



Fresno Unified School District

# **Special Education Policy and Procedures**

**2014-15**



*Each child in public school in California is a general education student first. To realize this vision each student who receives special education services should be served in the least restrictive environment with access to the best first instruction in the Common Core State Standards. All adults in the educational system are responsible for the education and support of all students, regardless of need. Our mission is to provide early interventions and appropriate Pre-Kindergarten thru 12<sup>th</sup> grade education that prepares all students for a seamless transition to adult life with the expectation that all students will learn and become productive citizens*

## **The Fresno Unified School District Policy and Procedure Handbook**

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Special Education Procedural Handbook 2013

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## **IDENTIFICATION, REFERRAL, AND ASSESSMENT**

### **1.1 PURPOSE AND SCOPE**

An individual with a disability is a student who is identified by an individualized education program team, or if applicable an individualized family service plan, if applicable, as a child with a disability under both federal and state law, and who requires instruction and services which cannot be provided with modification of the regular school program in order to ensure that the student receives a free appropriate public education (FAPE), and who comes within the following age categories:

- Younger than three years of age and identified by the local educational agency as requiring intensive special education and services, as defined by the board.
- Between the ages of three to five years, inclusive, and identified by the local educational agency pursuant to Education Code section 56441.11.
- Between the ages of five and 18 years, inclusive.
- Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards or has not graduated from high school with a regular high school diploma.

Individuals with suspected disabilities and meeting the definition under 56026 will be identified and referred for assessment. Each individual will receive a full and individual multidisciplinary evaluation in all areas of suspected disability in order to determine eligibility and identify educational needs. (Ed. Code, §§ 56026(a) and (b).)

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

### **1.2 IDENTIFICATION**

#### **1.2.A Child Find**

The Special Education Local Planning Area (SELPA) will actively and systematically seek out all individuals with disabilities including children with disabilities who are homeless children or are wards of the state and children with disabilities attending private schools.

Child Find activities may include but not be limited to:

- A comprehensive screening program, including health, vision, hearing;



- Distribution of written information, including brochures and pamphlets describing the referral procedure;
- Public awareness campaign, including public service announcements;
- Annual notices to local newspapers;
- Consultation with representatives of private schools, including religious schools on how to carry out activities to identify children with suspected disabilities;
- Coordination with preschools, Head Start and other child care facilities;
- Communication with hospitals, pediatricians, obstetricians, and other health professionals;
- Coordination with parent resource centers and support groups;
- Presentations to local professional groups and organizations established to inform and/or to serve culturally diverse populations;
- Coordination with activities of the SELPA Community Advisory Committee (CAC); and,
- Coordination with school site procedures, including referrals from the school site student intervention teams (e.g., Student Success Teams, etc.).

#### **1.2.B Student Success Team (SST)**

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

Although specialists, such as school psychologists, speech/language pathologists, and resource specialists may be involved in the SST process, the SST is not a special education function and as such is not subject to the associated restrictions and timelines. However, when a referral for special education assessment is made to an SST, the SST is subject to the 15-day timeline for development of an assessment plan. Additionally, all SSTs should be aware of the District's Child Find obligations, and should refer students for a special education assessment if a student is suspected of having a disability and in need of special education. Thus, a referral for a special education assessment may be appropriate as a result of an SST meeting.

### **1.3 REFERRAL PROCESS**

### **1.3.A Source of Referrals**

Referrals for assessment to determine eligibility for special education and related services may come from teachers, parents, agencies, appropriate professional persons, and from other members of the public.

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

### **1.3.B Referral Procedure**

- Referrals for assessments to determine eligibility for special education and related services will be made to the school site principal or designee at the child's school of residence.
- Referrals may be processed through the school site SST or other student intervention team to review the referral and document interventions tried prior to referral.
- All requests for assessments will be submitted in writing. If a parent makes the request verbally, the principal or designee will request that the parent make the request in writing and if the parent is unable to make the request in writing, the principal or designee shall assist the parent in making the request in writing.
- If the referral is not coming from the parent, the school site administrator or designee will review the referral. If the information is incomplete, the referral source will be contacted to request additional information. If the information is complete and appropriate, the school site administrator or designee will initiate the assessment process, including notification of parent. If determined that an assessment is required, an assessment plan will be developed, within 15 days of receipt of the referral.
- No assessment will be conducted without written parent consent.

### **1.3.C Inappropriate Referrals**

If, after reviewing all relevant information, the SST, the assessment planning team or District consider the referral inappropriate, the parents must receive a prior written notice which includes the following:

- A description of the action proposed or refused by the agency;
- An explanation of why the agency proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;



- A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- A description of other factors that is relevant to the agency's proposal or refusal.

The notice required must be:

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

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

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

(34 C.F.R. 300.503.)

#### **1.4 PARENTAL CONSENT**

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

The District must obtain informed consent from the parent. The “parent” is defined as follows:

- A biological or adoptive parent of a child;
- A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order;
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child;





- An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; and/or
- A surrogate parent.

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

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

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

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

#### **1.4.A Request for Initial Evaluation**

Either a parent of a child or the District may initiate a request for an initial evaluation to determine if the child is a child with a disability.

- The initial evaluation shall assess the child in all areas of suspected disability to determine whether the child is a child with a disability. The assessment and IEP team meeting must be held within 60 calendar days of receiving parental consent for the evaluation.
- Exception: The relevant time frame shall not apply to a District if:
  - A child enrolls in a school served by the LEA after the relevant time frame has begun and prior to a determination by the child’s previous District as to whether the child is a child with a disability, but only if the subsequent District is making sufficient progress to ensure prompt completion of the evaluation, and the parent and the subsequent LEA agree to a specific time when the evaluation will be completed; or
  - The parent of a child repeatedly fails or refuses to produce the child for the evaluation. (Ed. Code § 56302.1)

#### 1.4.B Parental Consent for Initial Evaluation

- The District shall obtain informed consent from the parent of a child before conducting the initial evaluation.
  - If the parent does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, the District may, but is not required to, file for a due process hearing to override lack of parent consent. Further, if the District does not pursue the evaluation, it does not violate its obligations.
  - Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.
- Consent for Services: The District is responsible for making a FAPE available to a child with a disability and shall seek to obtain informed consent from the parent of a child before providing special education and related services to the child.
- Absence of Consent for Initial Services: If the parent of a child does not provide consent to the initial provision of services, the **District cannot use the consent-override procedures by filing for a due process hearing in order to force** the provision of the initial special education and related services.
- Effect on District Obligation: If the parent of a child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent:
  - The District shall not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide such child with the special education and related services for which the LEA requests such consent; and
  - The District shall not be required to develop an IEP for the special education and related services for which the LEA requests such consent.
- For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:
  - Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
  - The rights of the parents of the child have been terminated in accordance



with state law; or

- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. (34 C.F.R. § 300.300(a)(2).)

## **1.5 ASSESSMENT PROCESS**

### **1.5.A Initial Assessments**

A comprehensive and individual assessment shall be conducted for each child being considered for special education and related services to determine if the child meets eligibility criteria as a child with a disability and to determine the educational needs of the child.

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

However, an IEP required as a result of an assessment of a student shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each LEA's school calendar when the referral has been made 30 days or less prior to the end of the regular school year. (Ed. Code, § 56344(a).) In the case of school vacations, the 60-day timeline shall recommence on the date that student schooldays reconvene. (Ed. Code, § 56344(a).) A meeting to develop an IEP for a student shall be conducted within **30 days** of a determination that the student needs special education and related services. (34 C.F.R. § 300.323(c)(1); Ed. Code, § 56344(a).)

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

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

The results of the assessment will be used by the child's IEP team to develop an appropriate IEP.

### **1.5.B Assessment Plan**

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

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

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

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

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

For initial assessments only, if the child is a ward of the state and is not residing with the child's parent, the District is not required to obtain informed consent from the parent of a child for the assessment to determine whether the child is an individual with exceptional needs if:

- Despite reasonable efforts to do so, the District cannot discover the whereabouts of the parent of the child.
- The rights of the parent have been terminated in accordance with state law.
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for initial



assessment has been given by an individual appointed by the judge to represent the child. (34 C.F.R. § 300.300(a)(2).)

If the child is a ward of the state and is not residing with his or her parent, the agency shall make reasonable efforts to obtain the informed consent from the parent of the child, as defined in California Education Code section 56028, for an initial assessment to determine whether the child is an individual with exceptional needs. (Ed. Code, § 56321.1.)

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

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an assessment for eligibility for special education and related services. (Ed. Code, § 56321(f).)

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

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

No assessment will be conducted unless the written consent of the parent is obtained prior to the assessment. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. (Ed. Code, § 56043(c)(4).) Assessment may begin immediately upon receipt of the consent. (Ed. Code, § 56043(c)(4).)

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

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



If a parent refuses to sign permission for an assessment, the school District may file for a mediation/due process hearing. If the District prevails in a due process hearing, the assessment can be conducted without parent consent. (Ed. Code, § 56321(c)(2).) If the District decides not to file for a due process hearing, it does not violate its obligations under the IDEA. (34 C.F.R. § 300.300(a); Ed. Code, § 56321(c)(3).)

### **1.5.C Assessment Requirements**

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

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

appropriate. For students with residual vision, a low vision assessment shall be provided.

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

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

#### **1.5.D Assessment of African-American Children under Larry P Decision**

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

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

#### **1.5.E Assessment Report**

The personnel who assess the student shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but

not be limited to, all the following:

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

If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the assessment report.

## **1.6 ELIGIBILITY CRITERIA**

Upon completion of the administration of tests and other evaluation materials, the determination of whether the student is an individual with a disability shall be made by the IEP team, including the parents of the child and assessment personnel. The IEP team will take into account all the relevant material which is available on the student. No single score or product of scores shall be used as sole criterion for the decision. Three primary factors must be considered in making this determination:

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

### **1.6.A Federal Categories of Disabilities**

- Autism





- Deaf-Blindness
- Deafness
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disability
- Multiple disabilities
- Orthopedic Impairment
- Other Health Impaired
- Specific Learning Disability
- Speech and Language
- Traumatic Brain Injury
- Visual Impairment

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

Students whose educational performance is adversely affected by a suspected or diagnosed attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD) and who demonstrate a need for special education and related services by meeting eligibility under one of the above thirteen categories, such as Specific Learning Disability, Other Health Impaired or Emotional Disturbance, are entitled to special education and related services. (Ed. Code, § 56339(a).) Therefore, when assessing a student with possible ADD/ADHD, it is prudent to assess all areas of suspected disability and analyze, at a minimum, SLD, OHI, and ED as possible qualifying eligibility categories.

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

*Refer to Chapter 2 in this Procedural Handbook for discussion regarding specific eligibility criteria.*

#### **1.6.B Special Rule for Eligibility Determination**

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



- Lack of appropriate instruction in reading, including the essential components of reading instruction;
- Lack of instruction in math; or
- Limited English proficiency.
- If the child does not otherwise meet the eligibility criteria listed in the 34 C.F.R. § 300.8(a), which are listed in 1.6.A above. (Ed. Code, § 56329(a)(2).)

#### **1.6.C Evaluations before Change in Eligibility**

- The District shall evaluate a child with a disability before determining that the child is no longer a child with a disability, except as provided below.
- Exception: The evaluation shall not be required before the termination of a child's eligibility due to graduation from secondary school with a regular high school diploma, or due to exceeding the age eligibility for a FAPE.
- Summary of Performance: For a child whose eligibility terminates due to graduation from secondary school with a regular high school diploma, or due to exceeding the age eligibility for a FAPE, the District shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals, and prior written notice regarding exit from special education due to earning a regular high school diploma or aging out, as the case may be.

### **1.7 REASSESSMENTS**

#### **1.7.A Three-Year Reassessments**

A reassessment of a student shall be conducted if the District determines that the educational or related services needs of the student, including improved academic achievement and functional performance, warrant a reassessment, or if the student's parents or teacher requests a reassessment. (Ed. Code, § 56381(a)(1).) A reassessment of a student shall occur not more frequently than once a year, unless the parent and the LEA agree otherwise in writing, and **shall** occur at least once every three years, unless the parent and the LEA agree in writing, that a reassessment is unnecessary. (Ed. Code, § 56381(a)(2).)

As part of a reassessment, the IEP team and other qualified professionals, as appropriate, shall review the following:

- Existing data including evaluations and information provided by the parents of the student;
- Current classroom-based assessments and observations; and
- Observations by teachers and related service providers.



On the basis of that review, and input from the student's parents, the team will identify what additional data, if any, are needed to make a determination, including:

- Whether the student continues to have a disability;
- The present levels of performance and educational needs of the student;
- Whether the student continues to need special education and related services; and
- Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the child and to participate as appropriate in the general curriculum. (Ed. Code, § 56381(b).)

If the team determines that additional tests or other evaluation material is needed to provide the necessary data identified above, the District will administer tests and other assessment materials as may be needed. (Ed Code, § 56381(c).)

If the team determines no additional data is needed, the District will notify the parents of that determination and the reason for it and the right of the parents to request an assessment. (Ed. Code, § 56381(d).)

The District is not required to conduct the assessment unless requested to do so by the student's parents. (Ed. Code, § 56381(d).)

#### **1.7.B State and Federally Mandated Behavioral Assessments**

Following is a description of the behavioral assessment that is required for specific students under state and federal regulations. A functional behavioral assessment (FBA) is required by federal law and is part of the disciplinary process.

##### **Functional Behavioral Assessment (FBA)**

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

- If, after a manifestation determination, the IEP team makes the determination that the conduct is a manifestation of the student's disability and the student does not have a behavior intervention plan. (34 C.F.R. § 300.530(f).)
- At any time an IEP team believes that such an assessment is warranted.

Following the FBA, the IEP team will develop a behavior intervention plan, if



deemed appropriate. This plan shall be part of the student's IEP and shall specify environmental instructional changes and other techniques and strategies, including positive behavioral interventions, strategies and supports.

In accordance with Assembly Bill 110, California's 2013–2014 budget bill, the California Department of Education (CDE) is required to provide oversight of, and technical assistance and monitoring to, local educational agencies regarding changes to the requirements related to the identification and provision of behavioral intervention services.

### **Ongoing Requirements for Completing Behavioral Emergency Reports**

California law continues to require that educational agencies complete a BER when emergency interventions are used for a student with a disability, or if serious property damage occurs. Pursuant to AB 86, this requirement, previously established in California *Code of Regulations*, Title 5, Section 3052(i)(5) through (i)(8), is now located in *EC* Section 56521.1, subsections (e) through (h). Otherwise, this requirement is essentially unchanged:

*EC* § 56521.(e) To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one school day if an emergency intervention is used or serious property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual with exceptional needs.

The behavioral emergency report shall include all of the following:

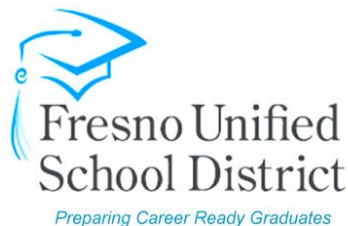
- The name and age of the individual with exceptional needs.
- The setting and location of the incident.
- The name of the staff or other persons involved.
- A description of the incident and the emergency intervention used, and whether the individual with exceptional needs is currently engaged in any systematic behavioral intervention plan.
- Details of any injuries sustained by the individual with exceptional needs, or others, including staff, as a result of the incident.
  - All behavioral emergency reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator.



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- If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an individualized education program (IEP) team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting a functional behavioral assessment, not developing an interim plan, or both.
- If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention plan.

(APPENDIX A for BER form)



**BEHAVIORAL EMERGENCY  
INTERVENTION REPORT  
For Special Education Students**

## ROUTING SLIP

Student Name: \_\_\_\_\_ Student Number: \_\_\_\_\_  
 Date of Incident: \_\_\_\_\_ Day: ☐M ☐T ☐W ☐Th ☐F Incident Start Time: \_\_\_\_\_

Provide name of person to whom the incident was reported, date, and initial of person reporting.

Who Must Be Notified Immediately	Name of person notified	Date/Time person was notified	Initials of reporting person
<input type="checkbox"/> Administrator	_____	_____	_____
<input type="checkbox"/> Parent (within 24 hours)	_____	_____	_____
<input type="checkbox"/> Nurse (if suspected injuries)	_____	_____	_____
<input type="checkbox"/> Other:	_____	_____	_____

Does student have a current FBA or FAA? ☐ Yes ☐ No  
 (Behavior Support Plan does not qualify)

If Yes, within 2 days, are revisions needed to FBA or FAA? ☐ Yes ☐ No

- ☐ Date IEP scheduled \_\_\_\_\_  
☐ Parent declined IEP and team will meet to review FBA or FAA.

If No, within 2 days, call to schedule IEP

- ☐ Parent was offered on IEP – date schedule for \_\_\_\_\_  
 Date  
☐ Parent declined IEP and team will meet to discuss need for FBA or FAA  
 on the following date: \_\_\_\_\_

FBA=Level II Support Plan

FAA=Level III Support Plan

Date

\_\_\_\_ Behavioral Emergency Intervention Report Completed.  
 \_\_\_\_ Restraint Box checked on Daily Evaluation sent home (if in Intervention class).  
 \_\_\_\_ Behavioral Emergency Intervention Report reviewed by Administrator/Designee/School Psychologist.  
 \_\_\_\_ Behavioral Emergency Intervention Report sent home to parent/guardian within 48 hours.  
 \_\_\_\_ Sent original and one copy of this page and the BEIR report to Special Education office.  
 \_\_\_\_ Copy filed to School-Based file.  
 \_\_\_\_ Document date of IEP or Conference summary in the Continuing Case Record in School Based File.

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## BEHAVIORAL EMERGENCY INTERVENTION REPORT

DEFINITION OF EMERGENCY: "...unpredictable, spontaneous behavior which poses clear and present danger of physical harm to the individual or others and which cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior" i.e. team control (California Code of Regulations; Title 5, Article 5, 3052 (i))

All persons involved complete form collaboratively and submit report within one (1) day to Site Administrator.

**Parent should receive copy within 48 hours.**

Name of Student: \_\_\_\_\_ D.O.B.: \_\_\_\_\_

Date of Incident: \_\_\_\_\_ School/District Fresno Unified School District

Setting and Location of the Incident: \_\_\_\_\_

Name of Staff (or other person (s) involved: \_\_\_\_\_

Description of the Incident: (continued pg 2) \_\_\_\_\_

Description of Injuries (if any) sustained by student or others, including staff: \_\_\_\_\_

Is there a current Behavior Plan being used? ☐ Yes ☐ No

Date parent notified (within 1 day) \_\_\_\_\_ By whom: \_\_\_\_\_

Person(s) completing form: \_\_\_\_\_ Position: \_\_\_\_\_  
 \_\_\_\_\_ Position: \_\_\_\_\_

If there is NOT a Behavior Intervention Plan:

Schedule an IEP within 2 days to review the emergency report and determine the necessity for an FAA and to determine the necessity for an interim BIP. The IEP team can document reasons for not conducting the assessment and/or not developing interim plan. \_\_\_\_\_

Meeting Date

If there is a Behavior Intervention Plan

The IEP team should review the BIP and determine if the incident constitutes a need to modify the plan.

Meeting Date \_\_\_\_\_

## BEHAVIORAL EMERGENCY INTERVENTION REPORT

Student: \_\_\_\_\_

Date of incident: \_\_\_\_\_

**DESCRIPTION OF INCIDENT:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Administrator or Designee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of School Psychologist or  
staff who reviewed with Psychologist: \_\_\_\_\_

Date: \_\_\_\_\_





## **SPECIAL EDUCATION ELIGIBILITY CRITERIA**

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## **SPECIAL EDUCATION ELIGIBILITY CRITERIA AND IEP PLANNING GUIDELINES**

### **2.1 PURPOSE AND SCOPE**

The purpose of this chapter is to define the specific processes and procedures involved in determining a student's need to receive special education and related services. It is not meant to determine instructional setting or placement. Those determinations are made by the IEP team based on identified student needs.

The determination of eligibility must be based on the findings of a multi-disciplinary assessment where no single test or single observer is the sole determining factor. The IEP team must assure that the student's academic needs cannot be met through modifications of the regular education program and that the individual with a disability, even with corrections and modifications within the general education environment, needs special education. The IEP team must also assure that all areas of suspected disability have been assessed. There shall be further documentation that race, cultural differences, economic disadvantage, language background, or lack of appropriate instruction in math or reading are not primary contributing factors to the results of the assessment. The IEP team will determine eligibility, and if the student is eligible, the IEP team will develop present levels of academic and functional performance, identify areas of need and develop goals that address each area of need. Goals will be supported by appropriate services in the least restrictive environment (LRE), as determined by the IEP team for the child to receive educational benefit.

### **2.2 PRIOR TO REFERRAL FOR SPECIAL EDUCATION**

The Student Success Team (SST), or the referring instructional personnel, shall document that supports and accommodations of the regular program have been attempted and that the results of those supports and accommodations have not been effective in meeting the student's need for an appropriate education. Students shall be referred for special education and related services only after the resources of the general education program have been considered and, where appropriate, utilized. (Ed. Code § 56303.) The SST is a general education function. It is a process of reviewing individual student concerns pertaining to educational performance and planning instructional interventions to be implemented in the general education classroom.

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

### **2.3 REFERRAL**

All referrals for special education and related services shall initiate a response from the District, consistent with the law. When a verbal referral is made, staff of the school district shall direct the individual to make the request in writing, and shall assist the individual to make the request in writing if the individual requests such assistance.

All school staff referrals shall be written and include:

- A brief reason for the referral; and
- Documentation of the resources of the regular education program that have been considered, modified, and when appropriate, the results of intervention. This documentation shall not delay time lines for completing the assessment plan or assessment. (5 Cal. Code Regs. § 3021(b)(1) and (2).)

### **2.4 ASSESSMENT**

Pursuant to Ed. Code § 56327, the personnel who assess the student shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all of the following:

- Whether the student may need special education and related services;
- The basis for making the determination;
- The relevant behavior noted during the observation of the student in an appropriate setting;
- The relationship of that behavior to the student's academic and social functioning;
- The educationally relevant health and development and medical findings, if any;
- For students with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services;
- A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and
- The need for specialized services, materials, and equipment for the students with low incidence disabilities, consistent with District guidelines established pursuant to Education Code section 56136.

Assessments shall be administered by qualified personnel who are competent in both the oral or sign language skills and written skills of the individual's primary



language or mode of communication and have a knowledge and understanding of the cultural and ethnic background of the student. If it clearly is not feasible to do so, an interpreter must be used, and the assessment report shall:

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

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

## **2.5 ELIGIBILITY CRITERIA**

A student qualifies as an individual with exceptional needs if the results of the assessment demonstrate that the degree of the student's impairment requires special education and related services. The decision as to whether or not the assessment results demonstrate that the degree of the student's disability requires special education shall be made by the IEP team, including assessment personnel. The IEP team shall take into account all the relevant information that is available on the student. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the student's eligibility for special education. (Ed. Code, §§ 56026, 56320, 56341(d); 5 Cal. Code Regs. § 3030 (a)-(j).)

