The continuum of options include, but are not necessarily limited to all of the following or any combination of the following:

- 1) General education classroom.
- 2) General education classroom with supplementary aids and services.
- 3) General education classroom with education specialist services provided primarily within the general education classroom
- 4) General education classroom with related services.
- 5) General education classroom with services from an education specialist in a separate classroom for a portion of the school day and other supports and/or related services.
- 6) Special classes and centers.
- 7) Nonpublic, nonsectarian school services.
- 8) State special schools.
- 9) Residential schools
- 10) Home/ Hospital

7.5 SPECIAL EDUCATION AND RELATED SERVICES AND 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 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 CFR 300.26(b) (3))

The primary academic instructional service for most special education services will be listed as *Specialized Academic Instruction* on the Offer of FAPE- Services Page of the IEP. As *specialized academic instruction* is identified, one must also identify the amount of service and the location. Specialized Academic Instruction may be provided in multiple locations within a school site or within a school week. An IEP document can be as specific as appropriate to clarify the unique needs of the student. For example, you may indicate SAI in general education for 10 hours a week, and indicate SAI in a separate class for 5 hours per week.

Refer to Chapter 11 for complete information about nonpublic, nonsectarian schools and agencies.

7.7 REVIEW AND REVISION OF THE IEP

The IEP will be reviewed periodically, but not less than annually to determine whether the annual goals for the child are being achieved. The IEP will be revised as appropriate to address any lack of expected progress toward the annual goals and in the general curriculum, where appropriate.

In addition, the IEP team will meet whenever the parent or teacher requests a meeting to develop, review or revise the IEP.

An IEP meeting will be held within 30 days of receipt of a written request from a parent.

The following should be included in a review

1. The results of any reevaluation,
2. Information about the child provided to, and by, the parent as required in the evaluation process;
3. The child's anticipated needs; and
4. Other matters.
5. Any lack of expected progress toward the annual goals and in the general curriculum where appropriate.

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 shall, to the extent appropriate, participate in reviews or revisions of the IEP.

7.7.A 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 individual with exceptional needs and the LEA may agree, not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document, signed by the parent and by a representative of the LEA, to amend or modify the student's existing IEP.

Changes to the IEP may be made, either 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.

7.7.B IEP Team Meetings Required

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

- (a) A student has received an initial formal assessment. The team may meet when a student receives any subsequent formal assessment.
- (b) The student demonstrates a lack of anticipated progress.
- (c) The parent or teacher requests a meeting to develop, review, or revise the individualized education program.
- (d) At least annually, to review the student's progress, the individualized education program, including whether the annual goals for the student are being achieved, and the appropriateness of placement, and to make any necessary revisions. The individualized education program 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. (30 EC 56343)

7.7.C Consolidation of IEP Meetings

To the extent possible, the LEA shall encourage consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

7.8 IEP MEETING PROCESS

7.8.A Present Levels of Academic and Functional Performance

The IEP team must determine the student's present level of academic achievement and functional performance. This determination is made by looking at assessment results, input from the parents, teacher and other providers. The IEP team can then identify areas of need for the student.

7.8.B Individual Transition Plan and Transition Services

Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter, an IEP must include an

Individual Transition Plan (ITP). The IEP for students 16 years or younger, if appropriate must contain:

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

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; and

If an invited agency representative cannot attend the IEP meeting to develop transition services, the district will obtain agency participation in planning for these services.

Beginning not later than 1 year before the child reaches the age majority (age 18), a statement that the child has been informed of the child's rights that will transfer to the child when reached age 18.

NOTE: Refer to Chapter 9 Secondary Transition for more details.

7.8.C Consideration of Special Factors

The IEP team will consider the following special factors:

Behavioral

In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.

Students with Limited English Proficiency

In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP.

For individuals whose primary language is other than English, linguistically appropriate goals, objectives, programs and services.

Blind and Visually Impaired

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 evaluation of the child's reading and writing skills, needs and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille) is conducted.

Deaf and Hearing Impaired

Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs. 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 in the child's language and communication mode.

Assistive Technology

Consider whether a child requires assistive technology devices and services.

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 free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.

7.8.D Developing Goals

There must be a goal for every area of identified need. Objectives or benchmarks are required for students who participate in an alternate statewide assessment. Goals must contain the following components:

1. Baseline (related to goal)
2. Who (the child)
3. Does what (measurable behavior)
4. When (reporting date)
5. Given what (conditions)
6. How much (mastery criteria)
7. How measured (performance data or assessment)

IEP goals should be based on the academic content standards for the grade in which the student is enrolled.

7.8.E Discussion of Options Considered

Prior to determining the actual special education and related services, the IEP team must discuss and document all options that were considered.

7.8.F 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 individuals with exceptional needs to be educated with nondisabled children to the maximum extent appropriate. (EC 56033.5)

Supplementary aids and services are often critical elements in supporting the education of students with disabilities in regular classes and their participation in a range of other school activities.

