



SELPA Superintendents' Council

MEETING AGENDA

June 6, 2019

9:30 a.m.

El Dorado County Office of Education - Conference Room B-2
6767 Green Valley Road - Placerville, Ca 95667

General Items

- 1. Approval of Agenda**
- 2. Public Hearing**
(Individuals may address Board on items not on the agenda - limited to 2 minutes)

Action Items

- 3. Approval of April 4, 2019 Meeting Minutes***
- 4. Policy Revisions**
 - a. Policy 15 – Public Participation***
 - b. Additional Policy Revisions – First Reading***
- 5. Speech and Language Services Review***
- 6. Allocation Plan – Next Steps***
- 7. Shared Risk Pool Requests***
 - a. EDUHSD (2) – Legal Risk Pool
 - b. Pollock Pines – Special Circumstances
- 8. Consolidation of Federal Grants***
- 9. Educationally Related Mental Health Services***

Discussion Items

- 10. Adjournment**

*Handout

Notices:

In compliance with the Americans with Disabilities Act, for those requiring special assistance to access public meeting rooms or to otherwise participate at a public meeting conducted by the El Dorado County Office of Education, please contact Kathy Daniels at 530-295-2205, kdaniels@edcoe.org at least 48 hours in advance of the meeting you wish to attend so that every reasonable effort to accommodate you, including requests for auxiliary aids or services, can be made. Meeting documents are provided online at <http://edcoe.org/educational-services/selpa-special-education-local-plan-area/selpa-superintendents-council>. If you require documents being discussed at a public meeting be made accessible, please contact Kathleen Hall, 530-295-2236, khall@edcoe.org at least 48 hours in advance of the meeting. EDCOE strives to provide a fragrance free work environment. For the comfort of all participants, attendees are requested to refrain from using perfume, cologne and other fragrances.



Dr. Ed Manansala, Superintendent of Schools
David M. Toston, Associate Superintendent

SELPA Superintendents' Council

Meeting Minutes - **UNADOPTED**

April 4, 2019

Conference Room B-2, EDCOE

In Attendance: Ed Manansala, Robbie Montalbano, Kevin Monsma, David Toston, Annette Lane, Cheryl Olson, David Roth, Eric Bonniksen, Grant Coffin, Jeremy Meyers, Marcy Guthrie, Margaret Enns, Natalie Miller, Matt Smith, Pat Atkins, Margaret Enns, and guests: Robert Steponovich, SELPA Business Services Director; Amy Andersen, EDCOE Special Services; and Kathleen Hall, Recording Secretary.

Meeting called to order at 2:35 pm by David M. Toston, Associate Superintendent, El Dorado County SELPA/ Charter SELPA.

General Items

1. Approval of Agenda

Superintendent Meg Enns moved to approve the agenda as presented; second by Superintendent Pat Atkins; motion carries. The Agenda was subsequently revised to change Item 4 – Support of Special Education Funding Legislation from an Action Item to a Discussion Item. Motion to move Agenda Item 4 from an Action Item to a Discussion Item was made by Meg Enns, second by Ron Carruth; motion carries.

2. Public Hearing

A Public Hearing was opened at 2:35 pm and, with no comment, closed at 2:35 pm.

Action Items

3. Approval of February 7, 2019 Meeting Minutes*

Superintendent Meg Enns moved to approve the minutes of the February 7, 2019 SELPA Superintendents' Council meeting; second by Superintendent Natalie Miller; motion carries.

4. Support of Special Education Funding Legislation* (This item was reclassified from an Action Item to a Discussion Item – see above.)

a. AB 428 – Special Education Finance Reform – Discussion only

Legislation proposed by Assemblyman Medina to increase special education funding. This bill is gaining traction – sponsored by the Coalition for Adequate Funding for Special Education. Components of the bill would establish state preschool funding (currently zero) and also address inequities in special ed funding rates by moving all SELPAs in the state to 95th percentile. Would change the declining enrollment adjustment component of the funding model to a district-level rather than a SELPA-level. David Toston attended the first committee hearing in support and will speak in support of the bill at an upcoming appropriations hearing.

David Toston will send out letter of support templates to the Superintendents and encouraged everyone to support this important legislation.

b. AB 1808 – Education Finance Omnibus Trailer Bill – Discussion only.

This legislation requires SELPAs to be involved in the LCAP process. CDE has not yet adopted an Annual Assurances Support Plan template. The SELPA will be reaching out to the districts to support and see where districts are in their LCAP development.

To meet the requirements, SELPA recommends holding meetings with each LEA Superintendent (or designee) to discuss how special education is included in the local control and accountability plan. The SELPA will make additional recommendations once a template has been adopted. The Superintendents requested standardized responses/guidelines to assist with this process.

5. Regional Program Review*

a. Summary of Meetings

David Toston highlighted that insufficient state and federal funding is one of the primary negative drivers of our fiscal discussions. Currently, the combined SELPA cost (cost from all SELPA members) for special education services exceeds \$48M. As a SELPA, we receive less than \$18M of state/federal revenue. Therefore, \$27M is coming from district and EDCOE local contributions. This is a documented, state-wide crisis. Superintendents discussed the importance of communicating this reality to a broader audience and advocating for increased funding.

Additionally, the group discussed the need for transparency, being comfortable with dissenting or different views, and timely notices to stakeholders. David Toston assured the group we are making good progress in these conversations and believes we are reaching a point to begin formal and intentional communications about the decisions Superintendents are considering.

The group requested additional fiscal information about the budgets and EDCOE's need for increased funding for regional programs. Superintendents also requested clarification if EDCOE was shifting its priorities.

David Toston reviewed the Regional Program Review attachments and was asked to clarify if the recommendation regarding speech and language services is intended to move away from the cooperative approach for other regional programs. The SELPA was asked by Superintendents to formulate a recommendation. It does not constitute a directive or mandated action, and in no way represents a move away from the long-standing cooperative approach characteristic of our county. The SELPA will continue gathering data to inform decisions regarding viable options for providing these services.

a. Recommendations

Eric Bonniksen made a motion to approve funding of the second Pacific Street Adult Transition Program class and to continue funding the additional teacher and aide for the 2019-20 school year; second by Marcy Guthrie; motion carries.

The Superintendents held off approving any other classrooms for the time being.

b. Next Steps

The SELPA will prepare models for the provision of speech and language services for Superintendents discussion and begin developing an outline of a revised, sustainable regional program funding model. The Superintendents will continue to examine student and district needs to identify effective and economical approaches for students served in regional programs and will continue to evaluate alternative program models where appropriate. The SELPA will begin developing a revised Allocation Plan for Superintendents' discussion and action in the fall of 2019.

Discussion Items

6. Public Records Request Update

David Toston reported on the status of the recent SELPA Public Records Request and shared that the information will be submitted prior to the due date.

7. Adjournment

The meeting was adjourned at 4:36 p.m. upon motion by Superintendent Marcy Guthrie; second by Superintendent Cheryl Olson; motion carried.



Policy 15 – Public Participation

The following copies are attached and included as this item:

- 4a.1 Copy of current 2009 El Dorado County SELPA Policy 15 – Public Participation
- 4a.2 Redline copy of Policy 15 with proposed revisions
- 4a.3 Clean copy of Policy 15 with revisions included

PUBLIC PARTICIPATION

It shall be the policy of this SELPA that public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities, are held prior to the adoption of any policies and/or regulations needed to comply with part B of the IDEA.

Per the Local Plan, policies are reviewed by the SELPA Steering Committee. While under Steering Committee review, the policies are available for review and comment by the public, parents of children with disabilities, or individuals with disabilities. Following Steering Committee, the policies are reviewed by the Executive Committee and recommendations are presented to the Superintendents' Council. (It is the practice that policies are presented for a first read and then brought back for revision, review and/or adoption at a second read.) As adequate time occurs between the first and second readings, the SELPA school districts will have the policies available for review and comment by the public, parents of children with disabilities, or individuals with disabilities. After ratification by the Superintendents' Council, the policies are approved by the County Board.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATE CODE, TITLE 20
1412(a)(19)

PUBLIC PARTICIPATION

~~It shall be the policy of this~~ The SELPA will ensure that there are opportunities for public participation prior to the adoption of any SELPA policies or procedures. In order to support and encourage public participation, the SELPA will hold ~~that~~ public hearings, provide adequate notice of the hearings, and ~~provide an~~ opportunities for members of the public, ~~y for comment available to the general public,~~ including individuals with disabilities and parents of children with disabilities, ~~to review and comment on any proposed policies, procedures, and/or regulations are held prior to the adoption of any policies and/or regulations necessary for compliance~~ ~~eded to comply~~ with part B of the IDEA.

~~Per the~~ Pursuant to the Local Plan, ~~any -proposed policies -(or amendments to policies)~~ are reviewed by the SELPA Steering Committee ~~(“Steering Committee”)-presented to the SELPA Superintendents’ Council for a first reading and then brought back for revision, review and/or adoption at a later meeting.~~

While under SELPA Superintendents’ ~~Steering Committee~~ Council review, the proposed policies are available for review and comment by member districts, the public, parents of children with disabilities, ~~or and~~ individuals with disabilities. During this period of review, the Council may decide to request that the proposed policies (or amendments) be reviewed by other ad hoc committees or groups.

~~Following the period of Steering Committee and public review, the proposed policies and any comments are reviewed by the~~ are reviewed by the Executive Committee. ~~The Executive Committee’s comments and~~ and recommendations are presented to the Superintendents’ Council ~~which has final authority to approve any proposed policies.. (It is the practice that policies~~ Policies ~~are presented to the Superintendent’s Council for a first reading and then brought back for revision, review and/or adoption at a second reading at a later meeting.)~~ As adequate time occurs between ~~As time allows, between~~ the first and second readings, the SELPA school ~~member~~ districts will have the policies available for review and comment by the public, parents of children with disabilities, ~~or and~~ individuals with disabilities. After ratification by the Superintendents’ Council, the policies are approved by the County Board.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATE CODE, TITLE 20
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PUBLIC PARTICIPATION

The SELPA will ensure that there are opportunities for public participation prior to the adoption of any SELPA policies or procedures. In order to support and encourage public participation, the SELPA will hold public hearings, provide adequate notice of the hearings, and provide opportunities for members of the public, including individuals with disabilities and parents of children with disabilities, to review and comment on any proposed policies, procedures, and/or regulations necessary for compliance with part B of the IDEA.

Pursuant to the Local Plan, any proposed policies (or amendments to policies) are presented to the SELPA Superintendents' Council for a first reading and then brought back for revision, review and/or adoption at a later meeting.

While under SELPA Superintendents' Council review, the proposed policies are available for review and comment by member districts, the public, parents of children with disabilities, and individuals with disabilities. During this period of review, the Council may decide to request that the proposed policies (or amendments) be reviewed by other ad hoc committees or groups.

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UNITED STATE CODE, TITLE 20
1412(a)(19)



**SELPA Policy and Administrative
Regulation Revisions Presented for First
Reading at June 6, 2019 SELPA
Superintendents' Council Meeting**

El Dorado County Office of Education

Dr. Ed Manansala, County Superintendent of Schools

David M. Toston, Associate Superintendent - SELPA

EDCOE Policy and Administrative Regulation (AR) Revisions presented for
first reading at the June 6, 2019 SELPA Superintendents' Council Meeting

Policy 2	Identification and Evaluation of Individuals for Special Education	
	Revised/Clean Version	1
	Redline Version	3
AR 2:	Identification and Evaluation of Individuals for Special Education	
	Revised/Clean Version	6
	Redline Version	10
Policy 3:	Individualized Education Program	
	Revised/Clean Version	15
	Redline Version	17
AR 3:	Individualized Education Program	
	Revised/Clean Version	20
	Redline Version	32
Policy 4:	Procedural Safeguards	
	Revised/Clean Version	47
	Redline Version	49
AR 4:	Procedural Safeguards	
	Revised/Clean Version	52
	Redline Version	56
Policy 5:	Confidentiality of Student Records	
	Revised/Clean Version	62
	Redline Version	64
AR 5:	Confidentiality of Student Records	
	Revised/Clean Version	66
	Redline Version	71
Policy 10:	Personnel Qualifications	
	Revised/Clean Version	77
	Redline Version	78
AR 10:	Personnel Qualifications	
	Revised/Clean Version	79
	Redline Version	82
Policy 11:	Performance Goals and Indicators	
	Revised/Clean Version	89
	Redline Version	90
Policy 12:	Participation in Assessments	
	Revised/Clean Version	91
	Redline Version	92
AR 12:	Participation in Assessments	
	Revised/Clean Version	93
	Redline Version	94
Policy 13:	Supplementation of State, Local and Other Federal Funds	
	Revised/Clean Version	96
	Redline Version	97
Policy 16:	Suspension and Expulsion/Due Process	
	Revised/Clean Version	98
	Redline Version	99

AR 16:	Suspension and Expulsion/Due Process	
	Revised/Clean Version	101
	Redline Version	110
Policy 17:	Access to Instructional Materials	
	Revised/Clean Version	121
	Redline Version	122
Policy 18:	Overidentification of Disproportionality	
	Revised/Clean Version	124
	Redline Version	125
Policy 19:	Prohibition of Mandatory Medicine	
	Revised/Clean Version	126
	Redline Version	127
Policy 20:	Data	
	Revised/Clean Version	129
	Redline Version	130
Policy 21:	Reading Literacy	
	Revised/Clean Version	131
	Redline Version	132

IDENTIFICATION AND EVALUATION OF INDIVIDUALS FOR SPECIAL EDUCATION

The Governing Board of each member LEA recognizes the need to actively seek out and evaluate school age residents within their districts who have disabilities in order to provide them with appropriate educational opportunities in accordance with state and federal law.

Each LEA Superintendent or designee shall follow SELPA procedures to determine when an individual is eligible for special education services and shall implement the SELPA procedures for special education program identification, screening, referral, assessment, planning, implementation, review, and triennial assessment. (Education Code § 56301) The district's process shall prevent the inappropriate disproportionate representation by race and ethnicity of students with disabilities.

In addition to identifying students with disabilities residing in their district, each district's "child find" identification system shall identify any highly mobile children with disabilities, such as migrant and homeless children. (20 USC § 1412(a)(3).)

Any procedures for the identification, evaluation, assessment, and instructional planning for children younger than age three will meet the requirements of Education Code, sections 56425 through 56432 and the California Early Intervention Services Act (Gov. Code §§ 95000-95029). The California Department of Education and local education agencies are responsible for providing early intervention services to infants and toddlers who have visual, hearing, or severe orthopedic impairment. The Department of Developmental Services and its regional centers must provide services to all other eligible children in this age group. The law also requires regional centers and local education agencies to coordinate family service plans for infants and toddlers and their families. Education Code, section 56441.11 sets forth eligibility criteria for preschool children ages three to five.

The LEA Superintendent or designee shall follow SELPA procedures providing that parents/guardians, teachers, appropriate professionals, and others may refer an individual for assessment for special education services. Identification procedures shall be coordinated with school site procedures for referral of students with needs that cannot be met with modifications to the regular instructional program. (Ed. Code § 56302)

When assessing students, staff shall use appropriate tests to identify specific information about the individual student's abilities. (Ed. Code § 56320.)

The LEA Superintendent or designee shall notify parents/guardians in writing of their rights related to identification, referral, assessment, instructional planning, implementation, and review, including the SELPA's procedures for initiating a referral for an initial assessment to identify individuals who need special education services. (Ed. Code § 56301)

Legal Reference:

EDUCATION CODE

44265.5 Professional preparation for teachers of impaired students
56000-56885 Special education programs, especially:
56026 Individuals with disabilities
56170-56177 Children in private schools
56195.8 Adoption of policies
56300-56304 Identification of individuals with disabilities
56320-56331 Assessment
56340-56347 Instructional planning and individualized education program
56381 Reassessment of students
56425-56432 Early education for individuals with disabilities
56441.11 Eligibility criteria, children 3 to 5 years old
56445 Transition to grade school; reassessment
56500-56509 Procedural safeguards

GOVERNMENT CODE

95000-95029.5 California Early Intervention Services Act

CODE OF REGULATIONS, TITLE 5

3021-3029 Identification, referral and assessment

3030-3031 Eligibility criteria

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974

1412 State eligibility

1415 Procedural safeguards

CODE OF FEDERAL REGULATIONS, TITLE 34

104.35 Evaluation and placement

104.36 Procedural safeguards

300.1-300.756 Assistance to states for the education of students with disabilities

COURT DECISIONS

Agostini v. Felton, (1997) 521 U.S. 203, 117 S.Ct. 1997

Management Resources:

FEDERAL REGISTER

34 CFR 300.a Appendix A to Part 300 - Questions and Answers

34 CFR 300a1 Attachment 1: Analysis of Comments and Changes

WEB SITES

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osep>

IDENTIFICATION AND EVALUATION OF INDIVIDUALS FOR SPECIAL EDUCATION

The Governing Board of each member LEA recognizes the need to actively seek out and evaluate school age residents within their districts who have disabilities in order to provide them with appropriate educational opportunities in accordance with state and federal law.