Eligibility Criteria are separated into thirteen federal classifications. Students need only meet eligibility under one of these federal classifications. (34 C.F.R., § 300.8.)

### **2.5.A Three Primary Factors Must Be Considered**

Three primary factors must be considered in making this determination:

- Does the student have a disability?
- Does the severity of the disability have an adverse effect on the student's educational performance?
- Does the student need special education and services?

### **2.5.B Special Rule for Eligibility Determination**

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



- Lack of appropriate instruction in reading, including the essential components of reading instruction;
- Lack of instruction in math; or
- Limited English proficiency

(Ed. Code, §§ 56329(a)(2), 56333-56339; 5 Cal. Code Regs. § 3030; 34 C.F.R. § 300.6.)

### **2.5.C Evaluations before Change in Eligibility**

- FUSD shall evaluate a student with a disability before determining that the student is no longer in need of special education services.
- Exception: The evaluation shall not be required before the termination of a student's eligibility due to graduation from high school with a regular diploma, or due to exceeding the age eligibility for a FAPE. However a Prior Written Notice is required.

## **2.6 SEVERE DISABILITIES AND NON-SEVERE DISABILITIES**

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

“Severely disabled” means individuals with exceptional needs who require intensive instruction and training in programs serving students with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance, severe intellectual disability, and those individuals who would have been eligible for enrollment in a development center for handicapped students under Chapter 6 (commencing with section 56800) of this part, as it read on January 1, 1980. (Ed. Code, § 56030.5.)

## **2.7 ELIGIBILITY CATEGORIES**

### **2.7.A Autism (AUT): A severely disabling condition**

Definition: (5 Cal. Code Regs. § 3030.)

A student exhibits any combination of the following autistic-like behaviors to include, but not be limited to:

- An inability to use oral language for appropriate communication;
- A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood;
- An obsession to maintain sameness;
- Extreme preoccupation with objects or inappropriate use of objects or both;

- Extreme resistance to controls;
- Displays peculiar motoric mannerisms and mobility patterns; and
- Self-stimulating, ritualistic behavior.

The federal regulations define Autism as a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. (34 C.F.R. § 300.8(c)(1).)

#### **IMPLEMENTATION PROCEDURES**

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

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

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

Definition:

A student has a hearing and visual impairments, the combination of which causes severe communication, developmental, and educational problems. (5 Cal. Code Regs. § 3030(b).)

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

#### **IMPLEMENTATION PROCEDURES**

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

- The effect of the disability on communication, social, emotional, physical, educational, and other areas of development;
- Current audiological measures of auditory functioning which documents a hearing loss, with and without amplification, as determined by a qualified audiologist;
- Performance which reveals significant dysfunction directly related to the physical impairment;
- A written report of an eye examination by either a physician or an optometrist which states that the student's central visual acuity is 20/200 or less.

### **2.7.C Deafness (D): A severely disabling condition.**

#### Definition:

A student has a hearing impairment, whether permanent or fluctuating, which impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination. (5 Cal. Code Regs. § 3030(a).)

Under the federal regulations, deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's education performance. (34 C.F.R. § 300.8(c)(3).)

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

#### **IMPLEMENTATION PROCEDURES**

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

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

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

#### Definition:

A student has a hearing impairment, whether permanent or fluctuating, which



impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination. (5 Cal. Code Regs. § 3030(a).)

Under the federal regulations, a hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. (34 C.F.R. § 300.8(c)(5).)

Hard of hearing: This hearing impairment demonstrates a mild to severe hearing loss, whether permanent or fluctuating, and adversely affects an individual's expressive and/or receptive communication, developmental growth, and/or educational performance and makes difficult, but does not preclude, the processing of linguistic information through hearing, with or without amplification.

#### **IMPLEMENTATION PROCEDURES**

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

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

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

##### **Definition:**

A student has significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affect a student's educational performance. (5 Cal. Code Reg. § 3030(h).

Under the federal regulations, an intellectual Disability means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(6).)

#### **IMPLEMENTATION PROCEDURES**

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

- The determination of a significant discrepancy (minimum of two standard deviations) between chronological age and ability level, as determined by a credentialed school psychologist;



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

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

**2.7.F Multiple Disability (MD): A severely disabling condition.**

Definition:

"Multiple disabilities" means concomitant impairments (such as mental retardation, blindness, intellectual disability, orthopedic impairment, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 C.F.R. § 300.8(c)(7).) This category of disability is from the federal regulations.

### **IMPLEMENTATION PROCEDURES**

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

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

##### **Definition:**

A student has a severe orthopedic impairment which adversely affects the student's educational performance. Such orthopedic impairments include impairments caused by congenital anomaly, impairments caused by disease, and impairments from other causes. (5 Cal. Code Regs. § 3030(e).)

Under the federal regulations, an orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, poliomyelitis, bone tuberculosis, etc.) and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 C.F.R. § 300.8(c)(8).)

### **IMPLEMENTATION PROCEDURES**

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

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



- Tumors, including but not limited to, bone tumors or bone cysts.
- Developmental diseases, including but not limited to, coxaplane or spinal osteochondritis.
- Other conditions, including but not limited to, fragile bones, muscular atrophy, muscular dystrophy, Perthe's disease, or juvenile rheumatoid arthritis.

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

##### Definition:

A student has limited strength, vitality or alertness, due to chronic or acute health problems which adversely affects a student's educational performance. In accordance with section 56026(e) of the Education Code, such physical disabilities shall not be temporary in nature as defined by section 3001(v). (5 Cal. Code Regs. § 3030(f).)

Under the federal regulations, other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

- Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and Tourette Syndrome; and
- Adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(9).)

##### IMPLEMENTATION PROCEDURES

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

- The school nurse shall provide the IEP team with specific medical information related to physical limitations and their projected duration.
- Qualified assessors shall include in reports the results of observations within the general education program.

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

##### Definition:

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



- An inability to learn which cannot be explained by intellectual, sensory, or health factors.
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations.
- A general pervasive mood of unhappiness or depression.
- A tendency to develop physical symptoms or fears associated with personal or school problems.

(5 Cal. Code Regs. § 3030(i).)

Emotional disturbance, under the federal regulations, is defined as follows:

- The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
  - An inability to learn that cannot be explained by intellectual, sensory, or health factors.
  - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
  - Inappropriate types of behavior or feelings under normal circumstances.
  - A general pervasive mood of unhappiness or depression.
  - A tendency to develop physical symptoms or fears associated with personal or school problems.
- The term includes schizophrenia.

The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance. (34 C.F.R. § 300.8(c)(4).)

#### **IMPLEMENTATION PROCEDURES**

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

- A report written by a credentialed school psychologist documenting the presence of a serious emotional disturbance. The report shall include a summary of previous and current assessments of educational and emotional status, educational history, school observations and home observations, if appropriate, health and developmental history, and attempted interventions.



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- Eligibility as emotional disturbance for purposes of educational placement and/or services shall not be determined solely on the basis of any non-educational evaluation (including evaluations by psychiatrists or clinical psychologists).
- The IEP Team must document the following in order to find that a student has a serious emotional disturbance:
  - The disturbance is of such severity that the student's educational needs cannot be met in the regular classroom.
  - The presenting educational difficulties are not the result of social maladjustment. (Ed. Code, § 56026(e).)
  - The presenting educational difficulties are not the result of a behavior disorder.
  - The behavior has been observed for a period of time longer than six months.
  - The inability to learn cannot be explained by intellectual or sensory factors or by limited school experience or poor attendance.

### Additional considerations:

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

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

#### Definition:

A specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. The term "specific learning disability" includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. That term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

In determining whether a student has a specific learning disability as defined above, the IEP team is not required to take into consideration whether a student has a severe discrepancy between achievement and intellectual disability in oral expression, listening comprehension, written expression, basic reading skills,



reading comprehension, mathematical calculation, or mathematical reasoning.

In determining whether a student has a specific learning disability, the IEP team may use a process that determines if the student responds to scientific, research-based intervention as part of its assessment procedures.

((Ed. Code, § 56337; Ed. Code, § 56337.5(a).)

A student who is assessed as being dyslexic and meets eligibility criteria specified in section 56337 and subdivision (j) of section 3030 of Title 5 of the California Code of Regulations for the federal Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) category of specific learning disabilities is entitled to special education and related services. (5 Cal. Code Regs. § 3030(j).)

A student has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, and has a severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in section 56337(a) of the Education Code. For the purpose of section 3030(j):

- Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, and cognitive abilities including association, conceptualization and expression.
- Intellectual ability includes both acquired learning and learning potential and shall be determined by a systematic assessment of intellectual functioning.
- The level of achievement includes the student's level of competence in materials and subject matter explicitly taught in school and shall be measured by standardized achievement tests.
- The decision as to whether or not a severe discrepancy exists shall be made by the individualized education program team, including assessment personnel in accordance with Education Code section 56431(d), which takes into account all relevant material which is available on the student. No single score or product of scores, test, or procedure shall be used as the sole criterion for the decisions of the individualized education program team as to the student's eligibility for special education. In determining the existence of a severe discrepancy, the individualized education program team shall use the following procedures:
  - When standardized tests are considered to be valid for a specific student, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and a standard deviation of 15, the achievement test score and the ability test score to be compared;

second, computing the difference between these common standard scores; and, third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed four common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations, and work samples as appropriate.

- When standardized tests are considered to be invalid for a specific student, the discrepancy shall be measured by alternative means as specified on the assessment plan.
- If the standardized tests do not reveal a severe discrepancy as defined in subparagraphs (a) or (b) above, the individualized education program team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team, which shall include, but not be limited to:
  - Data obtained from standardized assessment instruments;
  - Information provided by the parent;
  - Information provided by the student's present teacher;
  - Evidence of the student's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;
  - Consideration of the student's age, particularly for young children;
  - Any additional relevant information;
  - The discrepancy shall not be primarily the result of limited school experience or poor school attendance;
  - The discrepancy shall not be due to limited English proficiency; and
  - The discrepancy shall not be due to lack of appropriate instruction in reading and math.

Specific learning disability is defined as follows:

- General. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- Disorders not included. The term does not include 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. (34 C.F.R. § 300.8(10).)

### **IMPLEMENTATION PROCEDURES**

#### **Required Factors in Determining Eligibility**

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

- There is a severe discrepancy between ability and achievement.
- There is documented evidence of a processing disorder in one or more of the following areas:
  - Attention.
  - Visual processing.
  - Auditory processing.
  - Sensory-motor skills.
  - Cognitive abilities including association, conceptualization, and expression.

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

#### **Determination of a Severe Discrepancy**

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





areas of academic instruction:

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

A report written by a credentialed school psychologist shall document that the student demonstrates a severe discrepancy between his ability and achievement. The determination of a severe discrepancy necessitates the use of a standardized achievement test and a test of intellectual ability.

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

#### Additional Considerations

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

The relationship of the processing disorder to the student's academic deficits should be clearly established and become the basis for instructional planning and development of specific objectives for the student's IEP.

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

NOTE: The CDE has not offered guidance on using the Response to Intervention (RtI) method to determine eligibility for SLD at this time. However, districts may



use the process that determines if a student responds to scientific, researched-based intervention as part of its assessment procedures. (Ed. Code, § 56337(c).)

## **2.7.K Speech OR Language Impairment (SLI): A non-severe disabling condition.**

### Definition:

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

- Articulation disorders, such that the student's production of speech significantly interferes with communication and attracts adverse attention.
- Abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness. An appropriate medical examination shall be conducted, where appropriate.
- Fluency difficulties which result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the student and listener.
- Inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the student's language performance level is found to be significantly below the language performance level of his or her peers.
- Hearing loss which results in a language or speech disorder and significantly affects educational performance. (Ed. Code, § 56333.)

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

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

## **2.7.L Articulation**

(5 Cal. Code Regs. § 3030(c).)

#### Articulation Disorder

- The student displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the student's production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level, and which adversely affects educational performance.
- A student does not meet the criteria for articulation disorder if the sole assessed disability is an abnormal swallowing pattern.

#### **IMPLEMENTATION PROCEDURES**

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

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

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

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

#### **2.7.M Abnormal Voice**

(5 Cal Code Regs. § 3030(c).)

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

#### **IMPLEMENTATION PROCEDURES**

- A student shall be assessed by a multi-disciplinary team as having abnormal voice when the disorder adversely affects educational performance. When indicated, vocal assessment shall include a medical laryngeal examination.
- The IEP team documents that the abnormal voice is noticeable to both familiar and unfamiliar listeners, interferes with communicating, is



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noticeable over a long period of time and is inappropriate for the student's age and/or sex.

### **2.7.N Fluency Disorder**

(5 Cal. Code Regs. § 3030(c).)

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

#### **IMPLEMENTATION PROCEDURES**

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

### **2.7.O Language Disorder**

(5 Cal. Code Regs. § 3030(c).)

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

- The student scores at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. When standardized tests are considered to be invalid for the specific student, the expected language performance level shall be determined by alternative means as specified on the assessment plan; or
- The student scores at least 1.5 standard deviations below the mean or the score is below the 7th percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed in subsection (a) and displays inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of fifty utterances. The language sample must be recorded or transcribed and analyzed, and the results included in the assessment report. If the student is unable to produce this sample, the language, speech, and hearing specialist shall document why a fifty-utterance sample was not obtainable and the



contexts in which attempts were made to elicit the sample. When standardized tests are considered to be invalid for the specific student, the expected language performance level shall be determined by alternative means as specified in the assessment plan.

### **IMPLEMENTATION PROCEDURES**

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

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

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

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

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

Language Disorder does not include:

- Students who have atypical patterns resulting from lack of familiarity with English, cultural differences, race, or environmental deprivation.
- Students whose language is commensurate with his/her general cognitive functioning.

### **2.7.P TRAUMATIC BRAIN INJURY (TBI): A severe or non-severe disabling condition.**

#### **Definition:**

Under the federal regulations, “traumatic brain injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory; perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and, speech. The term does not apply to



brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. (34 C.F.R. § 300.8(12).)

#### **IMPLEMENTATION PROCEDURES**

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

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

The IEP Team shall determine that the traumatic brain injury adversely affects educational performance.

The least restrictive environment shall be considered when determining placement.

#### **2.7.Q VISUAL IMPAIRMENT INCLUDING BLINDNESS (VI): A severe or non-severe disabling condition.**

##### **Definition:**

A student has a visual impairment, which, even with correction, adversely affects educational performance. (5 Cal. Code Regs. § 3030(d).)

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

#### **IMPLEMENTATION PROCEDURES**

A multi-disciplinary team shall assess a student. A current written report of an eye examination by either an ophthalmologist or optometrist is required prior to functional vision assessment by a person credentialed to serve the visually



impaired. One of the following descriptions should apply:

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

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## CHAPTER 3

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## **INDIVIDUALIZED EDUCATION PROGRAM**

### **3.1 PURPOSE AND SCOPE**

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

The FUSD will provide a continuum of program options to meet the needs of students with disabilities to ensure a FAPE.

The IEP team determines the services and programs that can meet the student's needs in the least restrictive environment (LRE), allowing for interaction with typically developing peers and course content consistent with instruction provided to students without disabilities, as appropriate.

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

The IEP shall show a direct relationship between the present levels of performance, the goals (and objectives, if appropriate), based on assessed needs and the specific educational services to be provided. (5 Cal. Code Regs. § 3040 (c).)

### **3.2 INDIVIDUALIZED EDUCATION PROGRAM REQUIREMENTS**

#### **3.2.A Development of IEP**

An initial assessment to determine whether the child is eligible and to determine educational needs shall be made and an IEP shall occur within 60 days of receiving parent/guardian consent for the assessment, pursuant to Education Code section 56302.1 and pursuant to Education Code section 56344. (Ed. Code, § 56043.)

An IEP shall be developed within a total time not to exceed 60 calendar days, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of the parent/guardian's written consent for assessment, unless the parent/guardian agrees, in writing, to an extension. (Ed. Code, § 56043(f).)

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

All efforts will be made to ensure that the parent/guardian(s) of a child, with a

disability, is/are present at each IEP meeting or are afforded the opportunity to participate by other means. (Ed. Code, §§ 56304; 56341.5(a) and (g).) The parent/guardian(s) will be notified of the meeting early enough to ensure that they will have an opportunity to attend, and the meeting will be scheduled at a mutually agreed upon time and place. (Ed. Code, § 56341.5(b) and (c).)

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

### **3.2.B IEP Content**

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

- A statement of the child's present levels of academic achievement and functional performance, including:
  - How the disability affects the child's involvement and progress in the general education curriculum;
  - For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and
  - For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.
- A statement of measurable annual goals, including academic and functional goals designed to:
  - Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
  - Meet each of the child's other educational needs that result from the child's disability.
- A description of how the child's progress toward meeting the annual goals will be measured, and when periodic reports on progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with issuance of report cards) will be provided.
- A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the



extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

- To advance appropriately toward attaining the annual goals;
- To be involved in and make progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
- To be educated and participate with other children with disabilities and typically developing peers in the activities described above.
- An explanation of the extent, if any, to which the child will not participate with typically developing peers in the regular class and extracurricular and nonacademic activities.
- A statement of any individual appropriate accommodations that is necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments.
- If the IEP team determines that the child shall take an alternate assessment on a particular state or district-wide assessment of student achievement, a statement of why:
  - The child cannot participate in the regular assessment; and
  - The particular alternate assessment selected is appropriate for the child;
- The projected date for the beginning of services and modifications, and the anticipated frequency, location, and duration of those services and modifications.
- Beginning not later than the first IEP to be in effect when the child is 16 (or younger if determined appropriate by the IEP team) and updated annually thereafter:
  - Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
  - The transition services (including course of study) needed to assist the child in reaching those goals; and
  - Beginning not later than one year before the child reaches the age of majority (age 18), a statement that the child has been informed of the child's rights that will transfer to the child when reaching age 18. (Ed. Code, § 56345(g).)
- For students in grades 7 to 12, inclusive, any alternative means and



modes necessary for the student to complete the prescribed course of study of the district and to meet or exceed proficiency standards for graduation.

- For individuals whose native language is other than English, linguistically appropriate goals, objectives, programs, and services.
- Pursuant to section 300.106 of Title 34 of the Code of Federal Regulations, extended school year services shall be included in the IEP and provided to the student if the IEP team of the student determines, on an individual basis, that the services are necessary for the provision of a FAPE to the student.
- Provision for the transition into the regular class program if the student is to be transferred from a special class or nonpublic, non-sectarian school into a regular class in a public school for any part of the school day, including the following:
  - A description of activities provided to integrate the student into the regular education program. The description shall indicate the nature of each activity, and the time spent on the activity each day or week.
  - A description of the activities provided to support the transition of students from the special education program into the regular education program.
- For students with low-incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Education Code section 56136. (Ed. Code, § 56345(b).)

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

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

### **3.3 IEP TEAM MEMBERS**

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

The IEP team shall include all of the following:

- One or both of the student's parent/guardians, a representative selected by a parent/guardian, or both.
- Not less than one general education teacher of the student, if the student is, or may be, participating in the general education environment. If more



than one general education teacher is providing instructional services to the student, one general education teacher may be designated by the District to represent the others. The general education teacher of a student shall, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies for the student, and the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student.

- Not less than one special education teacher of the student, or if appropriate, not less than one special education provider of the student.
- A representative of the local educational agency who meets all of the following criteria:
  - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of individuals with exceptional needs;
  - Is knowledgeable about the general curriculum; and
  - Is knowledgeable about the availability of resources of the local educational agency.
- An individual who can interpret the instructional implications of the assessment results. The individual may be a member of the team.
- At the discretion of the parent/guardian, guardian, or the local educational agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate. The determination of whether the individual has knowledge or special expertise regarding the student shall be made by the party who invites the individual to be a member of the IEP team.
- Whenever appropriate, the student. District shall invite the student to attend his or her IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals and the needed transition services for the student. If the student does not attend the IEP meeting, the District shall take steps to ensure that the student's preferences and interests are considered. (Ed Code, § 56341(b).)

### **3.3.A IEP Team Member Excusal**

#### **IEP Team Area of Curriculum Not Being Discussed**

A member of the IEP shall not be required to attend an IEP team meeting, in whole or in part, if the parent/guardian of student and the District agree, in



writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

#### IEP Team Member Area of Curriculum or Related Services Being Discussed

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

- The parent/guardian and FUSD consent to the excusal after conferring with the member, in writing; and
- The member submits in writing to the parent/guardian and the IEP team, input into the development of the IEP prior to the meeting. A parent/guardian's agreement shall be in writing. (Ed. Code, § 56341(f) and (g).)

#### **3.3.B If Parent/guardians Cannot Attend IEP Meeting**

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

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

- A detailed record of phone calls made or attempted and the result of those calls;
- Copies of correspondence sent to the parent/guardians and any responses received; or
- Detailed records of visits made to the parent/guardian's home or place of employment and the results of those visits.(Ed. Code, § 56341.5(h).)

When no parent/guardian can be located or if the court has specifically limited the rights of the parent/guardian or guardian to make educational decisions for the child, and no one is appointed by the court to make such educational determinations, a surrogate parent/guardian will be appointed by FUSD.

### **3.4 LEAST RESTRICTIVE ENVIRONMENT (LRE)**

#### **3.4.A Definition:**





- To the maximum extent appropriate, individuals with exceptional needs, including children in public or private institutions or other care facilities, are educated with children who are nondisabled.
- Special classes, separate schooling, or other removal of individuals with exceptional needs from the general educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Ed. Code, § 56040.1)

Least restrictive environment (LRE) requirements include the following:

- The student's placement will be as close as possible to his/her home.
- Unless the IEP requires some other arrangement, the student will be educated in the school that he or she would attend if not identified with special needs.
- In selecting the LRE, consideration will be given to any potential harmful effect on the student or on the quality of services that he/she needs.
- A student with a disability will not be removed from education in age-appropriate general education classrooms solely because of needed modifications in the general curriculum. (34 C.F.R. § 300.116.)
- In providing or arranging for the provision of nonacademic and extracurricular services and activities, the District will ensure that the student with the disability participates with typically developing peers in those services and activities to the maximum extent appropriate to the needs of that student. The District will ensure that each eligible student has the appropriate supplementary aids and services necessary for the student to participate in nonacademic settings. (34 C.F.R. § 300.117.)
- Special classes may enroll a student only when the nature or severity of the disability is such that education in the general education classes with the use of supplementary aids and services, including curriculum modifications and behavioral support, cannot be achieved satisfactorily. These requirements also apply to separate schooling or other removal of students from the general education environment. (Ed. Code, § 56364.2; 5 Cal. Code Regs. § 3042; 34 C.F.R. § 300.114(a)(2)(ii).)

