

Special Education



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

A child in foster care who has a disability or is suspected of having a disability may be eligible for special education services from birth to age 22. Children under age 5 may qualify for early intervention services. For children under age 3, assessment and services are provided through the Regional Centers located throughout California. Between ages 3 and 5 years, early intervention services are provided by the school district where the child resides. EC § 56001. See *Early Care and Education Fact Sheet* for more information.

WHAT IS SPECIAL EDUCATION?

Special education is a system of services and supports designed to meet the specific learning needs of a child with a disability. EC § 56031

The special education local plan (SELPA) that serves the geographic area where the student resides (including children placed in licensed children's institutions and foster family homes) is responsible for providing special education services. If the place of residence is not served by a SELPA, the county office of education is responsible. EC § 56156.4.

Charter schools may be exempt from most laws governing school districts. However, if a charter school is a participating member of a SELPA, it must provide special education services. See *Wells v. One2One Learning Found.*, 141 P.3d. 225, 249 (Cal. 2006).

FEDERAL AND CALIFORNIA LAW

IDEA: The Individuals with Disabilities Education Act, found at 20 USC §§ 1400 and the following sections, ensures that all children with disabilities have access to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet each student's unique needs. IDEA's corresponding federal regulations are found at 34 CFR Part 300.

FAPE: *Free, Appropriate, Public, Education.* Refers to the provision of highly individualized special education and related services provided at public expense. 20 USC § 1401(9); 34 CFR § 300.17; EC § 56000; 5 CCR § 3001(o).

CHILD FIND: School districts/SELPAs have a duty to actively and systematically identify, locate and assess individuals with exceptional needs who may be entitled to special education services. § 1412(a)(3); EC §

56301(a)(b)(1)-(3), 34 CFR § 300.111.

THE IEP PROCESS

Assessment

Referral for an assessment to determine eligibility for special education services starts the process. A referral may be made a parent/educational rights-holder, teacher, or other provider and must be in writing to ensure that assessment and meeting timelines will begin. EC § 56029; 5 CCR § 3021. See also *Educational Rights Fact Sheet*.

A "proposed assessment plan" must be submitted to the parent/educational rights-holder within 15 calendar days of receipt of a written referral. EC § 56321(a). This plan explains the types of assessments that will be conducted. Generally, a child cannot be assessed without written consent of his/her educational rights holder. Exceptions may apply if:

- a child is a ward of the court (in limited circumstances), or
- the district prevails at a due process hearing. EC §§ 56321, 56381(f)

The parent/educational rights-holder has 15 calendar days to provide written consent to the proposed assessment. EC §§ 56321(c), 56043(b)

The initial IEP team meeting to determine eligibility must be held within 60 calendar days (not school days) of receipt of written consent to assessment, not including summer vacation or school breaks of 5 days or more. EC §§ 56344(a), 56043(c).

When a child with a disability transfers from one district to another in the same academic year, each school district shall ensure the assessments are completed as expeditiously as possible. 20 USC § 1414(b)(3) (D); EC § 56320(i).

A parent/educational rights holder has the right to obtain, at public expense, an independent educational assessment of the child from qualified specialists if the parent disagrees with the assessment obtained by the school district. EC § 56329(b).

Eligibility for Special Education Services

Two triggering conditions must be met:

- The child has an impairment adversely affecting her/his educational performance that requires special education.
- The impairment fits into one of the following qualifying categories of disabilities:
 - mental retardation;

- hearing impairment;
- speech or language impairment;
- visual impairment;
- emotional disturbance;
- hearing and visual impairment;
- severe orthopedic impairment;
- autism;
- traumatic brain injury;
- other health impairment (this generally includes ADHD);
- specific learning disability.

20 USC § 1401(3); EC § 56026.

Age: Students may be eligible for special education from birth to age 22. EC § 56026. School districts are required to provide special education services for eligible students age 3-22.

Placement

FAPE must be provided in the Least Restrictive Environment (LRE). Children with disabilities are to receive an education to the maximum extent appropriate with non-disabled peers and are not to be removed from regular classes unless even with supplemental aids and services, education in regular classes cannot be achieved satisfactorily. 20 USC § 1412(a)(5)(A); EC § 56031.

In California, there are four factors to determine whether placement represents the LRE:

- Academic benefits of placement in the mainstream setting;
- Non-academic benefits of placement in the mainstream setting;
- Negative effects that the student's presence may have; and
- Cost of educating the student in a mainstream environment.

Sacramento City Unified Sch. Dist. v. Rachel Holland, 14 F.3d 1398 (9th Cir. 1994).

The spectrum of placement options moves from least restrictive to most restrictive:

- Least restrictive placements include full inclusion and mainstreaming with Resource Specialist Program (RSP) Support;
- More restrictive placements include a special day class (SDC) or a non-public school (NPS);
- Most restrictive placements include residential placement or a home hospital program.