Each LEA Superintendent or designee shall ~~implement the designated~~ follow SELPA procedures to determine when an individual is eligible for special education services and shall implement the SELPA procedures for special education program identification, screening, referral, assessment, planning, implementation, review, and triennial assessment. (Education Code § 56301) The district's process shall prevent the inappropriate disproportionate representation by race and ethnicity of students with disabilities.

~~In addition to identifying students with disabilities residing in their district, each district's Note: The Individuals with Disabilities Education Act (IDEA), 20 USC 1412(a)(3), requires that the districts' "child find" identification system include identification of~~ shall identify students with disabilities resident in the district as well as any highly mobile children with disabilities, such as migrant and homeless children. (20 USC § 1412(a)(3).)

~~Note: Any procedures for the~~ identification, evaluation, assessment, and instructional planning procedures for children younger than age three must conform will meet the requirements of -with Education Code, sections 56425 through -56432 and the California Early Intervention Services Act (Government Code Gov. Code §§ 95000-95029). The California Department of Education and local education agencies are responsible for providing early intervention services to infants and toddlers who have visual, hearing, or severe orthopedic impairment. - The Department of Developmental Services and its regional centers must provide services to all other eligible children in this age group. The law also requires regional centers and local education agencies to coordinate family service plans for infants and toddlers and their families. Education Code, section 56441.11 sets forth eligibility criteria for preschool children ages three to five.

The LEA Superintendent or designee shall ~~implement the designated~~ follow SELPA's procedures providing that method whereby parents/guardians, teachers, appropriate professionals, and others may refer an individual for assessment for special education services. ~~Students 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. (Education Code 56303)~~
[01] Identification procedures shall be coordinated with school site procedures for referral of students with needs that cannot be met with modifications to the regular instructional program. (Ed. Code § 56302)

~~For assessment purposes, When assessing students,~~ -staff shall use appropriate tests to identify specific information about the individual student's abilities. (Ed. Code § 56320.)

The LEA Superintendent or designee shall notify parents/guardians in writing of their rights related to identification, referral, assessment, instructional planning, implementation, and review, including the SELPA's procedures for initiating a referral for an initial assessment to identify individuals who need special education services. (~~Education Code~~Ed. Code § 56301)

Legal Reference:

EDUCATION CODE

44265.5 Professional preparation for teachers of impaired students

56000-56885 Special education programs, especially:

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56170-56177 Children in private schools

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56300-56304 Identification of individuals with disabilities

56320-56331 Assessment

56340-56347 Instructional planning and individualized education program

56381 Reassessment of students

56425-56432 Early education for individuals with disabilities

56441.11 Eligibility criteria, children 3 to 5 years old

56445 Transition to grade school; reassessment

56500-56509 Procedural safeguards

GOVERNMENT CODE

95000-95029.5 California Early Intervention Services Act

CODE OF REGULATIONS, TITLE 5

3021-3029 Identification, referral and assessment

3030-3031 Eligibility criteria

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974

1412 State eligibility

1415 Procedural safeguards

CODE OF FEDERAL REGULATIONS, TITLE 34

104.35 Evaluation and placement

104.36 Procedural safeguards

300.1-300.756 Assistance to states for the education of students with disabilities

COURT DECISIONS

Agostini v. Felton, (1997) 521 U.S. 203, 117 S.Ct. 1997

Management Resources:

FEDERAL REGISTER

34 CFR 300.a Appendix A to Part 300 - Questions and Answers

34 CFR 300a1 Attachment 1: Analysis of Comments and Changes

WEB SITES

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osep>

| ~~W:\EDCOE SELPA\EDCOE Policies and Admin Regs\EDCOE Policies and ARs Feb 4 2009\EDCOE Policy 2.doc~~

IDENTIFICATION AND EVALUATION OF INDIVIDUALS FOR SPECIAL EDUCATION

A student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and used where appropriate. (Ed. Code § 56303.)

A district shall not determine that a student is eligible for special education if the dominant factor for finding eligibility is lack of appropriate instruction in reading, lack of instruction in mathematics, or limited English proficiency. (20 U.S.C. § 1414(b)(5); Ed. Code, § 56329, subd. (a)(2).)

All referrals for special education and related services from school staff 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 their effect. (5 CCR § 3021.)

Within 15 days of a referral for initial assessment, the district shall provide student's parent/guardian with a notice of parental rights and a written proposed assessment plan. The 15-day period may be extended if the parent/guardian agrees in writing to an extension. The 15-day period does not include days between the student's regular school session or term, or days of school vacation in excess of five school days from the date of receipt of the referral.

The proposed assessment plan shall meet all of the following requirements: (Education Code 56321)

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 assessment to be conducted
4. State that no individualized education program (IEP) will result from the assessment without parent/guardian consent

Upon receiving the proposed assessment plan, the parent/guardian shall have at least 15 days to decide whether or not to consent to the initial assessment. The assessment may begin as soon as informed parental consent is received by the respective district. The member districts shall not interpret parent/guardian consent for initial assessment as consent for initial placement or initial provision of special education services. (Education Code 56321; 34 CFR 300.505)

However, an individualized education program required as a result of an assessment of a pupil shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar for each pupil for whom a referral has been made 30 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 60-day time shall recommence on the date that pupil schooldays reconvene. A meeting to develop an initial individualized education program for the pupil shall be conducted

within 30 days of a determination that the pupil needs special education and related services pursuant to paragraph (2) of subsection (b) of Section 300.343 of Title 34 of the Code of Federal Regulations. (Education Code 56344)

If a parent/guardian refuses to consent to the initial evaluation or failed to respond to the request to provide consent, the member district may pursue an evaluation by utilizing the mediation and due process procedures found at 20 USC § 1415 and in accordance with Education Code, sections 56501, subd. (a) (3), and 56506, subd. (e). (See BP/AR 6159.1 - Procedural Safeguards and Complaints for Special Education.) In the event that authorized parent does not consent to an initial evaluation, the member districts shall not provide special education services and shall not be considered in violation of the requirement to provide FAPE. In addition, the district is not required to convene an IEP team meeting or to develop an IEP for that child. (20 USC § 1414(a)(1).)

Informed parental consent means that the parent/guardian:

1. Has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication;
2. Understands and agrees, in writing, to the assessment;
3. Understands that the granting of consent is voluntary on his/her part and may be revoked at any time.
- 4.

(34 CFR § 300.500)

If the student is a ward of the state and is not residing with his/her parents/guardians, the district shall make reasonable efforts to obtain informed consent from the parent/guardian as defined in 20 USC, section 1401 for an initial evaluation to determine whether the student is a student with a disability. (20 USC § 1414(a)(1).)

The district shall not be required to obtain informed consent from the parent/guardian of a student for an initial evaluation to determine whether the student is a student with a disability 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 California law.

The rights of the parent/guardian to make educational decisions have been subrogated by a judge in accordance with California law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

(Education Code 56301; 20 USC 1414(a)(1))

1. As part of the assessment plan, the parent/guardian shall receive written notice that: (Upon completion of the administration of tests and other assessment materials, an IEP team meeting that includes the parent/guardian or his/her representative shall be scheduled pursuant to Education Code, section 56341. At

this meeting, the team shall determine whether or not the student is a student with disabilities as defined in Education Code, section, 56026 and shall discuss the assessment, the educational recommendations, and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent/guardian.

2. If the parent/guardian disagrees with an assessment obtained by the district the parent/guardian has the right to obtain, at public expense, one independent educational assessment of the student from qualified specialists, in accordance with 34 CFR § 300.502.

If the district observed the student in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to the independent educational assessment. 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, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

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

If the parent/guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the district with respect to the provision of a free appropriate public education 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 assessment, or if its assessment procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to an independent educational assessment of the student in the student's current educational placement and setting, if any, proposed by the district, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing.

4. 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 parent/guardian, the student in the proposed placement. Any such observation shall only be of the student who is the subject of the observation and may not include the observation or assessment of any other student in the proposed placement unless that student's parent/guardian consents to the observation or assessment. The results of any observation or assessment of another student in violation of Education Code, section 56329(d) shall be inadmissible in any due process or judicial proceeding regarding the free

appropriate public education of that other student.

(Ed. Code § 56329; 34 CFR § 300.502)

An IEP required as a result of an assessment shall be developed within a total time not to exceed 60 days from the date of the receipt of the parent/guardian's consent for assessment, unless the parent/guardian agrees to an extension in writing. The 60-day period does not include any days between the student's regular school sessions/terms, or days of school vacation in excess of five school days, (Ed. Code § 56043)

However, when a referral is made within 30 days of the end of the regular school year, an IEP required as a result of an assessment shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar. In the case of school vacations, the 60-day time shall recommence on the date that school reconvenes. (Ed. Code § 56344 (a).)

A meeting to develop an initial IEP for the pupil shall be conducted within 30 days of a determination that the pupil needs special education and related services. (Ed. Code §§ 56043(f)(2); 56344 (a).)

Before entering kindergarten or first grade, children with disabilities who are in a preschool program shall be reassessed to determine if they still need special education and services. The 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 to ensure that gains made are not lost by a rapid removal of individualized programs and supports for these individuals. (Ed, Code § 56445)

IDENTIFICATION AND EVALUATION OF INDIVIDUALS FOR SPECIAL EDUCATION

A student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and used where appropriate. (Ed. Code § 56303.)

~~Note: Education Code, section 56329, as amended by AB 1662 (Ch. 653, Statutes of 2005), provides that, when making a determination of eligibility for special education and related services, each A district shall not determine that a student is eligible for special education if the dominant factor for finding eligibility is lack of appropriate instruction in reading, lack of instruction in mathematics, or limited English proficiency. (20 U.S.C. § 1414(b)(5); Ed. Code, § 56329, subd. (a)(2).) 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 of the No Child Left Behind Act, lack of instruction in math, or limited English proficiency.~~

All referrals for special education and related services from school staff 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 their effect. (5 CCR § 3021.)

Within 15 days of a referral for initial ~~assessment, unless the parent/guardian agrees in writing to an extension, the~~ assessment, the district shall provide student's parent/guardian ~~shall receive~~ with a notice of parental rights and a written proposed assessment plan. ~~The 15-day period may be extended if the parent/guardian agrees in writing to an extension.~~ The 15-day period does not include days between the student's regular school session or term, or days of school vacation in excess of five school days from the date of receipt of the referral.

~~However, an individualized education program required as a result of an assessment of a pupil shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar for each pupil for whom a referral has been made 30 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 60-day time shall recommence on the date that pupil school days reconvene. A meeting to develop an initial individualized education program for the pupil shall be conducted within 30 days of a determination that the pupil needs special education and related services pursuant to paragraph (2) of subsection (b) of Section 300.343 of Title 34 of the Code of Federal Regulations. (Education Code 56344)~~

The proposed assessment plan shall meet all of the following requirements:- (Education Code 56321)

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 assessment to be conducted
4. State that no individualized education program (IEP) will result from the

assessment without parent/guardian consent

Upon receiving the proposed assessment plan, the parent/guardian shall have at least 15 days to decide whether or not to consent to the initial assessment. The assessment may begin as soon as informed parental consent is received by the respective district. The member districts shall not interpret parent/guardian consent for initial assessment as consent for initial placement or initial provision of special education services. (Education Code 56321; 34 CFR 300.505)

However, an individualized education program required as a result of an assessment of a pupil shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar for each pupil for whom a referral has been made 30 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 60-day time shall recommence on the date that pupil schooldays reconvene. A meeting to develop an initial individualized education program for the pupil shall be conducted within 30 days of a determination that the pupil needs special education and related services pursuant to paragraph (2) of subsection (b) of Section 300.343 of Title 34 of the Code of Federal Regulations. (Education Code 56344)

~~Note: Education Code 56321, as amended by AB 1662 (Ch. 653, Statutes of 2005), and 20 USC 1414(a)(1) provide that, if~~ If a parent/guardian refuses to consent to the initial evaluation or failed to respond to the request to provide consent, the member district ~~may~~ pursue an evaluation by utilizing the mediation and due process procedures ~~pursuant to found at~~ 20 USC § 1415 and in accordance with Education Code, sections 56501, subd. (a) (3), and 56506, subd. (e). ÷ (See BP/AR 6159.1 - Procedural Safeguards and Complaints for Special Education.) In the event that ~~an evaluation is not authorized~~ authorized parent does not consent to an initial evaluation, ~~20 USC 1414(a)(1) specifies that~~ the member districts shall not provide special education services and shall not be considered in violation of the requirement to provide ~~a free appropriate public education~~ FAPE ~~for failure to provide such services~~. In addition, the district is not required to convene an IEP team meeting or to develop an IEP for that child. (20 USC § 1414(a)(1).)

Informed parental consent means that the parent/guardian: ~~(34 CFR 300.500)~~

1. Has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication;
2. Understands and agrees, in writing, to the assessment;
3. Understands that the granting of consent is voluntary on his/her part and may be revoked at any time.

~~3-4.~~

(34 CFR § 300.500)

If the student is a ward of the state and is not residing with his/her parents/guardians, the district shall make reasonable efforts to obtain informed consent from the parent/guardian as defined in 20 USC, section 1401 for an initial evaluation to determine whether the student is a student with a disability. (20 USC § 1414(a)(1).)

The district shall not be required to obtain informed consent from the parent/guardian of a student for an initial evaluation to determine whether the student is a student with a disability if any of the following situations exists: ~~(Education Code 56301; 20 USC 1414(a)(1))~~

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 California law.
- ~~3.~~ The rights of the parent/guardian to make educational decisions have been subrogated by a judge in accordance with California law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

(Education Code 56301; 20 USC 1414(a)(1))

As part of the assessment plan, the parent/guardian shall receive written notice that: ~~(Education Code 56329; 34 CFR 300.502)~~

1. Upon completion of the administration of tests and other assessment materials, an IEP team meeting that includes the parent/guardian or his/her representative shall be scheduled pursuant to Education Code ~~-, section~~ 56341. At this meeting, the team shall determine whether or not the student is a student with disabilities as defined in Education Code ~~-, section~~ 56026 and shall discuss the assessment, the educational recommendations, and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent/guardian.
2. If the parent/guardian disagrees with an assessment obtained by the district the parent/guardian has the right to obtain, at public expense, one independent educational assessment of the student from qualified specialists, in accordance with 34 CFR § 300.502.

If the district observed the student in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to the independent educational assessment. 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, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

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

If the parent/guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the district with respect to the provision of a free appropriate public education 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 assessment, or if its assessment procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to an independent educational assessment of the student in the student's current educational placement and setting, if any, proposed by the district, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing.

4. 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 parent/guardian, the student in the proposed placement. Any such observation shall only be of the student who is the subject of the observation and may not include the observation or assessment of any other student in the proposed placement unless that student's parent/guardian consents to the observation or assessment. The results of any observation or assessment of another student in violation of Education Code, section 56329(d) shall be inadmissible in any due process or judicial proceeding regarding the free appropriate public education of that other student.

(Ed. Code § 56329; 34 CFR § 300.502)

An IEP required as a result of an assessment shall be developed within a total time not to exceed ~~60 days, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five school days, from~~ days from the date of the receipt of the parent/guardian's consent for assessment, unless the parent/guardian ~~agrees, in writing, to~~ agrees to an extension in writing. The 60-day period does not include any days between the student's regular school sessions/terms, or days of school vacation in excess of five school days, ~~(Education Code~~ Ed. Code § 56043)

However, when a referral is made within 30 days of the end of the regular school year, an IEP required as a result of an assessment shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar. In the case of school vacations, the 60-day time shall recommence on the date that school reconvenes. (Ed. Code § 56344 (a).)

A meeting to develop an initial IEP for the pupil shall be conducted within 30 days of a determination that the pupil needs special education and related services. (Ed. Code §§ 56043(f)(2); 56344 (a).)

Before entering kindergarten or first grade, children with disabilities who are in a preschool program shall be reassessed to determine if they still need special education and services. The 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 to ensure that gains made are not lost by a rapid removal of individualized programs and supports for these individuals. (Ed. Code ~~§ueation Code~~ 56445)

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INDIVIDUALIZED EDUCATION PROGRAM

The Governing Board of each member LEA desires to provide educational alternatives that afford students with disabilities full educational opportunities. Students with disabilities shall receive a FAPE and in the least restrictive environment as required by law.