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



In determining the educational placement of a student with a disability, FUSD will ensure that the placement decision is made by an IEP team including the parent/guardians, and other persons knowledgeable about the student. (Ed. Code, § 56342.5.)

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

Specific educational placement means that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. (5 Cal. Code Regs. § 3042.)

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

- General education classroom.
- General education classroom with supplementary aids and services.
- General education classroom with resource specialist services.
- General education classroom with related services.
- General education classroom with services from a special day class teacher and supports and/or related services.
- Special classes and centers.
- Nonpublic, non-sectarian school services.
- State special schools.
- Residential schools
- Home/Hospital. (Ed. Code, § 56361; 34 C.F.R. § 300.115.)

### **3.5 SPECIAL EDUCATION AND RELATED SERVICES AND DESCRIPTORS**

Specialized Academic Instruction (SAI) is defined as: “Adapting, as appropriate to the needs of the child with a disability, the content, methodology, or delivery of instruction to ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.”

The primary instructional service for most special education services will be

listed as SAI on the IEP. As specialized academic instruction is identified, one must also identify the amount of service and the location. A student may have more than one line for this service when the locations are different. For example, you may have one line that indicates SAI in general education for 10 hours a week, and another line that indicates SAI in a separate class for 5 hours per week.

### **3.5.A Specialized Academic Instruction/Resource Specialist Program/Non-Intensive Services**

#### **Description**

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

- Provision for a resource specialist or specialists who shall provide instruction and services for those students whose needs have been identified in an IEP developed by the IEP team, and who are assigned to regular classroom teachers for a majority of a school day;
- Provision of information and assistance to students with disabilities and their parent/guardian;
- Provision of consultation, resource information, and material regarding students with disabilities to their parent/guardians and to regular staff members;
- Coordination of special education services with the regular school programs for each student enrolled in the resource specialist program;
- Monitoring of student progress on a regular basis, participation in the review and revision of IEPs, as appropriate, and referral of students who do not demonstrate appropriate progress to the IEP team; and
- Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life. (Ed. Code, § 56362.)

#### **Staffing**

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

Rules for resource specialists:

- At least 80 percent of the resource specialists within a local plan shall be provided with an instructional aide.
- No resource specialist shall have a caseload that exceeds 28 students without a waiver.
- No resource specialist shall simultaneously be assigned to serve as a resource specialist and to teach regular classes.
- Resource specialists shall not enroll a student for a majority of a school day without approval by the student's IEP team.

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

### **3.5.B Specialized Academic Instruction/Special Day Classes/Intensive Services**

#### **Description**

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

The following standards for special classes shall be met:

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



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C.F.R. 3053(b)(2)((A).)

### **Staffing**

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

The special day class teacher must hold an appropriate special education credential and possess the necessary competencies to teach students assigned to the class. (5 C.F.R. § 3053(c).)

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

### **3.5.C Nonpublic, Nonsectarian School Services/Nonpublic, Non-sectarian Agency**

"Nonpublic, non-sectarian school" (NPS) means a private, non-sectarian school that enrolls individuals with exceptional needs pursuant to an IEP and is certified by the California Department of Education. (Ed. Code, § 56034.) It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a nonprofit corporation established or operated by a state or local agency, a public university or college, or public hospital. The NPS shall also meet standards prescribed by Superintendent of Public Instruction and the State Board of Education. (Ed. Code, § 56034.)

"Nonpublic, nonsectarian agency" (NPA) means a private, nonsectarian establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the student's educational program pursuant to an IEP and that is certified by the department. It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, a public university or college, or a public hospital. The NPA shall also meet standards as prescribed by the Superintendent and Board. (Ed. Code, § 56035.)

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

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



*Refer to Chapter 10 for complete information about nonpublic nonsectarian schools and agencies.*

### **3.5.D State Special Schools**

In determining the educational placement of a child with a disability, including a preschool child, the District will ensure that the placement decision is made by a group of persons, including the parent/guardians, and other persons knowledgeable about the child.

All placement decisions will be based on the individual needs of the student pursuant to the IEP and not on the basis of the disability, configuration of service delivery, and availability of staff. All placements will be made in the LRE.

### **3.5.E Residential Schools**

The IEP team may determine that a student needs a residential placement. The IEP may be an expanded IEP to include mental health providers, as appropriate.

### **3.5.F Home and Hospital Instruction**

“Home and hospital services” means instruction delivered to children with disabilities, individually, in small groups, or by telecasts, whose medical condition such as those related to surgery, accidents, short-term illness or medical treatment for a chronic illness prevents the individual from attending school. (Ed. Code, § 56361.)

## **3.6 RELATED SERVICES/DESIGNATED INSTRUCTIONAL SERVICES (DIS)**

The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable an individual with exceptional needs to receive a FAPE as described in the IEP of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only, as may be required to assist an individual with exceptional needs to benefit from special education, and includes the early identification and assessment of disabling conditions in children. (Ed. Code, § 56363; 5 Cal. Code of Regs § 3001(aa); 34 C.F.R. 300.34.)

Related services as specified in the IEP shall be available, when the instruction and services are necessary for the student to benefit educationally from his or her special education program. These services may be provided to individuals or to small groups in a specialized area of educational need, and throughout the full continuum of educational settings. All entities and individuals providing these services shall be qualified pursuant to 5 Cal. Code Regs 3060-3065. Entities or



individuals providing these services shall be either employees of a district or county office or employed under contract pursuant to Education Code §§ 56365-56366, or employees, vendors, or contractors of the State Departments of health Services or Mental Health, or designated local public health or mental health. (5 Cal. Code Regs. 3051.)

### **3.6.A Speech and Language Services**

The related service in language speech and hearing may include:

- Specialized instruction and services for students with disorders of language, speech and/or hearing, including monitoring of student progress on a regular basis, providing information for the review, and when necessary participating in the review and revision of IEPs of students.
- Consultative services to students, parent/guardians, teachers, or other school personnel in the management of a student's language, speech development, or hearing needs.
- Coordination of speech and language services with a student's regular and special education program.
- The person providing instruction and services shall hold an appropriate credential with specialization in language, speech and hearing.
- Services may be provided by a speech/language pathology assistant (SLPA) working under the direct supervision of a credentialed speech/language pathologist if specified in the IEP.

Caseloads of full-time equivalent speech/language pathologist (SLP) shall not exceed a district-wide or SELPA-wide average of fifty-five (55) students unless prior written approval has been granted by the State Superintendent of Public Instruction. (5 Cal. Code of Regs § 3051.1.)

### **3.6.B Audiological Services**

Audiological instruction and services, aural rehabilitation, including auditory training and speech reading, may include the following:

- Aural rehabilitation (auditory training, speech reading, language habilitation and speech conservation) and habilitation with individual students or groups and support for the hearing-impaired students in the regular classroom.
- Monitoring hearing levels, auditory behavior, and amplification for all students requiring personal or group amplification in the instructional setting.

- Planning, designing, organizing and implementing an audiology program for individuals with auditory dysfunction, as specified in the IEP.
- Consultative services regarding test findings, amplification needs and equipment, ontological referrals, home training programs, acoustic treatment of rooms, and educational management of the hearing-impaired individuals.
- The person providing audiological services shall hold a valid credential with a specialization in clinical or rehabilitative services in audiology. (5 Cal. Code of Regs § 3051.2.)
- In addition, these service may include the following: identification of children with hearing loss; determination of range, nature, and degree of hearing loss, including referral for medical or professional attention for habilitation of hearing; provision of habilitative activities, such as language habilitation, auditory training, speech reading, hearing evalution, and speech conservation; creation and administration of programs for prevention of hearing loss; counseling and guidance of children, parent/guardians, and teachers regarding hearing loss; and determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification. (34 C.F.R. 300.34(c)(1).)

### **3.6.C Orientation and Mobility Instruction**

Related services in orientation and mobility may include the following:

- Specialized instruction for individuals in orientation and mobility techniques.
- Consultative services to other educators and parent/guardians regarding instructional planning and implementation of the IEP relative to the development of orientation and mobility and independent living skills. .
- Counseling services to parent/guardians of individuals with disabilities relative to the development of orientation and mobility skills and independent living skills of their children.
- The person providing mobility instruction and services shall hold a credential as an orientation and mobility specialist. (5 Cal. Code of Regs. § 3051.3.)

### **3.6.D Instruction in the Home and Hospital**

Instruction in the home or hospital for individuals with disabilities in the following manner:



- Special education and related services provided in the home or hospital for school age pupils is limited to those pupils who have been identified as individuals with exceptional needs in accordance with section 3030 and for whom the IEP team recommends such instructions or services.
- Instructions may be delivered individually, in small groups or by teleclass.
- For those individuals with exceptional needs with a medical condition such as those related to surgery, accidents, short-term illness or medical treatment for a chronic illness, the IEP team shall review, and revise, if appropriate, the IEP whenever there is a significant change in the pupil's current medical condition.
- When recommending placement for home instruction, the IEP team shall have in the assessment information a medical report from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the pupil from attending a less restrictive placement. The report shall include a projected calendar date for the pupil's return to school. The IEP team shall meet to reconsider the IEP prior to the projected calendar date for the pupil's return to school.
- Instruction in the home or hospital shall be provided by a general education teacher, the special class teacher or the resource specialist teacher, if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialist shall provide such instruction.
- The teacher providing the home instruction shall contact the pupil's previous school and teacher to determine: (i) The course work to be covered; (ii) The books and materials to be used; (iii) Who is responsible for issuing grades and promoting the pupil when appropriate; (iv) For pupils in grades 7 to 12, the teacher shall confer with the school guidance counselor to determine:
  - For the hours the pupil has earned toward semester course credit in each subject included in the IEP and the grade as of the last day of attendance;
  - Who is responsible for issuing credits when the course work is completed;
  - Who will issue the diploma if the pupil is to graduate. (5 Cal. Code of Regs § 3051.4.)

### **3.6.E Adapted Physical Education (APE)**



Adapted physical education (APE) is designed for students with disabilities who require developmental or corrective instruction and which preclude the individual's participation in the activities of the general physical education program, modified regular physical education program, or in a specially designed physical education program in a special class.

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

Teachers instructing APE shall have a credential authorizing the teaching of adapted physical education. (5 Cal. Code Regs. 3051.5.)

### **3.6.F Occupational Therapy and Physical Therapy**

Occupational or physical therapists shall provide services based upon recommendation of the individual education program team. Physical therapy and occupational therapy services for infants are limited by Education Code 5642.6. Physical therapy services may not exceed the services specified in the Business and Professions Code at Section 2620. The district, special education local plan area, or county office shall assure that the therapist has available safe and appropriate equipment.

- A physical therapist shall be currently licensed by the Board of Medical Quality Assurance of the State of California and meet the educational standards of the Physical Therapy Examining Committee and graduated from an accredited school
- An occupational therapist shall be currently registered with the American Occupational Therapy Association and graduated from an accredited school. (5 Cal. Code Regs. § 3051.6.)

### **3.6.G Vision Services**

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

- Adaptations in curriculum, media, and the environment, as well as instruction in special skills.
- Consultative services to students, parent/guardians, teachers, and other school personnel.
- The person providing services shall hold an appropriate credential with specialization in the area of the visually impaired. (5 Cal. Code Regs. §3051.7.)

### **3.6.H Psychological Services**



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

- Counseling provided to an individual with disabilities by a credentialed or licensed psychologist or other qualified personnel.
- Consultative services to parent/guardians, students, teachers and other school personnel.
- Planning, managing and implementing a program of psychological counseling for eligible children and parent/guardians as specified in the IEP. (5 Cal. Code Regs. § 3051.10.)

### **3.6.I Parent/guardian Counseling and Training**

Parent/guardian counseling and training may include:

- Assisting parent/guardians in understanding the special needs of their child; and
- Providing parent/guardians with information about child development. (5 Cal. Code Regs. § 3051.11.)

### **3.6.J Health and Nursing Services**

Related health and nursing services are designed to assist those individuals with disabilities who have health problems. Qualified personnel will provide services. Services may include the following:

- Managing the student's health problems on the school site;
- Consulting with staff members regarding management of the student's health problems;
- Providing group and individual counseling with the students and parent/guardians regarding health problems; and
- Making appropriate referrals and maintaining communication with health agencies providing care to students. (5 Cal. Code Regs. § 3051.12(a).)

### **3.6.K Specially Designed Vocational Education and Career Development**

Personnel providing vocational education services shall be qualified.

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

- Providing prevocational programs and assessing work-related skills, interest aptitudes, and attitudes;
- Coordinating and modifying the regular vocational education program;



- Assisting students in developing attitudes, self-confidence, and vocational competencies to locate, secure, and retain employment in the community or sheltered environment, and to enable such individuals to become participating members of the community;
- Establishing work training programs within the school and community;
- Assisting in job placement;
- Instructing job trainers and employers as to the unique needs of the students;
- Maintaining regularly scheduled contact with all workstations and job-site trainers; and
- Coordinating services with the Department of Rehabilitation, the Department of Employment Development and other agencies as designated in the IEP. (5 Cal. Code Regs. § 3051.14.)

#### **3.6.L Recreation Services**

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

- Therapeutic recreation services which are those specialized instructional programs designed to assist students in becoming as independent as possible in leisure activities, and when possible and appropriate, facilitate the student's integration into regular recreation programs;
- Recreation programs in schools and the community which are those programs that emphasize the use of leisure activity in the teaching of academic, social, and daily living skills; and, the provision of nonacademic and extracurricular leisure activities and the utilization of community recreation programs and facilities; and
- Leisure education programs which are those specific programs designed to prepare the student for optimum independent participation in appropriate leisure activities, including teaching social skills necessary to engage in leisure activities, and developing awareness of personal and community leisure resources. (5 Cal. Code Regs. § 3051.15.)

#### **3.6.M Specialized Services for Low-Incidence Disabilities**

Specialized services for low-incidence disabilities may include:

- Specially designed instruction related to the unique needs of students with low-incidence disabilities.
- Specialized services related to the unique needs of students with low-incidence disabilities provided by qualified individuals such as interpreters,



note-takers, readers, transcribers, and other individuals who provide specialized materials and equipment.

- Services will be provided by appropriately credentialed staff. (5 Cal. Code of Regs. § 3051.16.)

### **3.6.N Services for Students with Chronic Illnesses or Acute Health Problems**

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

- Individual consultation;
- Home or hospital instruction; and
- Other instructional methods using advanced communication technology.

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

### **3.6.O Services for Deaf and Hard of Hearing Students**

Related services for deaf and hard of hearing students may include, but need not be limited to:

- Speech, speech reading and auditory training;
- Instruction in oral, sign, and written language development;
- Rehabilitative and educational services for hearing-impaired individuals to include monitoring amplification, coordinating information for the annual review, and recommending additional services;
- Adapting curricula, methods, media, and the environment to facilitate the learning process;
- Consultation to students, parent/guardians, teachers, and other school personnel as necessary to maximize the student's experience in the general education program;

- A specially trained instructional aide, working with and under the direct supervision of the credentialed teacher of the deaf and hard of hearing, may assist in the implementation of the student's educational program; and
- Services will be provided by an individual holding an appropriate credential to provide services to the hearing impaired and who has training, experience and proficient communication skills for educating students with hearing impairments. (5 Cal. Code Regs. § 3051.18.)

### **3.6.P Individual and Small Group Instruction**

Instruction delivered one-to-one. or in a small group as specified, in an IEP enabling the student(s) to participate effectively in the total school program.

## **3.7 REVIEW AND REVISION OF THE IEP**

The IEP will be reviewed periodically, but not less than annually to determine whether the annual goals for the child are being achieved. The IEP will be revised to address any lack of expected progress toward the annual goals and in the general curriculum, where appropriate. (Ed. Code, § 56341.1.)

In addition, the IEP team will meet whenever the parent/guardian or teacher requests a meeting to develop, review, or revise the IEP. An IEP meeting will be held within 30 days of receipt of a written request from a parent/guardian. (Ed. Code, § 56343.5.)

The following should be included in a review:

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

(Ed. Code, § 56341.1(d).)

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

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

### **3.7.A Making Changes and Amendments to the IEP**

In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent/guardian of the student and FUSD may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document signed by the parent/guardian and by a representative of FUSD to amend or modify the student's existing IEP. (34 C.F.R. § 300.324(a)(4).) If changes are made to the IEP, FUSD must ensure that the student's IEP team is informed of those changes. (34 C.F.R. § 300.324(a)(4).) However, to the extent possible, FUSD must encourage the consolidation of reevaluation meetings for the student and other IEP team meetings for the student. (34 C.F.R. § 300.324(a)(5).)

Changes to the IEP may be made by the entire IEP team or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent/guardian shall be provided with a revised copy of the IEP with the amendments incorporated. (34 C.F.R. § 300.324(a)(6).)

### **3.7.B IEP Team Meetings Required**

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

- A student has received an initial formal assessment. The team may meet when a student receives any subsequent formal assessment.
- The student demonstrates a lack of anticipated progress.
- The parent/guardian or teacher requests a meeting to develop, review, or revise the IEP.
- At least annually, to review the student's progress, the IEP, including whether the annual goals for the student are being achieved, and the appropriateness of placement, and to make any necessary revisions. The IEP team conducting the annual review shall consist of the required members. Other individuals may participate in the annual review if they possess expertise or knowledge essential for the review.

(Ed. Code, §§ 56341.1, 56343.)

### **3.7.C Consolidation of IEP Meetings**

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

## **3.8 IEP MEETING PROCESS**

### **3.8.A Present Levels of Academic and Functional Performance**

The IEP team must determine the student's present level of academic

achievement and functional performance. This determination is made by looking at assessment results, input from the parent/guardians, teacher, and other providers. The IEP team can then identify areas of need for the student and from those needs, goals are developed and objectives, if applicable. (See 3.8.D below regarding goal development.)

### **3.8.B Individual Transition Plan and Transition Services**

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

- Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
- The transition services (including course of study) needed to assist the child in reaching these goals. (Ed. Code, § 56345(a)(8).)

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

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

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

### **3.8.C Consideration of Special Factors**

The IEP team will consider the following special factors:

#### Behavioral

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

#### Students with Limited English Proficiency

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

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



#### Blind and Visually Impaired

In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines that the use of Braille is not appropriate for the child. The IEP team will make this decision after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille) is conducted.

#### Deaf and Hearing Impaired

Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs. The IEP team will consider opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

#### Assistive Technology

Consider whether a child requires assistive technology devices and services.

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

### **3.8.D Developing Goals**

There must be a goal for every area of identified need. Objectives or benchmarks are required for students who participate in an alternate statewide assessment (CAPA).

Goals must contain the following components:

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

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

**3.8.E Discussion of Options Considered**

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

**3.8.F Supplementary Aids and Services**

Supplementary aids and services means aids, services, and other supports that are provided in general education classes or other education-related settings and in extracurricular and nonacademic settings, to enable individuals with exceptional needs to be educated with nondisabled children to the maximum extent appropriate. (Ed. Code, § 56033.5.)

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

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

**3.8.G Determination of Special Education and Related Services**

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

**3.8.H Extended School Year (ESY)**

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

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



Not every student with a disability is entitled to receive ESY services. Rather, students who are determined by their IEP team to need ESY services are entitled to receive them as part of a FAPE. Decisions about ESY eligibility are made individually through the IEP process and usually at the student's annual IEP meeting. ESY eligibility is not limited to students with particular types of disabilities.

ESY services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the student's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the student will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an ESY program if the IEP team determines the need for such a program and includes ESY in the IEP. (5 Cal. Code Regs. § 3043.)

### **3.9 INDIVIDUALIZED EDUCATION PROGRAM: TRANSITIONS**

#### **3.9.A Transition from Preschool to Elementary School**

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

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

As part of the exit process from special education, the present performance levels and learning style shall be noted by the IEP team. This information shall be made available to the assigned general education teacher upon the child's enrollment in Kindergarten or first grade as the case may be. (Ed. Code, § 56445.)

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

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

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

### **3.9.C Secondary Transition**

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

- Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
- The transition services (including course of study) needed to assist the child in reaching these goals. (Ed. Code, § 56345(a)(8).)

## **3.10 EDUCATIONAL BENEFIT**

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

### **3.10.A Definition of FAPE**

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

- Are provided at public expense;
- Meet the standards of the state;
- Include pre-school, elementary or secondary school and education through the 22nd birthday if appropriate; and
- Are provided in conformity with the IEP.

## **3.11 INTERIM PLACEMENTS**

### **3.11.A Transfers from District to District within the State**

If the child has an IEP and transfers into a district from district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the FUSD shall



provide the student with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with the parent/guardians, for a period not to exceed 30 days, by which time the District shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law.

#### **3.11.B Transfers from District to District within the Same SELPA**

If the child has an IEP and transfers into a district from a district operating under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved IEP, unless the parent/guardian and the District agree to develop, adopt and implement a new IEP that is consistent with federal and state law. FUSD is a single district SELPA and as such this provision would not apply to FUSD, so long as it remains a single district SELPA.

#### **3.11.C Transfers from District to District from Outside of State**

If the child has an IEP and transfers from an educational agency outside the state to a district within the state within the same academic year, the District shall provide the student with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with the parent/guardians, until the District conducts an assessment.

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

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

#### **3.11.D Transfers from District to District in a Different SELPA/Residential Placement Payment**

If, whenever a student was placed and residing in a residential nonpublic, nonsectarian school, prior to transferring to a district in another special education local plan area, and this placement is not eligible for funding pursuant to Education Code section 56836.16, the special education local plan area that contains the district that made the residential nonpublic, nonsectarian school placement is responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends. (Ed. Code, 56325(c).)00508-00003/491979.1



## CHAPTER 4

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## **SECONDARY TRANSITION**

### **4.1 PURPOSE AND SCOPE**

Transition services (designed with a results-oriented process focused on improving academic functional achievement of the student) must be addressed in the IEP of the student not later than in the year in which he/she turns 16 years of age. The goal of transition services is planned movement from secondary education to adult life that provides opportunities which maximize economic and social independence in the least restrictive environment for individuals with exceptional needs. Planning for transition from school to postsecondary environments should begin in the school system well before the student leaves the system. (Ed. Code, § 56460(e).)

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

### **4.2 DEFINITION OF TRANSITION SERVICES**

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

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





- Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. (34 C.F.R. 43; Ed. Code, § 56345.1(a).)

#### **4.3 TIMELINE FOR DEVELOPING INDIVIDUAL TRANSITION PLAN**

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

- Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
- The transition services (including course of study) needed to assist the child in reaching those goals; and
- Beginning not later than one year before the child reaches the age of majority (age 18), a statement that the child has been informed of the child's rights that will transfer to the child when reaching age 18. (Ed. Code, § 56344(a)(8) and (g).)

