

**Foster Children and Youth Educational Technical Assistance  
Mental Health Advocacy Services, Inc.  
3255 Wilshire Blvd., Suite 902  
Los Angeles, CA 90010  
(213) 389-2077**

**HELPING YOUR CHILD SUCCEED IN SCHOOL:**

**An Education Handbook for Parents and Caregivers of Children  
and Youth in the Foster Care System**

**BY**

**Nancy M. Shea, J.D.**

**Lois A. Weinberg, Ph.D.**

**Andrea Zetlin, Ed.D.**

**May 2006**

**This Handbook was funded through the generous support of The Stuart Foundation.**



This handbook was developed for you, the parents and caregivers of children and youth in the child welfare system. The children and youth in your care face many challenges, and school is one of the greatest. While many children and youth do well, many do not. In fact, some have substantial problems learning and, in order to achieve, need to be enrolled in special programs or receive supplemental services from the school and district. Therefore, it is very important that you know the rights of the child or youth in your care, as well as your rights as parent or caregiver, and how to exercise those rights under the federal and state education laws.<sup>1</sup> Throughout the rest of this handbook we have used “parent” to refer to any individual who is the holder of education rights.

The information in this handbook will help you better understand the education system and how schools operate. You will be better informed to make important decisions about your child’s or youth’s education, and better able to play a larger role in his or her schooling. This handbook provides answers to the most commonly asked questions. Please refer to the Table of Contents to find information you need. If you have further questions or need more information, you should ask the school or your social worker for assistance.

We wish to acknowledge the following resources for information we used to help put together this handbook: the website of the California Department of Education <[www.cde.ca.gov](http://www.cde.ca.gov)>, the website of Protection and Advocacy in California <[www.pai-ca.org](http://www.pai-ca.org)>, and *Educational Advocacy*, by Elizabeth Calvin (2004). We are grateful to Elaine Mac Leod and Joseph Staub who read earlier drafts of this handbook and provided us with helpful comments.

We hope this guide will help you work with your school and district to ensure the most appropriate education for the child or youth in your care.

---

<sup>1</sup> This guide is based on federal and state education laws in effect at the time of printing. These laws can change over time. If you have any questions about the validity of any information in this handbook, contact a legal authority in your area. We have included some legal citations for those who want to refer to the specific laws. Most legal references are available on-line or at a public library.



**HELPING YOUR CHILD SUCCEED IN SCHOOL:  
AN EDUCATION HANDBOOK FOR PARENTS AND CAREGIVERS  
OF CHILDREN AND YOUTH IN THE FOSTER CARE SYSTEM**

**TABLE OF CONTENTS**

**Question**

**Page**

**Chapter I**

**INTRODUCTION TO THE SCHOOL SYSTEM**

- How are schools organized? .....13
- What is the California Department of Education (CDE)? .....13
- What is the County Office of Education? .....13
- What are Special Education Local Planning Areas (SELPA) .....13
- What are school districts and local boards of education? .....14
- What are the different types of schools? .....14
  - What is a Magnet School? .....15
  - What is a Charter School? .....15
  - What is a Private School? .....15
  - What is a Nonpublic Special Education School (NPS)? .....15

**Chapter II**

**WHO MAKES DECISIONS ABOUT EDUCATION FOR  
FOSTER CHILDREN AND YOUTH**

- Who has the right to make educational decisions for a child? .....16
- What kind of educational decisions are made by parents or other decisionmakers? .....16
- How is “parent” defined? .....16
- Under what circumstances will the juvenile court limit the parent or guardian’s educational rights? ..... 17
- Who is a “responsible adult”? .....17
- Who cannot be appointed a responsible adult?.....17
- How does a “responsible adult” differ from a “surrogate parent”? .....17
- Who can be appointed a surrogate parent? .....17
- How long does an appointment as a responsible adult or surrogate parent last? .....17
- What are the specific responsibilities of a surrogate parent? .....18
- When can a Juvenile Court judge make educational decisions? .....18

**Chapter III**

**GENERAL EDUCATION PROVISIONS**

**The Child’s Right to an Education**

- Do children have a right to education in California? .....19
- What rights do parents have that will help their children succeed in school? .....19

**Attendance and Enrollment Requirements**

- Do all children and youth have to go to school? .....20
- When may a child enter kindergarten? .....20
- What if a student violates compulsory education laws and has a pattern of unexcused absences? .....20
- When is a student considered truant? .....21
- What will happen if a foster child is absent from school because of attendance at a court hearing, other court-ordered activity, or a change of placement? .....21
- What is required to enroll a foster child in school? .....21
- How does the immediate enrollment provision apply to students with Individualized Education Programs (IEPs) that require a specific placement? .....21
- If a foster child must change placement during the school year, does he or she have to change schools? .....21
- What does “school of origin” mean? .....21
- Who determines if it is in the child’s best interest to remain in the school of origin? .....22
- Who is responsible for providing transportation to the student’s school of origin? .....22
- Who is the foster care liaison (AB490 liaison)? .....22

**School Records**

- What is the Family Education Rights and Privacy Act (FERPA)? .....22
- What are considered education records? .....23
- Does FERPA define parent? .....23
- What are the requirements for transferring school records of a foster child? .....23
- If a high school student transfers in the middle of the school term, is he or she entitled to any credits? .....23
- What is the Health and Education Passport (HEP)? .....23
- Does the child welfare worker have access to the school records? .....24

**No Child Left Behind**

- What is the No Child Left Behind (NCLB) Act of 2001? .....24

**California’s Required Exams**

- What is California’s Accountability System? .....24
- What is the California High School Exit Examination (CAHSEE)? .....25
- What are the evaluation criteria that schools use to measure effectiveness? .....25
- What penalties are imposed if schools do not meet state and federal expectations? .....26

**Graduation Requirements**

- What are the requirements for graduation? .....26
- What if a student has been unable to pass CAHSEE and cannot graduate? .....26
- What are the high school course requirements for admission to a California University? .....26
- What is the General Education Development Test (GED)? .....28

**Special Programs**

- What is the student study team (SST)? .....28
- What are alternative school options? .....29
- What is independent study? .....29
- What is home schooling? .....29
- What is a continuation high school? .....30
- What is a community day school (CDS)? .....30
- What is a pregnant minor school? .....30

**Chapter IV**

**SPECIAL EDUCATION**

- How is special education defined in the law? .....31
- What is meant by specially designed instruction? .....31
- At what age may a child receive special education services? .....31

**Referral and Assessment Process**

- How do I refer a child for an assessment for special education? .....32

**Question**

**Page**

- After the school (or school district) receives my referral, how long does it take for the assessment to be completed? .....32
- What is an assessment plan? .....34
- What are the legal requirements of a special education assessment? .....34
- On what basis is eligibility for special education determined? .....35

**Individualized Education Program (IEP) Meeting**

- What is an Individualized Education Program (IEP)? .....37
- What must be included in an IEP according to the special education law? .....37
- What does least restrictive environment (LRE) mean? .....38
- Who are the required participants at an IEP meeting? .....39
- When must an IEP team meet? .....39
- What are related services? .....39
- When is transportation available to students who receive special education services? .....40
- When a student moves into a new school district, does the new district have to provide the same special education services as the previous district? .....40

**AB3632 Services**

- What are AB3632, AB2726, or Chapter 26.5 services? .....40
- What mental health services are available under AB3632? .....41
- How is a student referred for AB3632 services? .....41
- Who is eligible to receive AB3632 services? .....41
- Who is not eligible to receive AB3632 services? .....41
- If a student in the foster care system is placed in a home in another county, will that affect the student’s ability to obtain AB3632 services? .....41
- What are the AB3632 referral timelines? .....42

**Assistive Technology**

- What is assistive technology? .....42

**Functional Behavioral Assessments and Behavioral Implementation Plans**

- What is a functional analysis assessment? .....43
- What is considered a serious behavior problem? .....43
- Who conducts a functional behavioral assessment? .....43
- What are positive behavioral interventions? .....43
- What happens after a functional analysis assessment is completed? .....43
- What is a behavioral implementation plan? .....43



**Question**

**Page**

**Transition Services and High School Graduation**

- Must the school include in a student’s IEP information about graduation requirements and progress toward graduation? .....44

**Due Process and Other Dispute Resolution Procedures**

- What can I do if I disagree with decisions made at the IEP meeting about my child’s eligibility for special education services, educational placement, related services, or any other aspect of a free appropriate education for my child? .....45
- What is a due process mediation? .....46
- What is a due process hearing? .....46
- Who may file for a due process hearing and mediation for a student? .....46
- Where do I send a request for a due process hearing and mediation? .....47
- What should I include in my request for a due process hearing and mediation? .....47
- May a school district or county office of education try to stop parents from having a due process hearing and mediation by objecting to the information that they provided about the issues in the case? .....47
- After a parent files for a due process hearing and if the case is not dismissed, will there be an opportunity to resolve the issues prior to the due process hearing and mediation? .....47
- May a parent have representation by an advocate or attorney at a hearing? .....48
- If a parent uses an attorney at a due process hearing or mediation, are there circumstances under which the school district is responsible for paying the fees of the parent’s attorney? .....48
- Are there free or low cost legal services available for special education representation? .....48
- Where does the student go to school during the due process hearing and mediation proceedings? .....48
- What is an informal meeting? .....49
- Are informal meetings sometimes scheduled prior to a parent filing for a due process hearing or mediation? .....49
- How is an informal meeting scheduled? .....50
- What is a pre-hearing mediation? .....50

**Compliance Complaints**

- What can be done if a school district or county office of education violates special education law or discriminates against the student? .....50
- Who may file a complaint? .....51
- Whom may the complaint be about? .....51
- What happens after I file a complaint? .....52

**Question**

**Page**

- What will happen after I file a complaint with the Complaint Management and Mediation Unit? .....52

**Early Intervention Services**

- What are early intervention services? .....53
- Who should be referred for early intervention services? .....53
- What agencies are responsible for providing early intervention services? .....53
- What is an individualized family services plan (IFSP)? .....53
- What specific services might be included on an IFSP? .....53

**504 Services**

- Are there services available for students with disabilities who do not qualify for special education services? .....54
- What is Section 504? .....54
- What is considered a disability under Section 504? .....54
- What does physical impairment mean under Section 504? .....54
- What does mental impairment mean under Section 504? .....55
- What are considered major life activities under Section 504? .....55
- If a student is eligible for services under the special education law, is that student also eligible under Section 504? .....55
- If a student is not eligible for services under special education law, might the student still have a qualifying disability under Section 504? .....55
- What is required under Section 504 if a student has a qualifying disability? .....56
- If a student is not found eligible for services under Section 504 or the services or accommodations recommended are not appropriate, are there any appeal procedures? .....56
- What can be done if you believe a student’s rights under Section 504 are being violated? .....56

**Chapter V**

**DISCIPLINE**

**Disciplinary Terms and Procedures that Apply to All Students**

- How is suspension defined under California law? .....57
- For how many days may a student be suspended and who may suspend a student? ....57
- What procedures should occur prior to a student being suspended? .....57
- May a school or school district informally suspend a student without following formal suspension procedures? .....58

**Question**

**Page**

- What are the offenses for which a student may be suspended or expelled? .....58
- Is suspension or expulsion appropriate for students who are frequently truant from or tardy to school? .....59
- Are there alternatives to suspension or expulsion that may be imposed? .....60
- How is expulsion defined under California law? .....60
- What are “zero tolerance” offenses? .....60

**Disciplinary Procedures for Students without Disabilities**

- How many days may a student without a disability be suspended from school? .....60
- How many days may a student without a disability be expelled from school? .....61
- If a student is expelled from school, what public education options are available to him or her? .....61

**Disciplinary Procedures for Students with Disabilities**

- What are the procedures for suspending a student with a disability for 10 days or less? .....61
- May a student with a disability be kept out of school for more than 10 days in the same school year? .....61
- Are there “zero tolerance” offenses that require a student with a disability to be removed from the school setting? .....62
- Who determines in which temporary alternative setting the student should be placed? .....62
- Does the student have to be provided special education services while in the temporary alternative educational setting? .....62
- What is a “manifestation determination” IEP? .....62
- What decisions must the manifestation determination IEP team make? .....63
- If a determination is made that the student’s misbehavior is directly connected to the disability or the misbehavior is the result of a failure to implement the student’s IEP, what course of action must the IEP team recommend? .....63
- Are there circumstances under which a student may be removed to an alternative educational setting even though the misbehavior was directly connected to the disability or the failure to implement the IEP caused the misbehavior? .....63
- If a parent disagrees with the decisions of the manifestation determination IEP team, what course of action is available? .....63
- Are there circumstances under which a local education agency may request a special education hearing related to a student’s misbehavior? .....63
- If a special education hearing has been requested by either the student’s parent or the local education agency, what school placement does the student attend until the hearing is completed? .....64

## **Appendices**

### **Sample Letters**

#### Request for Evaluation for Special Education

- Parent with education rights
- Foster parent/relative caregiver with educational rights
- Foster parent/caregiver without educational rights
- Social worker

#### Request for Evaluation for Special Education and Simultaneous 3632 Referral

#### Request for Meeting to Review IEP

- Parent with education rights
- Foster parent with educational rights

### **AB 3632 Timelines**

### **Some Acronyms and Abbreviations Used in Education**

## Chapter I

### INTRODUCTION TO THE SCHOOL SYSTEM

#### **How are schools organized?**

Public schools are organized as follows:

- the California Department of Education,
- County Offices of Education,
- Special Education Local Planning Areas (SELPAs),
- School districts and local school boards, and
- Local schools

#### **What is the California Department of Education (CDE)?**

The California Department of Education (CDE) and the State Superintendent of Public Instruction are both part of the state government, and are responsible for enforcing education law and regulations and for continuing to improve public education in California. The CDE and the State Superintendent of Public Instruction work in partnership with local districts to improve student achievement.

#### **What is the County Office of Education?**

California has 58 County Offices of Education, each serving a number of school districts and students. County superintendents are usually elected although some are appointed by the County Board of Education. County Offices of Education do not supervise school districts; they do not tell them what to do. Instead, County Offices of Education provide those education-related services that can be handled most effectively and economically on a regional basis rather than by individual school districts. These include:

- Court schools,
- Staff development,
- Centralized school district support,
- Technology services,
- Special education services not offered by local school districts,
- Regional Occupational Centers and Programs (ROCPs), and
- Vocational education.

These services are provided at the request of districts or to meet state mandates. In addition, County offices of Education have the fiscal responsibility of overseeing school district budgets.

#### **What are Special Education Local Plan Areas (SELPAs)?**

A Special Education Local Plan Area (SELPA) is an organization made up of school districts (or one very large district) that have joined together to ensure that, as a group, they offer a full continuum of special education services. There are 112 SELPAs in the state. Some SELPAs are housed within County Offices of Education.

### **What are school districts and local boards of education?**

Schools are grouped together to form school districts. School districts are responsible for the overall education of school-age students within district boundaries. School districts may cover:

- Kindergarten through 6<sup>th</sup> or 8<sup>th</sup> grade
- Kindergarten through 12<sup>th</sup> grade
- 9<sup>th</sup> through 12<sup>th</sup> grade
- 7<sup>th</sup> through 12<sup>th</sup> grade

Many districts also provide pre-kindergarten programs not required by law, except for some students with an Individualized Education Program (IEP).

The district superintendent is responsible for all activities in the district. The superintendent and his or her staff work closely with the School Board, a group of elected individuals who make policy decisions for the schools within the district. Every district has a school board, and boards generally have monthly meetings that are open to the public. These meetings range from routine discussions of general district business to intense, provocative debates with the community during which controversial issues are debated and landmark decisions sometimes made. In most districts, members serve four-year terms, and terms are staggered so seats do not all become open at once. In general, to run for a school board position, one must be at least 18 years old, a citizen of the state, a resident of the district, a registered voter, and eligible under the state constitution to be elected to public office.

