# Identification and Evaluation of Individuals for Special Education

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

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

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

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

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

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

**Initial Evaluation for Special Education Services**

Before the initial provision of special education and related services to a student with a disability, the district shall conduct an individual initial evaluation of the student's educational needs related to all areas of suspected disability.

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

The proposed evaluation plan shall meet all of the following requirements:

1. Be in a language easily understood by the general public.
2. Be provided in the native language of the parent/guardian or other mode of communication used by the parent/guardian unless it is clearly not feasible.
3. Explain the types of evaluation to be conducted.
4. State that no individualized education program (IEP) will result from the evaluation without parent/guardian consent.

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

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

Before conducting an initial evaluation, the district shall provide the parent/guardian with prior written notice in accordance with 34 CFR 300.503. In addition, as part of the evaluation plan, the parent/guardian shall receive written notice that includes all of the following information:

1. Upon completion of the administration of tests and other evaluation materials, an IEP team meeting that includes the parent/guardian or the parent/guardian's representative shall be scheduled pursuant to Education Code 56341. At this meeting, the team shall determine whether or not the student is a student with disabilities, as defined in Education Code 56026, and shall discuss the evaluation, the educational recommendations, and the reasons for the recommendations.

2. When making a determination of eligibility for special education, the district shall not determine that a student is disabled if the primary factor for such determination is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in 20 USC 6368, lack of appropriate instruction in mathematics, or limited English proficiency, if the student does not otherwise meet the eligibility criteria under 34 CFR 300.8.

3. A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent/guardian.

4. If the parent/guardian disagrees with an evaluation obtained by the district, the parent/guardian has the right to obtain, at public expense, an independent educational evaluation (IEE) of the student from qualified specialists, in accordance with 34 CFR 300.502. The parent/guardian is entitled to only one such evaluation at public expense each time the district conducts an assessment with which the parent/guardian disagrees.

   If the district observed the student in conducting its evaluation, or if its evaluation procedures make it permissible to have in-class observation of the student, an equivalent opportunity shall apply to the IEE. This equivalent opportunity shall apply to the student's current placement and setting as well as observation of the district's proposed placement and setting, if any, regardless of whether the IEE is initiated before or after the filing of a due process hearing proceeding.

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

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

and setting proposed by the district, regardless of whether the IEE is initiated before or after the filing of a due process hearing.

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

**Parent/Guardian Consent for Evaluation**

Consent means that the parent/guardian:

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

2. Understands and agrees, in writing, to the carrying out of the activity for which the parent/guardian consent is sought and the consent describes that activity and lists the records (if any) that will be released and to whom

3. Understands that the granting of consent is voluntary on the parent/guardian's part and may be revoked at any time

4. Understands that if the parent/guardian revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). The district is not required to amend the education records of a student to remove any reference to the student's receipt of special education and services if the student's parent/guardian submits a written revocation of consent after the initial provision of special education and related services to the student.

Upon receiving the proposed evaluation plan, the parent/guardian shall have at least 15 days to decide whether to consent to the initial evaluation. The district shall not interpret parent/guardian consent for initial evaluation as consent for initial placement or initial provision of special education services.

The district shall make reasonable efforts to obtain informed consent of the parent/guardian for an initial evaluation or reevaluation of a student.

The district shall maintain a record of its attempts to obtain consent, such as:

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

If a parent/guardian refuses to consent to the initial evaluation or fails to respond to a request to provide consent, the district may, but is not required to, pursue an evaluation by utilizing the procedural safeguards, including the mediation and due process procedures pursuant to 20 USC 1415 and 34 CFR 300.506-300-516.

For a student who is a ward of the state and not residing with the student's parent/guardian, the district shall make reasonable efforts to obtain the consent from the parent/guardian of the student for an initial evaluation to determine whether the student is a student with a disability. The district may conduct an initial evaluation without obtaining informed consent if any of the following situations exists:

1. Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent/guardian of the student.
2. The rights of the parent/guardian of the student have been terminated in accordance with state law.
3. The rights of the parent/guardian to make education decisions have been subrogated by a judge in accordance with California state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

The district need not obtain parent/guardian consent before reviewing existing data as part of an evaluation or reevaluation, or before administering a test or other evaluation that is administered to all students, unless consent is required from the parents/guardians of all students.

**Conduct of the Evaluation**

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

However, when a referral has been made for a student 30 days or less prior to the end of the regular school year, an IEP required as a result of an assessment of the student shall be developed within 30 days after the commencement of the subsequent regular school year.

The evaluation shall be conducted by qualified personnel who are competent to perform the assessment as determined by the district.

In addition, evaluations and reevaluations shall be administered by qualified personnel who are competent in the oral or sign language skills and written skills of the student's primary language or mode of communication and have a knowledge and understanding of the cultural and ethnic background of the student. If it is clearly not feasible to do so, an interpreter shall be used, and the assessment report shall document this condition and note that the validity of the assessment may have been affected. The normal process of second- language acquisition, as well as manifestations of dialect and sociolinguistic variance shall not be diagnosed as a disabling condition.

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

In conducting the evaluation, the district shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. The district shall also use any information provided by the parent/guardian that may assist the district in making the determination as to whether the student is a student with a disability and, if so, the necessary components of the student's IEP

when the IEP is developed, including information related to enabling the student to be involved in and to progress in the general education curriculum.