#### **4.4 OTHER AGENCY INVOLVEMENT**

A representative from any agency that is likely to be responsible for providing or paying for transition services may be invited to the IEP beginning when the student is 16 or younger, if appropriate, with parental consent or consent of adult student. (Ed. Code, § 56341(d)(3).)

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

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

#### **4.5 IEP TEAM PARTICIPANTS FOR SECONDARY TRANSITION**

##### **4.5.A Student**

The District shall invite the student with exceptional needs to attend his or her IEP team meeting if the purpose of the meeting will be to consider postsecondary goals for the student and the needed transition services for that student to assist in reaching his or her transition goals. The Student's role as a participant is to communicate preferences, interests, strengths, and take part in the IEP development.



If the student is not in attendance, the District must take steps to ensure that the student's preferences and interests are considered. (34 C.F.R. § 300.321(b)(1); Ed. Code, § 56341(d)(2).)

2006 IDEA Regulations Comments indicated that if the student is a minor, the parents (unless education rights have been limited or extinguished) have the authority to determine whether the student should attend the IEP team meeting (p. 46671) 34 C.F.R. § 300.321(b)(2) provides that it is the public agency's obligation to take other steps to ensure that the student's preferences and interests are considered if the child is unable to attend the meeting.

The IEP team meeting where transition services are discussed must comply with the mandatory members of an IEP team. *(See Chapter 3 regarding IEP team members)*

#### **4.6 POSTSECONDARY GOALS**

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

#### **4.7 SUMMARY OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE**

A student is exited from eligibility for special education when the student obtains a regular high school diploma or turns 22, whichever occurs first. At this time, a Summary of Academic Achievement and Functional Performance will be prepared by FUSD and provided to the student when he/she leaves school, either by graduating with a regular high school diploma or reaching the age of 22. The summary will offer the student a document that summarizes his/her academic and functional performance with recommendations about what accommodations and supports the student may need to enter post-school activities, such as training, higher education, employment, and independent living. For a student whose eligibility terminates, FUSD shall provide the student with a summary of his/her academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting his/her post-secondary goals. (20 U.S.C. § 1414(c)(5)(B).)

#### **4.8 TRANSFER OF RIGHTS AT AGE OF MAJORITY**

FUSD is required to notify the student and family that educational rights transfer to the student upon reaching the age of majority, which is 18 years old in California. Beginning not later than one year before the student reaches the age of majority under state law, FUSD shall provide a statement that the student has been informed of his/her rights, if any, that will transfer to the child on reaching



the age of majority. (Ed. Code, § 56345(g).)

#### **4.9 POSTSECONDARY FOLLOW UP**

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

#### **4.10 STUDENTS BETWEEN 19 AND 22 YEARS**

FUSD is required to serve students between the ages of 18 and 21, inclusive; if the student is enrolled in, or eligible for, a program under IDEA or other special education program prior to his or her 19<sup>th</sup> birthday, and has not yet completed his or her prescribed course of study or who has not met proficiency standards, as follows:

- Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including any ESY program for individuals with exceptional needs.
- Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in July, August, or September of that new fiscal year.
- Any person who becomes 22 years of age during the months of October, November, or December while participating in a program under this act shall be terminated from the program on December 31 of the current fiscal year, unless the person would otherwise complete his or her IEP at the end of the current fiscal year or unless the person has not had an individual transition plan incorporated into his or her IEP and implemented from the age of 20 years, in which case the person shall be terminated from the program at the end of the fiscal year.(Ed. Code, § 56026(c)(4).)

*Refer to Transition to Adult Living, An Information and Resource Guide, California Department of Education, 2007 on the following website:*

[http://www.calstat.org/publications/pdfs/transition\\_guide\\_07.pdf](http://www.calstat.org/publications/pdfs/transition_guide_07.pdf)

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## CHAPTER 5

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## **EARLY CHILDHOOD EDUCATION**

### **5.1 PURPOSE AND SCOPE**

The FRESNO Unified School District SELPA (FUSD), and the Central California Regional Center (CVRC) will actively and systematically seek out all children with disabilities from birth to age five to refer, assess, and determine eligibility for special education services.

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

### **5.2 IDENTIFICATION AND REFERRAL**

FUSD and CVRC will conduct Child Find activities to locate children who may be eligible for special education services.

Child Find activities may include:

- Assigning liaisons to local hospitals and hospitals with neonatal intensive care units;
- Contacting local parent organizations and support groups;
- Distributing early intervention materials to agencies and individuals providing medical, social, and educational services in the community;
- Community-wide health and developmental screening;
- Producing and distributing public service announcements;
- Producing pamphlets, brochures, and other written communication; and
- Making presentations to local professional groups, philanthropic organizations, and other organizations established to inform and/or to serve culturally diverse populations. (17 Cal. Code Regs. § 52040(b).)

FUSD and CVRC shall coordinate local Child Find activities with each other and other public agencies. (17 Cal. Code Regs. § 52040(c).)

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

FUSD and CVRC shall inform primary referral sources of the following:

- Eligibility criteria for early-intervention services;



- Types of early intervention services available through the Early Start Program;
- Contact persons and telephone numbers for regional centers and districts; and
- Federal requirement that a referral shall be made to the regional center or district within two (2) working days of identification of an infant or toddler who is in need of early intervention services. (17 Cal. Code Regs. § 52040(e).)

When FUSD or CVRC receive an oral or written referral for early-intervention services, the agency shall ensure that:

- The date of the referral is documented in the infant's or toddler's record;
- A service coordinator is assigned; and
- Written notice is provided and consent is requested. (17 Cal. Code Regs. § 52060.)

### **5.3 EARLY EDUCATION PROGRAM DESCRIPTION**

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

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

The frequency of home-based services shall be weekly, bi-weekly, or monthly, depending on the needs of the infant and the family. (Ed. Code, § 56426.1(b).)



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

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

#### **5.4 ASSESSMENT TO DETERMINE ELIGIBILITY**

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

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

- A review of pertinent records related to the infant's or toddler's health status and medical history provided by qualified health professionals who have evaluated or assessed the child.
- Information obtained from parental observation and report.
- Evaluation by qualified personnel of the child's level of functioning in each of the following areas:
  - Cognitive development;
  - Physical and motor development, including vision and hearing;
  - Communication development;
  - Social or emotional development; and
  - Adaptive development.
- No single procedure shall be used as the sole criterion for determining a child's eligibility.
- Standardized tests or instruments may be used as part of the evaluation. If such tests are used, they shall be selected to ensure that, when administered to an infant or toddler with impaired sensory, motor, or speaking skills, the tests produce results that accurately reflect the infant's or toddler's aptitude, developmental level, or any other factors the test purports to measure. The test should not factor in the infant's or toddler's



impaired sensory, motor or speaking skills unless those skills are the factors the test purports to measure. The tests must be validated for the specific purpose for which they are used.

- If standardized, normed, or criterion-referenced instruments are used as part of the evaluation, a significant difference between an infant's or toddler's current level of functioning and the expected level of development for his or her age shall be established when an infant's or toddler's age equivalent score falls one-third below age expectation.
- Procedures and materials for evaluation and assessment of infants and toddlers shall be selected and administered so as not to be racially or culturally discriminatory.
- Infants or toddlers with solely low-incidence disabilities shall be evaluated and assessed by qualified personnel of the FUSD whose professional preparation, license, or credential authorization are specific to the suspected disability.
- Regional Centers, LEA's, and multidisciplinary teams shall not presume or determine eligibility, including eligibility for medical services provided through the Department of Health Services, for any other state or local government program or service when conducting evaluations or assessments of an infant or toddler or their family.
- Evaluations for eligibility shall be conducted in natural environments whenever possible. (17 Cal. Code Regs. § 52082; Gov. Code § 95016)

## **5.5 ASSESSMENT FOR SERVICE PLANNING**

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

- The child's unique strengths and needs in each of the areas listed in Section 5.4, paragraph 3(a-e), above;
- Early intervention and other services appropriate to meet the identified needs; and
- The resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of an infant or toddler with a disability. (17 Cal. Code Regs. § 52084(a).)

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





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

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

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

- Be conducted by qualified personnel trained to utilize appropriate methods and procedures;
- Be based on information provided by the family through a personal interview;
- Incorporate the family's description of its resources, priorities, and concerns related to enhancing the development of the child; and
- Be conducted in the language of the family's choice or other mode of communication unless it is not feasible to do so. (17 Cal. Code Regs. § 52084(d).)

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

## **5.6 TIMELINE FOR COMPLETION OF EVALUATION AND ASSESSMENT**

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

In the event of exceptional circumstances, which make it impossible to complete the initial evaluation and assessment for eligibility within 45 days of receiving a referral, the service coordinator shall inform the parents and document the reasons for the delay. The service coordinator shall also inform the parent of an alternative timeline which includes a specific date for completing the evaluation as soon as possible; and document that the parent has been informed and is in agreement with the reasons documented for the extension beyond 45 days. (17 Cal. Code Regs. § 52086(b).)



If an infant or toddler has been determined eligible, but the assessment has not been completed within 45 days of receiving a referral because of exceptional circumstances which make it impossible to complete a timely initial evaluation, the service coordinator shall inform the parents and document the reasons for the delay. In such cases, an interim IFSP will be developed and the services agreed upon will be implemented. The interim IFSP will include the name of the service coordinator and timelines for completing assessments. (17 Cal. Code Regs. § 52086(c).)

At the parent's signed request, FUSD or CVRC may extend the 45-day timeline for completion of the evaluation and assessment. The request for an extension shall be documented in the child's record. (17 Cal. Code Regs. § 52086(d).)

## **5.7 ELIGIBILITY**

The term "eligible infant or toddler with a disability" means infants and toddlers from birth through two years of age, for whom a need for early-intervention services is documented by means of assessment and evaluation and who meet one of the following criteria:

- **Developmental Delay:** Infants and toddlers with a developmental delay in one or more of the following five areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development.
- **Established Risk:** Infants and toddlers with established risk conditions who are infants and toddlers with conditions of known etiology which have a high probability of resulting in developmental delay; or, infants and toddlers who have solely a low-incidence disability.
- **High Risk for Developmental Disability:** Infants or toddlers are a high risk for a developmental disability when a multidisciplinary team determines that such infants or toddlers have a combination of two or more of the following factors that require early-intervention services based on evaluation and assessment:
  - Prematurity of less than 32 weeks gestation and/or low birth weight of less than 1,500 grams.
  - Assisted ventilation for 48 hours or longer during the first 28 days of life.
  - Small for gestational age: below the third percentile on the National Center for Health Statistics growth charts.
  - Asphyxia neonatorum associated with a five-minute Apgar score of 0 to 5.
  - Severe and persistent metabolic abnormality, including, but not limited



to, hypoglycemia, acidemia, and hyperbilirubinemia in excess of the usual exchange transfusion level.

- Neonatal seizures or nonfebrile seizures during the first three years of life.
- Central nervous system lesion or abnormality.
- Central nervous system infection.
- Biomedical insult including, but not limited to, injury, accident, or illness which may seriously or permanently affect developmental outcome.
- Multiple congenital anomalies or genetic disorders which may affect developmental outcome.
- Prenatal exposure to known teratogens.
- Prenatal substance exposure, positive infant neonatal toxicology screen or symptomatic neonatal toxicity or withdrawal.
- Clinically significant failure to thrive, including, but not limited to, weight persistently below the third percentile for age on standard growth charts or less than 85 percent of the ideal weight for age and/or acute weight loss or failure to gain weight with the loss of two or more major percentiles on the growth curve.
- Persistent hypotonia or hypertonia, beyond that otherwise associated with a known diagnostic condition.

(17 Cal. Code Regs. § 52022(c)(1).)

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

A developmental delay shall not be determined based on: (1) Temporary physical disability; (2) Cultural or economic factors; (3) The normal process of second language acquisition; or (4) Manifestation of dialect and sociolinguistic variance. (17 Cal. Code Regs. § 52022(d).)

- Additionally, a child from birth to four years, nine months shall qualify if the IEP team determines the following:
  - Is identified as a student with a disability.
  - Requires intensive special education and services by meeting one of the following:
    - The child is functioning at or below 50 percent of

his or her age in gross or fine motor, receptive or expressive language development, social or emotional development, cognitive development, and visual development;

- The child is functioning between 51 percent and 75 percent of his or her chronological age level in any two of the skill areas identified in (i); or
- The child has a disabling medical condition or congenital syndrome which has a high predictability of requiring intensive special education and services. (17 Cal. Code Regs. § 52110; 5 Cal. Code Regs. § 3031.)

## **5.8 DEVELOPMENT OF THE IFSP**

An initial IFSP shall be developed by CVRC and/or FUSD for each eligible infant or toddler, within 45 days of the receipt, by either CVRC or FUSD, of the oral or written referral, except when an interim IFSP is required pursuant to title 17 of California Code of Regulations, section 52107. (17 Cal. Code Regs. § 52102(a).)

A periodic review of the IFSP shall be conducted every six months or more frequently if service needs change, or if the parent requests such a review. The periodic review of the IFSP may be carried out by a meeting or by another means that is acceptable to the parent and other participants. (17 Cal. Code Regs. § 52102(b) and (d).)

An annual meeting to review the IFSP shall be conducted to document the infant's or toddler's progress and revise its provisions, and shall include all mandatory members. (17 Cal. Code Regs. § 52102(e).)

All IFSP meetings shall be conducted in settings and at times or by means that are reasonably convenient to the parent and in the language of the parent's choice unless it is clearly not feasible to do so. (17 Cal. Code Regs. § 52102(g).)

Meeting arrangements shall be made in collaboration with the parent. A written notice of the meeting shall be provided to the parent and other members of the multidisciplinary team in a timely manner to ensure attendance at the IFSP meeting. (17 Cal. Code Regs. § 52102(h).)

Each initial IFSP meeting and each annual IFSP meeting shall include the following participants:

- The parent of the infant or toddler;
- The service coordinator; and,
- The person(s) who conducted the evaluations or assessments.



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

- Other family members; and/or
- An advocate or person outside of the family.

Each IFSP meeting shall include persons who will be providing services to the infant or toddler and family, as appropriate. (17 Cal. Code Regs. §§ 52102, 52104.)

#### **5.8.A Contents of the IFSP**

The IFSP must be in writing and contain:

- A statement that can be measured or observed by a qualified professional of the infant's or toddler's present levels of development in the following areas:
  - Physical development,
  - Cognitive development,
  - Communication development,
  - Social or emotional development, and
  - Adaptive development.
- With agreement of parent, a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability.
- A statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made, and whether modifications or revisions of the outcomes or services are necessary.
- A statement about the outcomes for the family when services for the family are related to meeting the special developmental needs of the infant or toddler.
- A statement of specific early-intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services.
- A statement of the natural environments in which early-intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment.



- The projected dates for initiation of services and the anticipated duration of the services.
- The scheduled days when services/programs will not be available when the service provider operates a program which has a fixed schedule which includes breaks in service for periods such as holidays or vacations.
- The name of CVRC, FUSD, or service provider providing each early-intervention service.
- The funding source for other or non-required services provided by any entity other than CVRC or FUSD including the procedures that will be followed to obtain such funding.
- The name of the service coordinator.
- When dually eligible, the service provider will be a CVRC social worker. If the eligibility is a solely low-incidence, the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's family needs (or who is otherwise qualified to carry out all applicable responsibilities), will be responsible for the implementation of the plan and coordination with other agencies and persons.
- The steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained before early-intervention services can be provided. If the parents do not provide consent with respect to a particular early-intervention service, then the only early-intervention service to which consent is obtained shall be provided. (17 Cal. Code Regs. § 52106; Gov. Code, § 95020.)

#### **5.8.B Review of the IFSP**

The IFSP shall be evaluated once a year and the family must be provided a review of the plan at six-month intervals (or more frequently if service needs change, or if the parent requests such a review).

The IFSP team will review the degree to which progress toward achieving the outcome is made and document all modifications and revisions of the outcomes or services as necessary. (17 Cal. Code Regs. § 52102(c).)

The contents of the initial and annual IFSP and changes to the IFSP resulting from the periodic review shall be fully explained and a legible copy of the document given to the parent. Written consent from the parent shall be obtained prior to the provision of early-intervention services described in the IFSP as required in section 52162(a) of these regulations. (17 Cal. Code Regs. § 52102(i).)



If the parent does not provide consent with respect to a particular early-intervention service listed in the IFSP or withdraws consent after first providing it, that service shall not be provided. The early-intervention services to which parental consent is obtained shall be provided. (17 Cal. Code Regs. § 52102(j).)

## **5.9 TRANSITION REQUIREMENTS FOR EARLY INTERVENTION<sup>1</sup>**

At age three, an eligible child shall be served under part B of the IDEA by FUSD. To ensure a smooth transition for eligible toddlers receiving early-intervention services to preschool or other appropriate services, the following requirements must be met:

- The families of such toddlers will be included in the transition plans.
- At two years, six months of age, the CVRC service coordinator will notify:
  - The parent of the toddler who may be eligible for special education and related services under Part B of the IDEA that transition planning will occur within the next three to six months; and
  - FUSD that there will be an IFSP meeting before the toddler is two years, nine months, or at the discretion of all parties, up to six months before the toddler turns three years old to specify necessary Part B transition steps.

Within 30 days of the above notification of the parent and FUSD, all parties shall agree on the date of the Part B transition IFSP. (17 Cal. Code Regs. § 52112(b).)

- For all toddlers with an IFSP, the transition steps contained in the IFSP shall include all of the following:
  - Discussion with and providing parents information regarding:
    - The toddlers transition to special education for a toddler with a disability who may be eligible for special education under Part B of the IDEA; and
    - Steps to prepare the toddler for changes in service delivery, including steps to help the toddler adjust to and function in a new setting.
  - Provide information about community resources such as Head Start, child Development Preschools, private or public preschool for toddler who will not be eligible for special education services after three years of age.
  - A projected date for conducting a final review of the IFSP to review the

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<sup>1</sup> Some of these transition activities may be required by CVRC. However, they are mentioned herein to give a complete picture of transition requirements.



early-intervention services and the transition outcomes by age three. (17 Cal. Code Regs. § 52112(c).)

- For toddlers who may be eligible for preschool services from FUSD under Part B of the IDEA, the Part B transition steps necessary will be written at the IFSP meeting before the toddler is two years, nine months (or at the discretion of all parties up to six months before the toddler's third birthday) shall include the following:
  - With parent consent, the transmission of information about the toddler to FUSD, including assessment information and copies of developed and implemented IFSPs;
  - Identified needed assessments to determine continued CVRC and IDEA eligibility, responsibility, and associated timelines for completion of assessments;
  - Statements of the steps necessary to ensure that the referral is received by FUSD in a timely manner that ensures that assessments and an IEP are completed by the toddler's third birthday;
  - A referral for assessment no later than the time in which the toddler is two years, nine months or before FUSD school break if the toddler will turn three during the school break.
  - The transition IFSP shall contain steps necessary to satisfy the referral and IEP development requirements contained in Education Code sections 563221 and 56344.
  - Identification of people responsible for convening an IEP and final IFSP meeting, and the person responsible for convening an individualized program plan (IPP) meeting, if necessary, for the toddler by age three to:
    - Review the progress toward meeting the early intervention services outcomes identified in the IFSP;
    - Determine the eligibility for special education and develop the IEP; and
    - Develop an IPP if the toddler is eligible also under the Lanterman Developmental Disabilities Act (as required in Welfare and Institutions Code section 4646).
- FUSD will hold an IEP meeting before the child's third birthday that ensures smooth and effective transition to a preschool program so that the child is in his/her preschool program on his/her third birthday. The IFSP transition planning meeting will be convened with the service coordinator, the family, and the FUSD transition coordinator at least 90 days (and at the





discretion of all parties, up to six months) before the child is eligible for the preschool services. The purpose of the meeting is to discuss the transition steps, as outlined above, and the timelines, dates for transition activities, and any such services that the child may receive.

- In the case of a child who may not be eligible for preschool services, with the approval of the family, reasonable efforts will be made to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services. (17 Cal. Code Regs. § 52112; Ed. Code, § 56426.9.)
- An invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the service coordinator or other representatives of the early education or early-intervention system to assist with the smooth transition of services. (17 Cal. Code Regs. § 52112.)

## **5.10 PRESCHOOL CHILDREN (AGE THREE TO FIVE) WITH DISABILITIES**

### **5.10.A Identification and Referral**

Preschool children age three to five with disabilities will be identified through:

- Child Find activities listed in previous sections.
- Direct referrals from parents, preschools, physicians, members of the community, and Kindergarten teachers.
- Children who are in transition from the Early Start Program.

Children who have been participating in the Early Start Program and are eligible to participate in a preschool program will experience a smooth transition to preschool programs in FUSD. Representatives of FUSD will participate in all transition planning conferences to ensure a smooth transition.

### **5.10.B Evaluation and Assessment**

Assessment procedures, as described in Chapter 1 are applicable to preschool children from three to five years of age.

The assessments will be conducted by a trans-disciplinary team including early childhood specialists, speech and language pathologists, school psychologists, and other professionals, as appropriate.

The team will use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent that may assist in determining whether the child has a disability.

Special attention will be given to:

- Assessing children with developmentally appropriate assessments.



- Assessing children in natural environments.
- Assessing children to identify participation in appropriate preschool activities.
- Involving preschool personnel in observing and assessing children.

When standardized tests are considered invalid for children between the ages of three and five years, alternative means will be utilized (e.g., scales, instruments, observations, and interviews) as specified in the Assessment Plan. (Ed. Code, §§ 56441.11, 56441.6, 56426.6.)

#### **5.10.C Eligibility**

The special education eligibility criteria listed in Chapter 1 shall apply to preschool children between the ages of three and five years. A preschool child qualifies as a child who needs early childhood special education services if the child meets the following criteria:

- Is identified as having one of the following disabling conditions:
  - Autism,
  - Deaf-blindness,
  - Deafness,
  - Hearing impairment,
  - Intellectual disability,
  - Multiple disabilities,
  - Orthopedic impairment,
  - Other health impairment,
  - Serious emotional disturbance,
  - Specific learning disability,
  - Speech or language impairment in one or more of voice, fluency, language and articulation,
  - Traumatic brain injury,
  - Visual impairment, or
  - Established medical disability (defined as a disabling medical condition or congenital syndrome that the IEP team determines has a high predictability of requiring special education and services). (Ed. Code, § 56441.11.)
- Needs specifically designed instruction or services.