School districts are responsible for curriculum and textbook selection, as well as the administration and reporting of the Standardized Testing and Reporting Program (STAR) testing. They also are responsible for overseeing special education and student services (i.e., child welfare and attendance), the district budget, maintenance of school facilities, and relations with employee unions.

### **What are the different types of schools?**

Schools are the basic unit of educational services. Most schools have a principal, office staff, general education classroom teachers, special education teachers and staff, and other specialists and support staff. Secondary schools usually also have vice or assistant principals, deans, and counselors. Schools are divided into:

- Elementary - K-5 or K-6,
- Middle, 6-8
- Junior High, 7-9
- Senior High, 9-12 or 10-12

There are also the following types of schools:

- Magnet schools,
- Charter schools,
- Private schools, and
- Nonpublic schools

**What is a Magnet School?**

Magnet schools are public schools operated by the school district and open to all qualifying students regardless of where in the district they live. They cost nothing to attend and are usually organized around a unifying theme or a different organizational structure for students with similar interests. For example, there are magnets for science, technology, the performing arts and other careers.. The magnet school provides instruction in a variety of combinations of grades K through 12<sup>th</sup>. The goals of magnet schools are to promote desegregation, equity, and excellence in learning.

**What is a Charter School?**

Charter schools are innovative public schools usually formed as a positive alternative to existing schools in a community. Like the magnet school, it can provide instruction in variety of combinations of grades K through 12<sup>th</sup>. A charter school may be started by parents, teachers, community members, and must be approved to operate by the local school board. Charter schools have unique goals and operating procedures that are specified in the agreement between the school board and the organizers of the charter. The purpose of charter schools is to improve student learning, encourage the use of different and innovative teaching methods, and provide parents, students, and teachers with expanded educational opportunities within the public school system.

**What is a Private School?**

Parents can send their children to religious (church) schools or to non-sectarian private schools. These schools generally charge tuition and can be costly. They can be for boys or girls only, or both, and can focus on elementary or secondary instruction, or both. Religious schools provide a religious education along with core studies. Private schools often offer an environment with high academic achievement, reduced class sizes, and lower teacher-student ratios.

**What is a Nonpublic Special Education School (NPS)?**

Nonpublic schools provide appropriate special education services when no appropriate special education program is available through the public schools. Nonpublic schools are considered to be a more restrictive educational placement in which special education students are educated apart from their general education peers. They offer intensive programs with highly specialized services, such as counseling, tutoring, or behavior management for students who cannot be served by their local school districts. They tend to be narrowly focused in who they serve and typically enroll students with specific challenges, such as emotional disturbance, severe learning disabilities, multiple disabilities, and mental retardation. They include both day and residential institutions. Tuition is paid by the school district if the IEP team determines that a nonpublic school placement is necessary.

## Chapter II

### WHO MAKES DECISIONS ABOUT EDUCATION FOR FOSTER CHILDREN AND YOUTH

#### Who has the right to make educational decisions for a child?

- The child's parents or legal guardians
- A court-appointed responsible adult
- A surrogate parent appointed by the court or the school district
- A juvenile court judge

#### What kind of educational decisions are made by the parent or other decisionmaker?

- Enrollment in school
- Preference for placement in school of origin
- Consent for assessment for special education
- Consent for implementation of the individual education plan
- Request for special education due process (such as a due process hearing or mediation)
- Application to a magnet school, charter school, or alternative education setting

#### How is "parent" defined?

It depends. For students in general education, the law does not define who is considered a parent. In special education, however, the law specifically defines parent to include any of the following:

- A person having legal custody of a child.
  - Biological or adoptive parent.
  - Legal guardian.
- A foster parent if
  - the court has limited the parent's authority to make educational decisions.
  - the child has been placed in a planned permanent living arrangement with the foster parent.
- A surrogate parent appointed by the district or court.
- A responsible adult appointed by the court.
- An adult student for whom no guardian or conservator has been appointed.
- A person acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives<sup>2</sup>.

---

<sup>2</sup>Cal.Ed.Code § 56028



## **Under what circumstances will the Juvenile Court limit the education rights of the parent or legal guardian?**

If the student's parent or guardian is unavailable, unable, or unwilling to make educational decisions for the child, the juvenile court may limit the parent or guardian's educational rights.<sup>3</sup>

## **Who is a “responsible adult”?**

Once the Juvenile Court limits the rights of the parent or guardian to make educational decisions, it must appoint a responsible adult to make decisions for that child regardless of educational placement.

## **Who cannot be appointed a responsible adult?**

Responsible adults cannot have a conflict of interest or be employed by any agency involved in the education or care of the child. This includes child welfare workers, probation officers, attorneys for the child, as well as school district and group home employees. Foster parents are not considered to have a conflict solely because they receive payment for their services.

## **How does a “responsible adult” differ from a “surrogate parent”?**

A surrogate parent is someone who is appointed to represent the child's interests relating to special education services. If the court is unable to locate a responsible adult for a child who has been referred for special education assessment or is currently receiving special education services, the court may either appoint a surrogate parent or direct the local school district to appoint a surrogate parent. The school district must appoint a surrogate parent within 30 days of making a determination that the child needs a surrogate.<sup>4</sup> Surrogate parents and responsible adults have the same rights and responsibilities when representing the interests of a child in special education.<sup>5</sup>

## **Who can be appointed a surrogate parent?**

Relative caregivers, foster parents, and court-appointed special advocates (CASAs) have priority in the law for appointment as a surrogate parent. If none of these individuals is available or willing to act as a surrogate parent, the school must choose someone else who is qualified to be a surrogate parent and is not an employee of any agency that is involved in the education or care of the child. Those who may not be appointed include child welfare workers, probation officers, attorneys for the child as well as school district and group home employees.<sup>6</sup>

## **How long does an appointment as a responsible adult or surrogate parent last?**

The appointment of a responsible adult or surrogate parents lasts until:

- The youth reaches 18 years of age and no guardian or conservator has been appointed.
- Another adult is appointed to make educational decisions.
- The educational rights of the parent or guardian are fully restored.

---

<sup>3</sup> Welf.& Inst. Code §§ 319, 361

<sup>4</sup> Gov't Code § 7579.5(a)

<sup>5</sup> 20 U.S.C. § 1415(b)(2)(A)(i)

<sup>6</sup> Gov't Code § 7579.5(a)(1)(b)

- The child is placed in a planned permanent living arrangement, at which time the foster parent, relative caregiver, or non-relative extended family member has the right to make educational decisions on behalf of the child.
- The child is no longer in need of special education services.<sup>7</sup>

### **What are the specific responsibilities of a surrogate parent?**

The federal special education law was written to give parents an equal say with the school district in determining the appropriate educational services for their child. A surrogate parent must represent the child's interests relating to special education services just like any parent would. By law the surrogate parent is required to meet with the child at least once. It also is recommended that the surrogate parent meet with the child as often as possible, attend the child's individualized education program meetings, review the child's education records, consult with persons involved in the child's education, and sign any consent relating to the individualized education program.<sup>8</sup>

### **When can a Juvenile Court judge make educational decisions?**

If, at the initial hearing on a petition alleging abuse or neglect of the child, the Juvenile Court limits the right of the parents to make educational decisions but cannot identify a responsible adult and the appointment of a surrogate parent is not warranted, the court may, with the input of any interested person, make educational decisions for the child. Any order made under this provision shall expire at the time the petition is either adjudicated or dismissed.<sup>9</sup>

---

<sup>7</sup> Welf.& Inst. Code § 361; Cal.Ed.Code § 56028; Gov't. Code § 7579.5.

<sup>8</sup> Gov't. Code § 7579.5(c), (d)

<sup>9</sup> Welf.& Inst. Code § 319

## Chapter III

### GENERAL EDUCATION PROVISIONS

#### **The Child's Right to an Education**

##### **Do children have a right to education in California?**

Education is a basic right that is protected by the California Constitution. This means that a school district cannot deny a child an education either by refusing to enroll him or her or by removing him or her without an opportunity to challenge such actions.

##### **What rights do parents have that will help their children succeed in school?**

Parents<sup>10</sup> of students enrolled in public schools have the right to work together in a mutually supportive and respectful partnership with schools to help their children succeed.<sup>11</sup> Among the specific rights that parents have are the following:

- Observe the classroom(s) in which their child is enrolled or will be enrolled.
- Meet with their child's teacher(s) and the principal.
- Volunteer their time and resources for the improvement of the school facilities and programs.
- Be notified if their child is absent from school without permission.
- Receive the results of their child's performance on standardized and statewide tests and information on the performance of the school.
- Request a particular school for their child and to receive a response; however, a school district is not necessarily required to grant such a request.
- Have a school environment for their child that is safe and conducive to learning.
- Examine the curriculum materials of the class(es) in which their child is enrolled.
- Be informed of their child's progress in school and of the appropriate school personnel whom they should contact if problems arise with their child.
- Have access to the school records of their child and to question anything that they feel is inaccurate, misleading, or is a violation of the student's privacy rights, as well as receive a response from the school to any inquiries about said records.
- Receive information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish.
- Be informed in advance about school rules, attendance policies, dress codes, and procedures for visiting the school.
- Receive information about any psychological testing the school does involving their child and to deny permission to give the test.

---

<sup>10</sup> Throughout this section "parent" will refer to that individual who holds educational rights.

<sup>11</sup>Cal. Ed. Code §51105.

## **Attendance and Enrollment Requirements**

### **Do all children and youth have to go to school?**

State law requires that all children between the ages of 6 and 18 years of age must attend school full-time. There are some exceptions, however. For instance, students can be excused from attending school if they are:

- in an approved home school, private school, or other alternative education program.<sup>12</sup>
- Working with a work permit, though they still must go to school part-time.<sup>13</sup>
- Have arrived in the district from another state within ten days of the end of the term.<sup>14</sup>
- Fifteen years old at the start of a leave of absence agreed to by the district for travel, work or study<sup>15</sup>
- Temporarily disabled, but not from a disability covered by special education, in which case they are to receive individual instruction.<sup>16</sup>
- Excluded from school for “filthy or vicious habits” or contagious diseases<sup>17</sup>
- Absent due to illness, medical appointments, funerals of immediate family members, jury duty, the student’s child’s illness or medical appointments, or other “justifiable personal reasons” when the parent or guardian’s written request is approved by the principal.<sup>18</sup>
- Sixteen and older and who choose a full- or part-time alternative to regular high school, including continuation classes, regional occupational programs, and adult education courses.<sup>19</sup>

### **When may a child enter kindergarten?**

A child may enroll in kindergarten if he or she will be 5 years old on or before December 2<sup>nd</sup> of the year of registration.<sup>20</sup>

### **What if a student violates compulsory education laws and has a pattern of unexcused absences?**

In 1974, the California Legislature enacted a statute creating the School Attendance Review Boards (SARBs), composed of representatives from various child and youth-serving agencies, including child welfare and probation. The purpose of a SARB is to enforce compulsory education laws and to divert students with school attendance or behavior problems from the juvenile justice system, at least until all available resources have been exhausted.<sup>21</sup>

---

<sup>12</sup> Cal. Ed. Code §§ 48220-48224

<sup>13</sup> Cal. Ed. Code § 48230

<sup>14</sup> Cal. Ed. Code § 48231

<sup>15</sup> Cal. Ed. Code § 48232

<sup>16</sup> Cal. Ed. Code § 48206.3

<sup>17</sup> Cal. Ed. Code §§ 48211-48214

<sup>18</sup> Cal. Ed. Code § 48205

<sup>19</sup> Cal. Ed. Code § 48400

<sup>20</sup> Cal. Ed. Code § 48000

<sup>21</sup> Cal. Ed. Code §§ 48260 et seq.

If the student is habitually truant, he or she may be referred to the Juvenile Court. In addition a parent, guardian or other person having control or charge of a child may face criminal penalties for failing to make the child attend school.

**When is a student considered truant?**

A student may be considered truant when he or she is absent from school without a valid excuse more than three days or tardy in excess of 30 minutes on each of more than three days in one school year.<sup>22</sup>

**What will happen if the absence from school of a foster child is the result of attendance at a court hearing, other court-ordered activity, or a change in placement?**

Students may not be penalized if absent because they attended a court hearing, participated in other court-ordered activity or changed placements. Also, a student’s grades may not be lowered as a result of these situations; however, the school can require that the student complete makeup work and tests. If the student’s absences are the result of a change of placement, his or her grades and credits must be calculated as of the date he or she left school and not lowered as a result of the absences.<sup>23</sup>

**What is required to enroll a foster child in school?**

A child who has been placed out of home by probation or child welfare and, as a result, changes schools, must be enrolled by his or her new school, even if the child is missing the records and documents normally required for enrollment, including proof of residency, birth certificate, previous academic records, and record of immunizations.<sup>24</sup>

**How does the immediate enrollment provision apply to students with Individualized Education Programs (IEPs) that require a specific placement?**

If a student who receives special education services transfers to a new school, services that are comparable to the ones required by the IEP must immediately be provided. Furthermore, if the student’s new school is in a different Special Education Local Plan Area (SELPA) and the district does not adopt the previous IEP, the SELPA/district must hold a meeting within 30 days of the student’s transfer to develop a new IEP.<sup>25</sup>

**If a foster child must change placement during the school year, does he or she have to change schools?**

The law allows foster children to remain in the “school of origin” for the remainder of the school term if it is in their best interest to do so.

**What does “school of origin” mean?**

The “school of origin” is the school that a foster child attended when he or she was permanently housed or the school in which the child was last enrolled.<sup>26</sup>

---

<sup>22</sup>Cal. Ed. Code § 48260

<sup>23</sup>Cal. Ed. Code § 490060.5

<sup>24</sup>Cal. Ed. Code § 48853.5(d)(4)(B)

<sup>25</sup>Cal. Ed. Code § 56325(a)

<sup>26</sup>Cal. Ed. Code § 48853.5(e)

### **Who determines if it is in the child’s best interest to remain in the school of origin?**

The foster care liaison, in consultation with the foster child and the person holding educational rights for the foster child, determines whether it is in the child’s best interest to remain in the school of origin or be enrolled in any public school the foster child is eligible to attend.<sup>27</sup>

### **Who is responsible for providing transportation to the student’s school of origin?**

The law does not state who is responsible for providing transportation to a child’s school of origin. However, it does state that meeting the needs of a child in foster care must be a collective effort, and it encourages the school and the county placing agency to collaborate to ensure that the child’s education placement remains stable.<sup>28</sup>

### **Who is the foster care liaison (490 liaison)?**

Every school district must have an educational liaison, who is often referred to as the AB490 liaison, for foster children and youth.<sup>29</sup> Among the duties of the liaison are

- Assuring proper school placement, enrollment, and checkout from school,
- Assisting with transfer of grades, credits, and records when the student transfers schools, and
- Completing school transfers within 2 business days

## **School Records**

### **What is the Family Education Rights and Privacy Act (FERPA)?**

The Family Education Rights and Privacy Act, or FERPA, is a federal law passed in 1974 that assures confidentiality of, and parental access to, education records. These rights transfer to the student or former student who has reached the age of 18 or is attending any school beyond the high school level. In general, FERPA requires states to provide the following rights to parents:

- to inspect and review all of the student’s education records maintained by the schools. Schools are not required to provide copies of materials in education records unless, for reasons such as great distance, it is impossible for the parents or eligible students to inspect the records personally. The school may charge a fee for copies.
- to prevent release of education records to third parties without the parents’ written consent except in certain circumstances.
- to request that a school correct records believed to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place in the record a statement describing the contested information.<sup>30</sup>

---

<sup>27</sup>Cal. Ed. Code § 48853.5(d)(2)

<sup>28</sup>Cal. Ed. Code § 48853.5(d)(6)

<sup>29</sup>Cal. Ed. Code § 48853.5

<sup>30</sup>20 U.S.C. § 1233(g)

### **What are considered education records?**

Education records are defined as those materials maintained by the educational agency or institution, containing personally identifiable information directly related to a student. The following, however, are not included in the definition of education records:

- oral information based on personal observation or knowledge and not based on an education record (that is, observations about a child’s behavior).
- records solely possessed by the maker (for example, a teacher) used only as a personal memory aid and not accessible or revealed to any other person except a temporary substitute for the maker of the record.
- records of the law enforcement unit of an educational agency or institution.