Supplementary aids and services can be accommodations and modifications to the curriculum under study or the manner in which that content is presented or 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. Determining the appropriate supplementary aids and services must be done on an individual basis.

7.8.G Determination of Special Education and Related Services

The IEP team determines the special education and related services that are needed to implement the goals for the student to receive educational benefit in the least restrictive environment. The special education and related services, including ESY if needed, must be documented to include frequency, duration and location of the services offered to the student.

7.8.H Extended School Year (ESY)

The need for Extended School Year (“ESY”) programming must be considered and documented annually on the IEP for every student receiving special education services. The need for ESY services may be addressed at any IEP meeting. The IEP meeting addressing ESY should take place a reasonable time prior to the commencement of the ESY break.

Extended school year services are individualized extensions of special education and related services that are provided to a student with a disability beyond the regular school year, for example, during the school (year round) and summer vacation. When appropriate and necessary for the unique needs of the child, ESY is provided by the LEA at no cost to the parents to students who have demonstrated difficulties with regression and lack of recoupment related to the specific skills they’ve 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, students who are determined by their IEP team to need ESY services are entitled to receive them as part of a free appropriate public education. Decisions about ESY eligibility are made individually through the IEP process usually at the student’s annual IEP meeting. ESY eligibility is not limited to students with particular types of disabilities.

Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to

continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program.
(5 CCR 3043)

NOTE: Refer to Chapter 14 Resources for more information on determining the need for ESY.

7.9 INDIVIDUALIZED EDUCATION PROGRAM: TRANSITIONS

7.9. 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 should be identified.

If appropriate and 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.

7.9. B Transition from Special Class or Center, or from Non-Public, Nonsectarian School to the General Education Classroom in the Public School

When students transfer into the general education classroom from special classes or centers, or from nonpublic, nonsectarian school to the general education in the public school the IEP will include the following:

1. A description of activities provided to integrate the child into the general education program indicating the nature of each activity and the time spent on the activity each day or week; and
2. A description of the activities provided to support the transition of students from the special education program into the general education program.

7.9.C Secondary Transition

Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter, the IEP must contain an Individual Transition Plan. The IEP for students 16 years or younger, if appropriate must contain:

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

NOTE: Refer to Chapter 9 Secondary Transition for more information.

7.10 EDUCATIONAL BENEFIT

Board of Education v. Rowley 1982 was decisive in defining the term *educational benefit*. The Supreme Court concluded that the IDEA does not require that LEAs maximize the potential of students with disabilities. The intent of the IDEA was more to open the door of public education to students with disabilities rather than guarantee any particular level of educational achievement.

7.10.A Components of Educational Benefit Analysis

Based on procedural requirements, including:

1. The assessment is complete and the child is assessed all areas of suspected disability
2. The IEP team identifies needs related to:
 - the child's disability
 - involvement and progress in the general curriculum
3. Goals are established in each need area
 - Objectives are developed for students taking CAPA
4. Services are planned to support:
 - Progress towards all goals
 - Progress in the general curriculum
 - Participation in the general education environment
 - Education with other students with disabilities and typically developing peers
5. The IEP team reviews the student's progress and adjusted the IEP if progress was not made or to address other needs.

7.10.B Definition of FAPE

Free Appropriate Public Education (FAPE) means special education and related services that:

1. Are provided a public expense;
2. Meet the standards of the State;
3. Include pre-school, elementary or secondary school and education through the 22nd birthday if appropriate; and
4. Are provided in conformity with the IEP.

NOTE: See Chapter 14 Resources for Educational Benefit Checklist

7.11 INTERIM PLACEMENTS

7.11.A Transfers from District to District within the State

If the child has an IEP and transfers into a district from a district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the LEA shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved IEP, in consultation with the parents, for a period not to exceed 30 days, by which time

the LEA shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law.

7.11.B Transfers from District to District within the Same SELPA

If the child has an IEP and transfers into a district from a district operating under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved IEP, unless the parent and the LEA agree to develop, adopt and implement a new IEP that is consistent with federal and state law. It is recommended that at least an IEP Amendment be done to reflect the change in location and provider.

7.11.C 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 a district within the state within the same academic year, the LEA shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved IEP, in consultation with the parents, until the LEA conducts an assessment.

In order to facilitate the transition of an individual with exceptional needs, the new school in which the pupil enrolls shall take reasonable steps to promptly obtain the pupil's records.