- Has a need that cannot be met with modification of a regular environment in the home or school, or both, without ongoing monitoring or support as determined by an IEP team.
- Additionally, a child from birth to four years, nine months shall qualify if the IEP team determines the following:
  - Is identified as a student with a disability.
  - Requires intensive special education and services by meeting one of the following:
    - The child is functioning at or below 50 percent of his or her age in gross or fine motor, receptive or expressive language development, social or emotional development, cognitive development, and visual development;
    - The child is functioning between 51 percent and 75 percent of his or her chronological age level in any two of the skill areas identified in (i); or
    - The child has a disabling medical condition or congenital syndrome which has a high predictability of requiring intensive special education and services. (5 Cal. Code Regs. § 3031, 17 Cal. Code Regs. § 52110.)
- A child is not eligible for special education and related services if the child does not otherwise meet the eligibility criteria and his or her educational needs are due primarily to:
  - Unfamiliarity with the English language;
  - Temporary physical disabilities;
  - Social maladjustment; or,
  - Environmental, cultural, or economic factors.

#### **5.10.D Individualized Education Program**

The requirements for developing, implementing, and reviewing IEPs described in Chapter 3 are applicable to preschool children, ages three to five.

An early education program for preschool children with disabilities shall include specially designed instruction and related services to meet the unique needs of preschool children and their families. To meet this purpose, the program focus is on the young child and his or her family and shall include both individual and small group services, which shall be available in a variety of typical age-appropriate environments for young children, including the home, and shall include opportunities for active parent involvement. (Ed. Code, § 56441.2.)



A preschool teacher, who has observed the child in an appropriate preschool environment, will be a member of the IEP team. (Ed. Code, § 56341(c).)

The IEPs of preschool children will describe how the disability affects the child's participation in appropriate activities. (Ed. Code, § 56441.2.)

#### **5.10.E Services for Preschool Children with Disabilities**

Services for preschool children with disabilities and their families shall be provided in coordination with other state and local agencies. (Ed. Code, § 56441.1(a).)

As the preschool child approaches the age to enter an elementary school environment, the child's preparation shall be geared toward a readiness for Kindergarten and later school success. (Ed. Code, § 56441.1(b).)

Services will be provided at public expense, under public supervision, and without cost to the parents.

Early education services for preschool children may be provided to individuals or small groups and shall include:

- Observing and monitoring the child's behavior and development in his or her environment.
- Presenting activities that are developmentally appropriate for the preschool child and are specially designed, based on the child's exceptional needs, to enhance the child's development. Those activities shall be developed to conform to the child's IEP and shall be developed so that they do not conflict with his or her medical needs.
- Interacting and consulting with the family members, regular preschool teachers, and other service providers, as needed, to demonstrate developmentally appropriate activities necessary to implement the child's IEP in the appropriate setting, and necessary to reinforce the expansion of his or her skills in order to promote the child's educational development. These interactions and consultations may include family involvement activities.
- Assisting parents to seek and coordinate other services in their community that may be provided to their child by various agencies.
- Providing opportunities for young children to participate in play and exploration activities, to develop self-esteem, and to develop pre-academic skills.



- Providing access to various developmentally appropriate equipment and specialized materials.
- Providing related services that include parent counseling and training to help parents understand the special needs of their children and their children's development. (Ed. Code, § 56441.3.)

Appropriate settings for these services include any of the following:

- The regular public or private nonsectarian preschool program;
- The child development center or family day-care home;
- The child's regular environment, that may include the home;
- A special site where preschool programs for both children with disabilities and children who are not disabled, are located close to each other and have an opportunity to share resources and program;
- A special education preschool program with children who are not disabled attending and participating for all or part of the program; or,
- A public school setting which provides an age-appropriate environment, materials, and services. (Ed. Code, § 56441.4.)

Early education services shall be provided by a trans-disciplinary team.

Responsibilities of early education staff shall include consultation with regular preschool program providers, consultation with other specialists, assessment services, and direct services. (Ed. Code, § 56441.6.)

Services may be provided by any of the following methods:

- Directly by FUSD;
- Through an interagency agreement between a local educational agency and another public agency;
- Through a contract with another public agency;
- Through a contract with a nonpublic, nonsectarian school or nonpublic, nonsectarian agency; or
- Through a contract with a nonsectarian hospital. (Ed. Code, § 56441.8.)

#### **5.10.F Instructional Adult-to-Child Ratio**

Appropriate instructional adult-to-child ratios for the group services shall be dependent on the needs of the child.

Appropriate instructional adult-to-child ratios for group services shall be dependent on the needs of the child. However, because of the unique needs of individuals with exceptional needs between the ages of three and five years,



inclusive, who require special education and related services, the number of children per instructional adult shall be less than ratios set forth in subsection (b) of section 18204 of title 5 of the California Code of Regulations, as it read on May 1, 1987, for young children in a regular preschool program. Group services provided to individuals with exceptional needs between the ages of three and five years, inclusive, identified as severely disabled pursuant to Education Code section 56030.5 shall not exceed an instructional adult-to-child ratio of one to five. (Ed. Code, § 56441.5.)

#### **5.10.G Transition from Preschool to Kindergarten**

As the preschool age child approaches the age to enter the elementary school environment, the child's preparation is geared toward readiness for kindergarten and later school success. (Ed. Code, § 56441.1(b).)

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

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## CHAPTER 6

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## **SUSPENSION AND EXPULSION DUE PROCESS**

### **6.1 DISCIPLINE**

A student identified as an individual with disabilities pursuant to the IDEA is subject to the same grounds for suspension and expulsion which apply to students without disabilities.

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

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

Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, the IEP team must meet to review the relationship between the child's disability and the behavior subject to the disciplinary change of placement. (34 C.F.R. § 300.530(e).)

### **6.2 SUSPENSION**

The California Education Code provides that the superintendent or designee may suspend a student with a disability for up to **5 consecutive school days** for a single incident of misconduct and up to **20 school days in a school year**. An additional 10 days is allowed for reassignment for purposes of readjustment. However, special considerations must be made when suspending a special education student. When disciplining special education students for more than 10 days, an examination must be made as to whether the removal constitutes a change in placement.

A change of placement occurs if:

- The removal is for more than 10 consecutive days;
- The student has had a series of removals that constitutes a pattern, defined as (i) removal for a total of more than 10 days, (ii) the behavior is substantially similar to the previous incidents that resulted in the series of removals, and (iii) the removals are close in amount of time and proximity of time.

FUSD determines on a case-by-case basis whether a pattern of removals constitutes a change in placement, and that decision is subject to review through due process procedures. (34 C.F.R. § 300.536(b).)

If the removal constitutes a change in placement, then within 10 school days of the decision to change the placement, then a manifestation determination must be held. (*See, 6.6 below.*)





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

### **6.3 SERVICES DURING SUSPENSION**

Students suspended for more than 10 school days in a school year shall continue to receive special education and related services as specified on the IEP, during the period of suspension. This will enable the child to participate in the general curriculum and to progress toward meeting the goals in his/her IEP. (34 C.F.R. § 300.530(b)(2).)

### **6.4 TRANSPORTATION DURING SUSPENSION**

If a student with disabilities is excluded from transportation, the student is entitled to be provided with an alternative form of transportation at no cost to the student or parent/guardian, provided that transportation is specified on the IEP. (Ed. Code, § 48915.5(c).)

### **6.5 PROCEDURAL SAFEGUARDS**

On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of conduct, FUSD will notify the parents of that decision and provide the parents with their procedural safeguards. (34 C.F.R. § 300.530(h).)

### **6.6 MANIFESTATION DETERMINATION (REFER TO FUSD MANIFESTATION DETERMINATION PROCEDURES, CHAPTER 6 APPENDIX A)**

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the District, the parent, and relevant members of the IEP team (as determined by the parent and FUSD) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- 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 FUSD's failure to implement the IEP.

If the IEP team determines that either of the above is applicable for the student, the conduct shall be determined to be a manifestation of the student's disability. If the IEP team determines that neither of them applies, then the student can be disciplined like his or her non-disabled peer. If parents disagree with the decision regarding the manifestation determination, that decision can be reviewed through due process procedures.



#### **6.7.A Determination that Behavior is a Manifestation of the Disability**

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

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

#### **6.7.B Determination that Behavior is NOT a Manifestation of the Disability**

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

- Student must continue to receive services to enable him/her to participate in the general curriculum and to progress toward meeting the goals in the IEP.
- If appropriate, receive a functional behavioral assessment, and/or develop/revise the Behavior Intervention Plan to address the behavior so that it does not recur.

### **6.7 45-DAY REMOVAL TO INTERIM ALTERNATIVE EDUCATION SETTING (IAES) (SPECIAL CIRCUMSTANCES)**

School personnel may remove a student to an interim alternative educational setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, in cases where a student:

- Carries or possesses a weapon to or at school, on school premises, or at a school function under the jurisdiction of FUSD;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of FUSD; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state or FUSD. (34 C.F.R. § 300.530(g).)

The IAES shall be determined by the IEP team. (34 C.F.R. § 300.531.)



### **Definition of Serious Bodily Injury**

- Serious bodily injury means bodily injury which involves:
  - A substantial risk of death;
  - Extreme physical pain;
  - Protracted and obvious disfigurement; or
  - Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18 U.S.C. § 1365(h)(3).)

### **6.8 SERVICES DURING 45-DAY PLACEMENT**

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

- Continue to receive services to enable him/her to participate in the general curriculum and to progress toward meeting the goals in the IEP.
- Receive, as appropriate, a functional behavioral assessment, and/or develop/revise the Behavior Intervention Plan to address the behavior so that it does not recur.

### **6.9 DISCIPLINARY APPEAL PROCESS**

If the parent disagrees with any decision regarding placement or manifestation determination, they may request an expedited hearing. (34 C.F.R. § 300.532.) If FUSD believes that maintaining the current placement could substantially result in injury to the child or others, the District may request an expedited hearing. (34 C.F.R. § 300.532.)

### **6.10 PLACEMENT DURING APPEAL PROCESS**

When an appeal has been requested by either the parent or FUSD, the student shall remain in the IAES pending the decision of the administrative law judge (ALJ) or until the expiration of the 45-day placement, whichever occurs first, unless the parent or FUSD agree otherwise.

### **6.11 EXPEDITED HEARING**

In cases where a challenge to a disciplinary decision is being made, an expedited hearing shall occur within twenty school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing. (34 C.F.R. § 300.532(c)(2).)

### **6.12 AUTHORITY OF ADMINISTRATIVE LAW JUDGE (ALJ)**



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

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

### **6.13 PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES (SEE CHAPTER 6 APPENDIX B FOR CDE GUIDANCE ON REQUIREMENTS FOR BEHAVIORAL EMERGENCY REPORTS)**

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct may assert any of the protections provided under IDEA if the District had knowledge that the student had a disability before the behavior that precipitated the disciplinary action occurred. (34 C.F.R. § 300.534(a).)

#### **6.14.A Basis of Knowledge**

FUSD shall be deemed to have knowledge that a child is a child with a disability if before the behavior precipitating the disciplinary action occurred:

- The parent of the child had expressed concern in writing to District supervisory or administrative personnel, or a teacher of the child, that the child was in need of special education and related services;
- The parent of the child had requested an evaluation of the child; and/or
- The teacher of the child, or other District personnel, had expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the District or to other supervisory personnel of the District. (34 C.F.R. § 300.534(b).)

#### **6.14.B Exception**

FUSD shall not have been deemed to have knowledge that the child is a child with a disability if:

- The parent of the child has not allowed an evaluation of the child, or has refused services if the child has been evaluated and it was determined that the child was not a child with a disability; or
- The child has been evaluated and determined not to be a child with a disability. (34 C.F.R. § 300.534(c).)

### **6.14 CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE**



- If the District does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities, who engage in comparable behaviors. (34 C.F.R. § 300.534(d)(1).)
- If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by FUSD and information provided by the parents, FUSD shall provide special education and related services. Pending the results, the child shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. (34 C.F.R. § 300.534(d)(2).)

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## MANIFESTATION DETERMINATION PROCEDURES

**Manifestation Determination IEP Meeting must be held:**

☐ On day 7 of suspension

☐ On day 11 of suspension

☐ On day 18 of suspension

Procedure		Responsible Parties
<input type="checkbox"/>	<ul style="list-style-type: none"> <li>School Site Administrator determines that the student with an Individualized Education Program (IEP) was in violation of EC 48900.</li> </ul>	<ul style="list-style-type: none"> <li>School Site Administrator</li> </ul>
<input type="checkbox"/>	<ul style="list-style-type: none"> <li>School Site Administrator suspends student immediately.</li> <li>School Site Administrator <b>personally gives</b> the <b>Procedural Safeguards</b> (Parents' Rights) to the parent/guardian/adult student/surrogate (if applicable) on the same day the decision is made at the mandatory suspension conference.</li> <li>In the event of an emergency, if the mandatory suspension conference cannot be held, the School Site Administrator mails the <b>Procedural Safeguards</b> (Parents' Rights) to the parent/guardian/adult student/ surrogate (if applicable) on the same day the decision is made.</li> <li>The School Site Administrator documents on the ATLAS Suspension Form the date, time and manner (e.g., in person, by mail, etc.) in which the <b>Procedural Safeguards</b> (Parents' Rights) were provided to the parent/guardian /adult student/surrogate.</li> </ul>	<ul style="list-style-type: none"> <li>School Site Administrator</li> </ul>
<input type="checkbox"/>	<p><b>DAY 7, 11, and 18 OF SUSPENSION</b></p> <ul style="list-style-type: none"> <li>School Site Administrator notifies all of the following of the suspension, to review the case, and to review the Manifestation Determination (MD) process: <ul style="list-style-type: none"> <li>Regional Instructional Manager (RIM)</li> <li>School Psychologist</li> <li>Special Education Case Manager</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>School Site Administrator</li> </ul>
<input type="checkbox"/>	<ul style="list-style-type: none"> <li>School Site SPED Team establishes the date, time, and location of the Manifestation Determination (MD) IEP meeting.</li> <li><u>MD IEP meeting team must include all of the following:</u> <ul style="list-style-type: none"> <li>Parent/Guardian/Adult Student/Surrogate</li> <li>Student aged 15+ and older (younger if appropriate)</li> <li>School Site Administrator</li> <li>Special Education Teacher(s) serving student</li> <li>Special Education Case Manager (if different from SPED Teacher)</li> <li>General Education Teacher(s) serving the student in core subject</li> <li>School Psychologist</li> <li>Regional Instructional Manager (RIM), if needed</li> </ul> </li> </ul>	<p>School Site SPED Team:</p> <ul style="list-style-type: none"> <li>School Psychologist</li> <li>Special Education Teacher/Case Manager</li> <li>General Education Teacher(s)</li> <li>School Site Administrator</li> </ul>
<input type="checkbox"/>	<ul style="list-style-type: none"> <li>Special Education Case Manager sends the <b>Meeting Notice</b> for the MD IEP meeting (include date, time, and location) to the parent/guardian/adult student/surrogate. <ul style="list-style-type: none"> <li><b>Procedural Safeguards</b> (Parents' Rights) are included with the Meeting Notice.</li> </ul> </li> <li>If neither parent/guardian/adult student/surrogate can participate in the MD IEP meeting in which the decision is to be made relating to the educational placement of the child, the district must use other methods to ensure parent participation, including individual telephone calls, conference telephone call, or video conferencing. <ul style="list-style-type: none"> <li>The School Psychologist, Special Education Case Manager or RIM must document the meeting methods offered and the manner in which parent participation occurred on the <b>Structured Meeting Notes</b> form.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Special Education Case Manager</li> <li>School Psychologist</li> </ul>

## MANIFESTATION DETERMINATION PROCEDURES

Procedure	Responsible Parties
<div style="display: flex; align-items: flex-start;"> <div style="width: 40px; text-align: center; margin-right: 10px;"> <input type="checkbox"/> </div> <div> <p><b>PRIOR TO THE MD IEP MEETING:</b></p> <ul style="list-style-type: none"> <li>The School Psychologist develops or updates (as appropriate) the Behavior Support Plan (BSP) or updates an existing Behavior Intervention Plan (BIP). If necessary, School Psychologist will conduct a Functional Behavioral Assessment (FBA) and develop the Behavior Intervention Plan (BIP). These forms must be in SEIS.</li> <li>Special Education Teacher/Case Manager, in consultation with School Psychologist (and RIM if needed), general education teacher(s), and site administrator, prepares the draft MD IEP forms.               <ul style="list-style-type: none"> <li>GE teacher(s) provide input on positive behavior supports and strategies, supplementary aids and services, program modifications, and supports for school personnel. This is documented on the <b>Structured Meeting Notes</b> form by the Case Manager.</li> </ul> </li> </ul> </div> </div>	<p>School Site SPED Team:</p> <ul style="list-style-type: none"> <li>School Psychologist</li> <li>Special Education Teacher/Case Manager</li> <li>General Education Teacher(s)</li> <li>School Site Administrator</li> </ul>
<div style="display: flex; align-items: flex-start;"> <div style="width: 40px; text-align: center; margin-right: 10px;"> <input type="checkbox"/> </div> <div> <p><b>IEP TEAM HOLDS THE MD IEP MEETING</b></p> <p><i>The MD IEP meeting is held separately after any other IEP team meeting. The 30-day, Annual, and Triennial IEP meetings, if needed, are held before the MD IEP team meeting. The answers to the MD questions are based upon the student's Special Education eligibility at the time of the incident.</i></p> <ul style="list-style-type: none"> <li>School Psychologist (and RIM if needed) reviews the Procedural Safeguards with the parent/guardian/adult student/surrogate including their right to pursue a due process hearing if they disagree with the decision of the MD IEP Team (see pages 4-7).</li> <li><b>The MD IEP team determines:</b> <ol style="list-style-type: none"> <li>If the conduct in question was caused by or had a direct and substantial relationship to the student's disability, <u>OR</u></li> <li>If the conduct in question was the direct result of the District's failure to implement the student's last signed IEP.</li> </ol> </li> <li>When the answer to 1 or 2 above is Yes, then the student's conduct shall be deemed to be a manifestation of the student's disability.               <ul style="list-style-type: none"> <li>If the behavior <b>is a manifestation of the student's disability</b> – then District shall conduct an FBA and/or develop/revise the BIP.</li> </ul> </li> <li>When the answer to <u>both</u> 1 and 2 above is No, then the student's conduct is not a manifestation of the student's disability.               <ul style="list-style-type: none"> <li>If behavior <b>is not a manifestation of the student's disability</b> – then District may conduct, <i>as appropriate</i>, an FBA and/or develop/revise the BIP.</li> </ul> </li> <li><u>If the parent/guardian/adult student/surrogate disagree with the decision of the MD IEP Team, the School Psychologist or RIM will:</u> <ul style="list-style-type: none"> <li>Inform the parent/guardian/adult student and surrogate of their right to pursue a due process hearing if they disagree with the decision of the MD IEP Team regarding whether the student's behavior was a manifestation of his/her disability (see pgs. 4-7 of <b>Procedural Safeguards</b>).</li> <li>Document on the <b>Manifestation Determination</b> form, above the signature section in the "Comments" field, that parent/guardian/adult student/surrogate were informed of their right to a due process hearing if they disagree.</li> </ul> </li> <li>Suggested statement:</li> </ul> </div> </div>	<p>IEP Team:</p> <ul style="list-style-type: none"> <li>School Psychologist</li> <li>Special Education Case Manager</li> <li>School Site Administrator</li> <li>General Education teacher(s)</li> <li>School Site Administrator</li> <li>RIM, if needed</li> </ul>

Fresno Unified School District  
Department of Special Education

## MANIFESTATION DETERMINATION PROCEDURES

Procedure		Responsible Parties
	<ul style="list-style-type: none"> <li>• <i>Parent/guardian/adult student/surrogate</i> (write only what applies) <i>were informed verbally and in writing of their right to pursue a due process hearing if they disagree with the decision of the MD IEP Team (see pgs. 4-7 of <b>Procedural Safeguards</b>).</i></li> <li>• Ensure that parent/guardian/adult student/surrogate place their initials next to the written statement of being verbally informed.</li> </ul>	
<input type="checkbox"/>	<p><b>FOLLOWING THE MD IEP MEETING:</b></p> <ul style="list-style-type: none"> <li>• The School Psychologist updates information on the MD in SEIS.</li> <li>• The Special Education Teacher/Case Manager updates the IEP documents in SEIS and affirms and attests the IEP.</li> <li>• <u>Within 3 school days of the MD IEP meeting</u>, the School Psychologist will ensure that the original IEP paperwork has been sent to the Department of Special Education via intradistrict mail.</li> </ul>	<ul style="list-style-type: none"> <li>• School Psychologist</li> <li>• Special Education Teacher/Case Manager</li> </ul>

**ADDITIONAL NOTES:**

- Special Education students who have accumulated 7 days of suspension for the school year must have a Manifestation Determination (MD) IEP meeting.
- If subsequent suspensions occur, the team will hold another MD IEP meeting on the 11<sup>th</sup> day of suspension and then again on the 18<sup>th</sup> day of suspension. The total number of days of suspension for a student shall not exceed 20 days in a school year.
  - It is not required that the IEP team hold an MD IEP meeting for each subsequent suspension between day 7, day 11, and day 18.
- **Exception: Each suspension for weapons, drugs, or serious bodily injury requires a separate Pre-Expulsion MD IEP meeting**, regardless of when a previous MD IEP or previous Pre-Expulsion MD IEP meeting was held during the school year.
  - **There is no minimum accumulation of suspension days before the Pre-Expulsion MD IEP is held.**
    - For example, if a suspension for weapons, drugs or serious bodily injury occurs on day 2 of suspension, the team will hold the Pre-Expulsion MD IEP team meeting as soon as possible and not wait until day 7 of suspension.
- The Pre-Expulsion MD IEP meeting is held separately from any other IEP team meetings such as annual or triennial IEP team meetings. These meetings require 2 different meeting notices and have different timelines.
  - The Annual or Triennial IEP is held first and the MD meeting follows.
  - The answers to the MD questions are based upon the student's Special Education eligibility at the time of the incident.
- **Development of a Functional Behavior Assessment (FBA)**
  - If the behavior **is a manifestation of the student's disability** – then District shall conduct an FBA and/or develop/revise the BIP.
  - If behavior **is not a manifestation of the student's disability** – then District may conduct, *as appropriate*, an FBA and/or develop/revise the BIP.