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Non-Public Schools

There is a presumption that a child in foster care be placed in a mainstream public school unless the child has an IEP requiring placement outside the public school or the parent/educational rights-holder determines it is in the child's best interest to be placed in another educational program. *EC § 48853.*

A student shall not be placed in a special class or NPS unless the severity of the disability is such that education in a regular class with accommodations and modifications cannot be achieved satisfactorily. *EC § 56040.1.*

The child in foster care must have an IEP or must be assessed for special education services prior to placement in an NPS. *EC §§ 56342.1, 56320.*

Related Services

"Related services" means any services necessary to help a student benefit from a special education program. These services might include transportation from home or a drop-off point to school, psychological services, adapted physical education, occupational therapy, physical therapy, speech and language supports, assistive technology, and attendance at extended school year sessions. *20 USC § 1401(26); 34 CFR § 300.34; EC § 56363.*

When a child with disabilities is suspected of needing mental health services, s/he may be referred to a community mental health service. *GC § 7576; EC § 56331.*

THE IEP MEETING

Individualized Education Program (IEP): An IEP is both the meeting and document that sets forth what services a child found to be eligible for special education is to receive. *EC §§ 56032, 56341.*

The IEP team meeting shall be scheduled at a mutually agreed-upon time and place for district participants and the parent/educational rights-holder. *EC § 56341.5(c).* If the parent/educational rights-holder cannot attend the IEP meeting, with his/her consent the school district shall accommodate his/her participation with other methods, such as individual or conference telephone calls. *EC § 56341.5(g).*

A parent/educational rights holder has the right to audio or electronically record an IEP

meeting with 24-hour notice to the district. *EC §§ 56321.5, 56341.1(g).* A deaf or non-English speaking parent/educational rights holder has a right to request an interpreter to ensure that s/he understands the IEP team discussion. *EC § 56341.5(i).*

What Is an IEP Meeting? At the IEP meeting, a student's eligibility for special education services under IDEA is determined. If a student is found eligible, then an IEP document and plan is developed. The written IEP includes measurable goals and objectives, modifications and accommodations, individualized range of related services, and behavioral plans, where necessary. (See *FBA/FAA Fact Sheet*). *20 USC § 1414(d); EC § 56341.5; 5 CCR § 3042(b); EC § 56043(g)(1).*

When the child reaches age 16, the IEP shall address postsecondary goals and transition services. *EC §§ 56341.5(e), 56345.1.*

As appropriate and necessary, the school district must provide opportunities to involve students with disabilities in nonacademic and extracurricular activities, including athletics, recreational, special interest groups/clubs, employment, etc. *EC § 56345.2.*

Who Attends? The IEP Team consists of: a parent/educational rights-holder or surrogate parent, one regular education teacher, one special education teacher, an educational agency representative other than the teacher, and an individual who can interpret the assessment. Other individuals with expertise or knowledge about the child's needs may be invited at the discretion of the local education agency or parents/educational rights-holder. The child should be included when appropriate. *20 USC § 1414(d)(1)(b); 34 CFR § 300.344; EC § 56341.*

To Agree or Disagree? If the parent/educational rights-holder needs time to think over or disagree with part of an IEP plan, s/he does not have to sign it at the IEP meeting. It is his/her right to withhold consent to the IEP document in part or in its entirety. Any part of the IEP document to which the parent/educational rights-holder does not consent cannot be implemented and may become the basis for a due process fair hearing. *20 USC § 1415; EC § 56346.*

Note: If a biological parent's educational rights have been limited, an educational representative appointed by the court or

surrogate parent appointed by the school district may sign the IEP in lieu of the parent. (See *Educational Rights Fact Sheet*). *WIC §§ 361, 726; GC §§ 7589.5, 7579.6; 20 USC § 1415(b)(2)(A)(i); EC § 56055.*

Timelines

A student's IEP must be reviewed at least once annually, or more frequently upon request. *20 USC § 1414(d)(4); EC §§ 56343, 56043.*

If a parent/educational rights holder requests an IEP meeting outside of the annual review, the school district has 30 days to hold the IEP meeting.

When a child who has an IEP is transferred from district to district within the state, the new school district shall provide FAPE without delay, including services comparable to the existing IEP, for the initial 30 days of enrollment. At that time, the district shall adopt the previous IEP or must present a new offer of FAPE for the parent/educational rights-holder's consent. *EC § 56325.* A complete reevaluation, followed by a triennial IEP meeting, must be done every three years, or more frequently upon request. *20 USC § 1414(a)(2)(B); 34 CFR § 300.536, EC §§ 56381, 56043(k).*

PROCEDURAL RIGHTS / DISAGREEMENTS WITH SCHOOLS

Compliance Complaint

A parents/educational rights-holder should file a compliance complaint with the State Department of Education when s/he feels that the school district has violated its duty under a student's IEP or the special education laws. Anyone may file a Compliance Complaint (i.e. the individual does not have to hold educational rights for the child). *20 USC § 1415(b)(6); 34 CFR § 300.660-662; 5 CCR § 4650; 5 CCR § 4600; EC § 56500.2.*

Due Process

A parent/educational rights holder may file for a due process hearing if s/he is in disagreement with the school district regarding:

- implementation of the child's IEP;
- the child's eligibility for special education;
- assessments of the child;
- educational placement of the child; or
- changes made to the child's IEP without the parent/educational rights-holder's approval.