Upon receipt of a request from an educational agency where an individual with exceptional needs has enrolled, a former educational agency shall send the pupil's special education records, or a copy thereof, to the new educational agency with five working days. (EC 56325)

SECONDARY TRANSITION

8.1 PURPOSE AND SCOPE

Transition services (designed with a results oriented process focused on improving academic functional achievement of the student) must be addressed in the IEP of the student not later than in the year in which he/she turns 16 years of age. The goal of **transition services** is planned movement from secondary education to adult life that provides opportunities that 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. (30 EC 56460)

Transition is all about planning for a student's future and how academic courses, functional curriculum and vocational activities help move a student towards the future goal. 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 helping the student work towards his or her future goals. The goal of transition is to provide the student with all the skills, knowledge and support necessary to make their post school goals a reality.

8.2 DEFINITION OF TRANSITION SERVICES

The term "transition services," is a coordinated set of activities for students with special needs that does all of the following:

- (1) Is designed within an 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 pupil from school to post-school activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.

- (2) Is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil.
- (3) 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.
- (4) Transition services for students with special needs may be special education, if provided as specially designed instruction, or designated instruction and service, if required to assist a pupil to benefit from special education. Is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil.
- (5) 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. (56345.1. (a))

8.3 TIMELINE FOR DEVELOPING INDIVIDUAL TRANSITION PLAN

Beginning not later than the first IEP to be in effect when the child is 16, 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;
- (b) the transition services (including course of study) needed to assist the child in reaching those goals; and
- (c) beginning not later than 1 year before the child reaches the age majority (age 18), a statement that the child has been informed of the child's rights that will transfer to the child when reached age 18.

8.4 AREAS TO BE ADDRESSED

8.4. A Instruction

The IEP is an individualized instructional and support plan for students with disabilities. The transition planning, activities and services detailed in the IEP align instruction with student's post-secondary goals. The individual transition plan should include a specific course of student tailored to the unique needs of the student

to support the student progress towards both their annual goals and objectives and towards their measureable post-secondary goals and objectives. The course of study should be a specific identification of the courses that the student will take during the year covered by the annual IEP. The attachment of a transcript is not sufficient to meet the specificity requirements of a course of study.

8.4. B Related Services

The IEP must describe any related services the student may need, such as transportation to a work experience or career counseling to help the student prepare for his or her future goals.

8.4. C Community Experiences

Instructional activities may take place in the community such as community based instruction to help students generalize the skills learned in the classroom to the real world.

8.4. D Employment

All students should have employment related language in their IEP. For some students this may be a goal to go to college; for others it may mean job training or supported employment. Other students may go right to work after leaving school. LEAs are responsible for helping students identify their goals and develop plans that prepare students to achieve.

8.4. E Daily Living Skills and Functional Evaluation

Some students may need specific instruction and activities in order to learn to take care of themselves and live as independently as possible. Some students may need a functional evaluation to determine which skills they will need to develop so that they are able to enter employment or live independently.

8.5 OTHER AGENCY INVOLVEMENT

A representative from any agency that is likely to be responsible for providing or paying for transition services may be invited to the IEP beginning when the student is 16, or younger if appropriate, with parental consent or consent of adult student.

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.

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

8.6 IEP TEAM PARTICIPANTS FOR SECONDARY TRANSITION

8.6.A Student

Role: Participates, communicates preferences and interests, communicates strengths, and takes part in the IEP development.

(If the student is not in attendance, how were the student's interests and preferences determined?)

300.321(b)(1) Would provide that the pupil be invited to the IEP meeting if a purpose of the meeting is consideration of the pupil's postsecondary goals and the transition services needed to achieve those goals.

(2006 IDEA Regulations Comments indicated that if the student is a minor, the parents (unless ed. rights have been limited or extinguished) have the authority to determine whether the student should attend the IEP Team meeting (pg.46671) 300.321(b) (2) it is the public agency's obligation to take other steps to ensure that the student's preferences and interests are considered if the pupil is unable to attend the meeting.

8.6.B Parent/Family

Role: Supports the student, reinforces the value of an individual program, provides information about student's strengths and areas where assistance is needed.

8.6.C Special Education Specialist

Role: Provides information, completes age appropriate assessments with student, provides teaching strategies including accommodations and or modifications, suggests course of study related to student's post-school goals; identifies related services, provides input into transition service needs,

links student and parents with appropriate post-school services, coordinates all persons, agencies, services or programs involved in the transition planning process.

8.6.D General Education Teacher

Role: Assists in planning course of study, assists in identifying and providing modifications, adaptations, support and positive behavioral strategies or interventions.

(34 CFR 300.321 – Not less than one regular education teacher of such child (if the child is, or may be, participating in regular education))

8.6.E LEA Representative

Role: Support staff and allocate LEA resources

- Qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities
- Is knowledgeable about the general curriculum and the availability of resources of the LEA
- Has the authority to commit the LEA to implement the IEP
- LEA may designate another staff member of the IEP team if these criteria are met.

8.6.F Other Specialists

- Who can interpret the instructional implications of evaluation results
- Who may be one of the team members already listed.