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## **PRE-EXPULSION MANIFESTATION DETERMINATION PROCEDURES**

<b>Procedure</b>		<b>Responsible Parties</b>
<input type="checkbox"/>	<ul style="list-style-type: none"> <li>School Site Administrator determines that a student with an Individualized Education Program (IEP) was in violation of EC 48900 and is referring for expulsion.</li> </ul>	<ul style="list-style-type: none"> <li>School Site Administrator</li> </ul>
<input type="checkbox"/>	<ul style="list-style-type: none"> <li>School Site Administrator suspends student immediately.</li> <li>School Site Administrator <b>personally gives</b> the <b>Procedural Safeguards</b> (Parents' Rights) to the parent/guardian/adult student/surrogate (if applicable) on the same day the decision is made at the mandatory suspension conference.               <ul style="list-style-type: none"> <li>In the event of an emergency, if the mandatory suspension conference cannot be held, the School Site Administrator mails the <b>Procedural Safeguards</b> (Parents' Rights) to the parent/guardian/adult student/surrogate (if applicable) on the same day the decision is made.</li> </ul> </li> <li>The School Site Administrator documents on the ATLAS Suspension Form the date, time, and manner (e.g., in person, by mail, etc.), in which the <b>Procedural Safeguards</b> (Parents' Rights) were provided to the parent/guardian/adult student/surrogate.</li> </ul>	<ul style="list-style-type: none"> <li>School Site Administrator</li> </ul>
<input type="checkbox"/>	<p><b>ON FIRST DAY OF SUSPENSION:</b></p> <ul style="list-style-type: none"> <li>School Site Administrator notifies all of the following of the suspension (including recommendation for expulsion), to review the case, and to review the Pre-Expulsion Manifestation Determination (MD) process:               <ul style="list-style-type: none"> <li>Student Discipline Office in the Department of Prevention and Intervention</li> <li>Regional Instructional Manager (RIM)</li> <li>School Psychologist</li> <li>Special Education Case Manager</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>School Site Administrator</li> </ul>
<input type="checkbox"/>	<ul style="list-style-type: none"> <li>Student Discipline Office notifies the Special Education Department (SELPA Director and Special Education Department Office Managers) of the expulsion recommendation and the need to conduct a Pre-Expulsion Manifestation Determination IEP meeting.</li> <li>Special Education Department Office Manager emails the appropriate RIM and School Psychologist and provides them with the Pre-Expulsion MD IEP meeting timeline.</li> <li>In the case of Weapons or Drugs or Serious Bodily Injury Only:               <ul style="list-style-type: none"> <li>RIM contacts the SELPA Director within the first 2 days of the violation to discuss the recommendations regarding a 45-day Interim Alternative Education Placement.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Student Discipline Office</li> <li>Regional Instructional Manager (RIM)</li> <li>School Psychologist</li> </ul>
<input type="checkbox"/>	<p><b>PRIOR TO DAY 10<sup>th</sup> SCHOOL DAY OF SUSPENSION:</b></p> <ul style="list-style-type: none"> <li>School Site SPED Team establishes the date, time, and location of the Pre-Expulsion MD IEP team meeting.</li> <li><u>Pre-Expulsion MD IEP meeting team must include all of the following:</u> <ul style="list-style-type: none"> <li>Parent/Guardian/Adult Student/Surrogate</li> <li>Student aged 15+ and older (younger if appropriate)</li> <li>School Site Administrator</li> <li>Special Education Teacher serving the student</li> <li>Special Education Case Manager (if different from SPED Teacher)</li> <li>General Education Teacher(s) serving the student in core subject</li> <li>School Psychologist</li> <li>Regional Instructional Manager (RIM)</li> </ul> </li> </ul>	<p>School Site SPED Team:</p> <ul style="list-style-type: none"> <li>School Psychologist</li> <li>Regional Instructional Manager (RIM)</li> <li>Special Education Teacher/Case Manager</li> <li>General Education teacher(s)</li> <li>School Site Administrator</li> </ul>
<input type="checkbox"/>	<ul style="list-style-type: none"> <li>Special Education Case Manager sends the <b>Meeting Notice</b> for the Pre-Expulsion MD IEP team meeting (include date, time, and location) to the parent/guardian/adult student/surrogate by <u>certified mail (return receipt requested)</u> and also by <u>U.S. Postal mail via the office at the school site.</u></li> </ul>	<ul style="list-style-type: none"> <li>Special Education Case Manager</li> <li>School Psychologist</li> <li>Regional Instructional Manager (RIM)</li> </ul>

## **PRE-EXPULSION MANIFESTATION DETERMINATION PROCEDURES**

Procedure	Responsible Parties
<ul style="list-style-type: none"> <li>• <b>Procedural Safeguards</b> (Parents' Rights) are included with Meeting Notice.</li> <li>• RIM emails the Student Discipline Hearing Office with the date, time, and location of the Pre-Expulsion MD IEP team meeting.</li> <li>• If neither parent/guardian/adult student/surrogate can participate in the meeting in which the decision is to be made relating to the educational placement of the child, the district must use other methods to ensure parent participation, including individual telephone calls, conference telephone call, or video conferencing.               <ul style="list-style-type: none"> <li>• RIM must document the meeting methods offered and the manner in which parent participation occurred on the <b>Structured Meeting Notes</b> form.</li> </ul> </li> </ul>	
<div data-bbox="94 867 126 898" style="float: left; margin-right: 10px;"><input type="checkbox"/></div> <p><b>PRIOR TO THE PRE-EXPULSION MD IEP TEAM MEETING:</b></p> <ul style="list-style-type: none"> <li>• The School Psychologist develops or updates (as appropriate) the Behavior Support Plan (BSP) or updates an existing Behavior Intervention Plan (BIP) or conducts a Functional Behavioral Assessment (FBA) and develops the Behavior Intervention Plan (BIP). These forms must be in SEIS.</li> <li>• Special Education Teacher/Case Manager, in consultation with School Psychologist and RIM, general education teacher(s), and site administrator, prepares the draft Pre-Expulsion MD IEP forms.               <ul style="list-style-type: none"> <li>• GE teacher(s) provide input on positive behavior supports and strategies, supplementary aids and services, program modifications, and supports for school personnel. This is documented on the <b>Structured Meeting Notes</b> form by the Case Manager.</li> </ul> </li> <li>• School Psychologist downloads the <b>Pre-Expulsion Summary</b> form from the Document Library in SEIS and brings to the IEP team meeting.</li> <li>• The <b>Pre-Expulsion Summary</b> form includes (1) the special education and related services to be provided in accordance with the current IEP, and (2) the location where the services will be delivered.</li> </ul>	<p>School Site SPED Team:</p> <ul style="list-style-type: none"> <li>• Regional Instructional Manager (RIM)</li> <li>• School Psychologist</li> <li>• Special Education Teacher/Case Manager</li> <li>• General Education teacher(s)</li> <li>• School Site Administrator</li> </ul>
<div data-bbox="94 1564 126 1596" style="float: left; margin-right: 10px;"><input type="checkbox"/></div> <p><b>IEP TEAM HOLDS THE PRE-EXPULSION MD IEP MEETING</b></p> <p><i>The Pre-Expulsion MD IEP meeting is held separately after any other IEP team meeting. The 30-day, Annual, and Triennial IEP meetings, if needed, are held before the Pre-Expulsion MD IEP team meeting. The answers to the MD questions are based upon the student's Special Education eligibility at the time of the incident.</i></p> <ul style="list-style-type: none"> <li>• School Psychologist (and RIM if needed) reviews the Procedural Safeguards with the parent/guardian/adult student/surrogate including their right to pursue a due process hearing if they disagree with the decision of the Pre-Expulsion MD IEP Team (see pages 4-7).</li> <li>• <b>The Pre-Expulsion MD IEP team determines:</b> <ol style="list-style-type: none"> <li>1. If the conduct in question was caused by or had a direct and substantial relationship to the student's disability, <b>OR</b></li> <li>2. If the conduct in question was the direct result of the District's failure to implement the student's last signed IEP.</li> </ol> </li> <li>• When the answer to 1 or 2 above is Yes, then the student's conduct shall be deemed to be a manifestation of the student's disability.               <ul style="list-style-type: none"> <li>• If the behavior <b>is a manifestation of the student's disability</b> – then District shall conduct an FBA and/or develop/revise the BIP.</li> </ul> </li> <li>• When the answer to <u>both</u> 1 and 2 above is No, then the student's conduct is not a manifestation of the student's disability.               <ul style="list-style-type: none"> <li>• If behavior <b>is not a manifestation of the student's disability</b> – then District may conduct, <i>as appropriate</i>, an FBA and/or develop/revise the BIP.</li> </ul> </li> </ul>	<p>IEP Team:</p> <ul style="list-style-type: none"> <li>• Parent/Guardian/Surrogate/Adult Student</li> <li>• School Site Administrator</li> <li>• Special Education Teacher/Case Manager</li> <li>• General Education teacher(s)</li> <li>• School Psychologist</li> <li>• Regional Instructional Manager (RIM)</li> </ul>

## **PRE-EXPULSION MANIFESTATION DETERMINATION PROCEDURES**

Procedure	Responsible Parties
<ul style="list-style-type: none"> <li>• <u>If the parent/guardian/adult student/surrogate disagree with the decision of the Pre-Expulsion MD IEP Team, the RIM will:</u> <ul style="list-style-type: none"> <li>• Inform the parent/guardian/adult student and surrogate of their right to pursue a due process hearing if they disagree with the decision of the Pre-Expulsion MD IEP Team regarding whether the student's behavior was a manifestation of his/her disability (see pgs. 4-7 of <b><i>Procedural Safeguards</i></b>).</li> <li>• Document on the <b><i>Manifestation Determination</i></b> form, above the signature section in the "Comments" field, that parent/guardian/adult student/surrogate were informed of their right to a due process hearing if they disagree.</li> <li>• Suggested statement: <ul style="list-style-type: none"> <li>• <i>Parent/guardian/adult student/surrogate (write only what applies) were informed verbally and in writing of their right to pursue a due process hearing if they disagree with the decision of the MD IEP Team (see pgs. 4-7 of <b><i>Procedural Safeguards</i></b>).</i></li> </ul> </li> <li>• Ensure that parent/guardian/adult student/surrogate place their initials next to the written statement of being verbally informed.</li> </ul> </li> </ul>	
<div data-bbox="94 1121 126 1155" style="float: left; margin-right: 10px;"><input type="checkbox"/></div> <p><b>FOLLOWING THE PRE-EXPULSION MD IEP TEAM MEETING:</b></p> <ul style="list-style-type: none"> <li>• The School Psychologist updates information on the Pre-Expulsion MD in SEIS and attaches the completed <b><i>Pre-Expulsion Summary</i></b> form.</li> <li>• The Special Education Teacher/Case Manager updates the IEP documents in SEIS and affirms and attests the IEP.</li> <li>• Regional Instructional Manager (RIM) will complete the following within 24 hours of the meeting: <ul style="list-style-type: none"> <li>• <u>Option 1</u>: Take a copy of the Pre-Expulsion MD IEP, BSP/BIP and current Psychoeducational Report to the Student Discipline Office.</li> </ul> <p><b>Or</b></p> <ul style="list-style-type: none"> <li>• <u>Option 2</u>: Email a scanned copy (or fax a copy - 457-3363) of the Pre-Expulsion MD IEP, BSP/BIP, and current Psychoeducational Report to the Student Discipline Office and copy the Student Discipline Hearing Officer.</li> </ul> </li> <li>• <b>Within 3 school days of the Pre-Expulsion MD IEP meeting</b>, the RIM will ensure that the original Pre-Expulsion MD IEP is sent to the Department of Special Education.</li> </ul>	<ul style="list-style-type: none"> <li>• Regional Instructional Manager (RIM)</li> <li>• School Psychologist</li> <li>• Special Education Teacher/Case Manager</li> </ul>

### **ADDITIONAL NOTES:**

- **Revocation of Suspended Expulsion**

- If a Special Education student commits another offense (behavioral infraction resulting in suspension) warranting the revocation of a suspended expulsion, the administrator will immediately suspend the student for 5 days and inform the Student Discipline Hearing Officer.
  - Within 5 days, the IEP team will hold a Manifestation Determination IEP meeting
  - **EXCEPTION:** If the suspended expulsion is revoked for any other reason than a behavioral infraction resulting in suspension (e.g., grades or attendance), then a Manifestation Determination IEP meeting is not required.

- **Development of a Functional Behavior Assessment (FBA)**

- If the behavior **is a manifestation of the student's disability** – then District shall conduct an FBA and/or develop/revise the BIP.
- If behavior **is not a manifestation of the student's disability** – then District may conduct, *as appropriate*, an FBA and/or develop/revise the BIP.

# Behavioral Intervention Letter, March 13, 2014



CALIFORNIA  
DEPARTMENT OF  
EDUCATION

**TOM TORLAKSON**

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

May 8, 2014

Dear Special Education Local Plan Area Directors, Special Education Administrators of County Offices of Education, Nonpublic School and Agency Administrators, and Other Entities Providing Related Services to Special Education Students:

## **Local Educational Agency and Individualized Education Program Team Responses to the Behavior of Students with Disabilities (Revised)**

Assembly Bill 86 (AB 86), the Education Omnibus Trailer Bill, Chapter 48, Statutes of 2013, repealed regulations and added state statute that addressed requirements and restrictions concerning student behavioral intervention. The result of these changes was to modify the Behavioral Intervention Plan (BIP) mandate to align it more closely with federal law and reduce unnecessary costs, while maintaining key protections for students with disabilities related to behavioral intervention.

In accordance with Assembly Bill 110, California's 2013–2014 budget bill, the California Department of Education (CDE) is required to provide oversight of, and technical assistance and monitoring to, local educational agencies (LEAs) regarding changes to the requirements related to the identification and provision of behavioral intervention services.

This correspondence provides clarification regarding considerations and requirements for when a LEA must take action as a response to a special education student's behavioral needs. This document is organized into three areas:

Individualized Educational Program (IEP) team considerations for a student whose behavior impedes learning

IEP team considerations for a student who requires a manifestation determination

LEA requirements and considerations following the use of an emergency intervention.

### **IEP Considerations for a Student Whose Behavior Impedes Learning**

In developing the IEP, the IEP team shall, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior [34 *Code of Federal Regulations (CFR)* 300.324(a)(2)(i)]. The IEP must include a statement of the "special education, related services, supplementary aids and services, and program modifications or supports" that will be provided to the child [20 *United States Code* 1414(d)(1)(A)(i)(IV)]. There are no unique requirements regarding the documentation of any positive behavioral interventions and supports and other strategies that are identified. Per the Office of Special Education Programs, if a BIP is developed, it should be included in the IEP and aligned with the goals in the IEP (71 *Federal Register* 46683, August 14, 2006) [<http://www.gpo.gov/fdsys/pkg/FR-2006-08-14/pdf/06-6656.pdf>] (PDF; 1MB).

### **IEP Team Considerations for Students Requiring a Manifestation Determination**

The LEA is required to conduct a manifestation determination for a special education student who has been suspended/removed from his current educational placement for more than 10 days, for the same or separate incidents of misconduct, within the same year [34 *CFR* 300.530(e)(i)(ii)] (see Chart A). If it is determined that the conduct leading to the student's removal from his current educational placement **was** a manifestation of the child's disability, then the LEA must either:

- (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a BIP for the child; or
- (ii) If a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior. [34 *CFR* 300.530(f)(1)]

If it is determined that the student's conduct **was not** a manifestation of the child's disability, the LEA must ensure that:

- (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur. [34 *CFR* 300.530(c)(d)(ii)]

It should be noted that Individuals with Disabilities Education Act (IDEA) does not provide specific guidance regarding the conduct or form of a functional behavioral assessment (FBA), as opposed to other types of assessment. The following resources provide information on FBAs and BIPs. These resources may prove to be useful to LEAs and IEP teams that are seeking more information. The contents of these resources **are not** formally endorsed by the CDE and are provided here for LEAs seeking to do more research on the subject of a FBA and BIP.

#### Functional Behavioral Assessment Resources (Not an Exhaustive List):

Functional Behavioral Assessments: What, Why, When, Where, and Who? Starin, Stephen, Ph.D. - <http://www.wrightslaw.com/info/discipl.fab.starin.htm> (accessed February 26, 2014)

Center for Effective Collaboration and Practice: Functional Behavioral Assessment - <http://cecp.air.org/fba/> (accessed February 26, 2014)

Functional Behavioral Assessment (provides definition of an FBA as well as assumptions included in the assessment and a model providing steps for conducting the assessment) - <http://www.behavioradvisor.com/FBA.html> (accessed February 26, 2014)

Positive Environments, Network of Trainers (PENT): Functional Assessment - <http://www.pent.ca.gov/beh/fa/fa.html>

#### Behavioral Intervention Plan Resource:

- Writing BIPs based on Functional Behavior Assessments (FBA): Making Data Based Decisions to Change Behavior; Riffel, Laura A., Ph.D. <http://www.behaviordocor.org> - [http://couragetorisk.org/2010\\_handouts/Riffel\\_Finding\\_the\\_Function\\_Behind\\_the\\_Behavior.pdf](http://couragetorisk.org/2010_handouts/Riffel_Finding_the_Function_Behind_the_Behavior.pdf) (PDF)

#### LEA Requirements and Considerations Following the use of an Emergency Intervention

Emergency behavioral interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the individual with exceptional needs (or others) that can't be "immediately" prevented by a response less restrictive than the temporary application of a technique to contain the behavior. [California *Education Code* (EC) 56521.1(a)]

California law continues to require that educational agencies complete a Behavioral Emergency Report (BER) when emergency interventions are used for a student with a disability, or if serious property damage occurs. Pursuant to AB 86, this requirement, previously established in California *Code of Regulations*, Title 5, Section 3052(i)(5) is now

located in *EC* Section 56521.1, subsection (e) (see below). In addition, IEP team considerations following the use of an emergency intervention, previously described in Title 5, Section 3052(i)(7) and (8), are now located in *EC* Section 56521.1, subsections (g) and (h) [see Chart B].

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

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

(f) All behavioral emergency reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator.

(g) If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an individualized education program (IEP) team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting a functional behavioral assessment, not developing an interim plan, or both.

(h) If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention plan.

If you have any questions about this subject, please contact Renzo Bernales, Education Programs Consultant, Special Education Division, by phone at 916-327-3637 or by e-mail at [rbernales@cde.ca.gov](mailto:rbernales@cde.ca.gov).

Sincerely,

*Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Policy and Program Services Unit at 916-323-2409.*

Fred Balcom, Director  
Special Education Division

Last Reviewed: Thursday, June 12, 2014

## CHAPTER 7

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## **IDENTIFICATION AND ASSESSMENT OF ENGLISH LEARNERS**

### **7.1 PURPOSE AND SCOPE**

This chapter was developed to provide FUSD staff members with a concise, practical, and sequential approach to the identification, assessment, and programs for students with disabilities, who are English learners (EL). When considering possible special education and related services, extreme care must be taken to avoid the over identification of students as having a disability, as well as the exclusion of English learners who may have a disability. With this in mind, two specific challenges are presented to educators:

- To utilize appropriate assessment tools and procedures and to provide services in the least restrictive environment.
- To incorporate language and culture into a special education curriculum.

All English learners must be properly identified, and the primary language of each new student shall be determined upon enrollment. (Ed. Code, § 52164.1.) Identification includes the completion of the state-mandated Home Language Survey (HLS), a form administered by the District to be completed by the parent or guardian at the time of first enrollment in a California public school, indicating language use in the home. (5 Cal. Code Regs., § 11510(k).)

Initial assessments shall be administered as follows:

Any student whose primary language is other than English as determined by the home language survey and who has not previously been identified as an English learner by a California public school or for whom there is no record of results from an administration of an English language proficiency test, shall be assessed for English language proficiency with the California English Language Development Test (CELDT) within 30 calendar days after the date of first enrollment in a California public school, or within 60 calendar days before the date of first enrollment, but not before July 1 of that school year. (5 Cal. Code Regs., § 11511 (a).)

Districts reporting the presence of English learners shall conduct an annual assessment of the English language development and academic progress of those students. (5 Cal. Code Regs., § 11306.)

Annual assessments shall be administered as follows:

The English language proficiency of all currently enrolled English learners shall be assessed by administering the CELDT during the annual assessment window, which begins on July 1 and ends on October 31 of each school year. (5 Cal. Code Regs., §§ 11511(b), 11510(e).)

For each student assessed using the CELDT, each school district shall notify





parents or guardians of the student's results within 30 calendar days following receipt of results of testing from the test contractor. The notification shall comply with the requirements of Education Code section 48985.

(5 Cal. Code Regs., § 11511.5.)

The District shall maintain a record of all students who participate in each administration of the CELDT. This record shall include the following information for each administration:

- The name of each student who took the test.
- The grade level of each student who took the test.
- The date on which the administration of the test was completed for each student.
- The test results obtained for each student. (5 Cal. Code Regs. § 11512(a)(1)-(4).)

The District shall enter in each student's record the following information for each administration of the test:

- The date referred to by subdivision (a)(3).
- The student's test results. (5 Cal. Code Regs. § 11512(b)(1)-(2).)

The record required above shall be created and the information it must contain shall be entered in each student's record prior to the subsequent administration of the test. (5 Cal. Code Regs. § 11512(c).)

Whenever a student transfers from one school district to another, the student's CELDT records including the information required above shall be transferred by the sending district within 20 calendar days upon a request from the receiving district where the student is now enrolled. (5 Cal. Code Regs. § 11512(d).)

## **7.2 IDENTIFICATION AND REFERRAL OF ENGLISH LEARNERS SUSPECTED OF HAVING A DISABILITY**

Procedures for identification and referral for special education and related services for all students are described in Chapter 1.

## **7.3 SPECIAL CONSIDERATIONS FOR EL STUDENTS PRIOR TO REFERRAL**

Unless the student has a severe disability, including, but not limited to, severe vision and hearing impairments, severe physical impairment, severe mental retardation, autism, or severe health impairment, the student should be allowed sufficient time to acquire English proficiency and receive appropriate academic instruction in English language arts and math. It is critical to differentiate between a student who is not achieving in the classroom because English is not



his/her primary language and a student who is not achieving due to a disability.

Following are some relevant sections of state and federal law that are particularly important in determining eligibility for special education instruction and services:

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

“The normal process of second language acquisition, as well as manifestations of dialect and sociolinguistic variance shall not be diagnosed as a handicapping condition.” (5 Cal. Code Regs. § 3023(b).)

“A child may not be determined to be eligible....if (i) the determinant factor for that eligible determination is . . . 1) lack of instruction in reading or math, or (2) limited English proficiency . . . and (ii) the child does not otherwise meet the eligibility criteria under 300.8(a).” (34 C.F.R. § 300.306(b).) (See also, Ed. Code, § 56329(a).)

#### **7.4 STUDENT SUCCESS TEAM (SST)**

The Student Success Team (SST) is designed to offer immediate assistance and suggestions for teachers, parents and support staff for an individual student who is not making progress or exhibiting various types of problems in the classroom and/or school. Through effective utilization of this team, many identification errors can be avoided. The Student Success Team serves as a group of professionals and parents who will discuss student strengths, problems, and possible interventions.

##### **7.4.A Suggested Members of an SST Team for an EL Student**

Members of the team may include the following, depending on the circumstances:

- Regular education teacher.
- Bilingual personnel.
- Principal or administrator.
- Parent.
- Special education specialist.
- School psychologist.
- School nurse.
- Counselor or specialist.