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EC § 56502. The parent/educational rights holder may file a written complaint with the Office of Administrative Hearings (OAH), Special Education Unit.

After a complaint is filed, the school district has 10 days to provide a written response.

Stay Put Provision

If the parent/educational rights-holder files for a due process hearing, the student must generally "stay put" (i.e. remain) in his/her current placement with services listed in the last-agreed-upon IEP until the disagreement is resolved. 20 USC § 1415(j); 34 CFR § 300.518; EC § 56505(d).

Resolution Session

Within 15 days of the request for due process, the school district must hold a resolution session between the parent/educational rights-holder and a district representative who has authority to bind the school district to a resolution unless both parties agree to waive the resolution session. The school district cannot bring an attorney to the resolution session unless the parent/educational rights-holder brings an attorney. If the session leads to resolution, the parties sign a binding agreement that can be voided within 3 days of signing. If the parties do not reach a resolution, the next step is mediation.

Mediation

After filing for due process, the parent/educational rights-holder has the option to mediate the dispute with the school district. During the time of this mediation process, the student is generally entitled to remain in his/her current school placement. An attorney may represent any of the parties to the mediation. Mediation can only be waived if both parties agree in writing. If the parent/educational rights-holder proceeds to mediation with the district, OAH will provide a neutral mediator. All discussions are confidential. If no agreement is reached, the parties proceed to hearing. 20 USC § 1415e; 34 CFR §§ 300.506, 507(a)(2); EC § 56501(b)(1)(2); EC § 56503.

Due Process Hearing

At least 5 days prior to the hearing, the parent/educational rights-holder and the school district must provide OAH and each other with copies of the following:

- All documents expected to be introduced at the hearing; and
- A list of all witnesses and their general

area of testimony that the parties intend to present at hearing.

The due process hearing should be conducted at a time and place reasonably convenient to the parent/educational rights-holder and the student. 34 CFR § 300.511(d); EC § 56505(b).

An impartial hearing officer from OAH should conduct the hearing. 20 USC § 1415(f)(3); 34 CFR § 300.508; EC § 56505(c).

At the hearing, both parties have the right to make opening and closing statements; present evidence and confront, cross-examine and compel the attendance of witnesses; have a written or electronic verbatim record of the hearing; and receive a written or electronic decision from the hearing officer.

Examples of Due Process Remedies

- *Compensatory education*: an equitable remedy to make up for education lost due to the school district's violation of FAPE.
- *Tuition reimbursement*: parents/educational rights-holders who remove their children to private school may be entitled to reimbursement if they prevail at a due process hearing.
- Further evaluations or independent educational evaluations (IEEs). Additional services/an increase in existing services.
- Changes in placement.
- Attorneys fees. 20 USC § 1415(i)(3).

OTHER RELEVANT LAWS AND POLICIES

Student Study Team (SST): An SST is a function of regular education, not special education, and is governed by school district policy rather than federal or state law. It is not mandatory to have an SST prior to an IEP or referral for special education assessment. Students struggling in school may be referred to an SST. An SST can be the "first step" towards determining whether a student needs special education services.

Section 504: Sec. 504 of the Rehabilitation Act of 1973 provides services to students who have a physical or mental impairment that substantially impairs a major life activity. Examples of qualifying disabilities are asthma, allergies, diabetes, ADD or ADHD. If the child qualifies, the school district must prepare a plan that outlines special services, accommodations, and modifications that will be implemented to assist the student. 34 CFR § 104.3(j). All students

that qualify under IDEA also qualify for protections under 504, but there are some students who only qualify for 504.

Similarities and Differences Between 504 and IDEA:

Generally, Section 504 covers a broader group of students than IDEA. Both a 504 Plan and an IEP under IDEA require school districts to provide students with disabilities with FAPE, however there are fewer procedural safeguards under Section 504 plans. While an IEP under IDEA is governed by an extensive body of state and federal laws and regulations, each school district will have its own Section 504 policy. State law parallels IDEA, and can be found at EC §§ 56000 et seq and 5 CCR §§ 3000 et seq.

Although a district is required to secure the consent of the parent/educational rights-holder to assess and provide services under IDEA, under Section 504, a district may develop and implement a 504 plan with or without a parent's consent.

CALIFORNIA HIGH SCHOOL EXIT EXAM

Beginning in the 2009–10 school year, any student with a disability (any type of disability, for any duration) who has an IEP or 504 plan is exempt from passing the California High School Exit Exam (CAHSEE) as long as the student has satisfied or will satisfy all state and local requirements for receipt of a high school diploma. This exemption will last until the State Board of Education decides whether to require an alternative to the CAHSEE for students with disabilities. If an alternative is determined feasible, the alternative may be implemented on January 1, 2011. EC §§ 60852.3(b), 60852.1.

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, please visit our website at www.cfyetf.org or contact Mia Stizzo at mia.stizzo@cfpic.org.

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