8.6.G Other Appropriate Agency Personnel

Role: Provide information about services, eligibility criteria, explain difference between entitlement of school programs and eligibility of adult services, assist in identifying community or adult services.

8.7 POST-SECONDARY GOALS

The IEP must document development of measurable postsecondary goals based on age-appropriate transition assessments. The IEP for students 16 years old, 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; the transition services (including courses of study) needed to assist the child in reaching those goals. [Section 614(d) (1) (A) (i) (VIII)]

8.8 SUMMARY OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE

The Summary of Academic Achievement and Functional Performance is not



part of the IEP process. The summary is prepared by the LEA and provided to the student when he/she leaves school, either by graduating with a general diploma or reaching the age of 22. The summary will offer the student a document that summarizes his/her academic and functional performance with recommendations about what accommodations and supports the student may need to enter post-school activities, such as training, higher education, employment, and independent living. For a student whose eligibility terminates, an LEA 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 the his/her post-secondary goals. (Section 614(c) (5) (B))

8.9 TRANSFER OF RIGHTS AT AGE OF MAJORITY

The IDEA continues the requirement of notifying the student and family that educational rights convert to the student upon reaching the age of majority, which is 18 years old in California. Beginning not later than 1 year before the student reaches the age of majority under State law, a statement that the student has been informed of his/her rights if any, that will transfer to the child on reaching the age of majority. (Section 614(d) (1) (A) (i) (VIII))

8.10 POST-SECONDARY FOLLOW UP

The State requires LEAs to seek information from students who have graduated from high school to collect data on post school outcomes.

8.11 STUDENTS BETWEEN 19 AND 22 YEARS

Between the ages of 19 and 22, inclusive; enrolled in or eligible for a program under this part 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.

1. Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including any extended school year program for individuals with exceptional needs.
2. Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in September or that new fiscal year (July or August). However, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term.
3. Any person who becomes 22 years of age during the months of October, November, or December while participating in a program under this act shall be terminated from the program on December 31 of the current fiscal year, unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year or unless the person has not had an individual transition plan incorporated into his or her individualized education program and implemented from the age of 20 years, in which case the person shall be terminated from the program at the end of the fiscal year. (E.C., Sec. 56026: (c) (4))

SUSPENSION AND EXPULSION/ DUE PROCESS

9.1 Discipline

A student with a disability can be expelled for violation of school conduct codes only when certain procedural safeguards are followed.

If an action is contemplated regarding behavior resulting in consideration for expulsion or involving a removal that constitutes a change of placement, the parents must be notified of that decision no later than the date on which the decision to take that action is made.

Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, the IEP team must meet to review the relationship between the child's disability and the behavior subject to the disciplinary action. (27 EC 48915.5)

9.2 Suspension

The principal or designee may suspend a student with a disability for up to **5 consecutive school days** for a single incident of misconduct and up to 10 cumulative **school days in a school year without conducting a manifestation determination**. **Students may be suspended for up to 20 days in a school year under certain conditions.**

The principal or designee shall monitor the number of days, including portions of days that students with valid IEPs have been suspended during the school year.

9.3 Services during Suspension

Students suspended for more than 10 school days in a school year shall continue to receive special education and related services as specified on the IEP, during the period of suspension after a manifestation determination is conducted..

9.4 Transportation during Suspension

If a student with disabilities 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.

9.5 Procedural Safeguards

The following procedural safeguards shall apply when a student is suspended for more than 10 cumulative school days, when a student is placed in an interim alternative educational setting (IAES), or when a change of placement is contemplated. Not later than the date on which the decision to take action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice.

9.6 Manifestation Determination

A Manifestation Determination must be held for any student that the school administration seeks to refer to the student disciplinary panel, or any student who has been suspended for 10 cumulative days.

Within 10 school days of any decision to change the placement of a student with a disability, because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA) 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 LEA's failure to implement the IEP.

The LEA must consider all special circumstances related to the conduct in question when making its determination.

If the LEA, the parent, and relevant members of the IEP team determine that either numbers (1) , or (2) above are applicable for the student, the conduct shall be determined to be a manifestation of the student's disability.

9.6.A Determination that Behavior is a Manifestation

In determining that the behavior is a manifestation of the student's disability, the IEP team must:

- (1) Conduct a functional behavioral assessment and implement a behavioral intervention plan if LEA has not conducted such assessment.
- (2) In the situation where a behavioral intervention plan has been developed, review behavioral intervention plan and modify if necessary to address the behavior; and
- (3) Except under special circumstances, return the student to the previous placement unless the parent and the LEA agree to a change of placement.

9.6.B Determination that Behavior is NOT a Manifestation of the Disability

If the team determines that the behavior was **not** a manifestation of the disability:

- (1) Student must continue to receive special education services to enable him/her to participate in the general curriculum and to progress toward meeting the goals in the IEP.
- (2) If appropriate, receive a functional behavioral assessment, behavior intervention services and/or modifications that are designed to address the behavior so that it does not recur.