- Speech/language pathologist.
- Interpreters (as needed).
- Student (as appropriate).
- Others.

#### **7.4.B SST Responsibilities**

Referrals for special education assessment may be processed through the SST. A parent can request that a special education assessment be conducted. If a parent requests for a special education assessment is processed through an SST, then the SST will:

- Meet within 15 calendars days of receipt of the referral;
- Review the student's strengths, concerns, prior interventions and modifications that have been considered, and/or utilized; and,
- Decide within 15 days whether to provide parents with an assessment plan.

The results of the interventions will be documented. A plan will be developed, listing additional interventions, and the individuals responsible for implementing them, with a follow-up date to review the student's progress. If an assessment plan is not developed as a result of the SST to assess the student for special education eligibility, then FUSD shall

- Provide written notice to the parents of the student of the denial of the request for an assessment, in accordance with title 34, Code of Federal Rules, Part 300.503 (Prior Written Notice), which shall include a copy of Procedural Safeguards, or
- Document in writing the parents' withdrawal of their request for the special education assessment.

When a student who is an English learner is referred to the school site's SST, the first step is to gather information regarding the specific difficulty the student is experiencing. The second step is to look at why the student is having this difficulty. When gathering information about the specific difficulty an English learner is experiencing, there may be a tendency to describe general performance behaviors, such as, "The student is not making progress," "The student is below grade level," or "The student is having problems reading," etc. Statements such as these do not describe the specific difficulty that has been observed, which then makes it difficult to design appropriate interventions. In addition, not knowing the specific difficulty an English learner is experiencing makes it a challenge to determine if the perceived weakness is due to extrinsic



factors (e.g., inappropriate instruction, normal process of second language acquisition, lack of formal education, etc.) or a possible intrinsic factor (such as a learning disability, language disorder, etc.).

When describing the specific difficulty the English learner is experiencing, the difficulty needs to be measurable and observable. In addition, data needs to be collected about the identified difficulty across different contexts (such as different subject areas), in different environments (such as home and school), and in both the primary language and English.

After identifying what specific difficulty the student is experiencing, the next step is to find out why the student is having this difficulty. If an English learner is experiencing difficulties only in English, but not in the primary language, then the problem could be due to extrinsic factors rather than an intrinsic disability.

## **7.5 ASSESSMENT PROCEDURES FOR ENGLISH LEARNERS**

After interventions have been tried and programmatic changes have occurred, some students, who have been referred to the SST, will need a special education assessment. Special assessment requirements for students whose primary language is other than English are included in this section.

### **7.5.A Psycho-Educational Assessments**

Assessment requirements important to English learners include the following:

- Assessments with students of limited English proficiency shall be administered in the child's native language or mode of communication, unless clearly not feasible to do so. (Ed. Code, §§ 56001(j), 56320(a).)
- Assessments shall be administered by qualified personnel who are competent in both the oral or sign language skills and written skills of the individual's primary language or mode of communication, and have a knowledge and understanding of the cultural and ethnic background of the student. If it clearly is not feasible to do so, an interpreter must be used, and the assessment report shall document this condition and note that the validity may have been affected. (5 Cal. Code Regs., § 3023.)
- Materials are selected and administered so as not to be racially, culturally or sexually discriminatory. (Ed. Code, §§ 56001(j), 56320(a).)
- Tests and other assessment materials shall be provided and administered in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so. (Ed. Code, § 56329(b)(1).)



- A variety of assessment tools and strategies will be used to gather relevant functional and developmental information, including information provided by the parent. (Ed. Code, § 56320.)
- No single procedure is used as the sole criterion for determining an appropriate educational program for an individual child. (Ed. Code, §§ 56001, 56320(e).)

The assessment team may include, but is not limited to:

- School psychologist.
- Speech/language pathologist.
- Regular education teacher(s).
- Special education specialist.
- School nurse.
- Bilingual specialist.
- Principal/vice principal/counselor.
- Parent.

#### **7.5.B Other Procedures for Gathering Information EL Students**

It is necessary to review existing procedures and their applicability for appropriate identification and instructional planning. Appropriate standardized tests are often not available in all languages. A broader variety of methods are necessary to obtain the information needed to determine if the referred student is, in fact, an individual with a disability.

Following is a brief overview of four assessment procedures.

- Norm-referenced Tests: The norm-referenced test measures an individual's performance in relation to others on the same instrument. Key words often associated with this type of testing include: reliability, validity, and standardization. When using this type of test, it is critically important that the student being tested comes from a background (e.g., language, socioeconomic status) similar to that of the students on which the norms were derived. This often is the case with English learners.
- Criterion-Referenced Tests: The criterion referenced test breaks down an area and measures what a student can do on each task in that area. No comparison of one student's performance with the performance of the group can be made. This type of testing gives yes/no answers to instructional questions (e.g., can the student tell time by the ½ hour?).



With this information, curricular suggestions can be made leading to specific goals and objectives.

- Systematic Observation: This alternative assessment encourages the direct study of the referred student in a wide variety of settings. In systematic observation, one selects a specific behavior to observe, selects an appropriate measuring technique, depicts what is seen in the observation, and makes interpretations. Since the student is in his/her natural environment, it is possible to obtain a better picture of what the student is actually doing while using his/her own peer group as a backdrop. However, the presence of an observer may alter the environment and thus affect the validity of the behavior observed.
  - Structured Interview: This alternative assessment technique provides for a broad range of information collection. It is designed to incorporate the expectations and concerns of all those who are associated with the referral. Additional, interview based assessments allows for the funneling of information and expectations into the formal assessment system.
- Additional Assessment Guidelines

Following are additional guidelines to consider when assessing a student with limited English proficiency:

- Assess language dominance at time of referral or evaluation by regular education personnel.
- Whenever possible use two language dominance tests to establish functioning information.
- Assess in student's dominant language whenever possible.
- Assess using non-language measures (e.g., performance).
- Use a trained interpreter whenever needed.
- Assess achievement in both primary language and English.
- Do not accept scores on translations of tests as valid; use other, non-biased or non-test-based measures to support the scores. (Document!)
- Assess adaptive behavior, mindful of different cultural norms.
- When considering the presence of a language disability, consider whether primary language is deficient when compared to peers and school population. Is language generally depressed (common in low socioeconomic populations) or are there significant peaks and valleys? Is there evidence of a true language disability?

## **7.6 PROGRAM OPTIONS**

All students in need of special education and related services, including students identified as English learners, are to be served under the requirements of current state and federal law.

## **7.7 IEP DEVELOPMENT FOR ENGLISH LEARNERS WITH DISABILITIES**

IEP Teams should ensure that:

- IEPs include linguistically appropriate goals and objectives, including when necessary use of the student's primary language; (Ed. Code, § 56345(b)(2).)
- Necessary documentation and translation services are provided to parents as needed; and
- Teachers providing the students the District's core curriculum are appropriately certified.

Other requirements include:

- Qualified teachers.
- Sufficient and appropriate basic and supplemental resources to ensure access to the district's core curriculum.
- When required, translation of parent notifications/documents, including IEP parent rights to inform and involve parents of EL students, and translation services as required by state and federal laws.
- Opportunities for parents to become members of the District and/or school advisory committees.

### **7.7.A Linguistically Appropriate Goals, Objectives, and Programs**

"Linguistically appropriate goals, objectives, and programs mean those activities which lead to the development of English language proficiency; and those instructional systems either at the elementary or secondary level which meet the language development needs of the limited English language learner. For individuals whose primary language is other than English, and whose potential for learning a second language, as determined by the individualized education program team, is severely limited, nothing in this section shall preclude the individualized education program team from determining that instruction may be provided through an alternative program pursuant to a waiver under Education Code section 311(c), including a program provided in the individual's primary language, provided that the IEP team periodically, but not less than annually, reconsiders the individual's ability to receive instruction in the English language." (5 Cal. Code Regs., § 3001(t).)



In California, it is recommended that linguistically appropriate goals be aligned to the California English Language Development Standards. The California English Language Development Standards are available for downloading at [www.cde.ca.gov](http://www.cde.ca.gov).

- Kindergarten – grade 2.
- Grades 3 – 12, literate in their primary language.
- Grades 3 – 12, not literate in their primary language.

The CDE EL Standards Book further clarifies that “students who enter California schools in those grade levels not literate in their primary language need to be taught the ELD literacy standards for earlier grade levels, including those standards related to phonemic awareness, concepts of print and decoding skills.”

#### **7.7.B IEP Accommodations & Modifications**

The IEP should stipulate appropriate accommodations and/or modifications that may be needed to assist the student who is an English learner to be successful in an educational setting.

Examples of accommodations that may be appropriate to consider for students learning English may be, but are not limited to, the following:

- Primary language support to assist with academics,
- Translation devices,
- Extra time on tests and assignments,
- Use of reference materials with visuals to aide comprehension,
- Bilingual dictionary if applicable to second language.

Examples of modifications that may be appropriate to consider for students learning English may be, but are not limited to, the following:

- Tests provided or adapted to be more “comprehensible,”
- Tests and assignments modified in length and content,
- Alternative testing formats such as use of visuals, drawings, etc.



**CHAPTER 8**

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## **PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS**

### **8.1 PURPOSE AND SCOPE**

Students with disabilities, and their parents, are afforded rights and procedural safeguards to ensure that all individuals with disabilities are provided a free and appropriate public education (FAPE).

Parents can obtain assistance in understanding their rights and procedural safeguards from the SELPA Administrator, or the Regional Instructional Managers.

#### **The Notice of Procedural Safeguards**

Parents shall be given a copy of their rights and procedural safeguards only one time a school year, with the exception that a copy also shall be given to the parents:

- Upon initial referral or parental request for assessment;
- Upon receipt of the first state complaint in a school year;
- Upon receipt of the first due process hearing request in a school year;
- When a decision is made to make a removal that constitutes a change of placement of an individual with exceptional needs because of a violation of a code of student conduct; or
- Upon request by a parent. (Ed. Code, § 56301(d)(2); 34 C.F.R. § 300.504.)

### **8.2 OVERVIEW**

Local Education Agencies (LEA) have an obligation to seek out and assess children who may be eligible for services. This obligation is referred to as “child find,” and it is defined by both federal and state law. (34 C.F.R. § 300.111; Ed. Code, §§ 56026(b), 56300(a).) A child with a disability is one who has been identified by an Individualized Education Program (IEP) team as having one or more of the thirteen disabling conditions that are defined in the Individuals with Disabilities Education Improvement Act (IDEA) and state law. In order to be eligible for special education services under IDEA, the student must not only meet eligibility criteria for one of the thirteen disabling conditions, but also, the student must, by reason of his or her disability, need special education services in order to benefit from education.

Children with disabilities are offered programs that provide for interaction with typically developing peers to the maximum extent appropriate.



### **8.3 PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS**

The Parental Rights and Procedural Safeguards for Special Education is attached at the end of this chapter as Appendix A.

### **8.4 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY**

When a student with a disability reaches age 18 (unless determined to be incompetent by appropriate authorities), the school district must provide any required notices to both the individual with disabilities and the parents. All educational rights transfer to the child at the age of majority, and FUSD must notify the individual and the parent of this transfer of rights. (Ed. Code., § 56041.5.)

FUSD must notify the individual and the parents of this transfer at least one year prior to the student's 18th birthday.

If a student with a disability has reached age 18 and has not been determined to be incompetent, but is determined not to have the ability to provide informed consent, the school district shall follow the state procedures for appointing an appropriate individual to represent the educational interests of the child. (34 C.F.R. § 300.520.)

### **8.5 PARENT REVOCATION OF CONSENT**

Parents have the right to revoke consent for their child's receipt of special education and related services, and school districts may not challenge the decision through mediation or due process. (34 C.F.R. § 300.300(b)(4)(ii).) However, if the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the district is not required to amend the child's education records to remove references to the child's receipt of special education and related services because of the revocation of consent. (34 C.F.R. § 300.9(c)(3).) Also, if parents revoke consent for special education, the school district will not be considered to be in violation of its obligation to provide FAPE to the child during the period of time when the parents refuse to consent to services (34 C.F.R. § 300.300(b)(4)(iii)), and is not required to convene an IEP team meeting or develop an IEP for the child for further provision of services. (34 C.F.R. § 300.300(b)(4)(iv).)

Department of Education officials emphasize that when parents revoke consent for special education and related services, they must do so in writing, and although school officials cannot delay in ceasing to provide special education and related services to the child, they must provide the parent with prior written notice (and a copy of procedural safeguards) prior to stopping services.

## CHAPTER 9

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## **SURROGATE PARENT PROCEDURES**

### **9.1 BASIC CRITERIA FOR APPOINTING A SURROGATE PARENT**

The Surrogate Parent role on the IEP team is to represent the rights of a student with special needs in all educational matters related to the provision of a free and appropriate public education (FAPE). It is the responsibility of each LEA to ensure that the rights of a child are protected in determining the need for, and assigning, a surrogate parent whenever the child is referred or eligible for special education and either:

- No parent for the student can be identified. (Gov. Code, § 7579.5(a)(2); 34 C.F.R. § 300.519(a)(1).)
- The District, after reasonable efforts, cannot locate a parent. (Gov. Code, § 7579.5(a)(3); 34 C.F.R. § 300.519(a)(2).)
- The student is adjudicated a ward or dependent of the court pursuant to Welfare and Institutions Code sections 300, 601, or 602, and all of the following conditions are met:
  - The court has referred the student to the District for special education or related services or the student already has a valid individualized education program (IEP);
  - The court has specifically limited the right of the parent or guardian to make educational decisions for the student; and
  - The student has no responsible adult to represent him or her pursuant to sections 361 or 726 of the Welfare and Institutions Code or section 56055 of the Education Code. (Gov. Code, § 7579.5(a)(1); 34 C.F.R. § 300.519(a)(3).)
- The student is an unaccompanied homeless youth, as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act. (42 U.S.C. 11434(a); (34 C.F.R. § 300.519(a)(4).)

### **9.2 RECRUITMENT OF VOLUNTEERS**

The SELPA/Special Education Administrator, Regional Instructional Managers and School Psychologists work with community agencies and organizations, both public and private, to secure applicants for the position of surrogate parent volunteer.

The SELPA/Special Education Administrator and Regional Instructional Managers will coordinate activities of the SELPA and LEAs in seeking volunteers.

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



### **9.3 TIMELINE FOR APPOINTMENT OF SURROGATE PARENT**

The District shall make reasonable efforts to appoint a surrogate parent within thirty (30) days of a determination by the District that the child needs a surrogate parent. (20 U.S.C. 1415(b)(1)(B); 34 C.F.R. § 300.519(h).)

### **9.4 SELECTION OF SURROGATE PARENT**

As a first preference, the District shall appoint a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals are available and willing to serve. If none of these individuals are available and willing to serve as a surrogate parent, the District shall select a surrogate parent of its choice, in accordance with the requirements described in Part 9.6, below. If the student is moved from the home of the relative caretaker or foster parent who was appointed as surrogate parent, the District shall appoint a new surrogate parent if necessary to ensure adequate representation of the student. (Gov. Code, § 7579.5(b).)

In the case of a child who is a ward of the state, the surrogate parent, alternatively, may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements set out in applicable law. In this situation, the District is not responsible for selecting a surrogate parent. (34 C.F.R. § 300.519(c).)

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the requirements enumerated at Paragraph F of this Regulation, until a surrogate parent can be appointed to meet the requirements. (34 C.F.R. § 300.519(f).)

### **9.5 RIGHTS AND DUTIES OF SURROGATE PARENT**

The surrogate parent shall have all rights relative to the student's education that a parent has pursuant to the IDEA and to Part 300 of Title 34 of the Code of Federal Regulations. The surrogate parent may represent the child in all matters relating to special education and related services, including, identification, assessment, instructional planning and development, educational placement of the child; review and revision of the child's IEP; and all other matters relating to the provision of a free appropriate public education (FAPE) to the child. In addition, the surrogate parent shall represent the child with regard to the provision of written consent to the IEP, including non-emergency medical services, mental health treatment services, and occupational or physical therapy services as set out in Government Code section 7570 through 7588. (Gov. Code, § 7579.5(c); 34 C.F.R. § 300.519(g).)

The surrogate parent shall also be responsible for fulfilling all of the duties and obligations of a surrogate parent as described in Government Code section 7579.5, including: meeting with the child at least the required one time and additional times if needed; reviewing the child's educational records, attending the child's IEP team meetings, and complying with Federal and State laws pertaining to confidentiality of student records



and other information. As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child. (Gov. Code, § 7579.5(d), (e), and (f).)

#### **9.6 IDENTIFICATION AND APPOINTMENT OF SURROGATE PARENT**

The recruitment, training and assignment of surrogate parents shall be the responsibility of the District's Administrator of Special Education Local Plan Area (SELPA), Regional Instructional Managers and Psychological Services.

**A person appointed as a surrogate parent shall have all of the following qualifications:**

- Be an adult 18 years of age or over;
- Have no vested interests that conflict with the child's educational interests as defined in Government Code section 7579.5, subdivision (i);
- Be committed to learning about the child's educational needs and about the special education system in which the child is enrolled;
- Have knowledge, special training, and skills to ensure adequate representation of the child;
- To the extent practicable, be culturally sensitive to his or her assigned child; and (Gov. Code, § 7579.5 (e).)
- Pass a fingerprint screening and comply with the District's Volunteer Policy (BP/AR No. 9212).

**The surrogate parent cannot be:**

- An employee of the California Department of Education, the District, institution or private school involved in the education of the child; or
- An agency involved with the care of the child, such as a county probation or welfare department, group home, residential treatment facility or Licensed Children's Institution. (34 C.F.R. § 300.519(d).)

#### **9.7 RESIGNATION OR TERMINATION OF APPOINTMENT**

A surrogate parent may resign his or her position only after he or she gives notice to the District. (Gov. Code, § 7579.5 (g).)

**The District shall terminate the appointment of a surrogate parent under the following circumstances:**

- The surrogate parent is not properly performing the duties of a surrogate parent; (Gov. Code, § 7579.5 (h).)
- The surrogate parent has an interest that conflicts with the educational interests of the child as defined in Government Code section 7579.3, subdivision (i); (Gov. Code, § 7579.5 (h).)



- When the student is no longer in need of special education; (Gov. Code, § 7579.5 (k).)
- When the student reaches 18 years of age, unless the student chooses not to make educational decisions for himself or is deemed by a court to be incompetent; (Gov. Code, § 7579.5 (k).)
- When another responsible adult is appointed to make educational decisions for the student; or (Gov. Code, § 7579.5 (k).)
- When the right of the parent or guardian to make educational decisions for the child is fully restored. (Gov. Code, § 7579.5 (k).)

See Government Code section 7579.5 for further clarification of persons who may serve as surrogate parents and their duties.

## **9.8 ACCESS TO THE STUDENT**

The surrogate parent must meet with the student under the supervision of the student's group home provider, foster parent, person with whom the student resides, placing agency representative, or designated school staff. Exceptions to this procedure are made by the SELPA Administrator/Special Education Administrator or Regional Instructional Managers.

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

## **9.9 ACCESS TO STUDENT RECORDS**

The surrogate parent retains the same rights as a parent/legal guardian to access student records. He or she must request copies of school records and other records in the same manner that is required by the parent/legal guardian.

Due to the continual need for confidentiality, when a surrogate parent discontinues representing a specific student, he or she must return to the District all copies of the student's records in his or her possession.

## **9.10 CONFLICT RESOLUTIONS AND APPEALS**

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

## **9.11 HOLD HARMLESS**

The SELPA and the surrogate parent shall enter into a signed agreement with a hold-harmless clause.



**CHAPTER 10**

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## **NON-PUBLIC SCHOOLS**

### **10.1 NON-PUBLIC SCHOOL/AGENCY PLACEMENT PROCESS**

Before FUSD places a student with a disability in, or refers a student to, a non-public school (NPS), FUSD shall hold an IEP team meeting to review the IEP. (Ed. Code, § 56342.)

The IEP team may recommend an NPS placement when a public school placement cannot be identified which will appropriately meet the student's needs. The IEP team shall take steps to find an appropriate placement in a public program operated by another LEA or FUSD special education programs. Following determination by the IEP team that the student requires an NPS placement, the IEP team and if applicable, other public agencies (which may have financial responsibilities for the placement of the student), will determine an appropriate non-public schools in which to place Student. (Ed. Code, § 56342.)

### **10.2 OUT-OF-STATE NON-PUBLIC PLACEMENTS**

Before contracting with an NPS or NPA outside of California, FUSD shall document its efforts to utilize public schools or to locate an appropriate NPS or NPA within the state. (Ed. Code, § 56365(e).)

If FUSD decides to place a student in an NPS or NPA outside of this state, FUSD shall indicate the anticipated date for the return of the student to a public school or NPS, or a combination thereof, located in the state and shall document efforts during the previous placement year to return the student. (Ed. Code, § 56365(g).)

If FUSD places a student with an NPS or NPA outside of this state, the student's IEP team shall submit a report to the Superintendent of Public Instruction, within 15 days of the placement decision. The report shall include information about the special education and related services provided by the out-of-state program placement and the costs of the special education and related services provided, and shall indicate the efforts of FUSD to locate an appropriate public school or NPS or NPA, or a combination thereof, within the state. The Superintendent shall submit a report to the State Board of Education on all placements made outside of this state. (Ed. Code, § 56365(f).)

### **10.3 CHANGE OF STUDENT RESIDENCE**

#### **10.3.A Transfer of Student Receiving Services in Non-Public School**

When a student receiving services in an NPS moves outside of the boundaries of the local district, the parent shall immediately report the change of residence to the administrator of both the former and new public school and the NPS. As agreed by the terms of the contract, the contracting NPS shall immediately notify



the LEA in both the former and new residence areas. The superintendent (or designee) of the local district making payment to the NPS must immediately notify the new local district of the transfer and provide a copy of the student's records, including the IEP, and the contract for services with the NPS. The fiscal responsibility of the former local district shall terminate on the last day of the student's residence in that district.

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

- No appropriate public education program is available;
- To move the student at the time of change of residence would be harmful to the health, welfare, or educational progress of the individual;
- The NPS continues to be within a reasonable distance and/or travel time from the home of the student; and
- Other contingencies that necessitate the individual remaining at the NPS as determined by the IEP team.

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

### **10.3.B Transfer of Student in a Residential Non-Public School**

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

#### **10.4 OUT-OF-HOME PLACEMENTS**

Determining the responsibility for payment for residential and NPS costs for students in out-of-home placements requires consideration of two factors:

- Which agency placed the student (i.e., the purpose of the placement); and
- Where the student was placed.

##### **10.4.A Students placed in a residential placement**

If FUSD places a student in a residential placement within the State of California or outside the State, FUSD will be responsible for the residential costs, as well as the educational costs of that placement.