The LEA Superintendent or designee shall implement the SELPA Procedural Guide. The Procedural guide outlines the composition of the IEP team, and the sets forth procedures regarding the contents, development, review, and revision of the IEP

A "foster parent" is a licensed person, relative caretaker, or non-relative extended family member. When the juvenile court has limited the right of a parent/guardian to make educational decisions on behalf of his/her child and the child has been placed in a planned permanent living arrangement, a foster parent shall have the same rights relative to his/her foster child's education as a parent/guardian. To the extent permitted by federal law, a foster parent shall have the same rights relative to his/her foster child's IEP as a parent/guardian. (Ed. Code § 56055)

Legal Reference:**EDUCATION CODE**

51225.3 Requirements for high school graduation and diploma
56055 Rights of foster parents pertaining to foster child's education
56136 Guidelines for low incidence disabilities areas
56195.8 Adoption of policies
56321 Development or revision of IEP
56321.5 Notice to include right to electronically record
56340.1-56347 Instructional planning and individualized education program
56350-56352 IEP for visually impaired students
56380 IEP reviews; notice of right to request
56390-56392 Certificate of completion, special education
56500-56509 Procedural safeguards
60640-60649 Standardized Testing and Reporting Program
60850 High school exit examination, students with disabilities
60852.3 High school exit examination, exemption for the class of 2006

FAMILY CODE

6500-6502 Age of majority

GOVERNMENT CODE

7572.5 Seriously emotionally disturbed child, expanded IEP team

WELFARE AND INSTITUTIONS CODE

300 Children subject to jurisdiction
601 Minors habitually disobedient
602 Minors violating law defined as crime

CODE OF REGULATIONS, TITLE 5

853-853.5 Standardized Testing and Reporting Program, accommodations
1215.5-1218 High School Exit Examination, accommodations for students with disabilities
3021-3029 Identification, referral and assessment
3040-3043 Instructional planning and the individualized education program

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974
1400-1482 Individuals with Disabilities Education Act

CODE OF FEDERAL REGULATIONS, TITLE 34

300.1-300.756 Individuals with Disabilities Education Act

ATTORNEY GENERAL OPINIONS

85 Ops.Cal.Atty.Gen. 157 (2002)

COURT DECISIONS

Schaffer v. Weast (2005) 125 S. Ct. 528
Shapiro v. Paradise Valley Unified School District, No. 69 (9th Circuit, 2003) 317 F.3d 1072
Sacramento City School District v. Rachel H. (9th Cir. 1994) 14 F.3d 1398

Management Resources:

FEDERAL REGISTER

34 CFR 300.a Appendix A to Part 300 - Questions and Answers
34 CFR 300.a1 Attachment 1: Analysis of Comments and Changes

WEB SITES

California Department of Education: <http://www.cde.ca.gov>
U.S. Department of Education, Office of Special Education and Rehabilitative Services:
<http://www.ed.gov/about/offices/list/osep>

INDIVIDUALIZED EDUCATION PROGRAM

The Governing Board of each member LEA desires to provide educational alternatives that afford students with disabilities full educational opportunities. Students with disabilities shall receive a ~~free appropriate public education~~ FAPE and ~~be placed~~ in the least restrictive environment ~~- as required by law which meets their needs to the extent provided by law.~~

The LEA Superintendent or designee shall implement the SELPA ~~-approved procedural guide~~ Procedural Guide. ~~The Procedural guide that~~ outlines the ~~appointment composition~~ of the ~~individualized education program (IEP) team,~~ and the sets forth procedures regarding the contents, ~~-of the IEP, and the~~ development, review, and revision of the IEP.

A "foster parent" is a licensed person, relative caretaker, or non-relative extended family member. Note: Education Code 56055 provides that a foster parent, t When the juvenile court has limited the right of a parent/guardian to make educational decisions on behalf of his/her child and the child has been placed in a planned permanent living arrangement, as the extent permitted by federal law, foster parent shall have the same rights relative to his/her foster child's education as a parent/guardian. ~~Education Code 56055 clarifies that this right applies only when the juvenile court has limited the right of a parent/guardian to make educational decisions on behalf of his/her child and the child has been placed in a planned permanent living arrangement. Education Code 56055 defines "foster parent" as a licensed person, relative caretaker, or non-relative extended family member.~~

To the extent permitted by federal law, a foster parent shall have the same rights relative to his/her foster child's IEP as a parent/guardian. (Ed. ~~ucation~~ Code § 56055)

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UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974

1400-1482 Individuals with Disabilities Education Act

CODE OF FEDERAL REGULATIONS, TITLE 34

300.1-300.756 Individuals with Disabilities Education Act

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<http://www.ed.gov/about/offices/list/osep>

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INDIVIDUALIZED EDUCATION PROGRAM

Members of the Individualized Education Program (IEP) Team

1. Each member LEA shall ensure that the individualized education program team for any student with a disability includes the following members: One or both of the student's parents/guardians, and/or a representative selected by the parent/guardian;
2. If the student is or may be participating in the regular education program, at least one regular education teacher. If more than one regular education teacher is providing instructional services to the student, the district may designate one such teacher to represent the others;
3. At least one special education teacher or, where appropriate, at least one special education provider working with the student
4. A representative of the district who is:
 - a. Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
 - b. Knowledgeable about the general education curriculum;
 - c. Knowledgeable about the availability of district and/or special education local plan area (SELPA) resources;
 - d. Has the authority to commit district resources and ensure that whatever services are set out in the IEP will be provided.
5. An individual who can interpret the instructional implications of assessment results. This individual may already be a member of the team as described in items #2-4 above or in item #6 below
6. At the discretion of the parent/guardian or district, 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. (Ed. Code § 56341))
7. Whenever appropriate, the student with a disability
8. For transition service participants:
 - a. The student, of any age, with a disability if the purpose of the meeting is the consideration of the student's postsecondary goals and the transition services needed

to assist the student in reaching those goals.

If the student does not attend the IEP team meeting, the district shall take other steps to ensure that the student's preferences and interests are considered;

- b. To the extent appropriate, and with the consent of the parent/guardian, a representative of any other agency that is likely to be responsible for providing or paying for transition services;
 - c. If a representative of a local agency has been invited but does not attend the meeting, the district shall take steps to obtain participation of the agency in the planning of any transition services. (Ed. Code § 56341)
9. For students suspected of having a specific learning disability in accordance with at least one individual who is qualified to conduct individual diagnostic examinations of the student, such as a school psychologist, speech language pathologist, or remedial reading teacher. In addition, at least one team member other than the student's regular education teacher shall observe the student's academic performance in the regular classroom setting. If the student is younger than five years or not enrolled in school, a team member shall observe the child in an environment appropriate for a child of that age. 34 CFR §§ 300.308, 300.542; Ed Code § 56341);
 10. For students who have been placed in a group home by the juvenile court, a representative of the group home;
 11. If a student with a disability is identified as potentially requiring mental health services, the district shall request the participation of the county mental health program in the IEP team meeting. (Ed. Code § 56331)

(20 USC § 1414(d)(1); 34 CFR § 300.321; Ed. Code §§ 56341, 56341.2, 56341.5)

Excusal of Team Member

A member of the IEP team shall not be required to attend an IEP team meeting, in whole or in part, if the parent/guardian consents and the district agrees, 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 at the meeting. If the meeting involves a discussion of the member's area of the curriculum or related service, the IEP team member may be excused from the meeting if the parent/guardian consents in writing to the excusal and the member submits to the parent/guardian and team written input into the development of the IEP prior to the meeting. (20 USC § 1414(d)(1)(C); 34 CFR § 300.321; Ed. Code § 56341)

Parent/Guardian Participation and Other Rights

The LEA Superintendent or designee shall take steps to ensure that one or both of the parents/guardians of the student with a disability are present at each IEP team meeting or are

afforded the opportunity to participate. These steps shall include, at minimum, notifying the parents/guardians of the meeting early enough to ensure that they will have the opportunity to attend, and scheduling the meeting at a mutually agreed upon time and place. (34 CFR § 300.322; Ed. Code § 56341.5)

The LEA Superintendent or designee shall send parents/guardians a notice of the IEP team meeting that:

1. Indicate the purpose, time, and location of the meeting;
2. Indicate who will be in attendance at the meeting.
3. For students beginning at age 16 (or younger than 16 if deemed appropriate by the IEP team):
 - a. Indicate that the purpose of the meeting will be the consideration of postsecondary goals and transition services for the student as required by 20 USC, section 1414(d)(1)(A)(i)(VIII), 34 CFR, section 300.320(b), and Education Code, section 56345.1
 - b. Indicate that the district will invite the student to the IEP team meeting;
 - c. Identify any other agency that will be invited to send a representative.

(34 CFR § 300.322; Ed. Code § 56341.5)

At each IEP team meeting convened by the district, the district administrator or specialist on the team shall provide the parent/guardian and student of the federal and state procedural safeguards. (Ed. Code §§ 56321, 56500.1)

Before any IEP meeting, the parent/guardian shall have the right and opportunity to request to examine all of his/her child's school records. Upon receipt of an oral or written request, the district shall provide complete copies of the records within five business days. (Ed. Code § 56043)

If neither parent/guardian can attend the meeting, the LEA Superintendent or designee shall use other methods to ensure parent/guardian participation, including video conferences or individual or conference telephone calls. (20 USC 1414(f); 34 CFR 300.322; Education Code 56341.5)

An IEP team meeting may be conducted without a parent/guardian in attendance if the district is unable to convince the parent/guardian that he/she should attend. In such a case, the district shall maintain a record of its attempts to arrange a mutually agreed upon time and place for the meeting, including, but not limited to: (34 CFR § 300.322; Ed. Code § 56341.5)

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.

Parents/guardians and the district shall have the right to audiotape the proceedings of IEP team meetings, provided members of the IEP team are notified of this intent at least 24 hours before the meeting. If the district gives notice of intent to audiotape a meeting and the parent/guardian objects or refuses to attend because the meeting would be audiotaped, the meeting shall not be audiotaped. Audiotape recordings made by a district, SELPA, or county office are subject to the federal Family Educational Rights and Privacy Act (20 USC § 1232g).

Parents/guardians have the right to:

1. Inspect and review the audiotapes;
2. Request that the audiotapes be amended if the parents/guardians believe they contain information that is inaccurate, misleading, or in violation of the student's privacy rights or other rights;
3. Challenge, in a hearing, information that the parents/guardians believe is inaccurate, misleading, or in violation of the student's privacy rights or other rights.

(Education Code 56341.1)

The district shall take any action necessary to ensure that the parents/guardians understand the proceedings of the meeting, including arranging for an interpreter for parents/guardians with deafness or whose native language is not English. (34 CFR 300.322; Education Code 56345.1)

The district shall provide the parents/guardians of a student with disabilities a copy of his/her child's IEP at no cost. (34 CFR 300.322)

Contents of the IEP

The IEP shall be a written statement determined in a meeting of the IEP team. It shall include, at minimum, all of the following: (

1. A statement of the present levels of the student's academic achievement and functional performance, including:
 - a. The manner in which the student's disability affects his/her involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled students)
 - b. For a preschool child, as appropriate, the manner in which the disability affects his/her participation in appropriate activities

- c. For students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.
- 2. A statement of measurable annual goals, including academic and functional goals, designed to do the following:
 - a. Meet the student's needs that result from his/her disability in order to enable the student to be involved in and progress in the general education curriculum;
 - b. Meet each of the student's other educational needs that result from his/her disability;
 - c.
- 3. A description of the manner in which the progress of the student toward meeting the annual goals described in item #2, above, will be measured, and when the district will provide periodic reports on the progress the student is making toward meeting the annual goals; e.g., through the use of quarterly or other periodic reports, concurrent with the issuance of report cards
- 4. A statement of the specific special educational instruction and related services and supplementary aids and services, based on peer-reviewed research, to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to:
 - a. Advance appropriately toward attaining the annual goals;
 - b. Be involved and make progress in the general education curriculum in accordance with item #1 above and to participate in extracurricular and other nonacademic activities;
 - c. Be educated and participate with other students with disabilities and nondisabled students when receiving special education instruction and services.
- 5. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in extracurricular and other nonacademic activities described in item #4 (c) above
- 6. A statement of any appropriate individual accommodations necessary to measure the academic achievement and functional performance of the student on state and district -wide assessments

If the IEP team determines that the student shall take an alternate assessment instead of a particular regular state or district-wide assessment, a statement of all of the following:

- a. The reason that the student cannot participate in the regular assessment;
- b. The reason that the particular alternate assessment selected is appropriate for the student.

Note: students with disabilities must be allowed to participate in any state and district assessments, with appropriate accommodations. (20 USC § 1412 (a).)

7. The projected date for the beginning of the services and modifications described in item #4 above and the anticipated frequency, location, and duration of those services and modifications;
8. Beginning not later than the first IEP to be in effect when the student is 16 years of age, or younger if determined appropriate by the IEP team, and updated annually thereafter, the following:
 - a. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;
 - b. The transition services, including courses of study, needed to assist the student in reaching those goals;
9. Beginning at least one year before the student reaches age 18, a statement that the student has been informed of his/her rights, if any, pursuant to Education Code 56041.5 that will transfer to the student upon reaching age 18;

20 USC 1414(d)(1)(A); 34 CFR 300.320; Education Code 56043, 56345, 56345.1)

Where appropriate, the IEP shall also include:

1. For students in grades 7-12, any alternative means and modes necessary for the student to complete the district's prescribed course of study, and to meet or exceed proficiency standards required for graduation;
2. Linguistically appropriate goals, objectives, programs, and services for students whose native language is not English;
3. Extended school year services when the IEP team determines, on an individual basis, that the services are necessary for the provision of a FAPE.

4. Provision for transition into the regular education program if the student is to be transferred from a special class or center or nonpublic, nonsectarian school into a regular education program in a public school for any part of the school day;

The IEP shall include descriptions of activities intended to:

- a. Integrate the student into the regular education program, including indications of the nature of each activity and the time spent on the activity each day or week; and
 - b. Support the transition of the student from the special education program into the regular education program;
5. Specialized services, materials, and equipment for students with low incidence disabilities, consistent with the state guidelines (Ed. Code 56136.)

(Education Code 56345)

Development, Review, and Revision of the IEP

In developing the IEP, the IEP team shall consider all of the following:

1. The strengths of the student;
2. The concerns of the parents/guardians for enhancing the education of their child;
3. The results of the initial assessment or the most recent assessment of the student;
4. The academic, developmental, and functional needs of the student.

(20 USC § 1414(d)(3)(A); 34 CFR § 300.324; Ed Code §§ 56341.1, 56345)

Special Factors

The individualized education program team shall consider the following special factors: :

1. In the case of a student whose behavior impedes his/her learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior;
2. In the case of a student with limited English proficiency, consider the language needs of the student as such needs relate to the student's IEP;
3. In the case of a student who is blind or visually impaired, provide for instruction in Braille and instruction in the use of Braille, unless the individualized education program team determines, after an assessment of the pupil's reading and writing skills, needs and

appropriate reading and writing media, including an assessment of the pupil's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the pupil;

4. Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.
5. Consider whether the pupil requires assistive technology devices and services (20 USC § 1401 (1)).

(Ed. Code § 56341.1)

If, in considering the special factors in items 1 through 5 above, the IEP team determines that a student needs a particular device or service, including an intervention, accommodation, or other program modification, in order to receive FAPE, the IEP team must include a statement to that effect in the student's IEP. (Ed. Code § 56341.1)

The team shall also consider the related services and program options that provide the student with an equal opportunity for communication access, including the following:

1. The student's primary language mode and language, which may include the use of spoken language, with or without visual cues, and/or the use of sign language;
2. The availability of a sufficient number of age, cognitive, and language peers of similar abilities which may be met by consolidating services into a local plan area-wide program or providing placement pursuant to Education Code, section 56361;
3. Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the student's primary language mode and language consistent with existing law regarding teacher training requirements;
4. Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) and the federal Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.).
5. Each public agency shall ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (34 CFR § 300.113.)

(Ed. Code § 56345)

The LEA Superintendent or designee shall ensure that the IEP team:

1. Reviews the IEP periodically, but at least annually, to determine whether the annual goals for the student are being achieved and the appropriateness of placement;
2. Revises the IEP, as appropriate, to address:
 - a. Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
 - b. The results of any reassessment conducted pursuant to Education Code 56381;
 - c. Information about the student provided to or by the parents/guardians regarding review of evaluation data. (34 CFR 305(a)(2) and Education Code 56381(b).)
 - d. The student's anticipated needs;
 - e. Any other relevant matter.
3. When reviewing the IEP, the IEP team will consider the special factors listed above. The IEP team shall also convene:
 - a. Whenever the student has received an initial formal assessment and, when desired, when the student receives any subsequent formal assessment
 - b. Upon request by the student's parent/guardian or teacher to develop, review, or revise the IEP

(Education Code 56343)

(20 USC 1414(d)(4); 34 CFR 300.324; Ed. Code §§ 56043, 56341.1, 56380)

If a participating agency other than the member district fails to provide the transition services described in the student's IEP, the team shall reconvene to identify alternative strategies to meet the transition service objectives set out for the student in the IEP. (20 USC 1414(d); 34 CFR 300.324; Education Code 56345.1)

As a member of the IEP team, the regular education teacher shall, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of:

1. Appropriate positive behavioral interventions and supports and other strategies for the student;
2. Supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student, consistent with the federal regulations.