School staff, however, may share directory information without parent consent. This includes name, date of birth, and attendance of the student.

### **Does FERPA define parent?**

FERPA does not define “parent”, but the regulations that were passed to implement FERPA state that a parent is ... a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.”<sup>31</sup>

### **What are the requirements for transferring school records of a foster child?**

Upon receiving a transfer request from a county placing agency, the local education agency from which the student is exiting must within two business days transfer the student out of school and deliver the educational information and records (including determination of seat time, full or partial credits earned, classes, grades, immunizations, and individualized education programs or 504 plans) regardless of any outstanding fees, fines, overdue textbooks, or other items or moneys owed to the school last attended.<sup>32</sup>

### **If a high school student transfers in the middle of the school term, is he or she entitled to any credits?**

Public school districts, as well as county offices of education, must accept for credit full or partial coursework satisfactorily completed by a student while attending a public school, juvenile court school, or nonpublic, nonsectarian school or agency.<sup>33</sup>

### **What is the Health and Education Passport (HEP)?**

The Case Plan for every child in foster care must include a summary of the child’s health and education information.<sup>34</sup> This is referred to as the Health and Education Passport (HEP). The summary should include, at a minimum:

- the names and address of the child’s physical health, mental health, dental, and education providers,
- the child’s grade level performance and school records.

---

<sup>31</sup>34 C.F.R. § 99.3

<sup>32</sup>Cal. Ed. Code §§ 49069.5(d) and (e); Cal. Ed. Code § 48853.5(d)(4)(C)

<sup>33</sup>Cal. Ed. Code § 48645.5)

<sup>34</sup>Welf.& Inst. Code § 16010

- assurances that the child’s placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement.
- a record of the child’s immunizations and allergies.
- the child’s medical issues, any current medications, and complete medical history.
- a record of the child’s mental health history as well as the child’s current mental health condition.
- any other relevant physical health, mental health, dental and education information.

The caregiver should receive a current copy of the child’s HEP at the time the child arrives at the placement.

**Does the child welfare worker have access to the school records?**

State law specifically provides that schools must release student records to any county placing agency (including probation and child welfare), without parental consent or court order, for the purpose of fulfilling the requirements of the health and education passport or for the purpose of fulfilling educational case management responsibilities and to assist with the school transfer or enrollment of a student.<sup>35</sup>

**No Child Left Behind**

**What is the No Child Left Behind (NCLB) Act of 2001?**

This act provides a framework on how to improve the performance of elementary and secondary schools, while at the same time ensuring that no child is trapped in a failing school. The NCLB Act reauthorizes the Elementary and Secondary Education Act and has four major emphases:

- (1) increased accountability at the state level, including use of challenging state standards in reading and mathematics, annual testing for all students in grades 3-8, and annual statewide progress objectives ensuring that all groups of students reach proficiency by 2014.
- (2) greater choice for the parents of students attending Title 1 schools that fail to meet state standards, including access to supplemental educational services and the opportunity for their children to attend a better public school within the school district
- (3) more flexibility for states and districts in the use of federal education dollars by consolidating funds from various federal and state grant programs
- (4) a stronger emphasis on reading, including a commitment of supplemental resources to ensure that every child can read by the end of third grade.

**California’s Required Exams**

**What is California’s Accountability System?**

California’s Accountability System uses the Academic Performance Index (API) to measure academic performance and growth of schools. It is a numeric index that ranges from a low of 200 to a high of 1000. A school's score on the API is an indicator of a school's performance level. The statewide API performance target for all schools is 800. A school's growth is measured by

---

<sup>35</sup>Cal. Ed. Code § 49076



how well it is moving toward or past that goal. A school's API Base is subtracted from its API Growth to determine how much the school improved in a year.

The API score summarizes the results of various statewide tests. Indicators used in calculating the 2004-05 API reporting cycle included:

- Standardized Testing and Reporting (STAR) Program
  - California Standards Test (CST)
    - English-language arts, grades two through eleven, including a writing assessment at grades four and seven
    - Mathematics, grades two through eleven
    - History-social science, grades eight, ten, and eleven
    - Science, grades five and nine through eleven
    - California Alternate Performance Assessment (CAPA) in English-language arts and mathematics, grades two through eleven.
  - Norm-referenced test (NRT)
    - California Achievement Test, Sixth Edition Survey (CAT/6 Survey) in all content areas, grades two through eleven.
- California High School Exit Examination (CAHSEE)
  - English-language arts and mathematics, grade ten.

### **What is the California High School Exit Examination (CAHSEE)?**

The primary purpose of the CAHSEE is to assess student achievement in public high schools and to ensure that those who graduate from public high schools can demonstrate grade level competency in reading, writing, and mathematics. The CAHSEE helps identify students who are not developing skills essential for life after high school. It encourages districts to give these students the attention and resources needed to help them achieve these skills during their high school years. Beginning in the 2005-2006 school year, no student is to receive a public school diploma without having passed the CAHSEE, as well as having met their district's requirements for graduation. A court has ordered that some special education students be granted a waiver for the 2005-2006 school year.

The CAHSEE has two parts: English language arts (ELA) and mathematics. The ELA part addresses state content standards through grade ten. In reading this includes vocabulary, decoding, comprehension, and analysis of informational and literary texts. In writing, this covers writing strategies, applications, and conventions of English, such as grammar, spelling, and punctuation. The mathematics part of the CAHSEE addresses state standards in grades six and seven and in Algebra I. The exam includes statistics, data analysis and probability, number sense, measurement and geometry, mathematical reasoning, and algebra. Students are also asked to demonstrate a strong foundation in computation and arithmetic, including working with decimals, fractions, and percents.

### **What are the evaluation criteria that schools use to measure effectiveness?**

The federal government uses Adequate Yearly Progress (AYP) criteria under NCLB to determine if schools meet the national target for growth. In order to meet AYP under federal requirements, a school or district must have a minimum participation rate, a percentage of its students at proficient or above in English-language arts and mathematics, a minimum API of 560

or API growth of 1 point, and meet graduation rate requirements (82.9%) if it serves high school students.

### **What penalties are imposed if schools do not meet state and federal expectations?**

The state imposes penalties on schools if they do not show improvement in the API score. Low-performing schools are required to participate in an intervention program and, if lack of growth persists, risk being taken over by the state. Schools that receive federal Title I funds face Program Improvement (PI) requirements if they do not make AYP for 2 consecutive years in specific areas. PI schools must provide supplemental educational services for students enrolled in the underperforming school, such as tutorial services in math and reading. If schools do not make AYP for 3 consecutive years, parents can choose to enroll their children in other schools in the district.

## **Graduation Requirements**

### **What are the requirements for graduation?**

In order to graduate from California public high schools, students must complete specified state and local graduation requirements. Local school districts have the authority and responsibility for establishing high school graduation requirements. These requirements vary among school districts. However, California Education Code Section 51225.3 specifies that students must pass a minimum set of required courses and an exit examination. Algebra I (or its equivalent) is a required course that all students, including students with disabilities, must complete prior to receiving a diploma of graduation from high school.<sup>36</sup> As of the 2005-2006 school year, all students, except some special education students, must pass both parts of the CAHSEE to receive a public high school diploma. A court has ordered that some students in special programs be granted a waiver for the 2005-2006 school year.

### **What if a student has been unable to pass CAHSEE and cannot graduate?**

All students who have satisfied local graduation requirements, but have been unable to pass the exit exam, will be given the opportunity to continue their education in order to obtain the necessary skills needed to pass the exam and receive a diploma. There will be a number of options available including enrollment in:

- A summer course of CAHSEE remediation/intensive instruction.
- High school the following year in order to take independent study courses designed to help them pass the CAHSEE.
- An adult education program that will provide CAHSEE remediation/intensive instruction.

### **What are the high school course requirements for admission to a California University?**

High school students interested in attending a California public university after graduation must have completed the required freshman admission course requirements while in high school. The California State University and the University of California have established a uniform minimum set of courses required for freshman admission. Beginning with the 1998-99

---

<sup>36</sup>Cal. Ed. Code § 51224.5

school year, all students receiving a diploma of graduation from high school must complete all of the following while in grades 9 to 12:<sup>37</sup>

- Courses in the subjects specified, each course lasting one year, unless otherwise specified.
- Three years of English.
- Two years of mathematics, not including the required year of Algebra I beginning in 2003-04.<sup>38</sup>
- Two years in science, including biological and physical sciences.
- Three years of social studies, including United States history and geography; world history, culture, and geography; a one-semester course in American government and civics; and a one-semester course in economics.
- One year of visual or performing arts or foreign language. For the purposes of satisfying the requirement specified in this subparagraph, a course in American Sign Language shall be deemed a course in foreign language.
- Two years of physical education, unless the pupil has been exempted pursuant to the provisions of state law.<sup>39</sup>
- Other coursework as the governing board of the school district may specify.

---

<sup>37</sup>Cal. Ed. Code § 51225.3

<sup>38</sup>Cal. Ed. Code § 51224.5

<sup>39</sup>Cal. Ed. Code § 51241

## Graduation Requirements

High School Subject Area	State Mandated Requirements for High School Graduation	UC Requirements for Freshman Admissions	CSU Requirements for Freshman Admissions
English	Three years	Four years of approved courses	Four years of approved courses
Mathematics	Two years, in addition to Algebra I	Three years, including algebra, geometry, and intermediate algebra <i>Four years recommended</i>	Three years, including algebra, intermediate algebra, and geometry
Social Science	Three years of history, social science, including one year of U.S. history & geometry; one year of world history, culture, and geography, and one semester each of American Government and economics	Three years of history/ social science, including one year of U.S. history or one-half year of U.S. history and one-half year of civics or American Government; and one year of world history, cultures, and geography	Two years including one year of U.S. history or U.S. history and government and one year of other approved social science.
Science	Two years, including biological and physical sciences.	Two years with lab required, chosen from biology, chemistry, and physics. <i>Three years recommended.</i>	Two years, including one year of biological and one year of physical science with lab.
Foreign Language	One year of either visual and performing arts or foreign language.	Two years in same language required. <i>Three years recommended.</i>	Two years in same language required.
Visual and Performing Arts			
Physical Education	Two years		
Electives		One year	One year

### What is the General Education Development Test (GED)?

Students eighteen years or older may take the GED for the purpose of receiving the California High School Equivalency Certificate. The GED tests measure a student's knowledge in five content areas including: language arts, reading; language arts, writing; mathematics; science; and social studies. The tests are given in English, Spanish, and French throughout the United States and in Canada. A High School Equivalency Certificate is issued. For more information on the GED, contact your local adult school, community college, or visit the GED Web site at <http://www.cde.ca.gov/ta/tg/gd/>.

### Special Programs

#### What is the Student Study Team (SST)?

The SST provides a problem-solving process to identify strategies and programs that may resolve or alleviate academic, attendance, or behavior difficulties students are having. The SST is a general education responsibility that generally should be implemented fully prior to a referral to special education services. However, it should never be used as a way of delaying a referral for special education services if that is what the student needs. The SST includes the student, the

parents/guardians, the student's counselor, classroom teachers, and a school administrator. The team may also include the school psychologist or social worker, a special education consultant, the school/court liaison, and other school support staff. The SST meeting is held to summarize concerns, review the information collected, discuss strategies and develop or review a plan for addressing the concerns.

### **What are alternative school options?**

These are public school options that some students may choose to attend: They include:

- Independent study
- Home schooling
- Continuation high school
- Community day school
- Pregnant minor school

### **What is independent study?**

Independent study provides a highly flexible, supportive, and individualized program of instruction and counseling to assist students in the completion of their high school education. Independent Study is run through the school district. The school district provides materials, support, and a credentialed teacher who periodically meets with the student to review progress and make assignments. All students in independent study have a contract with the school and work toward standards, the same as students in traditional general education classes. While independent study students follow the district-adopted curriculum and are subject to the district graduation requirements, independent study offers flexibility to meet individual student needs, interests, and styles of learning. Independent study is only available as a voluntary option chosen by students and parents. It can be used on a short-term or long-term basis, on a full-time basis, or in conjunction with courses taken in a classroom setting. Classroom-based students may take some classes using independent study, often to solve scheduling problems. Usually, independent study is not a good option for students receiving special education services.

### **What is home schooling?**

Home-based independent study, which most people call home schooling, is a specific instructional strategy designed to assist parents who choose to assume major responsibility in providing the student's educational program apart from the traditional school. Some of the reasons that parents have to pursue home schooling include:

- Some parents do not want their children to enroll in schools that have large classes because they are concerned that their child will not get the attention he or she needs.
- Some parents are concerned about the language, drugs, gangs, and negative influences at the schools.
- Some parents want to teach their children the basics in reading and mathematics so the children will have a solid foundation and confidence about learning.
- Some parents want to work one-on-one with their child because of the child's personal or educational needs
- Some families that travel for business or vacation need to teach their children at the same time
- Some families want to teach their children at home within a religious context.

Home-based independent study is offered to meet the unique personal and education needs of those families who seek an established alternative instructional strategy. This form of home-based independent study is fully subject to Education Code requirements. For children to be engaged in independent study, they must be enrolled in a public school. The student, parent, and a supervising teacher enter into a contract as a team to facilitate this process.

**What is a continuation high school?**

Continuation high schools meet compulsory attendance mandates and target students ages 16 and older. The state mandates a minimum instructional day of 180 minutes for one unit of state funding. Many districts require students to attend school for 250 minutes. Continuation high schools provide a small campus setting, low student-teacher ratio, individualized instruction, a success-oriented learning experience, a course of instruction designed to meet district and state standards, active student participation in educational decisions, and recognition of individual worth. Many schools provide students with extended learning opportunities—both before and after school. The goal is to graduate students, or transition them back to a traditional high school.

**What is a community day school (CDS)?**

A community day school (CDS) is designed for students in Kindergarten through grade 12 as an educational placement option for expelled and other high-risk students. CDS schools are for students who have been expelled for any reason, or are referred by probation, School Attendance Review Boards (SARBs), or other district level processes. The school district may place in a CDS, students who have histories of behavior problems and repeated academic failure. Special education students may be placed in community day schools rather than in non public schools (NPS). Students in community day schools are required to attend a six-hour instructional day.

**What is a pregnant minor school?**

Pregnant minor schools were established to provide support for middle and high school girls who are pregnant or parenting in a setting away from a traditional high school. Schools offer instruction on pre-natal care, infant care, and programs for the children of the teens attending school. The main intent of these schools is to provide interim educational opportunities to the expectant mother so that she may continue her education and learn parenting skills. Students in Pregnant Minor Schools are required to attend 250 minutes daily.

## IV. SPECIAL EDUCATION

### **How is special education defined in the law?**

Special education is defined in the law as specially designed instruction to meet the unique needs of a student with a disability. It is provided at no cost to the student's parents.<sup>40</sup> It is not defined in terms of a specific school or classroom.