9.7 45-day Removal to 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, in cases where a student:

- (1) Carries or possesses a weapon to or at school, on school premises, or at a school function under the jurisdiction of the LEA.
- (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 LEA; or
- (3) Has inflicted **serious** bodily injury upon another person while at school, on school premises, or at school function under the jurisdiction of a State or LEA.

The IAES shall be determined by the IEP Team.

Definition of *Serious Bodily Injury*

Serious bodily injury means bodily injury which involves:

- (1) A substantial risk of death
- (2) Extreme physical pain
- (3) Protracted and obvious disfigurement; or
- (4) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18-U.S.C. 1365(h) (3))

9.8 Services during 45–Day Placement

A student who is removed from current placement to 45-day placement must:

- (1) Student must continue to receive services to enable him/her to participate in the general curriculum and to progress toward meeting the goals in the IEP.
- (2) Receive, *as appropriate*, a functional behavioral assessment, behavior intervention services and/or modifications that are designed to address the behavior so that it does not recur.

9.9 Disciplinary Appeal Process

If the parent disagrees with any decision regarding placement or manifestation determination, they may request an expedited hearing. If the LEA believes that maintaining the current placement could substantially result in injury to the child or others, the LEA may request an expedited hearing.

9.10 Placement during Appeal Process

When an appeal has been requested by either the parent or the LEA:

The student shall remain in the interim alternative educational setting (IAES) pending the decision of the administrative law judge (ALJ) until the expiration of the 45-day placement provided whichever occurs first, unless the State or LEA agree otherwise

9.11 Expedited Hearing

The State or LEA shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

9.12 Authority of Administrative Law Judge (ALJ)

The ALJ shall hear, and make determination regarding an appeal request. In making the determination, the ALJ may order a change in placement of a student with a disability. In such situations, the ALJ may:

- (1) Return the student to the placement from which the he/she was removed;
- (2) Order a change in placement of the student to an appropriate interim alternative educational setting for not more than 45 days, if the current placement of the student is substantially likely to result in injury to self or others.

9.13 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 LEA had knowledge that the student had a disability before the behavior that precipitated the disciplinary action occurred.

9.13.A Basis of Knowledge

A LEA shall be deemed to have knowledge that a child is a child with a disability if, before the behavior precipitated the disciplinary action occurred:

- (1) The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate LEA, or a teacher of the child, that the child is in need of special education and related services.
- (2) The parent of the child has requested an evaluation of the child.
- (3) The teacher of the child, or other personnel of the LEA, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

9.13.B Exception

An LEA shall not have been deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services if the child has been evaluated and it was determined that the child was not a child with a disability.

9.14 Conditions that Apply if No Basis of Knowledge

- (1) If a LEA 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.
- (2) 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 LEA and information provided by the parents, the LEA shall provide special education and related services. Pending the results, the child shall remain in the educational placement determined by school authorities.

ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DUE PROCESS

Sonoma County SELPA and Sonoma County Charter SELPA have a comprehensive Alternative Dispute Resolution process. Alternative Dispute Resolution (ADR) involves providing alternative means of solving problems that arise between families and schools. The ADR program involves everything from training parents and educators in effective communication and negotiation skills to conducting informal mediations. We have had a very strong success rate of preventing conflicts from going to fair hearing at the state level. The intent of this program is to maintain positive relationships between the student's family and the school as well as to save money for both parties.

Due Process

When the parents of a student with disabilities and the educational agency disagree about the child's identification, assessment, educational placement, or provision of FAPE, either side can request a due process proceeding.

There are three levels to the hearing process.

Resolution Session

When a parent files a due process hearing request, the district is required to schedule a resolution meeting within 15 days of receipt of the complaint with the parents and the relevant members of the IEP team. The purpose of the meeting is to attempt to reach resolution at an early stage.

Mediation Conference

If the resolution session is not successful or is waived by either party, a mediation conference that is an informal meeting between the district, parent, and an administrative law judge is conducted. The mediation conference must be scheduled by the state within 15 days of receiving the request for due process hearing.

Formal Administrative Fair Hearing

If the mediation conference is not successful or is waived by either party, an

administrative fair hearing is scheduled. This is a formal hearing conducted by an administrative judge from the Office of Administrative Hearings. At the hearing, both sides present evidence through submitting documents and by calling witnesses. The administrative law judge evaluates the evidence, determines the prevailing party, and directs corrective action, if any. This step must be held and a decision made within 45 days of the State's receipt of the request for a hearing.

Either party may request to have only a mediation conference instead of requesting a formal administrative fair hearing. If the issue is not resolved through mediation, a formal hearing can then be requested.