(20 USC 1414(d)(3)(C); 34 CFR 300.324; Education Code 56341; 34 CFR § 300.320.)

Whenever possible, the district shall attempt to consolidate any reassessment meetings and other IEP team meetings . (20 USC 1414(d)(3)(A); 34 CFR 300.324)

The student shall be allowed to provide confidential input to any representative of his/her IEP team. (Education Code 56341.5)

Amended IEPs

1. When a change is necessary to a student's IEP after the annual IEP team meeting for the school year has been held, the parent/guardian and the district may agree not to convene an IEP team meeting for the purpose of making the change and instead may develop a written document to amend or modify the student's current IEP.
2. The IEP team shall be informed of any such changes. Upon request, the district shall provide the parent/guardian with a revised copy of the IEP with the incorporated amendments. (20 USC 1414(d)(3)(D); 34 CFR 300.324)

When the district has placed a foster student in a nonpublic, nonsectarian school, the district must conduct an annual evaluation, as specified below. In addition the nonpublic, nonsectarian school to report to the district regarding the educational progress made by the student. (Ed. Code § 56157.)

If a student with disabilities residing in a licensed children's institution or foster family home has been placed by the district in a nonpublic, nonsectarian school, the district shall conduct an annual evaluation as part of the IEP process of whether the placement is the least restrictive environment that is appropriate to meet the student's needs. (Education Code 56157)

Six Month Review of Residential Placements

When an IEP team places a student in a residential placement, the IEP must be reviewed at least **every six months**.

When an IEP calls for a residential placement as a result of a review by an expanded IEP team, the IEP shall include a provision for a review, at least every six months, by the full IEP team of all of the following:

1. The case progress
2. The continuing need for out-of-home placement
3. The extent of compliance with the IEP

4. Progress toward alleviating the need for out-of-home care

(Cal. Gov. Code § 7572.5(c)(2).)

Timelines for the IEP and for the Provision of Services

At the beginning of each school year, each district shall have an IEP in effect for each student with a disability within each district's jurisdiction. (34 CFR 300.323; Education Code 56344)

The district shall ensure that, as soon as possible following development of the IEP, special education services and related services are made available to the student in accordance with his/her IEP. (34 CFR 300.323; Education Code 56344)

When a parent/guardian requests an IEP team meeting to review the IEP, the team shall meet within 30 calendar days of receiving the parent/guardian's written request, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five school days. If a parent/guardian makes an oral request, the district shall notify the parent/guardian of the need for a written request and the procedure for filing such a request. (Education Code 56043, 56343.5)

Each member district's policy must set forth procedures and timelines for the review of a classroom assignment of an individual with exceptional needs when so requested by that student's regular or special education teacher. (Ed. Code § 56195.8.) A mandatory IEP team meeting shall be held if, as a result of the review, there is a proposed change in the pupil's placement, instruction, related services, or any combination thereof. The Education Code does not specify any timeline for this review. The district shall develop procedures and timelines for such reviews, including procedures which will designate which personnel are responsible for the reviews.

The district shall ensure that the student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. The district shall also ensure that such teachers and providers are informed of their specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports that must be provided to the student in accordance with the IEP. (34 CFR 300.323)

Informed Parent Consent

Before providing special education and related services, the district shall seek to obtain informed parent consent pursuant to 20 USC 1414(a)(1). If the parent/guardian refuses to consent to the initiation of services, the district shall not provide the services or utilize the due process hearing procedures pursuant to 20 USC 1415(f). If the parent/guardian does not consent to all of the components of the IEP, then those components to which the parent/guardian has consented shall be implemented so as not to delay providing instruction and services to the student. (Education Code 56346)

If the parent/guardian refuses all services in the IEP after having consented to those services in the past, the district shall file a request for a due process hearing. If the district determines that a part of

the proposed IEP to which the parent/guardian does not consent is necessary in order to provide the student FAPE, a due process hearing shall be initiated in accordance with 20 USC 1415(f). While the due process hearing is pending, the student shall remain in his/her current placement unless the parent/guardian and the district agree otherwise. (Education Code 56346)

Transfer Students

To facilitate a student's transfer to another district, each district shall take reasonable steps to promptly obtain the records of a student with disabilities transferring into that district, including his/her IEP and the supporting documents related to the provision of special education services. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to the district during the school year from a district within the SELPA, the receiving district shall continue, without delay, to provide services comparable to those described in the existing IEP, unless the student's parent/guardian and district agree to develop, adopt, and implement a new IEP consistent with state and federal law. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to the district during the school year from a California LEA outside of the district's SELPA, the district/LEA shall provide the student with FAPE, including services comparable to those described in the previous LEA's IEP. Within 30 days, the district shall, in consultation with the parents/guardians, adopt the other LEA's IEP or shall develop, adopt, and implement a new IEP consistent with state and federal law. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to the district during the school year from an out-of-state LEA, the district shall provide the student with FAPE, including services comparable to the out-of-state LEA's IEP, in consultation with the parent/guardian, until such time as the district conducts an assessment, if the district determines that such an assessment is necessary, and develops, adopts, and implements a new IEP, if appropriate. (34 CFR 300.323; Education Code 56325)

INDIVIDUALIZED EDUCATION PROGRAM*Members of the Individualized Education Program (IEP) Team*

Each member ~~district LEA~~ shall ensure that the individualized education program team for any student with a disability includes the following members: ~~(20 USC 1414(d)(1); 34 CFR 300.321; Education Code 56341, 56341.2, 56341.5)~~

1. One or both of the student's parents/guardians, and/or a representative selected by the parent/guardian;
2. If the student is or may be participating in the regular education program, at least one regular education teacher. ~~-(If more than one regular education teacher is providing instructional services to the student, the district may designate one such teacher to represent the others;-)~~
- ~~2.3. At least one special education teacher or, where appropriate, at least one special education provider working with the student~~
- ~~3. At least one special education teacher or, where appropriate, at least one special education provider for the student~~

~~Note: The Analysis of Comments to the federal regulations, 71 Fed. Reg. 156, pg. 46670, recommend that the person selected as the district representative, pursuant to item #4 below, have the authority to commit district resources and be able to ensure that whatever services are set out in the IEP will be provided.~~

4. A representative of the district who is:
 - a. Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
 - ~~b. b.~~ Knowledgeable about the general education curriculum;
 - ~~c. e.~~ Knowledgeable about the availability of district and/or special education local plan area (SELPA) resources;
 - ~~d. Has the authority to commit district resources and ensure that whatever services are set out in the IEP will be provided.~~
- ~~5. An individual who can interpret the instructional implications of assessment results~~
5. An individual who can interpret the instructional implications of assessment results. This

individual may already be a member of the team as described in items #2-4 above or in item #6 below

~~Note: The Analysis of Comments to the federal regulations, 71 Fed. Reg. 156, pg. 46670, explain that a person who does not have knowledge and special expertise regarding the student, and who is not requested to be present at the IEP team meeting by the parent/guardian or by the district, would not be permitted to be a member of the team or attend the meeting as observer. This comment is consistent with an Attorney General opinion (85 Ops. Cal. Atty. Gen. 157 (2002)), which stated that members of the media may not attend an IEP team meeting as observers even though the parents/guardians have consented to such attendance. The Attorney General based this decision on the fact that the media would be "observers," not a "person with knowledge or expertise," as detailed below.~~

6. At the discretion of the parent/guardian or district, 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. (Ed. ~~ucation~~ Code § 56341))~~

~~7. 7.~~ Whenever appropriate, the student with a disability

~~8. 8.~~ For transition service participants:

- a. The student, of any age, with a disability if the purpose of the meeting is the consideration of the student's postsecondary goals and the transition services needed to assist the student in reaching those goals. ~~pursuant to 34 CFR 300.320(b)~~
If the student does not attend the IEP team meeting, the district shall take other steps to ensure that the student's preferences and interests are considered;
 - ~~b. b.~~ To the extent appropriate, and with the consent of the parent/guardian, a representative of any other agency that is likely to be responsible for providing or paying for transition services;
 - ~~c. c.~~ If a representative of ~~such other a~~ local agency has been invited but does not attend the meeting, the district shall take ~~other~~ steps to obtain participation of the agency in the planning of any transition services. (Ed. ~~ucation~~ Code § 56341)
9. For students suspected of having a specific learning disability in accordance with ~~34 CFR 300.308 (formerly 300.540) and 34 CFR 300.310 (formerly 300.542)~~, at least one individual who is qualified to conduct individual diagnostic examinations of the student, such as a school psychologist, speech language pathologist, or remedial reading teacher. In addition, at least one team member other than the student's regular education teacher shall observe the student's academic performance in the regular classroom setting. If the student is younger than five years or not enrolled in school, a team member shall observe the child in an environment appropriate for a child of that age. (Education 34 CFR §§ 300.308, 300.542; Ed Code § 56341);

~~In accordance with 34 CFR 300.310 (formerly 300.542), at least one team member other than the student's regular education teacher shall observe the student's academic performance in the regular classroom setting. If the child is younger than five years or not enrolled in school, a team member shall observe the child in an environment appropriate for a child of that age. (Education Code 56341)~~

10. For students who have been placed in a group home by the juvenile court, a representative of the group home;
11. If a student with a disability is identified as potentially requiring mental health services, the district shall request the participation of the county mental health program in the IEP team meeting. (~~Education~~ Code § 56331)

(20 USC § 1414(d)(1); 34 CFR § 300.321; Ed. Code §§ 56341, 56341.2, 56341.5)

Excusal of Team Member

A member of the IEP team shall not be required to attend an IEP team meeting, in whole or in part, if the parent/guardian consents and the district agrees, 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 at the meeting. If the meeting involves a discussion of the member's area of the curriculum or related service, the IEP team member may be excused from the meeting if the parent/guardian consents in writing to the excusal and the member submits to the parent/guardian and team written input into the development of the IEP prior to the meeting. (20 USC § 1414(d)(1)(C); 34 CFR § 300.321; ~~Education Code~~Ed. Code § 56341)

Parent/Guardian Participation and Other Rights

The LEA Superintendent or designee shall take steps to ensure that one or both of the parents/guardians of the student with a disability are present at each IEP team meeting or are afforded the opportunity to participate. These steps shall include, at minimum, notifying the parents/guardians of the meeting early enough to ensure that they will have the opportunity to attend, and scheduling the meeting at a mutually agreed upon time and place. (34 CFR § 300.322; ~~Education Code~~Ed. Code § 56341.5)

The LEA Superintendent or designee shall send parents/guardians a notices of the IEP team meetings that: (~~34 CFR 300.322; Education Code 56341.5~~)

1. Indicate the purpose, time, and location of the meeting;
2. Indicate who will be in attendance at the meeting.

~~Note: As amended by AB 1662 (Ch. 653, Statutes of 2005), Education Code 56341.5 conforms state law with federal law by requiring that the IEP team meeting notice contain a statement of~~

~~transition services beginning at age 16 rather than age 14.~~

3. For students beginning at age 16 (or younger than 16 if deemed appropriate by the IEP team):

- a. Indicate that the purpose of the meeting will be the consideration of postsecondary goals and transition services for the student ~~pursuant to as required by~~ 20 USC, section 1414(d)(1)(A)(i)(VIII), 34 CFR, section ~~CFR~~ 300.320(b), and Education Code, section 56345.1
- b. Indicate that the district will invite the student to the IEP team meeting;
- c. Identify any other agency that will be invited to send a representative.

(34 CFR § 300.322; Ed. Code § 56341.5)

At each IEP team meeting convened by the district, the district administrator or specialist on the team shall ~~inform~~ provide the parent/guardian and student of the federal and state procedural safeguards, ~~included in the notice of parental rights provided pursuant to (Ed. ucation Code §§ 56321, (Education Code 56500.1)~~

Before any IEP meeting, ~~T~~he parent/guardian shall have the right and opportunity to request to examine all of his/her child's school records ~~upon request and before any IEP meeting~~. Upon receipt of an oral or written request, the district shall provide complete copies of the records within five business days. (Ed. ~~ueation~~ Code § 56043)

If neither parent/guardian can attend the meeting, the LEA Superintendent or designee shall use other methods to ensure parent/guardian participation, including video conferences or individual or conference telephone calls. (20 USC 1414(f); 34 CFR 300.322; Education Code 56341.5)

An IEP team meeting may be conducted without a parent/guardian in attendance if the district is unable to convince the parent/guardian that he/she should attend. In such a case, the district shall maintain a record of its attempts to arrange a mutually agreed upon time and place for the meeting, including, but not limited to: (34 CFR § 300.322; ~~Education Code~~ Ed. Code § 56341.5)

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.

~~Note: Education Code 56341.1 grants the parent/guardian, district, SELPA, or county office the right to electronically record the proceedings of IEP team meetings. Audiotape recordings made by a district, SELPA, or county office are subject to the federal Family Educational Rights and Privacy Act (20 USC 1232g).~~

Parents/guardians and the district shall have the right to audiotape the proceedings of IEP team meetings, provided members of the IEP team are notified of this intent at least 24 hours before the meeting. If the district gives notice of intent to audiotape a meeting and the parent/guardian objects or refuses to attend because the meeting would be audiotaped, the meeting shall not be audiotaped.

Audiotape recordings made by a district, SELPA, or county office are subject to the federal Family Educational Rights and Privacy Act (20 USC § 1232g).

Parents/guardians ~~also~~ have the right to: ~~(Education Code 56341.1)~~

1. Inspect and review the audiotapes;
2. Request that the audiotapes be amended if the parents/guardians believe they contain information that is inaccurate, misleading, or in violation of the student's privacy rights or other rights;
3. Challenge, in a hearing, information that the parents/guardians believe is inaccurate, misleading, or in violation of the student's privacy rights or other rights.

(Education Code 56341.1)

The district shall take any action necessary to ensure that the parents/guardians understand the proceedings of the meeting, including arranging for an interpreter for parents/guardians with deafness or whose native language is not English. (34 CFR 300.322; Education Code 56345.1)

The district shall ~~give~~provide the parents/guardians of a student with disabilities a copy of his/her child's IEP at no cost. (34 CFR 300.322)

Contents of the IEP

The IEP shall be a written statement determined in a meeting of the IEP team. It shall include, ~~but not be limited to at minimum~~, all of the following: ~~(20 USC 1414(d)(1)(A); 34 CFR 300.320; Education Code 56043, 56345, 56345.1)~~

1. A statement of the present levels of the student's academic achievement and functional performance, including:
 - a. The manner in which the student's disability affects his/her involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled students)
 - ~~b.~~ b.—For a preschool child, as appropriate, the manner in which the disability affects his/her participation in appropriate activities
 - c. For students with disabilities who take alternate assessments aligned to

alternate achievement standards, a description of benchmarks or short-term objectives.

~~Note: AB 1662 (Ch. 653, Statutes of 2005) amended Education Code 56345 to require a statement of a student's academic and functional goals, as specified below. Education Code 56345 expresses the legislative recognition that, although some students may not meet or exceed the growth projected in the annual goals and objectives, the district must make a good faith effort to assist the students in achieving the goals in their IEP.~~

2. A statement of measurable annual goals, including academic and functional goals, designed to do the following:

- a. Meet the student's needs that result from his/her disability in order to enable the student to be involved in and progress in the general education curriculum;
- b. Meet each of the student's other educational needs that result from his/her disability;

~~Note: 34 CFR 300.320, as amended by 71 Fed. Reg. 156, and Education Code 56345 require the following statement in the IEP.~~

- c. ~~For students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives~~
3. A description of the manner in which the progress of the student toward meeting the annual goals described in item #2, above, will be measured, and when the district will provide periodic reports on the progress the student is making toward meeting the annual goals; ~~e.g., such as~~ through the use of quarterly or other periodic reports, concurrent with the issuance of report cards
4. A statement of the specific special educational instruction and related services and supplementary aids and services, based on peer-reviewed research, to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to:
 - a. Advance appropriately toward attaining the annual goals;
 - b. Be involved and make progress in the general education curriculum in accordance with item #1 above and to participate in extracurricular and other nonacademic activities;
 - c. Be educated and participate with other students with disabilities and nondisabled students when receiving special education instruction and services. ~~in the activities described in Education Code 56345(a)~~
5. An explanation of the extent, if any, to which the student will not participate with

nondisabled students in the regular class and in extracurricular and other nonacademic activities described in item #4 (c) above

~~Note: Pursuant to 20 USC 1412(a), students with disabilities must be included in state and district assessments, with appropriate accommodations, such as the Standardized Testing and Reporting Program (Education Code 60640-60649) and the high school exit examination (Education Code 60850-60859). See AR 6162.51—Standardized Testing and Reporting Program and AR 6162.52—High School Exit Examination for details regarding permitted accommodations.~~

6. A statement of any appropriate individual accommodations necessary to measure the academic achievement and functional performance of the student on state and district -wide assessments

If the IEP team determines that the student shall take an alternate assessment instead of a particular regular state or district-wide assessment, a statement of all of the following:

- a. The reason that the student cannot participate in the regular assessment;
- b. The reason that the particular alternate assessment selected is appropriate for the student.