### **What is specially designed instruction?**

It is instruction that is tailored for a specific student and addresses the student's needs. This instruction may take place in a variety of settings, including, for example:

- a general education classroom in a public school,
- a special education classroom in a public school,
- a classroom in a private special education school,
- the student's home,
- a hospital, or
- a 24-hour residential school.

It can be in any instructional area, for example:

- reading,
- mathematics,
- science,
- social skills,
- physical education,
- vocational education. Or
- study skills

It also includes related services and supplementary aids and services, such as:

- speech and language,
- psychological counseling,
- transportation,
- physical therapy,
- a one-to-one aide, or
- other program modifications or supports.
- 

### **At what age may a child receive special education services?**

- Infants and toddlers between birth and 3 with eligible disabilities or risk conditions may receive early intervention services
- Children between the ages of 3 and 5 with eligible disabilities may receive pre-school services.
- Students between the ages of 5 and 18 with eligible disabilities may receive special education services.

---

<sup>40</sup> Throughout this chapter parent refers to the any individual who has education rights.

- If a student is enrolled in or eligible for special education before his or her 19<sup>th</sup> birthday, the student is entitled to continue receiving special education services until:
  - the end of the school year in which the student turns 21 years of age, or
  - until the student receives a high school diploma.

## **Referral and Assessment Process**

### **How do I refer a child for an assessment for special education?**

A referral is a written request for an assessment to help determine if a student has a qualifying disability under special education law. This written request should be in the form of a letter to one of the following people at the student's school. The

- principal, or
- the person who oversees special education.

The following people may make referrals for special education assessments. These include:

- the student's parent,
- the student's guardian,
- the student's foster parent,
- a service provider who knows the student (such as a social worker, group home staff, etc.), or
- teacher and other school personnel.

If the student is just moving into the district and it is unclear which school the student will be attending, the referral letter then should be sent to the coordinator of special education for the student's school district. It is important that the referral letter

- be dated,
- the person writing it keep a copy, and
- that it be sent to the district or the school by certified mail with a return receipt requested

There are legal timelines that school personnel must follow once they receive a referral letter. Sample referral letters are included in the Appendix.

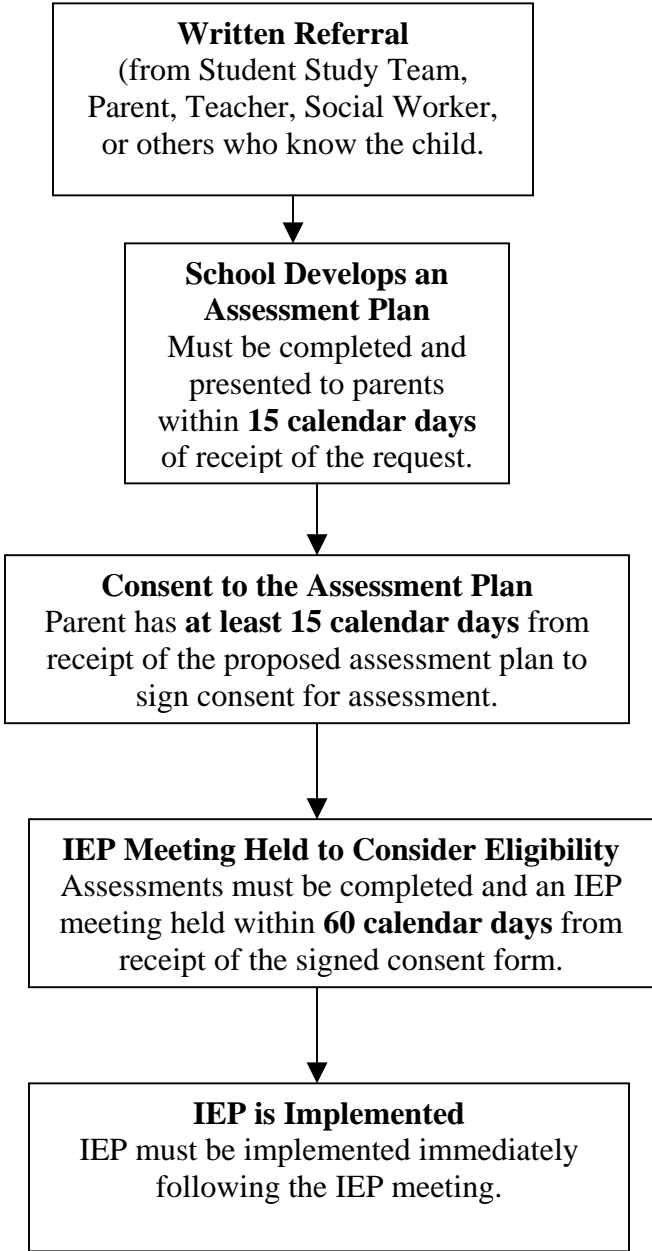
### **After the school (or school district) receives my referral, how long does it take for the assessment to be completed?**

- Within **15** days from the day the school or school district receives a written request for a special education assessment for a student, the school district must present the student's parents with an assessment plan.
- Once the school district receives a signed assessment plan, the district has **60** days to complete the assessment and have an individualized education program meeting for the student.
- These timelines include weekends, but do not include days between school sessions or terms or vacation periods of more than five days. This means that Presidents' Day



(which is one day) counts, but winter break (which usually is two weeks) does not count.

**Timeline for Assessment and IEP Implementation**



### **What is an assessment plan?**

An assessment plan identifies the areas in which the student will be assessed for special education and the types of tests (or other assessment techniques) that will be used to evaluate the student. An assessment plan must meet the following requirements:

- Address all areas of suspected disability.
- Be in a language easily understood by the general public.
- Be provided in the primary language of the parent or other mode of communication used by the parent (for example, American Sign Language), unless to do so is clearly not feasible.
- Explain the types of assessments to be conducted.
- State that no IEP will result from the assessment without the consent of the parent.

Written consent by the student's parent is required before the school district may assess the student. This consent must be an *informed consent*, which means that the person consenting is fully informed about what he or she is signing and agree to it. Consequently, if there are any questions about the assessment, the person who will be consenting to it should feel free to ask the school psychologist, or other evaluator, to explain what the tests or techniques are that will be used and exactly what areas they will assess.

### **What are the legal requirements of a special education assessment?**

School districts must use a variety of tests and other assessment procedures to gather information about the student. This information must be:

- relevant,
- identify how the student functions,
- provide the student's developmental levels, and
- include information provided by the student's parent.

Furthermore, the selection and administration of assessment materials and procedures must be done so they are not racially, culturally, or sexually discriminatory. Tests and other assessment materials must meet all of the following requirements. They must be:

- Provided and administered in the student's primary language or other mode of communication unless the assessment plan indicates why this clearly is not feasible.
- Validated for the specific purpose for which they are used (that is, the test measures what it is designed to measure).
- Administered by trained personnel in conformance with the instructions provided by the producer of the test.
- Selected and administered to best ensure that when administered to a student with impaired sensory, manual, or speaking skills that the test produces results that accurately reflect the student's true ability or achievement levels and not the student's impairment unless the impaired skills are what the test is supposed to measure.
- Administered by persons knowledgeable about the student's suspected disability, including the student's need for specialized services, materials, and equipment.

In addition, the assessment must be comprehensive and assess the student in all areas related to the suspected disability, including, when appropriate:

- health and development.
- vision, hearing, and motor abilities.
- language function.
- general ability.
- academic performance.
- self help skills.
- social emotional status.
- career and vocational abilities and interests.
- fine and gross motor skills.

### **On what basis is eligibility for special education determined?**

In order to be eligible for special education services, students must:

- qualify under one of the disability categories specified in federal special education law and, because of that disability,
- require special education and related services to benefit from their education.

A student is **not** eligible for special education services if he or she needs these services because of a lack of appropriate instruction in reading or math, or because of limited English proficiency.<sup>41</sup> The categories of disabilities are specified below and their definitions are provided on page 32-33.

- Autism
- Deaf-blindness
- Deafness
- Emotional Disturbance
- Hearing Impairment
- Mental Retardation
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech and Language Impairment
- Traumatic Brain Injury
- Visual Impairment<sup>42</sup>

The definitions sometimes are referred to as “eligibility criteria” because a student’s disability must conform to these criteria in order for the student to receive special education services. The members of the student’s individualized education program (IEP) team make the determination as to whether the student’s disability meets the eligibility criteria.

---

<sup>41</sup>20 U.S.C. § 1414(b)(5); 34 C.F.R. § 300.306(b)

<sup>42</sup> 20 U.S.C. § 1401(3); 34 C.F.R. 300.8; Cal. Ed. Code § 56026(a); 5 C.C. R. § 3030

## Eligibility Criteria

Disability	Definition
Autism	<p>A developmental disability, evident before age 3, significantly affecting</p> <ul style="list-style-type: none"> <li>• verbal and nonverbal communication, and</li> <li>• social interaction, generally.</li> </ul> <p>Often includes repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.</p>
Deaf-blindness	Both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.
Deafness	A hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification
Emotional Disturbance	<p>1. The term means a condition exhibiting <u>one or more</u> of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:</p> <ol style="list-style-type: none"> <li>(i) an inability to learn that cannot be explained by intellectual, sensory, or health factors;</li> <li>(ii) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;</li> <li>(iii) inappropriate types of behavior or feelings under normal circumstances;</li> <li>(iv) a general pervasive mood of unhappiness or depression; or</li> <li>(v) a tendency to develop physical symptoms or fears associated with person or school problems.</li> </ol> <p>2. The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have a serious emotional disturbance.</p>
Hearing Impairment	Impairment in hearing that negatively affects a child's educational performance but that is not included under the definition of deafness.
Mental Retardation	Significantly sub-average general intellectual functioning existing along with deficits in adaptive behavior and occurring before the student's 18 <sup>th</sup> birthday.
Multiple Disabilities	Impairments existing at the same time (such as mental retardation and blindness, mental retardation and orthopedic impairment, etc.), the combination of which causes severe educational problems that cannot be accommodated in special education programs solely for one of the impairments.
Orthopedic Impairment	A severe disorder of the bones, joints, ligaments, or muscles that negatively affects a child's educational performance and includes impairments caused by physical conditions present at birth, disease, and other causes.
Other Health Impairment	<p>Having</p> <ul style="list-style-type: none"> <li>• Limited strength, vitality, or alertness, including heightened alertness to environmental stimuli, which results in limited alertness with respect to the educational environment</li> <li>• That is due to chronic or acute health problems, such as asthma, attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), diabetes, epilepsy, heart condition, lead poisoning, leukemia, hemophilia, sickle cell anemia, among others.</li> </ul>

Specific Learning Disability	<ul style="list-style-type: none"> <li>• A disorder in one or more of the basic psychological processes involved in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations.</li> <li>• The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.</li> <li>• The term does not apply to learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.</li> </ul>
Speech and Language Impairment	A communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment
Traumatic Brain Injury	<ul style="list-style-type: none"> <li>• Means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psycho-social impairment, or both.</li> <li>• 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, psycho-social behavior, physical functions, information processing, and speech.</li> <li>• The term does not apply to brain injuries that students are born with or that are degenerative, or brain injuries caused by birth trauma.</li> </ul>
Visual Impairment	An impairment in vision that, even with correction, negatively affects a child's educational performance.

## **Individualized Education Program (IEP) Meeting**

### **What is an Individualized Education Program (IEP)?**

An individualized education program, or IEP, is a written document that describes the student's disability, the student's educational needs, and the educational program and services that the student requires in order to receive a free and appropriate public education (FAPE),

### **What must be included in an IEP according to special education law?**

The law requires that an IEP include:

- The student's present levels of performance in school subjects as well as in how the student functions in daily activities (e.g., walking, talking, etc.).
- How the student's disability affects his or her progress and involvement in the general education curriculum.
- Measurable annual goals that:
  - Meet the student's disability-related needs
  - Enable the student to be involved and progress in the general education curriculum
  - Include benchmarks or short term objectives for students taking alternative assessments
- Objective criteria, evaluation procedures, and schedules for determining whether annual goals are being achieved on a yearly basis.
- How the student's parents will be informed of the student's progress.

- Where the student will receive his special education instruction. The options include:
  - General education classroom
  - Resource program
  - Special day class
  - Nonpublic school
  - Residential treatment facility
  - Student's home
  - Hospital
- What related services the student requires in order to benefit from his or her educational program. The include:
  - Language and speech
  - Audiology
  - Psychological counseling
  - Physical therapy
  - Occupational therapy
  - Recreation therapy
  - Assistive technology
  - Orientation and mobility
  - Transportation
  - Parent counseling and training
  - Others, as appropriate
- The extent to which the student will be with students without disabilities.
- What supplementary aids and services the student will receive. For example:
  - One-to-one aide
  - Large print books
- Program modifications or supports
- Accommodations for state and districtwide assessments
- The date services are to begin, including how often they are to be received and how long each session will last
- Transition goals and services when a student turns 16 years old.
- English language acquisition goals and services for students who are designated as English learners.

### **What does least restrictive environment (LRE) mean?**

Least restrictive environment refers to the requirement in the law that students with disabilities must participate and be educated with students without disabilities to the maximum extent appropriate. Furthermore, removal from the general education environment should occur only if education in the general education classroom cannot occur satisfactorily even with the use of supplementary aids and services.<sup>43</sup>

---

<sup>43</sup>Sacramento City School District v. Rachel H., 14 F.3d 1398 (9<sup>th</sup> Cir 1994)

### **Who are the required participants at an IEP meeting?**

Required IEP team members include:

- Parents
- Child (if appropriate)
- General Education Teacher – if the child receives services in a regular education classroom or may receive services in the regular education classroom as a result of the IEP meeting
- Special Education Teacher or Provider
- Representative (that is, an administrator or designee) of the District, County Office of Education, or responsible Special Education Local Plan Area.
- Individual able to interpret instructional implications of assessment results

Others with knowledge or expertise may be invited by either the parent or the local education agency (that is the District or County Office of Education).

### **When must an IEP team meet?**

An IEP team must meet whenever any of the following occurs:

- A student has received an initial assessment for special education.
- The student demonstrates a lack of anticipated progress.
- The parent or teacher requests a meeting to develop, review, or revise the IEP. A parent, however, can request a maximum of two meetings per year.
- At least once at year to review the student’s progress, the IEP, the appropriateness of the placement and to make needed revisions.
- When school personnel remove or suspend a student with a disability from his or her current school placement for 10 school days or more in the same school year for a violation of a school’s code of conduct.

### **What are related services?**

Related services are the support services students with disabilities require to benefit from their special education programs. These services used to be called “designated instruction and services” (DIS) in California, but the term was recently changed to conform to the IDEA.<sup>44</sup>

The IDEA specifies the following categories as related services:

- Audiology
- Counseling Services
- Early Identification and Assessment of Disabilities in Children
- Medical Services
- Occupational Therapy
- Orientation and Mobility Services
- Parent Counseling and Training
- Physical Therapy
- Psychological Services
- Recreation
- Rehabilitation Counseling Services

---

<sup>44</sup>34 C.F. R. § 300.34; Cal. Ed. Code § 56363; 5 C.C.R. 3051 et seq.

- School Health Services
- Social Work Services in Schools
- Speech Language Pathology Services
- Transportation
- Other services not listed above that are needed by the student in order to benefit from an education

### **When is transportation available to students who receive special education services?**

The IEP team must consider how a student's disability affects his or her need for transportation, including determining whether the student's disability prevents him or her from using the same transportation provided to students without disabilities or from getting to school in the same manner as students without disabilities.<sup>45</sup> Transportation is also available to and from other schools or agencies for related services that are not provided at the student's regular school site.<sup>46</sup>

Transportation options may include, for example:

- the regular school bus
- public transportation (any out-of-pocket costs to the student or parents are reimbursed by the school district)
- riding a special bus from a pick up point,
- door-to-door transportation by a
  - school bus
  - taxi
  - parent who is reimbursed by the school district.