(E.C. §§ 56501-56507) Mediation and hearing requests must be made in writing and sent to:

Office of Administrative Hearings Special Education Division 2349 Gateway Oaks Drive, Suite 200 Sacramento, CA 95833-4231

Phone: (916) 263-0880 Fax: (916) 263-0890

Compliance Complaint

When it is believed that the LEA may have violated any part of special education law, a parent, individual, public agency, or organization can file a complaint with the California Department of Education (CDE). The party filing the complaint must forward a copy of the complaint to the other party at the same time it is filed with the CDE. The CDE must review it to decide if it is a matter for state or local investigation.

If it is determined to be an appropriate complaint for state investigation, an investigator interviews both sides, reviews documentation, and then decides whether the complaint is justified and what corrective action (if any) must be taken. A report of that investigation must be made within 60 days.

(34 C.F.R. § 300.153)

Complaint forms are available online at <http://cde.ca.gov/sp/se/qu/documents/cmplntinvsrqst.doc> and may be filed with the superintendent of the local agency or sent directly to:

California Department of Education Special Education Division Procedural Safeguards Referral Service 1430 N Street, Suite 2401

Sacramento, CA 95814 Phone: 1-800-926-0648 Fax: (916) 327-3704 Email:
speceducation@cde.ga.gov

Civil Rights Issues

It is the responsibility of the Office For Civil Rights in the Department of Education and the Office of Civil Rights in the Department of Health and Human Services to enforce federal laws prohibiting discrimination against persons on the basis of race, color, national origin, sex, age or mental and physical handicaps and to investigate discrimination complaints.

(Title VI, Civil Rights Act of 1964; Title IX, Civil Rights Act of 1972; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990)

If a parent or other individual believes that his or her rights have been violated because of his or her disability, or his or her child's disability, by an educational institution receiving federal assistance, a complaint can be submitted to:

Regional Director, Office of Civil Rights, Region IX 50 Beale Street, Suite
7200 San Francisco, CA 94105 Phone: (415) 486-5555 or TDD (877) 521-2172 Fax:
(415) 486-5570

Email: ocr.sanfrancisco@ed.gov

NON-PUBLIC SCHOOLS and RESIDENTIAL TREATMENT CENTERS

11.1 Non-Public School/Agency Placement Process

Before a LEA or Sonoma County Office of Education (SCOE) places a student with a disability in, or refers a student to, a non-public school (NPS), the LEA or SCOE shall hold an IEP team meeting to review the IEP.

The IEP team may recommend a 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 SCOE special education programs. Following determination by the IEP team that the student requires a NPS placement, the LEA in consultation with parents and other public agencies, (which may have financial responsibilities for the placement of the student) will select one or more non-public schools to determine which one can implement the student's IEP. (EC 56342)

11.2 Out-of-State Non-Public Placements

Before contracting with a NPS outside of California, the LEA or SCOE shall document its efforts to utilize public schools or to locate an appropriate NPS within the state.

If a LEA or SCOE decides to place a student in a NPS outside of this state, the LEA 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.

If a LEA or SCOE places a student with a NPS outside of this state, the student's IEP team shall submit a report to the superintendent 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 LEA to locate an appropriate public school or NPS or a

combination thereof, within the state. The superintendent shall submit a report to the State Board of Education on all placements made outside of this state. (E.C. 56365(a))

11.3 Transition of Students from Elementary District to High School District

An elementary school district shall notify a high school district of all students placed in non-public schools prior to the annual review of the IEP for each student, who may transfer to the high school district.

When a student with a disability meets LEA requirements for completion of a prescribed course of study and adopted differential proficiency standards, as designated in the student's IEP, the LEA, which developed the IEP, shall award the diploma.

11.4 CHANGE OF PUPIL RESIDENCE

11.4.A Transfer of Student Receiving Services in Non-Public School

When a student, receiving services in a NPS, moves outside of the boundaries of the local 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 LEA in both the former and new residence areas. The superintendent (or designee) of the local district making payment to the NPS 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 former local district shall terminate on the last day of the student's residence in that district.

Within (15) working days of receiving the student's records, the receiving district in the SELPA shall conduct a review of the student's IEP to determine whether or not the NPS placement is still appropriate. The following factors shall be considered in determining the appropriateness of the pupil's current placement:

- No appropriate public education program is available.
- To move the student at the time of change of residence would be harmful to the health, welfare or educational progress of the individual.

- The NPS continues to be within a reasonable distance and/or travel time from the home of the student.
- Other contingencies that necessitate the individual remaining at the NPS as determined by the IEP team.

If the student's NPS placement is considered appropriate in keeping with the federal mandate of the least restrictive environment, the receiving LEA shall negotiate a new contract for services with the NPS. If the placement is considered inappropriate, the new LEA shall, after a review of the IEP and with the consent of the parent/guardian, provide the needed special education services and facilities.

11.5 RESIDENTIAL TREATMENT CENTER (RTC) PLACEMENTS

Determining the responsibility for payment for costs for students in residential treatment centers 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.