Note: students with disabilities must be allowed to participate in any state and district assessments, with appropriate accommodations. (20 USC § 1412 (a).)

7. The projected date for the beginning of the services and modifications described in item #4 above and the anticipated frequency, location, and duration of those services and modifications;

~~Note: As amended by AB 1662 (Ch. 653, Statutes of 2005), Education Code 56345 now conforms state law with federal law to require that the IEP contain a statement of transition services beginning at age 16 rather than age 14.~~

8. Beginning not later than the first IEP to be in effect when the student is 16 years of age, or younger if determined appropriate by the IEP team, and updated annually thereafter, the following:
 - a. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;
 - b. The transition services, including courses of study, needed to assist the student in reaching those goals;
9. Beginning at least one year before the student reaches age 18, a statement that the student has been informed of his/her rights, if any, pursuant to Education Code 56041.5 that will transfer to the student upon reaching age 18;

20 USC 1414(d)(1)(A); 34 CFR 300.320; Education Code 56043, 56345, 56345.1)

Where appropriate, the IEP shall also include: ~~-(Education Code 56345)~~

1. For students in grades 7-12, any alternative means and modes necessary for the student to complete the district's prescribed course of study, and to meet or exceed proficiency standards required for graduation;
2. Linguistically appropriate goals, objectives, programs, and services for students whose native language is not English;

~~Note: AB 1662 (Ch. 653, Statutes of 2005) amended Education Code 56345 to require the following determination by the IEP team regarding extended school year services:~~

3. Extended school year services when the IEP team determines, on an individual basis, that the services are necessary for the provision of a ~~free appropriate public education (FAPE.)~~
4. Provision for transition into the regular education program if the student is to be transferred from a special class or center or nonpublic, nonsectarian school into a regular education program in a public school for any part of the school day;

The IEP shall include descriptions of activities intended to:

- a. Integrate the student into the regular education program, including indications of the nature of each activity and the time spent on the activity each day or week; and
- b. Support the transition of the student from the special education program into the regular education program;
5. Specialized services, materials, and equipment for students with low incidence disabilities, consistent with the ~~guidelines pursuant to Education Code 56136~~ state guidelines (Ed. Code 56136.)

(Education Code 56345)

Development, Review, and Revision of the IEP

In developing the IEP, the IEP team shall consider all of the following: ~~-(20 USC 1414(d)(3)(A); 34 CFR 300.324; Education Code 56341.1, 56345)~~

1. The strengths of the student;
2. The concerns of the parents/guardians for enhancing the education of their child;

3. The results of the initial assessment or the most recent assessment of the student;
4. The academic, developmental, and functional needs of the student.

(20 USC § 1414(d)(3)(A); 34 CFR § 300.324; Ed Code §§ 56341.1, 56345)

Special Factors

The individualized education program team shall consider the following special factors: ~~shall do the following: (EC 56341.1)~~

1. In the case of a student whose behavior impedes his/her learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior;
2. In the case of a student with limited English proficiency, consider the language needs of the student as such needs relate to the student's IEP;
3. In the case of a student who is blind or visually impaired, provide for instruction in Braille and instruction in the use of Braille, unless the individualized education program team determines, after an assessment of the pupil's reading and writing skills, needs and appropriate reading and writing media, including an assessment of the pupil's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the pupil;
4. Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.
5. Consider whether the pupil requires assistive technology devices and services (20 USC § 1401 (1)) as defined in Section 1401(1) and (2) of Title 20 of the United States code.

(Ed. Code § 56341.1)

If, in considering the special factors in items 1 through 5 above, the IEP team determines that a student needs a particular device or service, including an intervention, accommodation, or other program modification, in order to receive FAPE, the IEP team must include a statement to that effect in the student's IEP. ~~(Education Code)~~ Ed. Code § 56341.1)

The team shall also consider the related services and program options that provide the student with an equal opportunity for communication access, including the following: ~~(Education Code 56345)~~

1. The student's primary language mode and language, which may include the use of spoken

language, with or without visual cues, and/or the use of sign language;

2. The availability of a sufficient number of age, cognitive, and language peers of similar abilities which may be met by consolidating services into a local plan area-wide program or providing placement pursuant to Education Code, section 56361;
3. Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the student's primary language mode and language consistent with existing law regarding teacher training requirements;
4. Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the federal ~~Vocational~~ Rehabilitation Act ~~and the federal Americans with Disabilities Act~~ of 1973 (29 U.S.C. Sec. 794 et seq.) and the federal Americans with Disabilities Act ~~of 1990~~ (42 U.S.C. Sec. 12101 et seq.).
5. ~~In accordance with Section 300.113 of Title 34 of the Code of Federal Regulations, e~~Each public agency shall ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (34 CFR § 300.113.)

(Ed. Code § 56345)

The LEA Superintendent or designee shall ensure that the IEP team: ~~(20 USC 1414(d)(4); 34 CFR 300.324; Education Code 56043, 56341.1, 56380)~~

1. Reviews the IEP periodically, but at least annually, to determine whether the annual goals for the student are being achieved and the appropriateness of placement;
2. Revises the IEP, as appropriate, to address:
 - a. Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
 - b. The results of any reassessment conducted pursuant to Education Code 56381;
 - c. Information about the student provided to or by the parents/guardians regarding review of evaluation data, ~~pursuant to~~ (34 CFR 305(a)(2) and Education Code 56381(b).)
 - d. The student's anticipated needs;
 - e. Any other relevant matter.

~~Note: As amended by 71 Fed. Reg. 156, 34 CFR 300.324 requires that, when conducting a review of the IEP, the IEP team consider the special factors for students with additional behavior or communication needs as listed in items above.~~

3. ~~When reviewing the IEP, Consider~~the IEP team will consider the special factors listed above ~~when reviewing the IEP.~~ The IEP team shall ~~also meet~~also convene: ~~(Education Code 56343)~~

a. Whenever the student has received an initial formal assessment and, when desired, when the student receives any subsequent formal assessment

b. Upon request by the student's parent/guardian or teacher to develop, review, or revise the IEP

~~b.~~ (Education Code 56343)

(20 USC 1414(d)(4); 34 CFR 300.324; Ed. Code §§ 56043, 56341.1, 56380)

If a participating agency other than the member district fails to provide the transition services described in the student's IEP, the team shall reconvene to identify alternative strategies to meet the transition service objectives set out for the student in the IEP. (20 USC 1414(d); 34 CFR 300.324; Education Code 56345.1)

As a member of the IEP team, the regular education teacher shall, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of: ~~(20 USC 1414(d)(3)(C); 34 CFR 300.324; Education Code 56341)~~

1. Appropriate positive behavioral interventions and supports and other strategies for the student~~;~~
2. Supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student, consistent with ~~34 CFR 300.320~~the federal regulations.

(20 USC 1414(d)(3)(C); 34 CFR 300.324; Education Code 56341; 34 CFR § 300.320.)

~~To the extent possible~~Whenever possible, the district shall ~~encourage the consolidation of~~attempt to consolidate any reassessment meetings and other IEP team meetings ~~for a student.~~ (20 USC 1414(d)(3)(A); 34 CFR 300.324)

The student shall be allowed to provide confidential input to any representative of his/her IEP team. (Education Code 56341.5)

~~Note: As amended by 71 Fed. Reg. 156, 34 CFR 300.324 requires that the IEP team be informed when the IEP is amended under the circumstances described below:~~

Amended IEPs

1. When a change is necessary to a student's IEP after the annual IEP team meeting for the

school year has been held, the parent/guardian and the district may agree not to convene an IEP team meeting for the purpose of making the change and instead may develop a written document to amend or modify the student's current IEP.

2. The IEP team shall be informed of any such changes. Upon request, the district shall provide the parent/guardian with a revised copy of the IEP with the incorporated amendments. (20 USC 1414(d)(3)(D); 34 CFR 300.324)

~~Note: Education Code 56157 specifies that w~~When the district has placed a foster student in a nonpublic, nonsectarian school, the district must conduct an annual evaluation, as specified below.~~;~~
In addition,~~Education Code 56157 requires~~ the nonpublic, nonsectarian school to report to the district regarding the educational progress made by the student. (Ed. Code § 56157.)

If a student with disabilities residing in a licensed children's institution or foster family home has been placed by the district in a nonpublic, nonsectarian school, the district shall conduct an annual evaluation as part of the IEP process of whether the placement is the least restrictive environment that is appropriate to meet the student's needs. (Education Code 56157)

Six Month Review of Residential Placements

~~Note: As amended by AB 1662 (Ch. 653, Statutes of 2005), Education Code 56043 specifies that~~
~~if~~When an IEP team places a student in a residential ~~an IEP calls for a residential~~ placement, the IEP must be reviewed at least **every six months**.

When an IEP calls for a residential placement as a result of a review by an expanded IEP team, the IEP shall include a provision for a review, at least every six months, by the full IEP team of all of the following: ~~(Education Code 56043)~~

1. The case progress
2. The continuing need for out-of-home placement
3. The extent of compliance with the IEP
4. Progress toward alleviating the need for out-of-home care

(Cal. Gov. Code § 7572.5(c)(2).)

Timelines for the IEP and for the Provision of Services

At the beginning of each school year, each district shall have an IEP in effect for each student with a disability within each district's jurisdiction. (34 CFR 300.323; Education Code 56344)

~~The district shall ensure that a meeting to develop an initial IEP is conducted within 30 days of a determination that a student needs special education and related services.~~ The district shall also

ensure that, as soon as possible following development of the IEP, special education services and related services are made available to the student in accordance with his/her IEP. (34 CFR 300.323; Education Code 56344)

~~An IEP required as a result of an assessment of the student shall be developed within 60 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. (Education Code 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 for a student for whom a referral has been made 30 days or less prior to the end of the regular school year. In the case of school vacations, the 60-day time limit shall recommence on the date that student's school days reconvene. (Education Code 56344)~~

When a parent/guardian requests an IEP team meeting to review the IEP, the team shall meet within 30 calendar days of receiving the parent/guardian's written request, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five school days. If a parent/guardian makes an oral request, the district shall notify the parent/guardian of the need for a written request and the procedure for filing such a request. (Education Code 56043, 56343.5)

~~Note: Education Code 56195.8 mandates that each~~Each member district's policy must sets forth procedures and timelines for the review of a classroom assignment of an individual with exceptional needs when so requested by that student's regular or special education teacher. (Ed. Code § 56195.8.) A mandatory IEP team meeting shall be held if, as a result of the review, there is a proposed change in the pupil's placement, instruction, related services, or any combination thereof. ~~Education Code 56195.8 does not state a~~The Education Code does not specify specific deadline any timeline for this review. The district shall develop procedures and timelines for such reviews, including procedures which will designate which personnel are responsible for the reviews.

The district shall ensure that the student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. The district shall also ensure that such teachers and providers are informed of their specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports that must be provided to the student in accordance with the IEP. (34 CFR 300.323)

Informed Parent Consent

Before providing special education and related services, the district shall seek to obtain informed parent consent pursuant to 20 USC 1414(a)(1). If the parent/guardian refuses to consent to the initiation of services, the district shall not provide the services ~~by utilizing~~or utilize the due process hearing procedures pursuant to 20 USC 1415(f). If the parent/guardian does not consent to all of the components of the IEP, then those components to which the parent/guardian has consented shall be implemented so as not to delay providing instruction and services to the student. (Education Code 56346)

If the parent/guardian refuses all services in the IEP after having consented to those services in the past, the district shall file a request for a due process hearing. If the district determines that a part of the proposed IEP to which the parent/guardian does not consent is necessary in order to provide the student FAPE, a due process hearing shall be initiated in accordance with 20 USC 1415(f). While the due process hearing is pending, the student shall remain in ~~the~~ his/her current placement unless the parent/guardian and the district agree otherwise. (Education Code 56346)

Transfer Students

To facilitate a ~~transfer student's transition~~ student's transfer to another district, each district shall take reasonable steps to promptly obtain the records of a student with disabilities transferring into that district, including his/her IEP and the supporting documents related to the provision of special education services. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to the district during the school year from a district within ~~the~~ his same SELPA, the receiving district shall continue, without delay, to provide services comparable to those described in the existing IEP, unless the student's parent/guardian and district agree to develop, adopt, and implement a new IEP ~~that is~~ consistent with state and federal law. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to the district during the school year from a California LEA outside of the district's SELPA, the district/LEA shall provide the student with FAPE, including services comparable to those described in the previous LEA's IEP. Within 30 days, the district shall, in consultation with the parents/guardians, adopt the other LEA's IEP or shall develop, adopt, and implement a new IEP ~~that is~~ consistent with state and federal law. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to the district during the school year from an out-of-state LEA, the district shall provide the student with FAPE, including services comparable to the out-of-state LEA's IEP, in consultation with the parent/guardian, until such time as the district conducts an assessment, if the district determines that such an assessment is necessary, and develops, adopts, and implements a new IEP, if appropriate. (34 CFR 300.323; Education Code 56325)

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PROCEDURAL SAFEGUARDS

In order to protect the rights of students with disabilities, each member district shall follow all procedural safeguards as required by law. Parents/guardians shall receive written notice of their rights in accordance with law, Board Policy, and Administrative Regulation.

The LEA Superintendent or designee shall represent the district in any due process hearing conducted with regard to that district's students and shall inform their governing board about the results of the hearing.

Complaints for Special Education

A due process complaint is regarding the provision of FAPE and may only be filed by a parent, student, or LEA. The due process complaint is different from those complaints alleging a violation of state or federal law and that can be filed by anyone. Due process complaint procedures are described in detail in the accompanying administrative regulation. Complaints concerning compliance with state or federal law regarding special education shall be addressed in accordance with the district's uniform complaint procedures.

Legal Reference:

EDUCATION CODE

56000 Education for individuals with exceptional needs

56001 Provision of the special education programs

56020-56035 Definitions

56195.7 Written agreements

56195.8 Adoption of policies for programs and services

56300-56385 Identification and referral, assessment

56440-56447.1 Programs for individuals between the ages of three and five years

56500-56509 Procedural safeguards, including due process rights

56600-56606 Evaluation, audits and information

CODE OF REGULATIONS, TITLE 5

3000-3100 Regulations governing special education

4600-4671 Uniform complaint procedures

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

1400-1482 Individuals with Disabilities Education Act

UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act

UNITED STATES CODE, TITLE 42

11434 Homeless assistance

CODE OF FEDERAL REGULATIONS, TITLE 34

99.10-99.22 Inspection, review and procedures for amending education records

104.36 Procedural safeguards

300.1-300.818 Assistance to states for the education of students with disabilities, especially:
300.500-300.520 Procedural safeguards and due process for parents and students

Management Resources:

FEDERAL REGISTER

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

WEB SITES

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osep>

PROCEDURAL SAFEGUARDS

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Complaints for Special Education

~~Note: A due process complaint is regarding the provision of FAPE and may only be filed by a parent, student, or LEA. The due process complaint is different from those complaints alleging a violation of state or federal law and that can be filed by anyone. Due process complaint procedures are described in detail in the accompanying administrative regulation. A complaint, which can be made by anyone, is an allegation of a violation of state or federal law. These complaints are different than the due process complaint, as detailed in the accompanying administrative regulation, which is a legal document that must be filed to initiate a due process hearing.~~

Complaints concerning compliance with state or federal law regarding special education shall be addressed in accordance with the district's uniform complaint procedures.

Legal Reference:

EDUCATION CODE

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1232g Family Educational Rights and Privacy Act

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<http://www.ed.gov/about/offices/list/osep>

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PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Under California law, due process hearings pursuant to the IDEA (20 USC 1400 et seq.) are held only at the state level. Rights and procedures for due process are set forth in Education Code §§ 56501 et. seq. and 5 CCR §§ 3080 et. seq. . When California law provides greater protection to students and parents, it supersedes federal law.

Due process hearing rights extend to the student only if he/she is an emancipated student or a ward or dependent of the court with no available parent or surrogate parent. (Ed. Code § 56501; see AR 6159.3 - Appointment of Surrogate Parent for Special Education Students.)

Informal Resolution Process/Pre-Hearing Mediation Conference

Before requesting a due process hearing, the LEA Superintendent or designee and a parent/guardian may agree to meet informally to resolve any dispute relating to the identification, assessment or education and placement of a student with disabilities. The LEA Superintendent or designee shall have the authority to resolve the dispute through an informal alternative dispute resolution (“ADR”) process. (Ed. Code § 56502)

In addition, either party may file a request with the Superintendent of Public Instruction for a Pre-hearing Mediation Conference (commonly referred to as “mediation only”) to be conducted by a person designated by the California Department of Education. Based on the Pre-Hearing Mediation Conference, the LEA Superintendent or designee may resolve the issue(s) in any manner that is consistent with state and federal law, and is to the satisfaction of both parties. (Education Code 56500.3)

Attorneys may not attend the Informal Resolution Session or the Prehearing Mediation Conference. Attorneys may attend, or otherwise participate in, only those mediation conferences that are scheduled pursuant to a request for a due process hearing. (Ed. Code §§ 56500.3, 56501)

If the parties do not resolve their dispute through informal resolution session and/or a Pre-Hearing Mediation Conference , either party may file a request for a due process hearing.