### **When a student moves into a new school district, does the new district have to provide the same special education services as the previous district?**

When a student moves during a school year into a new school district, the new district must provide the student with services comparable to those in the previous school district's IEP for the first 30 days of attendance in the new district. During those first 30 days, the new district must adopt the old IEP or develop, adopt, and implement a new IEP that is consistent with federal and state special education law.<sup>47</sup>

## **AB3632 Services**

### **What are AB3632, AB2726, or Chapter 26.5 services?**

AB3632, AB2726, and Chapter 26.5 all refer to a law that was passed in California in 1984 and was subsequently amended. The law made the county departments of mental health (referred to in the law as Community Mental Health Services) responsible for providing mental

---

<sup>45</sup>34 C.F.R. Part 300, Appendix A, Q.33

<sup>46</sup>34 C.F.R. § 300.24(b)(15)

<sup>47</sup> Cal. Ed. Code § 56325(a)(1)



health services, and California Children's Services responsible for providing medically necessary physical and occupational therapy to eligible special education students.

**What mental health services are available under AB3632?**

- Mental health assessments
- Individual, group, or family psychotherapy
- Medication evaluation and monitoring
- Intensive day treatment
- Case management
- Residential placement for students eligible for special education as having ED (emotional disturbance)

**How is a student referred for AB3632 services?**

An IEP team typically makes the referral for AB 3632 services. A student must be eligible for special education or suspected of being eligible for special education for a referral to be made. The local education agency (school district or county office of education) must have

- Assessed the student
- Obtained written parent consent for the referral
- Provided counseling, parent counseling and training, psychological services, social work services, or behavioral intervention
  - Or determined these services would not be adequate

**Who is eligible to receive AB3632 services?**

An eligible student must have emotional or behavioral characteristics (for example: depression, anger, anxiety) that are

- Observed by qualified educational staff
- Preventing the student from benefiting from his or her educational services
- Significant, as indicated by how often they occur and how intense they are
- Not simply social maladjustment (such as juvenile delinquency)
- Not a temporary adjustment problem that can be resolved with short-term counseling

Furthermore, the student's cognitive functioning must be at a level that enables the student to benefit from mental health services

**Who is not eligible to receive AB3632 services?**

Students are not eligible for AB3632 services if they have a condition that can be described simply as social maladjustment as demonstrated by

- deliberate noncompliance with accepted social rules.
- a demonstrated ability to control unacceptable behavior, and
- the absence of a treatable mental disorder.

**If a student in the foster care system is placed in a home in another county, will that affect the student's ability to obtain AB3632 services?**

AB 3632 referrals should be made by school district or county office of education personnel to the community mental health service (CMH) in the county in which the student

lives. However, if the student has been placed into residential care from another county (for example, by a child welfare agency), CMH receiving the referral shall forward it to the CMH of the county of origin (that is, the county that placed the student). The county of origin has the responsibility for paying for and either providing or arranging for necessary mental health services to be provided for the student. The law states that these procedures shall in no way delay or prevent the referral and assessment process.<sup>48</sup> Unfortunately, children in the foster care system throughout the state are having trouble receiving AB3632 services when they are placed in homes out of their county of origin.

### **What are the AB 3632 referral timelines?**

A school district or county office of education has

- *5 business days* to deliver an AB 3632 referral to the community mental health agency (CMH)

CMH then has

- *15 days* to send the student's parent or other holder of educational rights an assessment plan
- *60 days* to complete the assessment and return to an IEP meeting

See Appendix for timeline flowchart.

### **Assistive Technology**

#### **What is assistive technology?**

An assistive technology device is a piece of equipment or a product system – whether acquired commercially or off the shelf, modified, or customized – that is used to increase maintain or improve the functional capabilities of students with disabilities.<sup>49</sup> Assistive technology devices that some special education children have received include:

- Communication devices
- Hearing aids
- Eye glasses
- Oxygen tanks
- Calculators and tape recorders
- Devices for loading and unloading children on the bus
- Computers

Assistive technology services include:

- Evaluating a student's assistive technology needs
- Making provisions for the student to acquire an assistive technology device, including purchasing or leasing the device for the student
- Coordinating a student's use of assistive technology with his educational program and related services
- Training or providing technical assistance to professionals, employers, or others who are substantially involved in the major life functions of the student.<sup>50</sup>

---

<sup>48</sup>Cal. Govt. Code § 7576(g)

<sup>49</sup>20 U.S.C. § 1401(1); 34 C.F.R. § 300.5

<sup>50</sup>20 U.S.C. §§ 1401(2)(A-F); 34 C.F.R. § 300.6

They also include any service that directly assists a student with a disability in selecting, acquiring, or using an assistive technology device.<sup>51</sup> However, assistive technology does not include any medical device that is surgically implanted or the replacement of such a device.<sup>52</sup>

## **Functional Analysis Assessments and Behavioral Implementation Plans**

### **What is a functional analysis assessment?**

The purpose of a functional analysis assessment (called a functional behavioral assessment under the IDEA) is to determine the function of a special education student's serious behavior problem. This type of assessment analyzes the specific causes of a student's behavior problem and specific ways to change the behavior by using positive behavioral interventions.

### **What is considered a serious behavior problem?**

Under California's Hughes Bill, a serious behavior problem is behavior that is

- Self-injurious
- Assaultive
- causes serious property damage and
- is pervasive and maladaptive.<sup>53</sup>

### **Who conducts a functional analysis assessment?**

A functional analysis assessment in California must be conducted by or under the supervision of a person with documented training in behavior analysis with emphasis on positive behavioral interventions.

### **What are positive behavioral interventions?**

Positive behavioral interventions are positive techniques and strategies, rather than punishment, to change a student's serious behavior problem. They are respectful of the student's dignity and do not cause harm or trauma to the student.

### **What happens after a functional analysis assessment is completed?**

There is an IEP meeting to review the results of the functional analysis assessment and, if necessary, develop a behavioral intervention plan, which becomes part of the student's IEP.

### **What is a behavioral implementation plan?**

A behavioral implementation plan is a plan that becomes part of a student's IEP and describes the student's functional analysis assessment. It includes a description of the student's:

- Maladaptive behavior(s),
- Replacement positive behavior(s),
- Goals and objectives, and
- Positive behavioral interventions and the circumstances under which they are to be used.

---

<sup>51</sup>20 U.S.C. § 1401(2); 34 C.F.R. § 300.6

<sup>52</sup>20 U.S.C. § 1401(1)(B); 34 C.F. R. § 300.5

<sup>53</sup> 5 CCR § 3001(aa)

Positive behavioral interventions may include:

- Altering identified events or situations that come before the serious behavior problem, such as
  - providing the student with choices
  - changing the setting
  - offering variety or a more meaningful curriculum for the student
  - removing environmental pollutants (for example, noise).
  
- Teaching the student alternatives to the problem behavior that accomplish the same goals, such as
  - Ways to request or to protest using socially acceptable behaviors
  - Appropriate communication modes to gain attention
  - Engaging in physically stimulating activities.
  
- Teaching adaptive behavior(s), such as
  - Choice making
  - self management
  - relaxation techniques
  - skill development.
  
- Altering what occurs after the student engages in replacement positive behaviors that have been taught, such as
  - Positively reinforcing the alternative behaviors.
  
- Altering what occurs after the student engages in maladaptive behavior, such as
  - Ignoring the inappropriate behavior
  - Redirecting the inappropriate behavior.

### **Transition Services and High School Graduation**

#### **Must the school include in a student's IEP information about graduation requirements and progress toward graduation?**

Because there is confusion regarding graduation requirements for special education students, the California Department of Education has issued a Special Alert to all school district Superintendents listing all the information that must be included in each special education student's IEP about graduation and progress toward graduation for 2006.

The following graduation-related information must be included in each student's IEP:

- Course of study for the pupil<sup>54</sup>
- Supports necessary for the pupil to make educational progress<sup>55</sup>

---

<sup>54</sup>20 USC § 1414(d)(1)(A)(i)(VIII)(bb)

- Local requirements for the receipt of a high school 2006 diploma<sup>56</sup>
- State requirements for receipt of a high school diploma (i.e., successful completion of algebra I, passage of the CAHSEE)<sup>57,58</sup>
- Accommodations or modifications, if any, required for the pupil to access instruction and assessments<sup>59</sup>
- Provision of remedial or supplemental instruction focused on the CAHSEE<sup>60</sup>
- Entitlement of the pupil to receive a free appropriate public education until the end of the school year in which the pupil turns 21 years of age, or until the pupil receives a high school diploma, whichever event occurs first<sup>61</sup>
- Statement that the pupil was informed of the rights under the IDEA that will transfer to the student on reaching the age of majority<sup>62</sup>
- Summary of the pupil's academic achievement and functional performance, including recommendations on how to assist the pupil to meet postsecondary goals<sup>63</sup>
- Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and the transition services the child needs to reach those goals<sup>64</sup>

Parents and students should insist that this information be included in the IEP and should use this information to understand and prepare for the transition and graduation process.

### **Due Process and Other Dispute Resolution Procedures**

#### **What can I do if I disagree with decisions made at the IEP meeting about my child's eligibility for special education services, the educational placement, related services, or any other aspect of providing a free and appropriate public education for my child?**

If you disagree with the recommendations of the school district, there are due process and non-due process procedures you can initiate to try to resolve the disagreement. The due process hearing and mediation processes have become quite technical and typically require consultation with a special education advocate or attorney.

---

<sup>55</sup> 20 USC § 1414 (d)(1)(A)(i)(IV)

<sup>56</sup> Cal Ed. Code §§ 56345(b)(1), 56500.5

<sup>57</sup> Cal Ed. Code §§ 51224.5, 60851(a)

<sup>58</sup> Pursuant to a recent court case, a passing score on the CAHSEE is not required for some special education students during the 2005-2006 school term.

<sup>59</sup> 20 USC §1414(d)(1)(A)(i)(VI)(aa)

<sup>60</sup> Cal Ed. Code § 60851(f)

<sup>61</sup> 20 USC § 1412(a)(1)

<sup>62</sup> 20 USC § 1414(d)(1)(A)(i)(VIII)(cc)

<sup>63</sup> 20 USC § 1414(c)(5)(B)(ii)

<sup>64</sup> 20 USC §§ 1414(d)(1)(A)(i)(VIII)(aa)-(bb)

### **What is a due process mediation?**

A due process mediation is conducted by a neutral mediator who has no connection to the school district. Due process mediations occur after a parent has filed for a due process hearing. The mediation is voluntary, so either the parent or the school district may choose not to participate.

At a mediation, the mediator meets with the parents and the school (or other relevant agency, such as community mental health) to try to resolve their differences in an atmosphere that is:

- informal, and
- non-conflictual.

If the mediation resolves the issues, then

- the mediator writes up an agreement, and
- the parent, the school district, and any other agencies involved sign it.

If the issues are not resolved, the mediator helps the parties define what the issues are for the hearing.

### **What is a due process hearing?**

A due process hearing, sometimes called a fair hearing or simply a hearing, typically follows a due process mediation when all of the issues cannot satisfactorily be resolved at the mediation. The hearing is presided over by a hearing officer from the Office of Administrative Hearings who does not have any connection to the local school district.

A hearing is similar, in many ways, to a trial. The parent and the school district have the right to:

- present evidence, written arguments, and oral arguments and
- examine, cross-examine, and compel the attendance of witnesses.

### **Who may file for a due process hearing and mediation for a student?**

Under state law, the following people may initiate a due process hearing and mediation for a student:

- a parent
- a guardian
- a surrogate parent
- a holder of educational rights for the student
- a student who is emancipated or is a ward or dependent of the court for whom no parent can be identified or located and for whom no appropriate surrogate parent has been appointed<sup>65</sup>
- an advocate or attorney may also file for a due process hearing and mediation on behalf of any of the above.

---

<sup>65</sup>Cal. Ed. Code § 56501(a)

### **Where do I send a request for a due process hearing and mediation?**

A request should be sent to the: Office of Administrative Hearings, Special Education Unit, 1102 Q Street, 4<sup>th</sup> Floor, Sacramento, CA 95814. The phone number is (916) 323-6876 and the fax number is (916) 322-8014. The request may be faxed, but it is also a good idea to mail a copy of the request as well.

### **What should I include in my request for a due process hearing and mediation?**

The information a parent must include in a due process hearing and mediation request letter is the following:

- The name of the student
- The residential address of the student or contact information for a homeless youth
- A description of what the disagreement is about in relation to the student's special education eligibility, educational program, services, or free appropriate public education as it relates to what the school has done or has not done. The description must give enough of the facts to clearly describe the problem and exactly what happened or did not happen
- A description of the proposed resolution to the problem; that is, what must happen in order to solve the disagreement for which the hearing is being requested.<sup>66</sup>

### **May a school district or county office of education try to stop parents from having a due process hearing or mediation by objecting to the information that they provided about the issues in the case?**

Although the information delineated in the answer to the above question is all the law requires, the law also has given school districts the option of objecting to the adequacy (what the law calls "sufficiency") of a parent's request for a hearing. School districts may request that a hearing officer:

- dismiss the case because the parent's request is not sufficient, or
- order that the parent file a more complete request.<sup>67</sup>

To have a better chance of not having the case dismissed or of having to refile the request, a parent should use the form developed by the Office of Administrative Hearings to initiate a request for a due process mediation and hearing. The form can be found on the OAH's website at [www.oah.dgs.ca.gov](http://www.oah.dgs.ca.gov).

### **After a parent files for a dues process hearing, and if the case is not dismissed, will there be an opportunity to resolve the issues prior to the due process hearing and mediation?**

The school district must convene a resolution meeting with the parents and relevant member(s) of the IEP team who have specific knowledge of the facts of the cases where

- the parents of the student discuss their reason for filing for a hearing and
- the school district is provided the opportunity to resolve the dispute.

---

<sup>66</sup> 20 U.S.C. § 1415(b)(7); 34 C.F.R. § 300.508(b); Cal. Ed. Code § 56502(c)

<sup>67</sup> 20 U.S.C. § 1415(c)(2)(A); 34C.F.R. § 300.508(d); Cal. Ed. Code § 56502(d)

The resolution meeting must be held unless the parents and the school district agree in writing to waive the meeting or agree instead to use the due process mediation for this purpose.

If the resolution meeting is not waived, or if the mediation is used for this purpose, the resolution meeting must be convened by the school district:

- within 15 days of receiving notice of the parents' request for a hearing and
- include a representative of the school district who has decisionmaking authority.

The school district may not use an attorney at the resolution meeting unless the parent is accompanied by an attorney.

**May a parent have representation by an advocate or attorney at a hearing?**

A parent, school district, or any other party to the hearing has the right to be accompanied, advised, and/or represented by:

- an attorney or advocate, and
- by individuals with special knowledge or training relating to the problems of children and youth with disabilities.

**If a parent uses an attorney at a due process mediation or hearing, are there circumstances under which the school district is responsible for paying the fees of the parent's attorney?**

Yes. School districts may have to pay the fees parents owe an attorney for preparing for and conducting a due process hearing mediation, if the parent prevails in the case. To be considered the prevailing party does not mean that the parent won on every issue argued and decided at the hearing. What it means is that the parent substantially won on at least one or more of the issues. The written decision of the hearing officer determines the extent to which each side prevailed on each issue heard and decided. If, for example, a parent prevails on only some of the issues argued, then the parent will only be entitled to recover a portion of the fees the parent owes an attorney.

Attorneys' fees may not be awarded if:

- the school district agreed in writing to settle the case more than 10 days prior to the hearing,
- the parent did not accept the offer within 10 days, and
- a court or a hearing officer finds that the decision from the hearing was not more favorable to the parent than what the school district had offered.