##### **10.4.B Out-of-Home Placements by Courts, Social Services, Regional Center and Other Public Agencies.**

Placements made by courts, social services, and regional centers and are not made by LEAs are not necessary for the student to receive a FAPE; in most of these cases, the student's district of residence (i.e., the district in which their parents or legal guardians reside) is not financially responsible for the costs associated with the residential placement.

In those cases where an educational agency did not make the placement decision, the court, regional center for the developmentally disabled, or public agency (other than an educational agency) placing the individual in the institution or home will be responsible for the residential and other non-educational costs. (Ed. Code, § 56159, Ed. Code, § 56155.)

Prior to placing an eligible student, or a student suspected of being eligible, in a residential facility outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the SELPA in which the residential facility is located. The administrator of the SELPA shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the SELPA where the residential facility is located. (Gov. Code, § 7579(a).)

Notwithstanding section 56159 of the Education Code, the involvement of the SELPA administrator in the placement discussion shall in no way obligate a public education agency to pay for the residential costs and the costs of noneducational services for the student placed in an LCI or foster family home. (Gov. Code, § 7579(b).)

Any public agency other than an LEA that places an eligible student, or a student suspected of being eligible, in a facility out of state without the involvement of the school district, SELPA, or county office of education in which the parent or



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guardian resides, shall assume all financial responsibility for the child's residential placement, special education program and related services in the other state unless the other state or its local agencies assume responsibility. (Gov. Code, § 7579(d).)

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## **STUDENT RECORDS**

### **11.1 PURPOSE AND SCOPE**

Local Educational Agencies (LEA) must establish policies and procedures that ensure the protection of parents' rights related to confidentiality of student records. (Ed. Code § 49069; 5 Cal. Code Regs. § 431.) CUSD policies and procedures regarding student records can be found at Board Policy and Administrative Regulation 7101. Policies and procedures must be consistent with State and federal laws and regulations, including the Family Educational Rights and Privacy Act of 1974 (FERPA) and corresponding California statutes and regulations, including sections 49060 et seq., of the California Education Code and sections 430 et seq., of Title 5 of the California Code of Regulations. Procedures should describe the required notice to parents, right to access student records, record-keeping procedures, retention and destruction of student records, and requests for amendment of student records.

A student record is information relative to an individual student gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained. (5 Cal. Code Regs. § 430(d).) For example, a student record could be handwritten, in print, tapes, film, microfilm. (Ed. Code § 49061(b).) Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record. (5 Cal. Code Regs. § 430(d).) A pupil record does not include informal notes related to a pupil compiled by a school officer or employee that remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute. (Ed. Code § 49061(b).) A "substitute" mean a person who performs the duties of the individual who made the notes on a temporary basis, and does not refer to a person who permanently succeeds the maker of the notes in his or her position. (Ed. Code § 49061(b).)

### **11.2 PARENT RIGHT TO ACCESS STUDENT RECORDS**

Unless the disclosure of a particular category of student records is specifically exempted by statute, parents have the right to inspect and review all student records that relate to their child, including those that address the identification, assessment, and educational placement of the child and the provision of a FAPE, which are collected and maintained by the LEA for second party review.

Each LEA shall permit parents access to records without unnecessary delay and, in no event, more than five (5) business days after the request has been made either orally or in writing. (Ed. Code § 49069; 56504.) This includes access to and confidentiality of student records including LEA educating students with disabilities in state hospitals, developmental centers, and youth and adult facilities. The LEA may not charge a fee for retrieval of information. (Ed. Code § 49065.) The agency may, however, charge a fee for copies of records, which are



made for parents, if the fee reflects the actual cost of reproducing the records and does not prevent the parents from exercising their right to inspect and review these records. (Ed. Code § 49065; 56504.) In order for the fee to be waived for the actual costs of copying the records, the LEA may require evidence to substantiate waiver of such a fee.

**Definition of Access:**

Access means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record. (5 C.C.R. 49061(e).)

**11.3 NOTICE TO PARENTS**

Parents must be notified, in writing, of their rights to inspect and review the school records of their children at the time of initial enrollment and annually thereafter. To the extent practicable, this notice should be in the home language of the student and should include information on policies, procedures, and rights related to record keeping including the Family Educational Rights and Privacy Act of 1974 (FERPA). The notice will contain the following specific information:

- The types of records and information contained therein.
- The position of the official responsible for the maintenance of each type of record.
- The location of the log or record required to be maintained.
- Criteria used by the District to define “school officials and employees” and in determining “legitimate educational interest.”
- The policies of the District for reviewing and expunging records.
- The right of the parent to access student records.
- The procedures for challenging the content of student records.
- The cost, if any, charged to the parent for reproducing copies of records.
- The categories of information which the institution has designated as directory information.
- Any other rights stated in the California Education Code and the right to file a complaint with Department of Health, Education and Welfare, concerning an alleged failure by the District to comply with the provisions of section 438 of General Education Provisions Act.
- The availability of the prospectus prepared pursuant to Education Code section 49091.14. (Ed. Code, § 49063.)





The right to inspect and review also includes responses to reasonable requests for explanations and interpretations of the records and the right to have a representative of the parent inspect and review the records. (Ed. Code § 49075; 56504.)

#### **11.4 SAFEGUARDS**

LEA must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages. (Ed. Code § 49062.)

#### **11.5 CONSENT TO RELEASE STUDENT RECORDS**

In order to for an individual other than a parent or guardian to have access to student records, there must exist written authorization from the parent or guardian to that access or there must be an exception to the requirement of such written parent or guardian consent. The following includes the requirements for written authorization of a parent or guardian, and also a number of exceptions that are listed in California Education Code § 49076.

- An LEA may permit access to pupil records to any person for whom a parent of the student has executed written consent specifying the records to be released and identifying the party or class of parties to whom the records may be released. The recipient must be notified that the transmission of the information to other without the written consent of the parent is prohibited. The consent notice shall be permanently kept with the record file. (Ed. Code § 49075.)
- Each LEA has the right to share information internally among its employees and contractors having a legitimate educational interest in the information, without parent consent. (Ed. Code § 49076(a)(1)(A).)
- Officials and employees of other public school or school systems, including local, county, or state correctional facilities where educational programs leading to a high school graduation are provided or where the pupil intends to or directed to enroll may have access to student records, without consent of the parent. (Ed. Code § 49076(a)(1)(B).)
- Parents of a pupil 18 years of age or older who is a dependent of the parents, as defined in federal law, may have access to student records, without consent of student. (Ed. Code § 49076(a)(1)(E).)
- A pupil 16 years of age or older or having completed 10<sup>th</sup> grade who requests access may have such access, without parent consent. (Ed. Code § 49076(a)(1)(F).)
- A district attorney in truancy proceedings may have access to student records, without parent's consent. (Ed. Code § 49076(a)(1)(G).)



- A prosecuting agency for consideration against a parent or guardian for failure to comply with compulsory education does not need parent consent to have access to student records. (Ed. Code § 49076(a)(1)(H).)
- A probation officer, district attorney, or counsel of record for a minor for the purposes of conducting a criminal investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation does not need parent consent prior to having access to student records. (Ed. Code § 49076(a)(1)(I).)
- A judge or probation officer for purposes of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition does not need parent consent to access student records. The judge or probation officer shall certify in writing to the school district that the information will only be used for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant this paragraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information. (Ed. Code § 49076(a)(1)(J).)
- A county placing agency who is fulfilling a health and education summary or for the purpose of fulfilling educational case management responsibilities required by the juvenile court or the law and to assist with school transfer or pupil enrollment does not require parent consent to access records. (Ed. Code § 49076(a)(1)(K).)
- Unless otherwise judicially instructed, the school district must, prior to the disclosure of any student records to organizations, agencies, or persons outside the school pursuant to a court order, make reasonable efforts to notify the parent or legal guardian and the pupil that the records are being disclosed. Only those records related to the specific purpose of the court order will be disclosed. (Ed. Code § 49077.)
- Student records shall be released to a peace officer without parent consent in the instances outlined in 49076.5.
- Whenever a student reaches the age of 18 years or is attending an institution of post-secondary education, the permission or consent required of, and the rights accorded to, the parents or guardian of the student shall thereafter only be required of, and accorded to, the student. (Ed. Code, § 49061.)

For a full list of exceptions access to student records without parent consent, or instances when a school district may release student information, see California Education Code § 49076 and Board Policy/Administrative Regulation 7101.

## **11.6 LOG OF REQUESTS FOR INFORMATION**

All requests of individuals or agencies, except as outlined in the next paragraph, must be recorded in a record or log of requests for information and the legitimate interest thereof, except for directory information recipients. (Ed. Code § 49064; 49073.) The log or record must be open to the inspection by a parent and the school officials or his designee responsible for the maintenance of student records and to other school officials with legitimate educational interests in the records, and to the Comptroller General of the United States, the Secretary of Health, Education and Welfare and administrative head of an educational agency as defined in PL 93-380, and state educational authorities as a means of auditing the operation of the system. (Ed. Code § 49064.)

The log or record must contain the following information: the name of the requesting party and, with certain exceptions, the legitimate interest of the party, the date access was given, and the purpose for which the party is authorized to use the records. The log required to be maintained does not have to include the following: (1) parents or pupil access; (2) parties to whom directory information is released; (3) parties to whom written consent has been executed by the parent; and (4) school officials and employees having legitimate educational interest. (Ed. Code § 49064.)

## **11.7 CHALLENGING THE CONTENT OF RECORDS**

If parents desire to challenge the content of student records, they must establish that one of the specific grounds set forth in the Education Code exists and provide a written request to correct or remove the information to the superintendent. (Ed. Code § 49070.) If the superintendent declines to amend the student record in question, the parents may appeal this decision to the LEA governing board. (Ed. Code § 49070.) CUSD's Board Policy and Administrative Regulation 7101 provides the process by which a parent can challenge the content of student records.

Grounds for amendment include:

- Inaccurate information.
- Information is an unsubstantiated personal conclusion or inference.
- Information is a conclusion or inference outside the observer's area of competence.
- Information is not based on personal observation of a named person with the time and place of the observation noted.
- Misleading information.
- Information in violation of the privacy or other rights of the student. (Ed. Code, § 49070.)

## **11.8 RETENTION AND DESTRUCTION OF STUDENT RECORDS**

No student records may be destroyed except pursuant to established District rules and regulations which must comply with the procedure for destruction of records contained in California Code of Regulations, Title 5, sections 16020 et seq., or as provided in Education Code sections 49070 (b) and (c) relating to the destruction of records that have been successfully challenged as inaccurate or unsubstantiated.

Prior to destruction of special education records for students with disabilities, the LEA must first contact, or attempt to contact, the parent/guardian to inform them that the records are no longer needed for educational services and will be destroyed, unless the parent wants to keep them. (34 C.F.R. § 300.624) Thereafter, the LEA may proceed with destruction, in accordance with state and federal law. However, notice should be provided within a reasonable time in order to give parents enough warning that the records are to be destroyed.

An agency may not destroy any educational record if there is an outstanding request to inspect or review them. Logs or records of access must be maintained as long as the educational record to which it pertains is maintained.

There are three types of records: mandatory permanent ("MP"), mandatory interim ("MI"), and permitted ("P"). After records are classified, they must then be classified for destruction according to the timelines contained 5 Cal. Code Regs. §437 and § 16020 et seq.

### **11.8.A Mandatory Permanent Records**

Mandatory Permanent Records are those records which the schools have been directed to compile by California statute authorization or authorized administrative directive. The school District shall maintain indefinitely all mandatory permanent student records or an exact copy thereof for every student who was enrolled in a school program within the District. Such records shall include:

- Name;
- Address;
- E-mail address;
- Telephone number;
- Date of birth;
- Major Field of study;
- Participation record in officially recognized activities and sports;
- Weight and height of athletic team members;



- Dates of attendance;
- Degrees and awards received; and
- Most recent previous school attended.

These mandatory permanent records must be forwarded to a requesting school in which the student has enrolled or intends to enroll, but the original or exact copy must be retained permanently.

(5 Cal. Code Regs. §§ 430, 432)

#### **11.8.B Mandatory Interim Records**

Mandatory Interim Records are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed as per California statute or regulation. These records must be forwarded to all California schools and may be forwarded to other schools. Such records include:

- Access logs or records identifying those persons (except authorized school personnel) or organizations requesting information from the record. The log or record shall be accessible only to the legal parent or guardian or the eligible student, or a dependent adult student, or the custodian of records;
- Health information including Child Health Developmental Disabilities Prevention Program verification or waiver;
- Participation in special education programs including required tests, case studies, authorizations and actions necessary to establish eligibility or discharge;
- Language training records;
- Progress slips and/or notices as required by Education Code sections 49066 and 49067;
- Parental restrictions regarding access to directory information or related stipulations;
- Parent or adult student rejoinders to challenged records and to disciplinary action;
- Parental authorizations or prohibitions of student participation in specific programs; and
- Results of standardized tests administered within the preceding three years.

(5 C.C.R. §§ 430, 432)

#### **11.8.C Permitted Records**



Permitted Records are those student records which Districts may maintain for appropriate educational purposes. Such records may include:

- Objective counselor and/or teacher ratings;
- Standardized test results older than three years;
- Routine discipline data;
- Verified reports of relevant behavioral patterns;
- All disciplinary notices; and/or
- Attendance records not covered in the California Code of Regulation, Title 11 section 400 (records related to ADA or to compulsory education).
- (5 Cal. Code Regs. §§ 430, 432.)

#### **11.8.D Destruction Procedures**

Pursuant to title 34, Code of Federal Regulations, part 300.624, a District is required to inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the student. The information must be destroyed at the request of the parent. (34 C.F.R. § 300.624(a).) However, permanent record of student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (34 C.F.R. § 300.624(b).) Therefore, notice to parent that student records are no longer needed to provide educational services must be provided to the parent prior to any destruction taking place.

##### **Destruction of Mandatory Permanent Records**

Mandatory permanent records shall be preserved in perpetuity by the District. (5 Cal. Code Regs. § 432(b).)

##### **Destruction of Permitted Records**

Permitted student records may be destroyed when their usefulness ceases. They may be destroyed after six months following the student's completion of, or withdrawal from, the educational program. (5 Cal. Code Regs. § 437.) Notwithstanding the foregoing, special education-related permitted records should ordinarily be retained by an LEA for at least two years after the student ceases to be enrolled in the LEA and may be destroyed thereafter.

##### **Destruction of Mandatory Interim Records**

Unless forwarded to another District, mandatory interim student records may be



adjudged to be disposable when the student leaves the District or when their usefulness ceases. (5 C.C.R. 437(c).) Destruction shall be in accordance with California Code of Regulations, Title 11, section 16027 during the third school year, after classification of being a disposable record. (5 C.C.R. §§ 437(c), 16027.) Classification of special education records as disposable should take into consideration the two-year statute of limitation when determining whether the records “usefulness ceases.” Generally, these records remain useful during the two-year statute of limitation.

#### **11.9 CONFIDENTIALITY OF STUDENT RECORDS**

The District is committed to protecting the privacy and confidentiality of student records. All personally identifiable information about students is confidential and covered by the rules of access set forth above, in District policy and in both federal and state law. The District shall adhere to these rules. Unless otherwise required or permitted by law, the District will allow access to student records only to persons for whom the parent of the student has executed written consent specifying the records to be released and identifying the persons to whom the records may be released.

**CHAPTER 12**

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## **LOW INCIDENCE PURCHASING**

As part of the Local Plan submitted to the state, each SELPA shall describe how specialized books, materials, equipment, and services will be distributed within the SELPA. This policy has been developed to provide a summary of legal and local requirements and guidelines for students with low-incidence disabilities. In addition to this policy, all requirements outlined under the Annual State Low Incidence Funding Update will be observed.

### **12.1 SUMMARY OF LEGAL REQUIREMENTS**

Education Code section 56836.22 provides for funds to purchase “specialized” books, materials, and equipment as required under the student’s individualized education program (IEP) for students with low-incidence disabilities as defined in Education Code section 56026.5 (hard of hearing, vision impairments, and severe orthopedic impairments, or any combination thereof).

Special supplies and equipment purchased with state funds are the property of the state and shall be available for use by individuals with exceptional needs throughout the state. The Clearinghouse for Specialized Media and Technology (“CSMT”) is available to facilitate the distribution of unused materials and equipment.

In addition to the equipment fund, annually, the State Budget Act may appropriate funds which shall be used to provide specialized services to students with low-incidence disabilities.

### **12.2 RESPONSIBILITY**

Low-Incidence funding is legally the responsibility of the SELPA, including accountability of how the funds are used and reassignment of specialized books, materials, and equipment within the SELPA and sharing with other SELPAs. To meet this responsibility, FUSD has established procedures and guidelines for purchases through the Low Incidence fund.

### **12.3 ELIGIBILITY**

Funds may be used for all students with the Low Incidence disabilities as defined in law, for both primary and secondary eligibilities. Some students counted as having an orthopedic impairment may not be eligible because they do not have a “severe orthopedic impairment” as per the definition of Low Incidence disabilities in Education Code section 56026.5. Students with low incidence disabilities require highly specialized services, equipment, and materials. (Ed. Code § 56000.5(a)(2)).



Education Code section 56320(g) requires that persons knowledgeable of that disability shall conduct the assessment of a student with a suspected Low Incidence disability. A Low Incidence disability does not guarantee the use of Low Incidence funds. The IEP team reviews assessment data and determines the most appropriate items or services needed to address the student's unique educational needs. These may, or may not be "specialized." Items which are found in most classrooms would not be acquired through Low Incidence funds.

### **12.3.A Procedures**

- **Determine Eligibility:** The IEP team determines eligibility for Low Incidence disability. The Low Incidence eligibility must be documented on the IEP as a primary or secondary disability.
- **Determine Student Needs:** The IEP team determines the student's educational needs for item(s) through educational assessment and documentation.

- **Educational Needs Assessment**

The personnel who assess the student shall prepare a written report, or reports as appropriate, of the results of each assessment. The report shall include, but not be limited to, the need for specialized services, materials, and equipment for students with Low Incidence disabilities.

- **IEP Documentation:** The requirements must be written into the IEP and shall include, but are not limited to, the following:
  - How the item will assist the student's instruction in accordance with the IEP;
  - How the item facilitates participation in the classroom;
  - Justification statement that is related to the student's unique educational needs as identified in the assessment information;
  - Assessment, goals, and objectives that are correlated to the justification statement of need;
  - Present level that reflects assessment information and need for support;

Identification of personnel who will provide support to the student and will monitor and inventory adapted equipment and FM System (list position).



- Attach Current Annual IEP: IEP must be signed and legible. Attach amendment IEPs as appropriate.

### **12.3.B Student Movement**

If a student moves out of FUSD, and “if the books, materials and equipment are still needed by other students with Low Incidence disabilities, then there is no requirement to send these books, materials or equipment with the student who moved. (CDE FAQs on Low Incidence Funding.) Providing these resources is the responsibility of the SELPA where the student now resides. If, however, books, materials and equipment purchased with Low Incidence funds are unused, SELPAs are encouraged to make arrangements with other SELPAs to share the unused equipment, books, and materials. The California Department of Education may be contacted for assistance in locating another SELPA that has need of the unused equipment, books, or materials.”

A graduating high school student who has a Low Incidence disability cannot use the specialized equipment purchased for him by his SELPA through Low Incidence funds in college. (CDE FAQs on Low Incidence Funding.) To do so would be a gift of public funds which is a violation of law. Books, materials and equipment purchased with Low Incidence funds remain the property of the state. If the student needs similar equipment upon graduating or aging out, he/she should contact the Department of Rehabilitation.

### **12.3.C Equipment**

- Item No Longer Needed: If the item(s) has been purchased for one student and is no longer being used by that student, the item can be reassigned to another student who is Low Incidence eligible. The IEP for that student must indicate the need for Low Incidence equipment.
- IEP teams may want to recommend a trial basis on a piece of equipment. This can be accomplished through a lease agreement with the vendor prior to purchase.

### **12.3D Management Information Documentation:**

An IEP team member will ensure that the student is listed with a Low Incidence disability on the Special Education Information System (“SEIS”) through SELPA.

### **12.3.E Definition of Low Incidence Disabilities**

- Visual Impairment  
To be eligible for special education, a “student has a visual impairment which, even with correction, adversely affects a student’s educational performance.” (5 Cal. Code Regs. § 3030(d).)



When an assessment of a student with a visual impairment determines that he or she has educational needs that cannot be met without special education and related services, the student is provided with instruction, specialized services, and materials and equipment in accordance with his or her IEP.

- Severe Orthopedic Impairment

To be eligible for special education a student "has a severe orthopedic impairment which adversely affects the [student's] educational performance. Such orthopedic impairments "include those impairments caused by congenital anomaly, impairments caused by diseases, and impairments from other causes." (5 Cal. Code Regs. § 3030(e).)

Conditions resulting in severe orthopedic impairments include, but are not limited to, cerebral palsy, muscular dystrophy, spinal bifida, spinal cord injuries, head traumas, juvenile rheumatoid arthritis, and tumors.

These conditions may improve, remain stable, or deteriorate, and changes in characteristics may occur at varying rates.

A severe orthopedic impairment is persistent and significantly restricts an individual's normal physical development, movement, and activities of daily living. As a result, this impairment may affect the student's educational performance. Accompanying sensory, intellectual, behavioral, learning, and medical problems often occur that may affect the student's school performance.

- Hearing Impairment

To be eligible for special education, a student "has a hearing impairment, whether permanent or fluctuating, which impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination." (5 Cal. Code Regs. § 3030(a).)

#### **12.4 GUIDELINES FOR HOME USE OF LOW INCIDENCE EQUIPMENT**

- The student must qualify as a Low Incidence student.
- The IEP Team, which must include the Specialist, determines the need for home use and documents a strong rationale for the determination.
- Duplication of equipment to provide for both home and school use is not seen as appropriate.
- Parents/Guardians will be responsible for the loss or damage of equipment.



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- LEA of attendance will be responsible for the loss or damage of equipment if parents/guardians fail to make restitution. School site or program will be responsible for tracking the location of the equipment.
- Equipment will be returned to the school when the school is not in session for the school year and extended school year.
- Parents/Guardians will agree in writing to:
  - Secure the equipment and supervise proper use;
  - Provide necessary and safe transportation of the equipment between home and school;
  - Acknowledge that the equipment was purchased for LEA use with students through state funds and that duplication of equipment for both home and school is not seen as appropriate;
  - Assume responsibility for the loss or damage of equipment;
  - Receive training in the use of the equipment before it can be sent home;
  - Borrow the equipment for a specified period of time. The loan may be renewed for additional intervals;
  - Acknowledge that the equipment will be called back at any time if the item is no longer needed or not being used properly; and,
  - Return the equipment to the school should they move OR get permission to take the equipment to the new location.