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

The district shall also ensure that assessments and other evaluation materials provide relevant information that assists in determining the student's educational needs and are:

1. Selected and administered so as not to be discriminatory on a racial, cultural, or sexual basis
2. Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer
3. Used for the purposes for which the assessments or measures are valid and reliable
4. Administered by trained and knowledgeable personnel except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist
5. Administered in accordance with any instructions provided by the producer of the assessments
6. Tailored to assess specific areas of educational need and not merely designed to provide a single general intelligence quotient
7. If administered to a student with impaired sensory, manual, or speaking skills, and administered to best ensure that the results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

Students shall be assessed in all areas related to the suspected disability, including, if appropriate, health and development, vision (including low vision), hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. When appropriate, a developmental history shall be obtained. For students with residual vision, a low vision assessment shall be provided in accordance with guidelines established pursuant to Education Code 56136. The district shall ensure that the evaluation is sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified.

As part of the initial evaluation and any reevaluation, the IEP team and other qualified professionals shall, if appropriate, review existing evaluation data on the student, including evaluations and information provided by the parents/guardians, current classroom-based local or state assessments and classroom-based observations, and observations by teachers and related services providers. On the basis of that review and input from the student's parent/guardian, the team shall identify what additional data, if any, are needed to determine:

1. Whether the student is a student with a disability, or in the case of a reevaluation, whether the student continues to have a disability, and the educational needs of the student
2. The present levels of academic achievement and related developmental needs of the student
3. Whether the student needs, or continues to need, special education and related services

4. Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general education curriculum

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

**Evaluation Report**
The personnel who evaluate the student shall prepare a written report of the results of each evaluation. The report shall include, but not be limited to, the following:

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

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

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

The normal process of second-language acquisition, as well as manifestations of dialect and sociolinguistic variance, shall not be diagnosed as a disabling condition.

**Independent Educational Evaluation**
An independent educational evaluation is defined as an evaluation conducted by a qualified examiner who is not employed by the district.

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

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

The parent/guardian is entitled to only one IEE at public expense each time the district conducts an evaluation with which the parent/guardian disagrees.

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

Upon receiving the request for an IEE, the district shall, without unnecessary delay, either:

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

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

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

**Coordinating Transitions**
The district will have a designated individual as the main point of contact for coordinating and completing, with other agencies and persons, the transition of a child and family from infant/toddler programs to preschool (Part C to Part B of the federal Individuals with Disabilities Education Act), including establishing practices to educate and support families during the transition.

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

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

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

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

**Policy Reference Disclaimer:**

*These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the Board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.*

**Legal References:**

**STATE**

CALIFORNIA CODE OF REGULATIONS

5 CCR 3021-3029 Identification, referral and assessment

5 CCR 3030-3031 Eligibility criteria

EDUCATION CODE

44265.5 Professional preparation for teachers of impaired students

56000-56885 Special education programs

56043 Special education; timelines

56195.8 Adoption of policies

56300-56305 Identification of individuals with disabilities

56320-56330 Assessment

56333-56338 Eligibility for specific learning disabilities

56340-56347 Individualized education program teams

56381 Reassessment of students

56425-56432 Early education for individuals with disabilities

56441.11 Eligibility criteria; children ages 3-5

56445 Transition to grade school; reassessment

56500-56509 Procedural safeguards

GOVERNMENT CODE

95000-95029.5 California Early Intervention Services Act

**FEDERAL**

UNITED STATES CODES

20 USC 1232g Family Educational Rights and Privacy Act (FERPA) of 1974

20 USC 1400-1482 Individuals with Disabilities Education Act

20 USC 1412 State eligibility

20 USC 1415 Procedural safeguards

CODE OF FEDERAL REGULATION

34 CFR 104.35 Evaluation and placement

34 CFR 104.36 Procedural safeguards

34 CFR 300.1-300.818 Individuals with Disabilities Education Act

34 CFR 300.301-300.306 Evaluations and reevaluations

34 CFR 300.323 When IEPs must be in effect

34 CFR 300.502 Independent educational evaluation of student with disability

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

**MANAGEMENT RESOURCES**

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATION

California Practitioners' Guide for Educating English Learners with Disabilities, 2019

COURT DECISION

N.B. and C.B v. Hellgate Elementary School District (9th Cir. 2008) 541 F.3d 1202

Compton Unified School District v. Addison (9th Cir. 2010) 598 F.3d 1181

Timothy O. v. Paso Robles Unified School District (9th Cir. 2016) 822 F.3d 1105

M.M. v. Lafayette School District (9th Cir. 2014) 767 F.3d 842

Hood v. Encinitas Union School District (2007) 486 F.3d 1099

FEDERAL REGISTER

Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845

U.S. DEPARTMENT OF EDUCATION PUBLICATION

Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families, July 2021

Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act, August 2021
A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA): Memorandum 11-07, January 2011
WEBSITES
CSBA District and County Office of Education Legal Services https://legalservices.csba.org/#
California Department of Education, Special Education http://www.cde.ca.gov/sp/se
U.S. Department of Education, Office of Special Education Programs
http://www2.ed.gov/about/offices/list/osers/osep
CSBA http://www.csba.org/#

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