When a due process mediation agreement settles all the issues in a case, the parties may include in the agreement how much the school district will pay for the parent's attorney's fees and costs.

**Are there free, or low-cost, legal services available for special education representation?**

Some legal service agencies provide advocates or attorneys to represent foster children and youth free of charge.

**Where does the student go to school during the due process mediation and hearing proceedings?**

During a due process hearing and mediation, the student must remain in his or her present placement unless:



- the school district and parent agree otherwise, or
- the student has violated school rules to an extent which allows the school district to place the student in an appropriate alternate setting. (See chapter on Discipline).

### **What is an informal meeting?**

The law specifies that when a due process hearing and mediation has been initiated, a public education agency (such as a school district) and a parent may meet informally to resolve any issue in disagreement prior to the hearing. This informal meeting should be conducted by either the:

- school district superintendent,
- county office of education superintendent, or
- director of the public education agency
- or the designees of the above officials.

The person conducting the informal meeting should have the authority to resolve the issues that are in disagreement.<sup>68</sup>

### **Are informal meetings sometimes scheduled prior to a parent filing for a due process hearing or mediation?**

Sometimes, when there is a disagreement that cannot be resolved at an IEP meeting and before a parent files for a due process hearing and mediation, a school district representative may ask a parent whether he or she would like to go to “an informal.” If a parent agrees to the informal meeting, then the parent will meet with a district or county office of education administrator who will attempt to resolve the issues in disagreement so that a due process mediation and hearing can be avoided.

There are certain circumstances that might encourage a parent to go to an informal meeting prior to filing for a due process hearing:

- The informal meeting typically will be scheduled quickly
- The school administrator has the reputation of being reasonable to parent requests in special education matters
- The parent and the administrator have a good relationship
- There is strong evidence to support the request for specific special education services over which there was disagreement at the IEP meeting
- What is being requested requires a relatively simple, non-costly change

The drawbacks of using the informal meeting process prior to filing for a due process hearing are:

- There is no additional pressure exerted on the school district or county office of education to bring about agreement (such as the likelihood of a hearing if issues are not resolved)
- The power relationship between the education agency and the parent is in favor of the district or county office of education

---

<sup>68</sup>Cal Ed. Code § 56502(g)

- The “stay put” provision in the law does not apply (this means there is no obligation on the education agency to maintain the student in his or her current school placement until the informal meeting has been completed)

### **How is an informal meeting scheduled?**

An informal meeting is scheduled by contacting the coordinator of special education for the school district and requesting an informal meeting. If it is impossible to schedule an informal meeting within a few days, it is probably better to select another dispute resolution procedure.

### **What is a pre-hearing mediation?**

A pre-hearing mediation is a mediation that takes place before filing for a due process mediation or hearing. A pre-hearing mediation is completely voluntary. A parent may choose not to have a pre-hearing mediation and go directly to a due process hearing and mediation.

The purpose of the pre-hearing mediation is to resolve issues in disagreement in a student’s special education case in a non-adversarial atmosphere. Consequently, attorneys or advocates are not allowed to attend or participate in the pre-hearing mediation conference. However, the parents or school district are not prohibited from consulting with an advocate or attorney before or after the pre-hearing mediation conference. Others (for example, the social worker) may accompany and advise either side at the pre-hearing mediation.

A neutral mediator with no connection to the school district conducts the pre-hearing mediation. If the issues in dispute are resolved at the pre-hearing mediation, a copy of the written agreement will be mailed to each side within 10 days following the mediation. If the pre-hearing mediation does not resolve the issues satisfactorily, the person who requested the pre-hearing mediation has the option of filing for a due process hearing.

The disadvantages of a pre-hearing mediation are:

- The school district representatives are likely to be more knowledgeable about special education law and practice than the student’s parent.
- There is not as much pressure on a school district to settle a case.
- The “stay put” provision in the law does not apply, which means there is no obligation on the part of the school district to keep the student in his or her current school placement while the pre-hearing mediation takes place. This is important if the student is in a school placement the parent wants, and the disagreement is that the school district is attempting to change this placement.

## **Compliance Complaints**

### **What can be done if the school district or county office of education violates special education law or discriminates against the student?**

A complaint may be filed with the Complaint Management and Mediation Unit of the California Department of Education for any one of the following reasons:

- The student is not receiving all the services on his or her IEP or not for the amount of time specified.
- There is a violation of special education law by the district or county office of education, such as:
  - Failure to assess or refer a student for special education
  - Failure to follow referral and assessment timelines
  - Failure to inform a student's parent of the student's IEP meeting.
- A mediation agreement, hearing decision, or other settlement agreement entered into with the district or county office of education is not being followed.
- The student is experiencing discrimination and is at risk of suffering some immediate loss of benefit as a result.
- The student or group of students is in danger or their health or welfare is threatened.<sup>69</sup>

To file a complaint, write to the following address and send a copy to your school district.  
 Complaint Management and Mediation Unit  
 Special Education Division  
 California Department of Education  
 1430 N Street, Suite 2401  
 Sacramento, CA 95814

### **Who may file a complaint?**

The following people or organizations may file a complaint:

- Any individual,
- A public agency (for example, a child welfare agency, a CASA organization), or
- An organization (such as a parent group)<sup>70</sup>

In addition, teachers and other staff may use the complaint process to address problems they experience with other school and district officials when trying to help parents or special education students obtain appropriate special education services. No school district or county office of education employee may use, or attempt to use, his or her official authority or influence to intimidate, threaten, or coerce any person attempting to assist a parent or guardian of a special education student to obtain services or accommodations for that student. Those who may file a complaint for this purpose include, but is not limited to the following individuals:

- teacher,
- related services provider,
- paraprofessional,
- aide, or
- contractor<sup>71</sup>

### **Whom may the complaint be about?**

The complaint may concern:

- a single child,

<sup>69</sup> 20 U.S.C. § 1415 (b)(6); 34 C.F.R. §§ 300.151 – 300.153; 300.660 – 662; 5 C.F.R. § 4650.

<sup>70</sup> 5 C. C. R. § 4600(b).

<sup>71</sup> Cal. Ed. Code § 56046

- a group of children, or
- a local education agency policy that violates federal or state special education law.

### **What happens after I file a complaint?**

The Complaint Management and Mediation Unit (CMMU) has 60 calendar days from receiving the complaint to carry out any necessary investigation and to resolve it.<sup>72</sup> Once received, the complaint must be reviewed by the CMMU to determine if the matter is

- for the state to investigate itself , or
- for the state to send to the local school district or county office of education for investigation.

Once the CMMU makes its determination, it must immediately notify the complainant of the decision and either refer the matter for local school district or county office of education investigation or begin its direct investigation.<sup>73</sup>

Although the CMMU must process your complaint within 60 days, the office has developed a process to “fast-track” certain complaints and provide resolution sooner than the 60 days. The complaints that can be “fast tracked” are those that present a small number of uncomplicated issues.

After filing a complaint, you may wish to call the CMMU to find out who the investigator is and to remind that individual of your need for quick processing. Whether or not you file your complaint as a fast-track complaint, if you do not hear from the CMMU with 10 days after you mailed the complaint, you should contact the CMMU to follow up by phone (916) 445-4632 or fax (916) 327-3516.

### **What will happen after I file a complaint with the Complaint Management and Mediation Unit?**

An investigator from the Complaint Management and Mediation Unit (CMMU) or, in some cases, your local school district will investigate the allegations in your complaint and make a written determination of whether the school district or county office of education was out of compliance in the area alleged by your complaint.

If found “out of compliance,” the school district or county office of education will be required to come back into compliance (i.e., do what it should have done). It also may be required to compensate the student for services that the student did not receive. For example, a school district found out of compliance for failing to provide a student with the amount of speech and language services specified in the student's IEP may be required to compensate the student for those services by providing the hours of service that the student did not receive but should have received in addition to the student's regularly scheduled speech and language services.

In addition, the CMMU may order the education agency to submit a plan of correction, which is a document that describes

---

<sup>72</sup>34 C.F.R. § 300.661; 5 C.C.R. § 4631(a)

<sup>73</sup>5 C.C.R. § 4651

- the steps it has taken and will continue to take to assure that the problem does not occur again, either to this student or to others, and
- the timelines for taking those steps.

## **Early Intervention Services**

### **What are Early Intervention Services?**

Early intervention services are designed to meet the developmental needs of an infant or toddler between the ages of birth to 3 years and the needs of the child's family.

### **Who should be referred for Early Intervention Services?**

Infants and toddlers with the following diagnoses and conditions may be eligible for early intervention services:

- Diagnosed conditions (such as Down Syndrome or cerebral palsy),
- Significant differences between expected and current functioning levels in either the cognitive, physical, communication, social/emotional, or adaptive areas, or
- Two or more diagnosed biomedical risk factors, such as low birth weight (3 pounds or less) and prenatal drug exposure.

Furthermore, all infants and toddlers in foster care who have a substantiated case of abuse or neglect should be referred for early intervention services.

### **What agencies are responsible for providing Early Intervention Services?**

School districts and county offices of education are responsible for providing or paying for services to infants and toddlers who have hearing, vision, or severe orthopedic impairments. Regional Centers are responsible for providing or paying for services for all other eligible infants and toddlers.

### **What is an individualized family services plan (IFSP)?**

It is a written plan for providing services to eligible infants and toddlers and their families. It is developed within 45 days of a referral and reviewed every 6 months. An IFSP must contain:

- Current levels of development of the child,
- Concerns/priorities/resources of family,
- Developmental outcomes to be achieved by the child,
- Description of the natural environment where services are to be provided,
- Name of service coordinator,
- Statement of transition steps (at least 90 days before child becomes 3 years old), and
- Specific services to be provided, including the frequency, duration, service provider and initiation date.

### **What specific services might be included on an IFSP?**

- Special instruction (e.g., infant stimulation, preschool)
- Family training or counseling
- Respite services

- Physical or occupation therapy
- Assistive technology
- Speech-language pathology
- Audiology
- Nursing
- Nutrition
- Social work services
- Transportation
- Other services

### **504 Services**

#### **Are there services available for students who do not qualify for special education services?**

Even though a student has learning or other problems that negatively affect his or her ability to function adequately in school, he or she may not be found eligible for special education services because of

- not fitting into one of the special education eligibility categories and/or
- the student’s learning or other problems are not severe enough to qualify for special education services.

Such students, however, may qualify for special services and accommodations under Section 504.

#### **What is Section 504?**

Section 504, part of the Rehabilitation Act of 1973, forbids discrimination on the basis of disability by

- states,
- local governments, and
- public and private organizations that receive federal funds.<sup>74</sup>

This law prohibits school districts and county offices of education from discriminating against students with disabilities. The regulations authorize the use of a “504 plan” for making accommodations in public schools for students with qualified disabilities under this law. Another law, the Americans with Disabilities Act, prohibits private schools from discriminating against students with qualified disabilities.

#### **What is considered a disability under Section 504?**

A disability under Section 504 is a physical or mental impairment that substantially limits one or more of the person’s major life activities.

#### **What does physical impairment mean under Section 504?**

Physical impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

---

<sup>74</sup>29 U.S.C. § 794

- neurological,
- musculoskeletal,
- special sense organs,
- respiratory, including speech organs,
- cardiovascular,
- reproductive, or
- digestive<sup>75</sup>

**What does mental impairment mean under Section 504?**

Mental impairment means any mental or psychological disorder, such as

- mental retardation,
- organic brain syndrome,
- emotional or mental illness, or
- specific learning disabilities<sup>76</sup>

**What are considered major life activities under Section 504?**

Major life activities include:

- caring for oneself,
- performing manual tasks,
- walking,
- seeing,
- hearing,
- speaking,
- breathing,
- learning, and
- working<sup>77</sup>

**If a student is eligible for services under special education law, is that student also eligible under Section 504?**

All students who are eligible for special education services under the IDEA are also considered qualified individuals with disabilities under Section 504.

**If a student is not eligible for services under special education law, might the student still have a qualified disability under Section 504?**

Some students who are not eligible for special education services under the IDEA are considered qualified individuals with disabilities under Section 504 and, therefore, may require that the school put together a 504 plan for them. Examples of students who may qualify for services under Section 504 include students who have

- dyslexia,
- pervasive developmental disorder,
- Tourette's Syndrome,

---

<sup>75</sup>34 CFR §104.3(j)(2)(i)

<sup>76</sup>34 CFR § 104.3(j)(2)(i)

<sup>77</sup>34 CFR §104.3(j)(2)(ii)

- obsessive compulsive disorder,
- conduct disorder,
- oppositional defiant disorder, and
- Attention Deficit Disorder (ADD) or Attention Deficit Hyperactivity Disorder (ADHD).

Other students, with certain permanent or temporary medical conditions, also may qualify, such as those with

- asthma,
- allergies,
- diabetes, or
- broken bones.

**What is required under Section 504 if a student has a qualifying disability?**

Section 504 requires a school district or county office of education to develop the following:

- a program designed to provide services comparable to those without disabilities,
- a written accommodation plan, typically called a 504 Plan, developed by people knowledgeable about the student, and
- an initial evaluation and periodic reevaluations.

**If a student is not found eligible for services under Section 504 or the services or accommodations recommended are not appropriate, are there any appeal procedures?**

You can appeal that decision. The school district or county office of education is responsible for arranging the Section 504 hearing process. The hearing officer selected must be independent of the local education agency.

**What can be done if you believe a student’s rights under Section 504 are being violated?**

The federal Office for Civil Rights (OCR) administers and enforces Section 504 protections in education. If you believe a student has not been afforded his or her rights under Section 504, you may file a complaint with the Office for Civil Rights at:

U.S. Department of Education  
 Office For Civil Rights  
 Region IX Office  
 Old Federal Building  
 50 United Nations Plaza, Room 239  
 San Francisco, CA 94102  
 Telephone: (415) 556-4275  
 TTY: (415) 437-7786  
 FAX: (415) 437-7783



## V. DISCIPLINE

### **Disciplinary Terms and Procedures that Apply to All Students**

#### **How is suspension defined under California law?**

Under California law, suspension means the removal of a student from ongoing instruction for adjustment purposes.<sup>78</sup> There are both in-school suspensions and suspensions where students are sent home.

#### **For how many days may a student be suspended and who may suspend a student?**

- A teacher may suspend a student from a class he or she is teaching for the day of the suspension and the day following; however, the teacher must immediately report the suspension to the principal and send the student to the principal (or to his or her designee if the principal is not available).
- A student may be removed from a particular class period, however, without being sent to the principal for not more than once every five school days.
- Only the principal (or someone acting in place of the principal) may suspend a student from school and not for more than five consecutive school days.

#### **What procedures should occur prior to a student being suspended?**

- Under most circumstances, a principal (or someone acting in place of the principal) or the superintendent must hold a conference between the student and, whenever possible, the teacher or supervisor who made the referral for the misbehavior.
- At the conference, the student must be informed of
  - the reason for the disciplinary action and
  - the existing evidence.
- The student also must be given the opportunity to present his or her version of the alleged misbehavior and the evidence in the student's defense.

A student may be suspended without being afforded an opportunity for a conference only if the principal, a superintendent, or their designees determines that an emergency situation exists.

An emergency situation is defined in California law as one that constitutes a clear and present danger to the lives, safety, or health of students or school personnel. If a student is suspended without a conference prior to suspension, both the parent and the student must be notified of the student's right to a conference and the student's right to return to school for the purposes of a conference.

At the time of suspension, a school employee must make reasonable effort to contact the student's parent or guardian in person or by telephone. Whenever a student is suspended from school, the parent or guardian must be notified in writing of the suspension.