Due Process Complaint Notice and Hearing Procedures

Due process hearing procedures may be initiated by a parent/guardian, the LEA, and/or a student who is emancipated or a ward or dependent of the court. under the following circumstances:

1. There is a proposal to initiate or change the identification, assessment or educational placement of the student or the provision of a free, appropriate public education to the student;
2. There is a refusal to initiate or change the identification, assessment or educational placement of the student or the provision of a free, appropriate public education to the student;

3. The parent/guardian refuses to consent to an assessment of his/her child; and/or There is a disagreement between a parent/guardian and the district regarding the availability of a program appropriate for the student, including the question of financial responsibility.

(20 USC § 1415(b); Education Code 56501)

Prior to initiating a due process hearing, the party requesting the hearing, or the party's attorney, must provide the opposing party a confidential due process complaint notice specifying: (

1. The student's name
2. The student's address or, in the case of a student identified as homeless pursuant to the McKinney-Vento Homeless Assistance Act(42 USC 11434a(2)), any available contact information for that student;
3. The name of the school the student attends;
4. A description of the nature of the student's problem relating to the proposed or refused initiation or change, including facts relating to the problem;
5. A proposed resolution to the problem to the extent known and available to the complaining party at the time.

(20 USC § 1415(b); 34 CFR § 300.508 (b).)

Resolution Session

When a parent seeks to initiate a request for due process, before their request is filed, they must provide the district with the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. (20 USC § 1415[f][1][B]; 34 CFR § 300.510)

The district has fifteen (15) days from the date it received the parents' due process hearing request to convene the resolution session. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request.

The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing issue within thirty (30) days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement. (20 USC § 1415[f][1][B]; 34 CFR § 300.51)

A due process complaint must be filed within two years of the date that the parent/guardian or district knew or should have known about the situation that forms the basis of the complaint.

Response to the Due Process Hearing Request

If the district has not sent a prior written notice to the parent/guardian regarding the subject matter contained in the parent/guardian's due process complaint notice, the district shall send a

response to the parent/guardian within 10 days of receipt of the complaint specifying:

1. An explanation of why the district proposed or refused to take the action raised in the complaint
2. A description of other options that the individualized education program (IEP) team considered and the reasons that those options were rejected
3. A description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action
4. A description of the factors that are relevant to the district's proposal or refusal.

(20 USC 1415(c)(1))

If the district sent prior written notice to the parent/guardian regarding the subject matter of the parent/guardian's due process complaint, the district may, within 10 days of receipt, send a response specifically addressing the issues in the complaint. (20 USC § 1415(c)(1))

Parties requesting a due process hearing shall file their request with the Superintendent of Public Instruction or designated contracted agency and give a copy of the request, at the same time, to the other party. (Ed. Code §56502)

Prior Written Notice

The LEA Superintendent or designee shall send to parents/guardians of any student with a disability a prior written notice within a reasonable time before:

1. The district initially refers the student for assessment
2. The district proposes to initiate or change the student's identification, evaluation, educational placement or the provision of a free, appropriate public education
3. The district refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of a free and appropriate public education
4. The student graduates from high school with a regular diploma

(Ed. Code §§ 56500.4, 56500.5; 20 USC § 1415(c); 34 CFR § 300.503)

The prior written notice shall include:

1. A description of the action proposed or refused by the district;
2. An explanation as to why the district proposes or refuses to take the action;
3. A description of any other options that the IEP team considered and why those options were rejected;
4. A description of each evaluation procedure, test, record or report the district used as a basis for the proposed or refused action;
5. A description of any other factors relevant to the district's proposal or refusal;
6. A statement that the parents/guardians of the student have protection under procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the description of procedural safeguards can be obtained; and
7. Any resources for parents/guardians to obtain assistance in understanding these

provisions

(20 USC § 1415(c); 34 CFR § 300.503)

Students with disabilities and their parents/guardians shall be provided written notice of their rights in language easily understood by the general public and in the primary language of the parent/guardian or other mode of communication used by the parent/guardian, unless to do so is clearly not feasible. The notice shall include, but not be limited to, those rights set forth in Education Code, section 56341. (Ed. Code §§ 56341, 56506; 34 CFR § 300.503)

If the native language or other mode of communication of the parent/guardian is not a written language, the district shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent/guardian in his/her native language or other mode of communication
2. The parent/guardian understands the contents of the notice
3. There is written evidence that items #1 and #2 have been satisfied

(34 CFR § 300.503)

Notice of Procedural Safeguards

A notice of procedural safeguards shall be made available to parents/guardians of students with a disability once a year and upon:

1. Initial referral for evaluation
2. Each notification of an IEP meeting
3. Reevaluation of the student
4. Registration of a complaint
5. Filing for a pre-hearing mediation conference or a due process hearing

(Ed. Code § 56301; 20 USC 1415(d)(1))

The notice of procedural safeguards shall include information on the procedures for requesting an informal meeting, pre-hearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; the type of representative who may be invited to participate; and the right of the parent/guardian and/or the district to electronically record the proceedings of IEP meetings in accordance with Education Code 56341. A copy of this notice shall be attached to the student's assessment plan and referred to at each IEP meeting. (20 USC 1415(d)(2); Ed. Code §§ 56321, 56321.5)

In addition, the notice of procedural safeguards shall include a full explanation of the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present complaints to initiate due process hearings; the student's placement while due process proceedings are pending; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parent/guardians of students in private schools at public expense.. (20 USC 1415(d)(2); 34 CFR 300.504)

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

~~Note: In~~ Under California law, due process hearings ~~pursuant to the required by the federal Individuals with Disabilities Education Act (IDEA) (20 USC 1400 et seq.)-1482)~~ are held only at the state level. ~~Related~~ rights and procedures ~~for due process~~ are set forth in Education Code §§ 56501 et. seq. ~~-56506~~ and 5 CCR §§ 3080 et. seq. ~~-3089~~. ~~Note that in cases where state law~~ When California law provides greater protections ~~to students and parents, state law~~ it supersedes federal law.

~~Note: Pursuant to Education Code 56501, Due~~ due process hearing rights extend to the student only if he/she is an emancipated student or a ward or dependent of the court with no available parent or surrogate parent. (Ed. Code § 56501; ~~s~~See AR 6159.3 - Appointment of Surrogate Parent for Special Education Students.)

Informal ADR Resolution Process/Pre-Hearing Mediation Conference

Before requesting a due process hearing, the LEA Superintendent or designee and a parent/guardian may agree to meet informally to resolve any ~~issue(s)~~ dispute relating to the identification, assessment or education and placement of a student with disabilities. The LEA Superintendent or designee shall have the authority to resolve the ~~dispute through an informal alternative dispute resolution (“ADR”) process.~~ ~~e~~ issue(s). (Ed. Code § 56502)

In addition, either party may file a request with the Superintendent of Public Instruction for a ~~Pre-hearing Mediation mediation~~ eConference (commonly referred to as “mediation only”) to be conducted by a person ~~under contract with the~~ designated by the California Department of Education. Based on the ~~Pre-Hearing m~~Mediation Cconference, the LEA Superintendent or designee may resolve the issue(s) in any manner that is consistent with state and federal law, ~~and~~ is to the satisfaction of both parties. (Education Code 56500.3)

~~Attorneys may not attend the Informal ADR session~~ Resolution Session or the Prehearing Mediation Conference. Attorneys may attend, or otherwise participate ~~in,~~ only in those mediation conferences that are scheduled ~~after the filing of a~~ pursuant to a request for a due process hearing. ~~(Education Code~~ Ed. Code §§ 56500.3, 56501)

If ~~either of these processes~~ the parties do not resolve their dispute through Informal ADR informal resolution session and/or a Pre-Hearing Mediation Conference, ~~fails to resolve the issue(s),~~ either party may file ~~for a state-level~~ a request for a due process hearing.

Due Process Complaint Notice and Hearing Procedures

Due process hearing procedures may be initiated by A a parent/guardian, the ~~district~~ LEA, and/or a student who is emancipated or a ward or dependent of the court, ~~may initiate due process~~

~~hearing procedures whenever~~under the following circumstances: ~~(20 USC 1415(b); Education Code 56501)~~

1. There is a proposal to initiate or change the identification, assessment or educational placement of the student or the provision of a free, appropriate public education to the student;
2. There is a refusal to initiate or change the identification, assessment or educational placement of the student or the provision of a free, appropriate public education to the student;
3. The parent/guardian refuses to consent to an assessment of his/her child; and/or
- ~~4.~~ There is a disagreement between a parent/guardian and the district regarding the availability of a program appropriate for the student, including the question of financial responsibility; ~~as specified in 34 CFR 300.403(b)~~

(20 USC § 1415(b); Education Code 56501)

~~Note: Pursuant to 20 USC 1415(b), as amended by P.L. 108-446, effective July 1, 2005, and 34 CFR 300.507, the district is mandated to adopt procedures (1) requiring either party (the district or the parent/guardian) or their attorney to provide notice of the request for a due process hearing to the other party and (2) containing the requirement that the party may not have a due process hearing until the notice specified in items #1-5 below has been filed. The CDE is required to develop a model form to assist parents in filing a complaint and due process complaint notice.~~

Prior to ~~having a~~initiating a due process hearing, the party requesting the hearing, or the party's attorney, ~~shall~~must provide the opposing party a confidential due process complaint notice; ~~which shall remain confidential~~, specifying: ~~(20 USC 1415(b); 34 CFR 300.507)~~

1. The student's name
2. The student's address or, in the case of a student identified as homeless pursuant to the McKinney-Vento Homeless Assistance Act(42 USC 11434a(2)), any available contact information for that student;
3. The name of the school the student attends;
4. A description of the nature of the student's problem relating to the proposed or refused initiation or change, including facts relating to the problem;
5. A proposed resolution to the problem to the extent known and available to the complaining party at the time.

(20 USC § 1415(b); 34 CFR § 300.508 (b).)

Resolution Session

When a parent seeks to initiate a request for due process, before their request is filed, they must provide the district with the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have

specific knowledge of the facts identified in the due process hearing request. (20 USC § 1415[f][1][B]; 34 CFR § 300.510)

The district has fifteen (15) days from the date it received the parents' due process hearing request to convene the resolution session. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request.

The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing issue within thirty (30) days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement. (20 USC § 1415[f][1][B]; 34 CFR § 300.51)

~~Note: The IDEA 2004 Reauthorization made significant changes to the (1) timelines for filing a due process complaint, (2) procedures for amending the complaints, and (3) rules regarding the sufficiency of the complaint notice; see 20 USC 1415(b) and (f). 20 USC 1415(f)(3)(C), as amended, specifies that a due process complaint must be filed within two years of the date that the parent/guardian or district knew or should have known about the situation that forms the basis of the complaint. However, federal regulations 34 CFR 300.662, set a different timeline and require a one year statute of limitations for filing a complaint. As amended by AB 1662 (Ch. 653, Statutes of 2005), Education Code 56500.2 reflects the federal regulations and states that a complaint must be filed within one year of the alleged violation. It is likely that federal regulations will be amended to clarify the inconsistency. In the meantime, districts should consult with legal counsel as to the appropriate timeline.~~

~~Note: 20 USC 1415(e)(1) requires the district to provide the following notice upon receipt of the due process complaint:~~

Response to the Due Process Hearing Request

If the district has not sent a prior written notice to the parent/guardian regarding the subject matter contained in the parent/guardian's due process complaint notice, the district shall send a response to the parent/guardian within 10 days of receipt of the complaint specifying:
~~(20 USC 1415(e)(1))~~

1. An explanation of why the district proposed or refused to take the action raised in the complaint
2. A description of other options that the individualized education program (IEP) team considered and the reasons that those options were rejected
3. A description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action
4. A description of the factors that are relevant to the district's proposal or refusal.

(20 USC 1415(c)(1))

If the district ~~has~~ sent prior written notice to the parent/guardian regarding the subject matter of the parent/guardian's due process complaint, the district may, within 10 days of receipt, send a response specifically addressing the issues in the complaint. (20 USC § 1415(c)(1))

Parties requesting a due process hearing shall file their request with the Superintendent of Public Instruction or designated contracted agency and give a copy of the request, at the same time, to the other party. (~~Education Code~~ Ed. Code §56502)

Prior Written Notice

The LEA Superintendent or designee shall send to parents/guardians of any student with a disability a prior written notice within a reasonable time before: (~~Education Code 56500.4, 56500.5; 20 USC 1415(c); 34 CFR 300.503~~)

1. The district initially refers the student for assessment
2. The district proposes to initiate or change the student's identification, evaluation, educational placement or the provision of a free, appropriate public education
3. The district refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of a free and appropriate public education
4. The student graduates from high school with a regular diploma

(Ed. Code §§ 56500.4, 56500.5; 20 USC § 1415(c); 34 CFR § 300.503)

The prior written notice ~~his notice~~ shall include: (~~20 USC 1415(c); 34 CFR 300.503~~)

1. A description of the action proposed or refused by the district;
2. An explanation as to why the district proposes or refuses to take the action;
3. A description of any other options that the IEP team considered and why those options were rejected;
4. A description of each evaluation procedure, test, record or report the district used as a basis for the proposed or refused action;
5. A description of any other factors relevant to the district's proposal or refusal;
6. A statement that the parents/guardians of the student have protection under procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the description of procedural safeguards can be obtained; and
7. Any resources ~~Sources~~ for parents/guardians to obtain assistance in understanding these provisions

(20 USC § 1415(c); 34 CFR § 300.503)

Students with disabilities and their parents/guardians shall be provided written notice of their rights in language easily understood by the general public and in the primary language of the parent/guardian or other mode of communication used by the parent/guardian, unless to do so is clearly not feasible. The notice shall include, but not be limited to, those rights ~~prescribed by set forth in~~ Education Code, section 56341. (~~Education Code~~ Ed. Code §§ 56341, 56506; 34 CFR § 300.503)

If the native language or other mode of communication of the parent/guardian is not a written language, the district shall take steps to ensure that: (~~34 CFR 300.503~~)

1. The notice is translated orally or by other means to the parent/guardian in his/her native language or other mode of communication
2. The parent/guardian understands the contents of the notice
3. There is written evidence that items #1 and #2 have been satisfied

(34 CFR § 300.503)

Notice of Procedural Safeguards ~~Notice~~

A notice of procedural safeguards ~~notice~~ shall be made available to parents/guardians of students with a disability once a year and upon: (~~Education Code 56301; 20 USC 1415(d)(1)~~)

1. Initial referral for evaluation
2. Each notification of an IEP meeting
3. Reevaluation of the student
4. Registration of a complaint
5. Filing for a pre-hearing mediation conference or a due process hearing

(Ed. Code § 56301; 20 USC 1415(d)(1))

~~This~~ The notice of procedural safeguards ~~notice~~ shall include information on the procedures for requesting an informal meeting, pre-hearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; the type of representative who may be invited to participate; and the right of the parent/guardian and/or the district to electronically record the proceedings of IEP meetings in accordance with Education Code 56341. A copy of this notice shall be attached to the student's assessment plan and referred to at each IEP meeting. (20 USC 1415(d)(2); ~~Ed. unction~~ Code §§ 56321, 56321.5)

In addition, the notice of procedural safeguards ~~is notice~~ shall include a full explanation of the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present complaints to initiate due process hearings; the student's placement while due process proceedings are pending; procedures for students who are subject to placement in an interim alternative educational setting;

requirements for unilateral placement by parent/guardians of students in private schools at public expense, ~~mediation; due process hearings; state-level appeals; civil action; attorney's fees; and the state's complaint procedure.~~ (20 USC 1415(d)(2); 34 CFR 300.504)

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CONFIDENTIALITY OF STUDENT RECORDS

The District and County Boards of Education recognize the importance of keeping accurate, comprehensive student records as required by law. Procedures for maintaining the confidentiality of student records shall be consistent with state and federal law.

The LEA Superintendent or designee shall establish regulations governing the identification, description and security of student records, as well as timely access for authorized persons. These regulations shall ensure parental rights to review, inspect and copy student records. In addition, the regulations will ensure protect the privacy rights of student and the student's family.