11.5.A Residential Treatment Center Placements by LEAs

If an LEA places a student in a residential treatment center (RTC) through an IEP process, the LEA is responsible for paying for the board and care, educational costs, parent travel considerations, and any related services including school-based mental health services.

11.5.B Residential Treatment Center Placements by Courts, Social Services, Regional Center and Other Public Agencies.

1. Residential Costs

Placements made by courts, social services and regional centers and are not made by LEAs are not necessary for the student to receive a free appropriate public education; 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. (EC 56159, EC 56155)

2. Educational Costs for Non Public School Placement

Licensed Children's Institutions (LCIs): If the IEP team determines that NPS placement is necessary to meet the goals of the IEP and the student is placed in a licensed children's institution (LCI) the educational costs will be the responsibility of the Sonoma County Office of Education.

Foster Family Home: If the student is in a foster family home (FFH) the NPS costs are the responsibility of the Sonoma County Office of Education.

SURROGATE PARENT PROCEDURES

12.1 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 free appropriate public education (FAPE). It is the responsibility of each LEA 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. Each LEA must ensure the rights of a child are protected by determining the need for, and assigning, a surrogate parent whenever the child is referred or eligible for special education and either:

- (1) No parent can be identified;
- (2) The LEA after reasonable efforts, cannot locate a parent;
- (3) The child is a ward of the State under the laws of the State;
- (4) The child is an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act.

12.2 RECRUITMENT OF VOLUNTEERS

The SELPA Director and LEA directors will work with community agencies and organizations, both public and private, to secure applicants for the position of surrogate parent volunteer.

The SELPA Director will coordinate activities of the SELPA and LEAs in seeking volunteers.

Each volunteer interested in the surrogate parent position must complete a surrogate parent application form.

12.3 SCREENING OF APPLICANTS

The following areas must be addressed by the SELPA Director in the screening process for the appointment of surrogate parents.

- (1) The volunteer must have an active interest in the students to be served.
- (2) The volunteer must have a willingness to learn the requirements of special education system and student.
- (3) The volunteer must have no criminal background (arrest/conviction) that includes a misdemeanor involving abuse or neglect or others, or contributing to the delinquency of minors, or any felony conviction.
- (4) The volunteer must have a valid *California Drivers License* and provide proof of insurance or demonstrate the ability to fulfill all duties of a surrogate parent without needing to drive.
- (5) The volunteer must be willing to be fingerprinted.
- (6) The volunteer must not have a conflict of interest, including financial, with the specific student represented, or other interests, including institutional or other biases that might restrict or interfere with his or her ability to advocate for all the services required to ensure a free appropriate public education for the assigned individual with exceptional needs.
- (7) The volunteer must not be an employee of an agency that has a direct relationship to the student, e.g., school employees, probation officers, social workers, group home providers, or others who may have a conflict of interest.
- (8) The volunteer should display sensitivity to the cultural, socio-economic and individual needs of the student served.

12.4 APPOINTMENT OF SURROGATE PARENT

- (1) Upon satisfactory completion of the surrogate parent training session and upon passing the SELPA screening process, the surrogate parent volunteer shall be assigned to one or more students, using the following criteria:
 - Cultural and socio-economic sensitivity.
 - Location, based on reasonable travel time for the surrogate parent.

- Ability to understand and relate to the disability and needs of the student.
- The interest of the surrogate parent volunteer.

12.5 TRAINING

Prior to assigning a surrogate parent to represent a student, the SELPA Director will arrange for training for the surrogate parent. Training shall include, but not be limited to, the following topics:

Special Education and Related Services

1. Special Education programs available within Sonoma County SELPA as well as other educational placement options.
2. Sonoma County SELPA Policies.
3. Federal and State laws and regulations regarding Special Education.
4. Parent and student rights under federal and State Special Education laws and regulations.
5. Surrogate parent responsibilities, including participating in Individualized Education Program (IEP) meetings and suspension/expulsion proceedings for the assigned student.
6. Conflicts of Interest.
7. Visiting with the student's classroom(s) and consulting with the student's teacher(s) and personnel providing related services.
8. Visiting with the student outside the educational environment.
9. Consulting with the student's foster parent(s), group home provider/staff members, or the person(s) with whom the student resides.

10. Ethical concerns, including the responsibility to hold all information regarding the assigned student in confidence.
11. The Community Advisory Committee (CAC) and parent support groups.
12. Child and adult abuse reporting laws.

Training Sessions

Training sessions shall be provided at convenient locations, and shall be scheduled on days and at times that are suited to meet the needs of the surrogate parent volunteers.

The SELPA Director will develop a post-test interview to be administered to all prospective surrogate parent volunteers following the training session.

The SELPA Director shall maintain records of the dates surrogate parents received training so that update/review training may be provided biannually for the surrogate parents.