---

<sup>78</sup>Cal. Ed. Code § 48925(d)

### **May a school or school district informally suspend a student without following formal suspension procedures?**

“Informal suspensions” are violations of the law. When a school or school district wants to send a student home for misbehavior, they must follow all the procedures required for formally suspending a student. Parents and other caregivers should not agree to take their children home from school for misbehavior unless proper paperwork is completed and all suspension procedures followed.

The problem with “informal suspensions” is that there is no paperwork documenting that the student is having problems and may need additional services, such as special education. Furthermore, formal suspension procedures require that students be informed of the evidence against them, that they have a right to give their version of what occurred, and that their parents are informed in writing about the suspension. These do not typically occur in informal suspensions.

### **What are the offenses for which a student may be suspended or expelled?**

For many offenses, suspension should be imposed only when other means of correction fail to bring about proper conduct. For more serious offenses, however, a student may be suspended on the first offense.

The following offenses constitute allowable grounds for suspending a student from school or recommending expulsion:<sup>79</sup>

- Caused, attempted to cause, or threatened to cause physical injury to another person.
- Willfully used force or violence upon the person of another, except in self-defense.
- Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object (unless the student had obtained written permission to possess a dangerous object from a certificated school employee and the principal or principal’s designee concurs).
- Unlawfully possessed, sold, or otherwise furnished, or was under the influence of, any controlled substance, an alcoholic beverage, or an intoxicant.
- Committed or attempted to commit robbery or extortion.
- Caused or attempted to cause damage to school property or private property.
- Stole or attempted to steal school property or private property.
- Possessed or used tobacco, or any products containing tobacco or nicotine products.
- Committed an obscene act or engaged in habitual profanity.
- Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia.
- Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
- Knowingly received stolen property or private property.

---

<sup>79</sup> Cal. Ed. Code § 48900

- Possessed an imitation firearm. Imitation firearm means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.
- Committed or attempted to commit a sexual assault or a sexual battery.
- Harassed, threatened, or intimidated a student who is a complaining witness or a witness in a school disciplinary proceeding for the purpose of either preventing that student from being a witness or retaliating against that student for being a witness, or both.
- Committed sexual harassment that is sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment (only pertains to students in grade 4 and above)
- Caused, attempted to cause, threatened to cause, or participated in an act of hate violence (only pertains to students in grade 4 and above).
- Intentionally engaged in harassment, threats, or intimidation directed against a student or group of students that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of that student or group of students by creating an intimidating or hostile educational environment.
- Has made terrorist threats against school officials or school property that include any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of \$1000, with the specific intent that the statement is to be taken as a threat and hereby causes that person reasonably to be in sustained fear for his or her own safety, or for his or her immediate family's safety, or for the protection of school district property, or the personal property of the person threatened or his or her immediate family

A student may not be suspended or expelled for the acts listed above unless they are related to a school activity or to school attendance under the jurisdiction of the superintendent or principal at the student's school district or at any other school district.

Acts related to a school activity or to school attendance may occur at any time, including, but not limited to, any of the following:

- while on school grounds,
- while going to or coming from school,
- during the lunch period whether on or off the campus, and
- during or while going to and from a school-sponsored activity.

**Is suspension or expulsion appropriate for students who are frequently truant from or tardy to school?**

Suspension or expulsion is not appropriate for students who are truant, tardy, or otherwise absent from school and alternative measures should be used with such students.

### **Are there alternatives to suspension or expulsion that may be imposed?**

Instead of recommending suspension or expulsion for a student, a principal of a school (or someone acting in the place of the principal, the superintendent of schools, or the governing board) may require a student to perform community service on school grounds during non-school hours. Community service may include, but is not limited to:

- work performed on school grounds in the areas of outdoor beautification or campus betterment, and
- teacher or peer assistance programs.

However, the community service option is not available for offenses for which suspension or expulsion is required.

### **How is expulsion defined under California law?**

Under California law expulsion means removal of a student from the supervision and control of school personnel.<sup>80</sup>

### **What are the offenses for which a student may be expelled?**

The governing board of the school district may expel a student for any of the offenses listed above.

### **What are “zero tolerance” offenses?**

There are certain offenses referred to in California law as “zero tolerance” offenses, which require that the governing board must expel any student who, at school or while engaging in school activities:

- Possessed, sold, or otherwise furnished a firearm;
- Brandished a knife at another person;
- Unlawfully sold a controlled substance; or
- Committed a sexual assault.<sup>81</sup>

Only the principal of the student’s school or the superintendent may recommend that a student be expelled; however, final action for expulsion is by the governing board.

## **Disciplinary Procedures for Students without Disabilities**

### **How many days may a student without a disability be suspended from school?**

The total number of days must not exceed 20 school days in any school year. However, if for purposes of adjustment a student enrolls in or is transferred to another regular school, an opportunity school or class, or a continuation school or class, the total number of school days for which the student may be suspended must not exceed 30 days in any school year.

---

<sup>80</sup>Cal. Ed. Code § 48925(b)

<sup>81</sup>Cal. Ed. Code § 48915(c)

### **How many days may a student without a disability be expelled from school?**

A general education student (a student who does not have an IEP) may be expelled for the remainder of the semester in which the offense is committed and the next semester. However, if a student commits one of the “zero tolerance” offenses, the Board of Education must set a date of one year from the expulsion, when the student will be reviewed for readmission to the school.

### **If a student is expelled from school, what public educational options are available to him or her?**

California law provides that a regular education student who is under an expulsion order must be referred to an alternative education program. Depending on the nature of the offense, the alternative educational program may either be within the school district or in a program operated by the county board of education.

### **Disciplinary Procedures for Students with Disabilities**

#### **What are the procedures for suspending a student with a disability for 10 days or less?**

According to the Individuals with Disabilities Education Act (IDEA), school personnel may remove or suspend a student with a disability from his or her current school placement for not more than 10 school days in the same school year for any violation of a school’s code of conduct.<sup>82</sup> These students may be removed to an appropriate temporary:

- alternative educational setting, or
- another setting

However, based on the decision in *Honig v. Doe*<sup>83</sup>, a series of shorter suspensions that together add up to more than 10 days per school year may indicate a pattern of exclusion from school and a significant change of placement, both of which are a violation of the IDEA, if an IEP meeting is not held.

#### **May a student with a disability be kept out of school for more than 10 days in the same school year?**

There are circumstances under which school personnel may keep a student with a disability out of school for longer than 10 schooldays. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change of placement for a student with a disability who violates a code of student conduct.

If the violation of the school code of conduct is determined to be not directly connected to a student’s disability, then the relevant disciplinary procedures that may be applied to students without disabilities also may be applied to this student in the same manner, and for the same amount of time, in which the procedures would be applied to students without disabilities.<sup>84</sup> The student with a disability, however, still must receive a free and appropriate public education, although it may be provided in a temporary alternative educational setting.

---

<sup>82</sup> 20 USC § 1415(k)(1)(B)

<sup>83</sup> *Honig v. Doe*, 484 U.S. 305 (1988)

<sup>84</sup> 20 USC § 1415(k)(C)

**Are there “zero tolerance” offenses that require a student with a disability to be removed from the school setting?**

Whether the behavior of a student with a disability is directly connected to the disability, the student still may be placed in a temporary alternative educational setting for not more than 45 days in cases where the student:

- Carries or possesses a weapon to or at school, on school premises, or to or at a school function;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or a school function;
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.<sup>85</sup>

**Who determines in which temporary alternative setting the student should be placed?**

The IEP team determines the specific alternative educational setting.

**Does the student have to be provided special education services while in the temporary alternative educational setting?**

The law requires that while in the temporary alternative educational setting the student must continue to:

- receive a free appropriate public education,
- participate in the general education curriculum, although in another setting, and
- progress toward meeting the goals set out in his or her IEP.

Furthermore, so that the behavioral violation does not recur that led to the student’s placement in the alternative educational setting, the student should receive, as appropriate:

- a functional behavioral assessment,
- behavioral intervention services, and
- behavioral modifications.

**What is a “manifestation determination” IEP?**

Within 10 days of any decision to change the placement of a student with a disability because of a violation of a code of school conduct (except for suspensions for not more than 10 days), an IEP meeting must be held that includes the local education agency and the parent.

Relevant members of the IEP Team must 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.

The purpose of this IEP team review is to determine whether the misbehavior of the student is a manifestation of the student’s disability (i.e., whether the misbehavior is directly connected to the disability).<sup>86</sup>

---

<sup>85</sup>20 USC § 1415(k)(G)

<sup>86</sup> 20 U.S.C. § 1415(k)(E)

**What decisions must the manifestation determination IEP team make?**

The IEP team must determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct in question was the direct result of the local education agency's failure to implement the IEP.

If the IEP team determines that either applies to the student, the misconduct shall be determined not to be a manifestation of the student's disability.

**If a determination is made that the student's misbehavior is directly connected to the disability or the misbehavior is the result of a failure to implement the student's IEP, what course of action must the IEP team recommend?**

The IEP team then must:

- conduct a functional behavioral assessment, and implement a behavioral intervention plan for the student, if the local education agency has not done so prior to the occurrence of the misbehavior; or
- in the situation where a behavioral intervention plan has been developed, review the plan and modify it, as necessary, to address the misbehavior.
- return the student to the placement from which he or she was removed, unless the parent and the local education agency agree to a change of placement as part of the modification of the behavioral intervention plan.

**Are there circumstances under which a student may be removed to an alternative educational setting even though the misbehavior was directly connected to the disability or the failure to implement the IEP caused the misbehavior?**

School personnel may remove a student to an interim alternative educational setting 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 of:

- weapons or drug possession or
- use or infliction of bodily injury.

**If a parent disagrees with the decisions of the manifestation determination IEP team, what course of action is available?**

If the student's parents disagree with a determination of the IEP team that the student's behavior was not directly connected to the student's disability or with any decision regarding the student's placement, the parent may request a special education hearing to resolve the disputed issue.

**Are there circumstances under which a local education agency may request a special education hearing related to a student's misbehavior?**

A local education agency that believes that maintaining the student in the current placement is substantially likely to result in injury to the student or to others, may also request a hearing.

**If a special education hearing has been requested by either the student's parent or the local education agency, what school placement does the student attend until the hearing is completed?**

When a hearing has been requested, unless the parents and the local education agency agree otherwise, the student is to remain in the alternative educational setting pending the decision of the hearing officer or the expiration of the time period for disciplinary removals as applied to children without disabilities, whichever occurs first.



## **APPENDICES**



## **SAMPLE LETTERS**

Request for Evaluation for Special Education

- Parent with education rights
- Foster parent/relative caregiver with educational rights
- Foster parent/caregiver without educational rights
- Social worker

Request for Evaluation for Special Education and Simultaneous 3632 Referral

Request for Meeting to Review IEP

- Parent with education rights
- Foster parent with educational rights

**SAMPLE LETTER**  
***Request for Evaluation for Special Education***  
***(parent with educational rights)***

Date:

Principal/Director of Special Education  
School Name  
School Address  
City, State, Zip

RE: Child's Name  
Date of Birth

Dear [Name]:

I am the mother/father of **[name of child]**, who is enrolled in the **[grade]** at **[name of school]**. My child is having the following problems at school, and I am concerned that he/she is not making progress. I am writing to request that **[name of child]** be given a comprehensive assessment by the school district to determine if he/she is eligible for special education services. **[Describe in detail the specific difficulties that child is having in school or with school work.]**

I look forward to receiving the assessment plan for my consent within 15 days of this request. If you have any questions, you may contact me at the number below. Thank you.

Sincerely,

**Signature**

**Name**  
**Address**  
**Telephone**

**SAMPLE LETTER**  
**Request for Evaluation for Special Education**  
**(foster parent/relative caregiver with educational rights)**

Date:

Principal/Director of Special Education  
School Name  
School Address  
City, State, Zip

RE: Child's Name  
Date of Birth

Dear [Name]:

I am the foster parent/relative caregiver of **[name of child]**, who is enrolled in the **[grade]** at **[name of school]**. **[Name of child]** is having the following problems at school, and I am concerned that he/she is not making progress. I am writing to request that **[name of child]** be given a comprehensive assessment by the school district to determine if he/she is eligible for special education services. **[Describe in detail the specific difficulties that child is having in school or with school work.]**

The juvenile court has given me educational decision-making authority for **[name of child]**. I look forward to receiving the assessment plan for my consent within 15 days of this request. If you have any questions, you may contact me at the number below.  
Thank you.

Sincerely,

**Signature**

**Name**  
**Address**  
**Telephone**

**SAMPLE LETTER**  
**Request for Evaluation for Special Education**  
**(foster parent/caregiver without educational rights)**

Date:

Principal/Director of Special Education  
School Name  
School Address  
City, State, Zip

RE: Child's Name  
Date of Birth

Dear [Name]:

I am the foster parent/caregiver of **[name of child]**, who is enrolled in the **[grade]** at **[name of school]**. **[Name of child]** is having the following problems in class and I am concerned that he/she is not making progress. I am writing to request that **[name of child]** be given a comprehensive assessment by the school district to determine if he/she is eligible for special education services. **[Describe in detail the specific difficulties that child is having in school or with school work.]**

**[Name of person]** has educational decision-making authority for **[name of child]**. He/she may be reached at **[address/telephone number]**. Please send him/her the assessment plan for his/her consent within 15 days of this request. If you have any questions, you may contact me at the number below. Thank you.

Sincerely,

**Signature**

**Name**  
**Address**  
**Telephone**

**SAMPLE LETTER**  
**Request for Evaluation for Special Education**  
**(social worker)**

Date:

Principal/Director of Special Education  
School Name  
School Address  
City, State, Zip

RE: Child's Name  
Date of Birth

Dear [Name]:

I am the social worker for **[name of child]**, who is enrolled in the **[grade]** at **[name of school]**. **[Name of child]** is having the following problems in class and I am concerned that he/she is not making progress. I am writing to request that **[name of child]** be given a comprehensive assessment by the school district to determine if he/she is eligible for special education services. **[Describe in detail the specific difficulties that child is having in school or with school work.]**

**[Name of person]** has educational decision-making authority for **[name of child]**. He/she may be reached at **[address/telephone number]**. Please send him/her the assessment plan for his/her consent within 15 days of this request. I would like to attend the IEP meeting and would appreciate receiving prior notification.

If you have any questions, you may contact me at the number below. Thank you.

Sincerely,

**Signature**

**Name**  
**Address**  
**Telephone**

**SAMPLE LETTER**  
***Request for Evaluation for Special Education and 3632 Referral***  
***(parent with educational rights)***

Date:

Principal/Director of Special Education  
School Name  
School Address  
City, State, Zip

RE: Child's Name  
Date of Birth

Dear [Name]:

I am the mother/father of **[name of child]**, who is enrolled in the **[grade]** at **[name of school]**. My child is having the following problems in class and I am concerned that he/she is not making progress. I am writing to request that **[name of child]** be given a comprehensive assessment by the school district to determine if he/she is eligible for special education services. **[Describe in detail the specific difficulties that child is having in school or with school work.]**

I also am requesting that a simultaneous AB3632 referral be made to County Mental Health pursuant to Cal. Gov't. Code Section 7576(d), which allows a school district to make an AB3632 referral for a student who is suspected of being an individual with exception needs and in need to mental health services but prior to the IEP meeting where the student is found eligible.

I look forward to receiving the assessment plan for my consent within 15 days of this request. If you have any questions, you may contact me at the number below. Thank you.