The LEA Superintendent or designee shall designate a certificated employee to serve as custodian of records for student records at the district level. At each school site, the principal or a certificated designee shall act as custodian of records for students enrolled at that school. The custodian of records shall be responsible for implementing Board policy and administrative regulation regarding student records. (5 CCR § 431)

Legal Reference:**EDUCATION CODE**

48201 Student records for transfer students who have been suspended/expelled

48904-48904.3 Withholding grades, diplomas, or transcripts of pupils causing property damage or injury; transfer of pupils to new schools; notice to rescind decision to withhold

48918 Rules governing expulsion procedures

49060-49079 Pupil records

49091.14 Parental review of curriculum

CODE OF CIVIL PROCEDURE

1985.3 Subpoena duces tecum

FAMILY CODE

3025 Access to records by non-custodial parents

GOVERNMENT CODE

6252-6260 Inspection of public records

HEALTH AND SAFETY CODE

120440 Immunizations; disclosure of information

WELFARE AND INSTITUTIONS CODE

681 Truancy petitions

16010 Health and education records of a minor

CODE OF REGULATIONS, TITLE 5

430-438 Individual pupil records

16020-16027 Destruction of records

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy

300.500 Definition of "personally identifiable"

300.501 Opportunity to examine records for parents of student with disability

300.573 Destruction of information

COURT DECISIONS

Falvo v. Owasso Independent School District, 220 F.3d. 1200 (10th Cir. 2000)

Management Resources:

WEB SITES

U.S. Department of Education, Family Policy Compliance Office: <http://www.ed.gov/offices/OM/fpc/>

CONFIDENTIALITY OF STUDENT RECORDS

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The LEA Superintendent or designee shall designate a certificated employee to serve as custodian of ~~records, with responsibility for records for~~ student records at the district level. At each school site, the principal or a certificated designee shall act as custodian of records for students enrolled at that school. The custodian of records shall be responsible for implementing Board policy and administrative regulation regarding student records. (5 CCR § 431)

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CONFIDENTIALITY OF STUDENT RECORDS

Districts shall establish, maintain and destroy pupil records according to regulations adopted by the State Board of Education. The following guidelines apply to confidential special education records.

Access:

Special education records are subject to the same privacy and access right as other Mandatory Interim pupil records. In addition, parents have the right to examine all school records relating to the identification, assessment, and educational placement of their child. Even though records may be stamped “confidential” or contain sensitive information, the parent or eligible student has full rights of access. Parents have the right to receive copies within **five business days** of making the request, either orally or in writing. A public educational agency may charge no more than the actual cost of reproducing the records, but if this cost prevents the parent from exercising their right to receive the copies, the copies shall be reproduced at no cost to the parents. (Ed. Code §§ 49060 et seq.; 5 CCR §§ 430 et seq.)

The LEA will not permit access to any child’s records without written parental permission **except** as follows:

- a. District and County Office of Education officials and employees who have a legitimate educational interest including a school system where the child intends to enroll;
- b. Certain state and federal officials for audit purposes;
- c. Certain law enforcement agencies for purposes listed in Education Code and Federal Law;
- d. A pupil 16 years of age or older, having completed the 10th grade who requests access;
- e. Students who are married even if younger than 18 years of age;
- f. District Employees;

(Ed. Code § 49076.)

The LEA may release information from the student’s records for the following:

- a. In cases of emergency when the knowledge of such information is necessary to protect the health or safety of the child and/or others;
- b. To determine the child’s eligibility for financial aid;
- c. To accrediting organizations to the extent necessary to their function;
- d. In cooperation with organizations conducting studies and research that does not permit the personal identification of children or their parents by persons not; connected with the research and provided that their personally identifiable information is destroyed when no longer needed;
- e. To officials and employees of private schools or school systems in which the child is enrolled or intends to enroll.;

(Ed. Code § 49076.)

Test Protocols are considered to be a part of a pupil's confidential file. Protocols must be maintained in a pupil's confidential file and copies provided to the parent upon request.

Confidentiality of Records:

All procedural safeguards of the Individuals with Disabilities in Education Act shall be established and maintained. A custodian of records must be appointed by each LEA to ensure the confidentiality of any personally identifiable student information. This is usually the case manager but may be another person who has been trained in confidentiality procedures.

The custodian of records is responsible for ensuring that files are not easily accessible to the public. Records of access are maintained for individual files, which include the name of party, date, and purpose of access.

(Ed. Code §§ 49060 et seq.; 5 CCR §§ 430 et seq.)

Transfer of Records:

When a student moves from one school to another, records should be transferred in accordance with state and federal law. Federal law requires the LEA from which the student moves to notify the parent of the transfer of records along with the parent's right to review, challenge and/or receive a copy of the transferred record. California law specifies that the LEA which receives the student shall be responsible for the notification. Procedurally, both requirements can be met if the district provides an annual notification to the parents of every student which specifies that records will be transferred and outlines the other rights cited above. This notice should be provided to all parents each fall and to the parents of every new student upon enrollment. (Ed. Code § 49068; 5 CCR §§ 438.)

CALIFORNIA SCHOOLS ARE NOT REQUIRED TO OBTAIN PARENT PERMISSION TO FORWARD RECORDS - IN FACT, THEY ARE REQUIRED TO FORWARD RECORDS TO ANY CALIFORNIA SCHOOL OF NEW OR INTENDED ENROLLMENT "WITHIN FIVE (5) DAYS. * Records cannot be withheld for nonpayment of fees or fines. (Ed. Code § 49060)

Mandatory Permanent Pupil records must be forwarded to all schools; the original, or a copy, must be retained by the sending LEA. Mandatory Interim Pupil records must be forwarded to California public schools and may be forwarded to any other schools. Permitted pupil records may be forwarded at the discretion of the custodian of the records. Private schools in California are required to forward Mandatory Permanent Pupil Records. (Ed. Code § 49068; 5 CCR §§ 438.)

If an agency or person provides a written report to the district, it becomes a part of the pupil's record and, as such, is available to the parent even though it may be marked "confidential." (Technically, it becomes a part of the record only when it is filed or maintained. The custodian

of the records should give serious consideration to the educational value of sensitive information before routinely including it as a pupil record. As alternatives, the report may be summarized in a more useful form, it may be returned for revision, or it may be rejected and destroyed before it becomes a record.)

Correction or Removal of Information (Ed. Code § 49070):

Parents have the right, on request, to receive a list of the types and locations of education records collected, maintained and used by the educational agency. Parents may challenge the content of the student's record if they believe the information in education records collected, maintained or used is inaccurate, misleading, or in violation of the privacy or other rights of the child. This right to challenge becomes the sole right of the student when the student turns 18 or attends a post-secondary institution. The request to remove or amend the content of the student record must be made in writing.

Within 30 days of receiving the request, the LEA Superintendent or designee shall meet with the parent/student and with the employee (if still employed) who recorded the information in question. The LEA Superintendent shall then decide whether to sustain the allegations and amend the records as requested or deny the allegations. If the allegations are sustained, the LEA Superintendent shall order the correction or removal and destruction of the information.

When a student grade is involved, the teacher who gave the grade shall be given an opportunity to state orally, in writing, or both, the reasons why the grade was given before the grade is changed either by the LEA Superintendent or at the decision of the district's Governing Board. Insofar as practical, the teacher shall be included in all discussions relating to the changing of the grade.

If the LEA Superintendent disagrees with the request to amend the records, the parent/student may write within 30 days to appeal this decision to the district's governing board. Within 30 days of receiving the written appeal, the district's governing board shall meet in closed session with the parent and the employee (if still employed) who recorded the information in question. The district's governing board shall then decide whether or not to sustain or deny the allegations. If the district's Governing Board sustains any or all of the allegations, it shall order the LEA Superintendent to immediately correct or remove and destroy the information in question. The decision of the district's governing board is final. The records of the district's governing board proceedings shall be maintained in a confidential manner for one year, after which they will be destroyed, unless the parent initiates legal proceedings within the prescribed period relative to the disputed information.

If the final decision of the district's governing board is unfavorable to the parent or if the parent accepts an unfavorable decision by the district, the parent shall have the right to submit a written statement commenting on the record or explaining any reasons the parent disagrees with the decision of the LEA Superintendent or the district governing board. This explanation shall be included in the records of the child for as long as the record or contested portion is maintained by

local educational agency. If the records of the child, or contested portion, is given by the agency to any party, the explanation must also be given to the party.

At the beginning of each school year, parents shall be notified of the availability of the above procedures for challenging student records.

In order to avoid potential challenges, it is recommended that each member district's staff receive training which alerts them to the requirements of privacy and access laws. To the degree that a statement describes a student's behavior, the statement can withstand challenges. Ambiguous terms should be avoided, and staff members should restrict their comments to areas of training. In addition, only those observations which have educational relevancy should be recorded. Statements describing unrelated family incidents or unsubstantiated claims are inappropriate for a student's record.

Record Classification and Destruction:

All school public records are classified as continuing records until such time as their usefulness ceases. While they are continuing records, their destruction is governed by a rather complicated set of guidelines. Certain items are specifically excluded from destruction restrictions. Copies of originals, pupil passes, tardy slips, admit slips, notes from home, including verification of illness and individual memorandum between employees of the district are not records and may be destroyed at any time. (5 CCR § 16022.)

Pupil records are defined within the three categories: **mandatory permanent, mandatory interim, and permitted.** (See below for a full explanation of each category.)

Mandatory Permanent pupil records become Class 1 permanent records when their usefulness ceases, and thus are never destroyed. *Caveat:* These records or a copy, are retained for every pupil who was ever enrolled in the district. A copy of the mandatory permanent records is forwarded for students who transfer.

Mandatory Interim pupil records can be classified as Class 1 permanent or Class III disposable when their usefulness ceases. The district is responsible for the classification subject to district governing board approval. If mandatory interim records are classified as disposable, they are to be destroyed in accordance with CCR Title 5, §16027. This requires that they be retained for three years beyond the date of origination.

The third category of pupil records – **Permitted** - may be destroyed whenever their usefulness ceases without the waiting period. However, if a student transfers, graduates or otherwise terminates attendance, such records shall be held six months and then destroyed.

As Mandatory Permanent pupil records, special education records may be classified as Class III, disposable, when they are deemed as no longer useful. This could occur only after transfer or withdrawal from a special education program. Even after classified as

disposable, Mandatory Interim records must be retained for **at least three years** beyond the date of the record's creation.

An important exception applies to those records which were used in assessment for a special education candidate who does not become a special education student. In such cases the records are Permitted pupil records and can be classified as Class III, disposable, and destroyed whenever their usefulness ceases.

(5 CCR §§ 432, 437.)

CONFIDENTIALITY OF STUDENT RECORDS

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- b. To determine the child’s eligibility for financial aid;
- c. To accrediting organizations to the extent necessary to their function;
- d. In cooperation with organizations conducting studies and research that does not permit the personal identification of children or their parents by persons not connected with the research and provided that their personally identifiable information is destroyed when no longer needed;
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If the LEA Superintendent disagrees with the request to amend the records, the parent/student may write within 30 days to appeal this decision to the district’s **g**Governing **b**Board-~~board~~. Within 30 days of receiving the written appeal, the district’s **g**Governing **b**Board shall meet in closed session with the parent and the employee (if still employed) who recorded the information in question. The district’s **g**Governing **b**Board shall then decide whether or not to sustain or deny the allegations. If the district’s Governing Board sustains any or all of the allegations, it shall order the LEA Superintendent to immediately correct or remove and destroy the information in question. The decision of the district’s **g**Governing **b**Board is final. The records of the district’s **g**Governing **b**Board proceedings shall be maintained in a confidential manner for one year, after which they will be destroyed, unless the parent initiates legal proceedings within the prescribed period relative to the disputed information.

If the final decision of the district’s **g**Governing **b**Board is unfavorable to the parent or if the parent accepts an unfavorable decision by the district, the parent shall have the right to submit a

written statement commenting on the record or explaining any reasons the parent disagrees with the decision of the LEA Superintendent or the district governing board. This explanation shall be included in the records of the child for as long as the record or contested portion is maintained by local educational agency. If the records of the child, or contested portion, is given by the agency to any party, the explanation must also be given to the party.

At the beginning of each school year, parents shall be notified of the availability of the above procedures for challenging student records.

In order to avoid potential challenges, it is recommended that each member district's staff receive training which alerts them to the requirements of privacy and access laws. To the degree that a statement describes a student's behavior, the statement can withstand challenges. Ambiguous terms should be avoided, and staff members should restrict their comments to areas of training. In addition, only those observations which have educational relevancy should be recorded. Statements describing unrelated family incidents or unsubstantiated claims are inappropriate for a student's record.

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~~Pupil records—In fact, a~~All school public records ~~s—~~are classified as continuing records until such time as their usefulness ceases. While they are continuing records, their destruction is governed by a rather complicated set of guidelines. Certain items are specifically excluded from destruction restrictions. ~~CCR Title 5, §16020 indicates that~~Copies of originals, pupil passes, tardy slips, admit slips, notes from home, including verification of illness and individual memorandum between employees of the district are not records and may be destroyed at any time. (5 CCR § 16022.)

~~Other pupil-related records~~Pupil records are defined within the three categories: **mandatory permanent, mandatory interim, and permitted**. (See below for a full explanation of each category.)

Mandatory Permanent pupil records become Class 1 permanent records when their usefulness ceases, and thus are never destroyed. *Caveat:* These records or a copy, are retained for every pupil who was ever enrolled in the district. A copy of the mandatory permanent records is forwarded for students who transfer.

Mandatory Interim pupil records can be classified as Class 1 permanent or Class III disposable when their usefulness ceases. The district is responsible for the classification subject to district governing board approval. If mandatory interim records are classified as disposable, they are to be destroyed in accordance with CCR Title 5, §16027. This requires that they be retained for three years beyond the date of origination.

The third category of pupil records – **Permitted** - may be destroyed whenever their usefulness ceases without the waiting period. However, if a student transfers, graduates or otherwise terminates attendance, such records shall be held six months and then destroyed.

As Mandatory Permanent pupil records, special education records may be classified as Class III, disposable, when they are deemed as no longer useful. This could occur only after transfer or withdrawal from a special education program. Even after classified as disposable, Mandatory Interim records must be retained for **at least three years** beyond the date of the record's creation.

An important exception applies to those records which were used in assessment for a special education candidate who does not become a special education student. In such cases the records are Permitted pupil records and can be classified as Class III, disposable, and destroyed whenever their usefulness ceases.

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PERSONNEL QUALIFICATIONS

Each member district within the El Dorado County SELPA will ensure that personnel providing special education related services meet the highly qualified requirements as defined under federal law, including that those personnel have the content knowledge and skills to serve children with disabilities. This policy shall not be construed to create a right of action on behalf of an individual student for the failure of a particular district staff person to be highly qualified or to prevent a parent from filing a State complaint with the CDE about staff qualifications.

Each member district will support and assist the state's efforts and activities to ensure an adequate supply of qualified special education, general education, and related services personnel. This shall include recruitment, hiring, training and efforts to retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

Legal References:**EDUCATION CODE**

56205(a)(13)

56058

56070

State Board Policy 6/11/98**UNITED STATES CODE, TITLE 20**

1412(a)(14-15)

1413(a)(3)

PERSONNEL QUALIFICATIONS

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State Board Policy 6/11/98

UNITED STATES CODE, TITLE 20

1412(a)(14-15)

1413(a)(3)

PERSONNEL QUALIFICATIONS

Special Education Staff

Teachers assigned to serve students with disabilities shall possess the credential that authorizes them to teach the primary disability of the students within the program placement in the student's individualized education program (IEP). (5 CCR §§ 80046.5 through 80048.6.) Special education teachers who teach core academic subjects shall possess the qualifications required by the No Child Left Behind Act. (20 USC §§ 1401, 6319, 7801; 34 CFR §§ 200.55-200.57, 300.18; 5 CCR §§ 6100-6126)

The LEA Superintendent or designee shall ensure that caseloads for special education teachers are within the maximum caseloads established by law or set by the district. (See Ed. Code § 56362 [Resource Specialists], and 56363.3 & 56441.7 [language, speech, and hearing specialists].)

Resource Specialists

Any LEA providing special education must adopt policies regarding resource specialists. (Ed. Code § 56195.8) In accordance with this requirement, each member district's Governing Board shall employ certificated resource specialists to provide services including but not limited to the following:

1. Instruction and services for students whose needs have been identified in an individualized education program (IEP) and who are assigned to regular classroom teachers for a majority of the school day;
2. Information and assistance to students with disabilities and their parents/guardians;
3. Consultation with and provision of resource information and material regarding students with disabilities to their parents/guardians and other staff members;
4. Coordination of special education services with the regular school programs for each student enrolled in the resource specialist program;
5. 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 sufficient progress to the IEP team; and
6. Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.