12.6 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 Senior SELPA Director or LEA director/designee.

School personnel shall make every reasonable effort to ensure that the surrogate parent has access to the student and student records as it relates to the student's educational needs.

12.7 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.

12.8 USE OF INTERIM SURROGATE PARENTS

When any of the following conditions prevail, the Director of Special Education of the LEA in which the student is educated, shall notify the SELPA Director, within two working days, of the need for the assignment of an interim surrogate parent:

- If no parent is immediately available, and the student has been referred for an assessment; or
- The student transfers into a Sonoma County SELPA and is provided an interim placement for special education and related services.

The LEA Director shall assign a surrogate parent, within five working days, depending upon the availability of surrogate parents.

The LEA Director shall terminate the services of the interim surrogate parent when/if any of the following exist:

- The student, after assessment, is found to be ineligible for special education and/or related services. The Director of Special Education of the LEA in which the student is educated shall notify the SELPA Director, within five working days, that the student was determined to be ineligible for special education.
- The student is determined to be ineligible for the services of a surrogate parent.
- A permanent surrogate parent is appointed for the student.

12.9 EVALUATION OF SURROGATE PARENTS

Evaluations of the surrogate parent shall be performed by the Director of Special Education of the LEA in which the student is educated, in conjunction with the SELPA Director. Each surrogate parent should be evaluated at a minimum on an annual basis. Evaluations can be conducted at more frequent intervals, at the discretion of the Director of Special Education of the LEA in which the student is educated, or at the discretion of the SELPA Director, if it is suspected that the surrogate parent is not adequately performing his or her duties.

12.10 TERMINATION OF SURROGATE PARENT APPOINTMENT

Only the SELPA Director may terminate a surrogate parent's appointment. The SELPA Director shall terminate the appointment of a surrogate parent, when the Director of Special Education of the LEA in which the student is educated notifies the SELPA Director of any of the following conditions:

1. Notice is received from the court that the student is no longer a dependent or ward of the court, under Section 300.601 or 602 of the Welfare and Institutions Code. A copy of said notice should be forwarded to the SELPA Director within two working days of receipt.
2. Notice is received from the court that the right of the parent or legal guardian to make educational decisions for the student, who is a ward, has been reinstated. A copy of said notice should be forwarded to the SELPA Director within two working days of receipt.
3. The student reaches the age of majority, as documented by the LEA or SCOE.
4. The student exits from the special education, as documented by an IEP team.
5. The parent or guardian appears and assumes the responsibility for making educational decisions for the student.
6. The surrogate parent receives an unsatisfactory evaluation, utilizing the SELPA Director evaluation process, and displays no apparent improvement following the evaluation. Termination, based upon the unsatisfactory evaluation, shall be at the discretion of the SELPA Director.

7. The surrogate parent is alleged to have committed a misdemeanor involving the abuse or neglect of others or contributing to the delinquency of minors, or any felony.
8. A surrogate parent is found to have a conflict of interest:
 - If the SELPA Director determines that a conflict of interest exists, it shall be documented and the LEA Director of Special Education shall be notified of it within two working days.
 - The surrogate parent takes action, which threatens the safety or well being of the assigned student.

The LEA Director of Special Education shall investigate the allegations of such action and report the results of said investigation to the SELPA Director as soon as possible, but no later than 30 days following the original report of the allegations.

The SELPA Director shall determine whether the surrogate parent's appointment should be terminated, based on the results of the investigation.

When the SELPA Director receives information indicating the possible need to terminate a surrogate parent, the SELPA Director shall consider the validity of the information and make a decision to terminate or not terminate within five working days.

If the SELPA Director determines that the surrogate parent should be terminated, the SELPA Director shall notify the surrogate parent within five working days of such decision.

Notice of termination shall be by documented phone call or certified mail, with return receipt requested.

At the discretion of the SELPA Director, the terminated surrogate parent may be granted the right to discuss the termination with the SELPA Director with the possibility of eventual reinstatement.

A surrogate parent who has been terminated may protest the termination in writing to the SELPA Director, whose decision regarding the appeal shall be final.

A student, whose surrogate parent has been terminated, shall be so notified by the LEA Director of Special Education in which the student is educated.

A student, who remains eligible for the services of a surrogate parent, shall be assigned an interim or new surrogate parent within two working days or as soon as possible.

12.11 CONFLICT RESOLUTIONS AND APPEALS

Conflicts must be brought to the attention of the SELPA Director, who will work with all parties involved, to bring resolution to the conflict. The SELPA Director will have the final authority in all appeals and conflicts.

12.12 HOLD HARMLESS

Surrogate parents are held harmless when acting in their official capacity except in acts or omissions found to have been wanton, reckless, or malicious. (California Government Code Section 7579.5(1)). The SELPA and the surrogate parent shall enter into a signed agreement with a hold harmless clause.