Sincerely,

**Signature**

**Name**  
**Address**  
**Telephone**



**SAMPLE LETTER**  
***Request for Meeting to Review IEP***  
***(parent with education rights)***

Date:

Principal/Director of Special Education  
School Name  
School Address  
City, State, Zip

RE: Child's Name  
Date of Birth

Dear [Name]:

I am the parent of **[name of child]**, who is enrolled in the **[grade]** at **[name of school]**. I am requesting that an IEP meeting be convened for **[name of child]** as soon as possible. He/she has been having problems at school and is not making progress. I think that his/her program may need to be modified to address his/her individual needs. **[Describe in detail the specific difficulties that child is having in school or with school work.]**

I understand that this IEP meeting must be held within 30 days of my request. If you have any questions, you may contact me at the number below. Thank you.

Sincerely,

**Signature**

**Name**  
**Address**  
**Telephone**

**SAMPLE LETTER**  
**Request for Meeting to Review IEP**  
**(foster parent/relative caregiver with educational rights)**

Date:

Principal/Director of Special Education  
School Name  
School Address  
City, State, Zip

RE: Child's Name  
Date of Birth

Dear [Name]:

I am the foster parent/relative caregiver of **[name of child]**, who is enrolled in the **[grade]** at **[name of school]**. I am requesting that an IEP meeting be convened for **[name of child]** as soon as possible. He/she has been having problems at school and is not making progress. I think that his program may need to be modified to address his individual needs. **[Describe in detail the specific difficulties that child is having in school or with school work.]**

I understand that this IEP meeting must be held within 30 days of my request. I have educational decision-making authority for **[name of child]**. If you have any questions, you may contact me at the number below. Thank you.

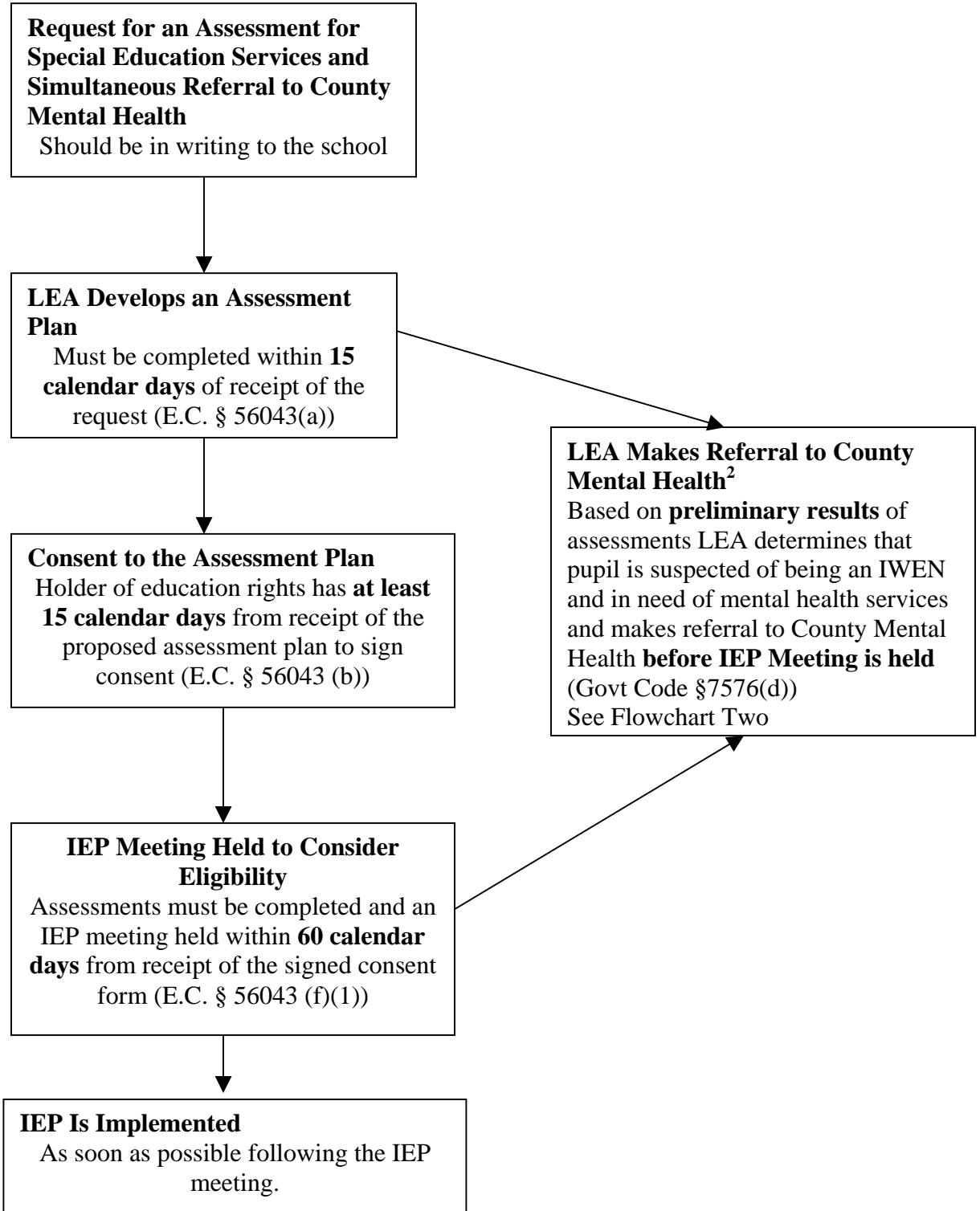
Sincerely,

**Signature**

**Name**  
**Address**  
**Telephone**

**FLOWCHART ONE**

**Request for an Assessment for Special Education Services And Simultaneous Referral to County Mental Health for AB 3632<sup>1</sup> Mental Health Services Student Has Not Yet Been Found Eligible for Special Education Services**



## Notes for Flowchart One

<sup>1</sup>In some counties AB 3632 mental health services are referred to as AB 2726 or Gov't Code 26.5 mental health services.

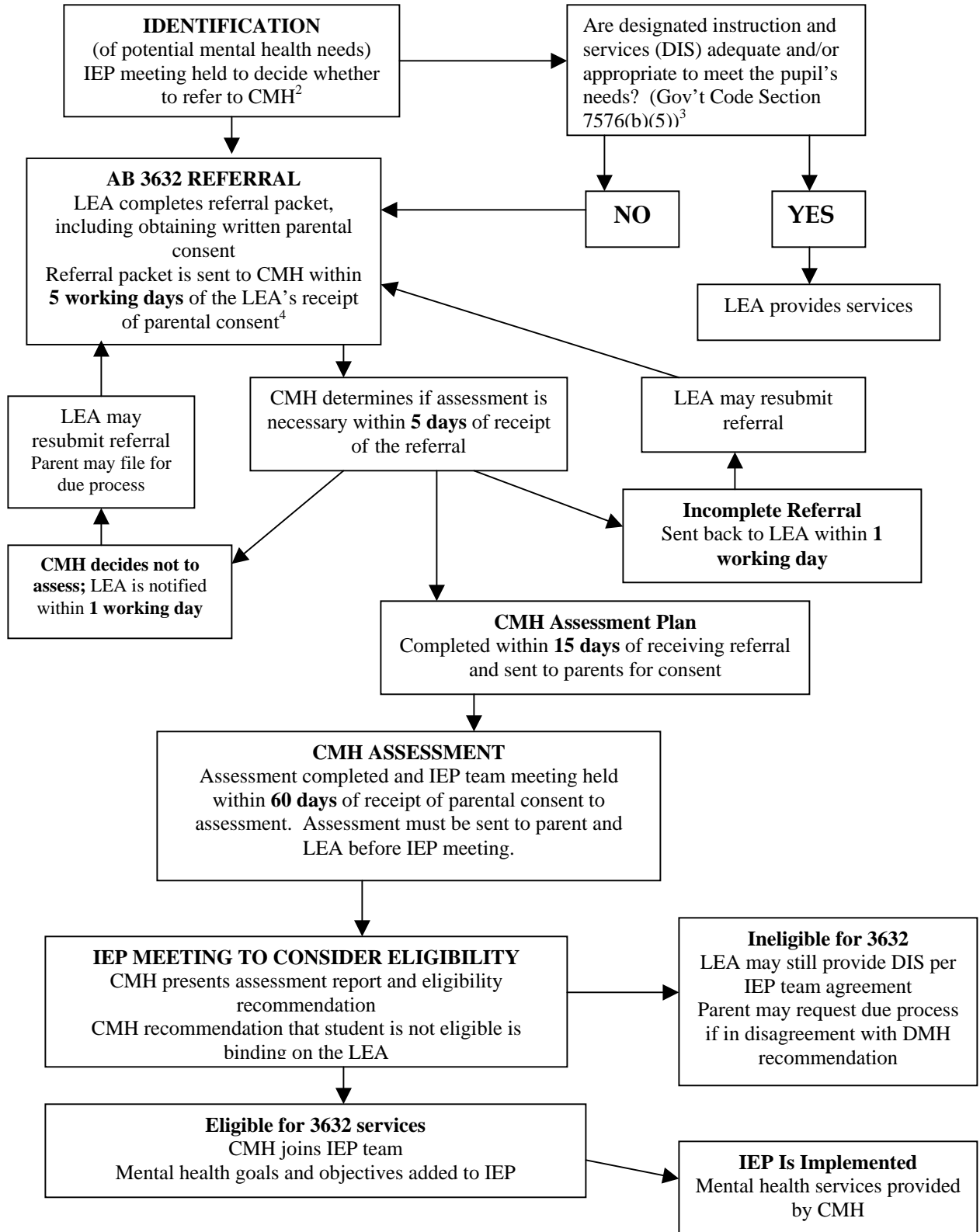
<sup>2</sup>A pupil may be referred to county mental health prior to his or her being deemed eligible for special education services if the local education agency has reason to believe the he or she is an individual with exception needs and is suspected of needing mental health services, and if the following conditions are met:

1. The local education agency has obtained written parental consent for the referral.
2. As determined using educational assessments, the pupils' functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.
3. The pupil has emotional or behavioral characteristics that
  - Are observed by qualified educational staff in educational and other settings, as appropriate
  - Impede the pupil from benefiting from educational services
  - Are significant as indicated by their rate of occurrence and intensity
  - Are associated with a condition that cannot be described solely as a social maladjustment or a temporary adjustment problems and cannot be resolved with short-term counseling

In addition to the above criteria, counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral and other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(Gov't Code §§ 7576 (d) and 7576(b)(2) – (4))

**FLOWCHART TWO**  
**Referral for AB 3632<sup>1</sup> Mental Health Services**  
**Student is Eligible for Special Education Service**



## Notes for Flowchart Two

<sup>1</sup>In some counties AB 3632 mental health services are referred to as AB 2726 or Gov't Code 26.5 services.

<sup>2</sup>To qualify for 3632 mental health services a pupil may be eligible for special education services under any eligibility criteria unless the request is for residential services. In that situation the pupil must be eligible for special education under the "emotional disturbance" criteria. In addition, the pupil must need mental health services in order to benefit from his or her special education program (Gov't Code §§ 7572 and 7572.5). There is one exception where the pupil may be referred to county mental at the same time that he or she is being initially assessed for special education services. See Flowchart One (Gov't Code §§ 7576 (d); 7576(b)(2) – (4)).

<sup>3</sup>Prior to the referral to county mental health the IEP team must determine whether the local education agency has appropriate counseling and guidance services, psychological services, parent counseling and training, social work or behavior intervention services that will meet the pupil's mental health needs. If the team determines that these services do not meet the educational needs of the pupil, or in cases where these services are clearly inadequate or inappropriate to meet the educational needs of the pupil, the team must document which of these services were considered and why they were determined to be inadequate or inappropriate (Gov't Code § 7576 (b) (5)).

<sup>4</sup>If referring a pupil to county mental health the local educational agency or the IEP team shall provide the following documentation:

1. Copies of the IEP, all current assessment report and other relevant information, including reports completed by other agencies.
2. A copy of the parent's consent
3. As determined using educational assessments, the pupils' functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.
4. A description of the counseling, psychological, and guidance services, and other interventions that have been provided to the pupil, as provided in the IEP of the pupil, including the initiation, duration and frequency of these services, or an explanation of the reasons a service was considered for the pupil and determined to be inadequate or inappropriate to meet his or her educational needs.
5. A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the following criteria:
  - Are observed by qualified educational staff in educational and other settings, as appropriate
  - Impede the pupil from benefiting from educational services
  - Are significant as indicated by their rate of occurrence and intensity
  - Are associated with a condition that cannot be described solely as a social maladjustment or a temporary adjustment problems and cannot be resolved with short-term counseling.

(Gov't Code § 7576 (c))

**SOME ACRONYMS AND ABBREVIATIONS**  
**USED IN EDUCATION**

AB	Assembly Bill (California State Assembly)
AB 3632	The bill established California's process for coordinating the delivery of services to children eligible for special education from education, mental health and California Children's Services; also referred to as Chapter 26.5, AB 2627, SB 1895.
AB 490	State legislation which created certain specific rights to education for children and youth in foster care.
ADA	Americans with Disabilities Act – federal law which prohibits the discrimination of persons with disabilities and allows claims for damages.
ADA	Average Daily Attendance
ADD/ADHD	Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder
AP	Advanced Placement
APE	Adapted Physical Education
API	Academic Performance Index
AUT	Autism
AYP	Adequate Yearly Progress
BIP	Behavior Intervention Plan
CA	Chronological Age
CAC	California Advisory Committee
CAHSEE	California High School Exit Exam
Cal.Ed.Code	California Education Code
CASA	Court Appointed Special Advocates
CCR	California Code of Regulations

CCS	California Children Services
CDE	California Department of Education
CDS	Community Day Schools
CELDT	California English Language Development Test
CFR	Code of Federal Regulations
COE	County Office of Education
DB	Deaf-Blind
DDS	Department of Developmental Services
DIS	Designated Instructional Service
DMH	Department of Mental Health
ED	Emotional Disturbance (formerly Serious Emotional Disturbance)
ELL/EL	English Language Learner/English Learner
ESY	Extended School Year
FAA/FBA	Functional Analysis Assessment/Functional Behavioral Assessment
FAPE	Free and Appropriate Public Education
FEP	Full English Proficient
FERPA	Family Educational Rights and Privacy Act
GED	General Education Diploma
HI	Hearing Impairment
IDEIA	Individuals with Disabilities Education Improvement Act of 2004 – the primary federal special education statute (formerly referred to as IDEA, EACHA, EHA, and PL 94-142)
IEP	Individualized Education Program
IFSP	Individualized Family Service Plan



ITP	Individualized Transition Plan
IWEN	Individual with Exceptional Needs
LCI	Licensed Children's Institution
LD/SLD	Learning Disability/Specific Learning Disability
LEA	Local Education Agency
LRE	Least Restrictive Environment
LSS	Language and Speech Services
MA	Mental Age
MR	Mental Retardation
MTU	Medical Therapy Unit
NCLB	No Child Left Behind
NPS/NPA	Non-Public School/Non-Public Agency
OCR	Office of Civil Rights (federal)
OHI	Other Health Impairment
OI	Orthopedic Impairment
OSEP	Office of Special Education Programs (federal)
OT	Opportunity Transfer
OT/PT	Occupational Therapy/Physical Therapy
PTSA	Parent Teacher Student Association
ROC/ROP	Regional Occupational Center/Regional Occupational Program
RS/RSP	Resource Specialist/Resource Specialist Program
RTI	Responsiveness to Intervention
SARB	School Attendance Review Board

SB	Senate Bill (California State Senate)
SDC	Special Day Class
SEA	State Education Agency
Section 504	Section 504 of the Rehabilitation Act of 1973 – the federal statute prohibiting discrimination on the basis of disability in programs receiving federal funding.
SELPA	Special Education Local Plan Area
SLI	Speech or Language Impairment
SST	Student Study Team/Student Success Team
TBI	Traumatic Brain Injury
USC	United States Code
VI	Visual Impairment