(Ed. Code § 56362):

The resource specialist program shall be directed by a resource specialist who is a credentialed special education teacher or who has a clinical services credential with a special class authorization, and who has three or more years of teaching experience, including both regular and special education teaching experience. (Ed. Code § 56362)

No resource specialist shall have a caseload which exceeds 28 students. As necessary, and with the agreement of the resource specialist, the member district Governing Board may request a waiver from the State Board of Education to increase the caseload to no more than 32 students, provided that an individual resource specialist does not have a caseload exceeding 28 students for more than two school years and has the assistance of an instructional aide at least five hours daily during the period of the waiver. (Ed. Code § 56362; 5 CCR § 3100)

Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes. (Ed. Code § 56362)

Related Services Personnel and Paraprofessionals:

Related services personnel and paraprofessionals must have qualifications established by the member district that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

The member district must ensure that related services personnel who deliver services in their discipline or profession meet the requirements to be licensed within their profession, having not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

The member district must allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, to be used to assist in the provision of special education and related services under this part to children with disabilities.

Legal Reference:**EDUCATION CODE**

44250-44279 Credentials, especially:

44256 Credential types, specialist instruction

44265 Special education credential

56195.8 Adoption of policies

56361 Program options

56362 Resource specialist program, contents, direction; resource specialists, case-loads, assignments, instructional aide; pupil enrollment

56362.1 Caseload

56362.5 Resource specialist certificate of competence

56362.7 Bilingual-crosscultural certificate of assessment competence

56363.3 Average caseload limits

56441.7 Maximum caseload (programs for individuals with exceptional needs between the ages of three and five inclusive)

CODE OF REGULATIONS, TITLE 5

3051.1 Language, speech and hearing development and remediation; appropriate credential

3100 Waivers of maximum caseload for resource specialists

80046.5 Credential holders authorized to serve students with disabilities

80048-80048.6 Credential requirements and authorizations

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 Highly qualified teachers

200.61 Parent notification regarding teacher qualifications

300.18 Highly qualified special education teachers

300.156 Personnel Qualifications

Management Resources:

WEB SITES

California Association of Resource Specialists and Special Education Teachers:

<http://www.carsplus.org>

California Speech-Language-Hearing Association: <http://www.csha.org>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

PERSONNEL QUALIFICATIONS

Special Education Staff

Teachers assigned to serve students with disabilities shall possess the credential that authorizes them to teach the primary disability of the students within the program placement ~~recommended~~ in the student's individualized education program (IEP). (5 CCR ~~§§~~ 80046.5 through 80048.6.) Special education teachers who teach core academic subjects shall possess the qualifications required by the No Child Left Behind Act. (20 USC ~~§§~~ 1401, 6319, 7801; 34 CFR ~~§§~~ 200.55-200.57, 300.18; 5 CCR ~~§§~~ 6100-6126)

~~Note: The federal No Child Left Behind Act (20 USC 6319; 34 CFR §§ 200.55-200.57) requires all teachers of core academic subjects, in both Title I and non Title I programs, to be "highly qualified" as under federal and California law. (defined in 20 USC § 7801; and 5 CCR §§ 6100-6126). A teacher is defined as "new to the profession" if they have graduated from an accredited institution of higher education and received a credential, or began an approved intern program, on or after July 1, 2002. A teacher is defined as "not new to the profession" if they graduated from an accredited institution of higher education and received a credential, or were enrolled in, or had completed, an approved intern program before July 1, 2002. (5 CCR § 6100)~~

~~An elementary teacher who holds at least a bachelor's degree, is currently enrolled in an approved intern program for less than three years (or has a credential), and meets the applicable requirements in Section 6102 or 6103 as noted in the next two paragraphs, meets NCLB requirements as "highly qualified". (5 CCR 6101)~~

~~An elementary teacher who is new to the profession, in addition to having at least a bachelor's degree and either being currently enrolled in an approved intern program for less than three years or holding a credential, must have passed a validated statewide subject matter examination certified by the Commission on Teacher Credentialing (CTC), including, but not limited to the California Subject Examination for Teachers (CSET) Multiple Subjects, Multiple Subject Assessment for Teachers (MSAT), and National Teaching Exams (NTE). (5 CCR 6102)~~

~~An elementary teacher who is not new to the profession at the elementary level, in addition to having at least a bachelor's degree and either being currently enrolled in an approved intern program for less than three years or holding a credential, must have completed either:~~

- ~~1. a validated statewide subject matter examination that the CTC has utilized to determine subject matter competence for credentialing purposes,~~
- ~~or~~
- ~~2. a high objective uniform state standard evaluation (HOUSSE) conducted pursuant to 5 CCR 6104 and in conjunction with the teacher's evaluation and assessment pursuant to Education Code section 44662. (5 CCR 6103)~~

~~A middle or high school teacher, who holds at least a bachelor's degree, is currently enrolled in an approved intern program for less than three years or has a full credential, and who meets the applicable requirements in Section 6111 or 6112 as noted in the next two paragraphs, meets NCLB requirements as "highly qualified". (5 CCR 6110)~~

~~A middle or high school teacher who is new to the profession, in addition to having at least a bachelor's degree and either being currently enrolled in an approved intern program for less than three years or holding a credential in the subject taught, must have passed or completed **one** of the following for every core subject currently assigned:~~

- ~~1. a validated statewide subject matter examination certified by the CTC,~~
- ~~2. university subject matter program approved by the CTC,~~
- ~~3. undergraduate major in the subject taught,~~
- ~~4. graduate degree in the subject taught, **or**~~
- ~~5. coursework equivalent to undergraduate major.~~

~~Note: A new special education teacher who is currently enrolled in an approved special education intern program for less than three years or who holds a special education credential, and can demonstrate subject matter competence in mathematics, language arts, or science, may demonstrate competence in the other core academic subjects in which the teacher teaches through the HOUSSE contained in 5 CCR 6104 not later than two years after date of employment.~~

~~A middle or high school teacher who is not new to the profession, in addition to having at least a bachelor's degree and either being currently enrolled in an approved intern program for less than three years or holding a credential, must have passed or completed **one** of the following for every core subject currently assigned:~~

- ~~1. a validated statewide subject matter examination that the CTC has utilized to determine subject matter competence for credentialing purposes,~~
- ~~2. university subject matter program approved by the CTC,~~
- ~~3. undergraduate major in the subject taught,~~
- ~~4. graduate degree in the subject taught,~~
- ~~5. coursework equivalent to undergraduate major,~~
- ~~6. advanced certification or credentialing (National Board Certification), **or**~~

~~7. a high objective uniform state standard evaluation pursuant to 5 CCR 6104.~~

~~Each member district must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.~~

~~[01] Caseloads for special education staff are specified in Education Code 56362 for resource specialists (see "Resource Specialists" section below) and in Education Code 56363.3 and 56441.7 for language, speech and hearing specialists.~~

The LEA Superintendent or designee shall ensure that caseloads for special education teachers are within the maximum caseloads established by law, or set by the district. (See Ed. Code § 56362 [Resource Specialists], and 56363.3 & 56441.7 [language, speech, and hearing specialists].)

Resource Specialists

~~Education Code 56195.8 mandates entities~~Any LEA providing special education ~~must~~to adopt policies ~~regarding~~related to resource specialists. (Ed. Code § 56195.8) The following section fulfills this mandate and should be revised for consistency with the policy and regulations of the SELPA in which the district participates. In accordance with this requirement,

~~e~~Each member district's Governing Board shall employ certificated resource specialists to provide services ~~which shall including but not include, but not be~~ limited to the following: (Education Code 56362):

1. Instruction and services for students whose needs have been identified in an individualized education program (IEP) and who are assigned to regular classroom teachers for a majority of the school day;
2. Information and assistance to students with disabilities and their parents/guardians;
3. Consultation with and provision of resource information and material regarding students with disabilities to their parents/guardians and other staff members;
4. Coordination of special education services with the regular school programs for each student enrolled in the resource specialist program;
5. 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 sufficient progress to the IEP team; and
6. Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.

(Ed. Code § 56362):

The resource specialist program shall be directed by a resource specialist who is a credentialed special education teacher or who has a clinical services credential with a special class authorization, and who has three or more years of teaching experience, including both regular and special education teaching experience. (~~Education Code~~ Ed. Code § 56362)

No resource specialist shall have a caseload which exceeds 28 students. As necessary, and with the agreement of the resource specialist, the member district Governing Board may request a waiver from the State Board of Education to increase the caseload to no more than 32 students, provided that an individual resource specialist does not have a caseload exceeding 28 students for more than two school years and has the assistance of an instructional aide at least five hours daily during the period of the waiver. (~~Education Code~~ Ed. Code § 56362; 5 CCR § 3100)

Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes. (~~Education Code~~ Ed. Code § 56362)

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Related services personnel and paraprofessionals must have qualifications established by the member district that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

The member district must ensure that related services personnel who deliver services in their discipline or profession meet the requirements to be licensed within their profession, having not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

The member district must allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, to be used to assist in the provision of special education and related services under this part to children with disabilities.

Legal Reference:

EDUCATION CODE

44250-44279 Credentials, especially:

44256 Credential types, specialist instruction

44265 Special education credential

56195.8 Adoption of policies

56361 Program options

56362 Resource specialist program, contents, direction; resource specialists, case-loads, assignments, instructional aide; pupil enrollment

56362.1 Caseload

56362.5 Resource specialist certificate of competence

56362.7 Bilingual-crosscultural certificate of assessment competence

56363.3 Average caseload limits

56441.7 Maximum caseload (programs for individuals with exceptional needs between the ages of three and five inclusive)

CODE OF REGULATIONS, TITLE 5

3051.1 Language, speech and hearing development and remediation; appropriate credential

3100 Waivers of maximum caseload for resource specialists

~~6100-6126 Teacher qualifications, No Child Left Behind Act~~

80046.5 Credential holders authorized to serve students with disabilities

80048-80048.6 Credential requirements and authorizations

~~UNITED STATES CODE, TITLE 20~~

~~1401 Definition of highly qualified special education teacher~~

~~6319 Highly qualified teachers~~

~~7801 Definitions, highly qualified teacher~~

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 Highly qualified teachers

200.61 Parent notification regarding teacher qualifications

300.18 Highly qualified special education teachers

300.156 Personnel Qualifications

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PERFORMANCE GOALS AND INDICATORS

Each member district of the El Dorado County SELPA will comply with the requirements of the performance goals and indicators developed by the CDE and provide data as required by the CDE.

Legal References:

EDUCATION CODE

56205(a)

UNITED STATES CODE, TITLE 20

1412(a)(16)

PERFORMANCE GOALS AND INDICATORS

~~It shall be the policy of~~ Each member district of the El Dorado County SELPA ~~to~~ will comply with the requirements of the performance goals and indicators developed by the CDE and provide data as required by the CDE.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATES CODE, TITLE 20
1412(a)(16)

PARTICIPATION IN ASSESSMENTS

Each member district of the El Dorado County SELPA shall ensure that all students with disabilities participate in state and district-wide assessment programs. The IEP team determines how a student will access assessments with or without accommodations, or access alternate assessments, consistent with state standards governing such determinations.

The LEA Superintendent or designee shall administer mandatory student assessments within the California Assessment of Student Performance and Progress (CAASPP) program as required by law and in accordance with LEA Superintendent policy and administrative regulation.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATE CODE, TITLE 20
1412(a)(17)

PARTICIPATION IN ASSESSMENTS

~~It shall be the policy of the e~~Each member district of the El Dorado County SELPA shall ensure that all students with disabilities ~~shall~~ participate in state and district-wide assessment programs. The IEP team determines how a student will access assessments with or without accommodations, or access alternate assessments, consistent with state standards governing such determinations.

The LEA Superintendent or designee shall administer mandatory student assessments within the ~~state~~ California Assessment of Student Performance and Progress (CAASPP) Standardized Testing and Reporting (STAR)-pProgram as required by law and in accordance with LEA Superintendent policy and administrative regulation.

Legal References:

EDUCATION CODE

56205(a)

UNITED STATE CODE, TITLE 20

1412(a)(17)

PARTICIPATION IN ASSESSMENTS

The member districts within El Dorado County SELPA are committed to all students having access to state and/or district assessments. Through the IEP process each student's strengths and weaknesses will be evaluated as to the content of the district and/or statewide assessment to determine appropriate means of access to the assessment(s).

The SELPA IEP forms include an assessment plan as well as statements related to district and statewide assessment.

Special education students shall be tested with the designated state achievement test and the standards-based test, unless their individualized education program specifically identifies that the student will be tested with the state-approved alternate assessment. The IEP team will determine which assessment will be most appropriate for each student based on guidance provided by the California Department of Education.

A student shall be permitted to take exams or assessments with the accommodation(s) and/or modification(s) as identified in his/her IEP or 504 plan. These accommodations and/or modifications must be in compliance with the current testing accommodation/modification guidelines provided by the California Department of Education.

School personnel have a responsibility to ensure special education students have appropriate accommodations and/or modifications to meet the individual needs of the students and allow access to all State and district assessments. Each member district will follow and implement the California State Board of Education policies and administrative regulations related to assessment, data collection and waivers.

Legal References:

EDUCATION CODE

56205(a), 56345, 60640, 5 CCR 853, 5 CCR 850

PARTICIPATION IN ASSESSMENTS

The member districts within El Dorado County SELPA are committed to all students having access to state and/or district assessments. Through the IEP process each student's strengths and weaknesses will be evaluated as to the content of the district and/or statewide assessment to determine appropriate means of access to the assessment(s).

The SELPA IEP forms include an assessment plan as well as statements related to district and statewide assessment.

Special education students shall be tested with the designated state achievement test and the standards-based test, unless their individualized education program specifically identifies that the student will be tested with the ~~California Alternate Performance Assessment (CAPA) or the California Modified Assessment (CMA)~~ state-approved alternate assessment. The IEP team will determine which assessment will be most appropriate for each student based on guidance provided by the California Department of Education.

A student shall be permitted to take exams or assessments with the accommodation(s) and/or modification(s) as identified in ~~the~~ his/her IEP or 504 plan. These accommodations and/or modifications must be in compliance with the current ~~“Testing Variations, Accommodations, and Modifications Matrix”~~ testing accommodation/modification guidelines provided by the California Department of Education.

School personnel have a responsibility to ensure special education students have appropriate accommodations and/or modifications to meet the individual needs of the students and allow access to all State and district assessments. Each member district will follow and implement the California State Board of Education policies and administrative regulations related to assessment, data collection and waivers ~~s~~ processes.

Legal References:

EDUCATION CODE

56205(a), 56345, 60640, 5 CCR 853, 5 CCR 850

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SUPPLEMENTATION OF STATE, LOCAL AND OTHER FEDERAL FUNDS

Funds received by the El Dorado County SELPA from Part B of the IDEA shall be expended in accordance with the applicable provisions of the IDEA and shall be used to supplement, and not to supplant State, local, and other Federal funds.

State and federal funds received by El Dorado County SELPA are allocated and distributed among the local educational agencies in the SELPA according to the adopted El Dorado County SELPA Allocation Plan.

EDUCATION CODE:

56195

56195.7(i)

56205(a)(12)(D)(ii)(II)

56205(a)(16)

56841(a)(2)

Legal Reference:

20 USC §1413 (a)(2)(A)(ii)

34 CFR §300.202(a)

SUPPLEMENTATION OF STATE, LOCAL AND OTHER FEDERAL FUNDS

Funds received by the El Dorado County SELPA from Part B of the IDEA shall be expended in accordance with the applicable provisions of the IDEA and shall be used to supplement₂ -and not to supplant State, local₂ and other Federal funds.

State and federal funds received by El Dorado County SELPA are allocated and distributed among the local educational agencies in the SELPA according to the adopted El Dorado County SELPA Allocation Plan.

EDUCATION CODE:

56195

56195.7(i)

56205(a)(12)(D)(ii)(II)

56205(a)(16)

56841(a)(2)

Legal Reference:

20 USC §1413 (a)(2)(A)(ii)

34 CFR §300.202(a)

SUSPENSION/EXPULSION

Each member district in the El Dorado County SELPA assures that data on suspension and expulsion rates will be provided in a manner prescribed by the CDE. If a member district finds significant discrepancies in its rate of long terms suspensions and/or expulsions of students with disabilities, the member district will review, and revise, as required by law, its policies, procedures and practices related to the development and implementation of IEPs.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATES CODE, TITLE 20
1412(a)(22)

SUSPENSION/EXPULSION

Each member district in the El Dorado County SELPA assures that data on suspension and expulsion rates will be provided in a manner prescribed by the CDE. If a member district finds significant discrepancies in its rate of long terms suspensions and/or expulsions of students with disabilities, When indicated by data analysis, each the member district ~~further assures that~~ will review, and revise, as required by law, its policies, procedures and practices related to the development and implementation of ~~the~~ IEPs ~~will be revised~~.

Legal References:

EDUCATION CODE

56205(a)

UNITED STATES CODE, TITLE 20

1412(a)(22)

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SUSPENSION AND EXPULSION/DUE PROCESS

Where California law provides greater protections to students, California law supersedes federal law.

Applicability to Students on 504 Plans

Neither state nor federal law requires IDEA procedures apply to students identified under Section 504 of the federal Rehabilitation Act of 1973 (“Section 504”) (29 USC § 794). However, in some instances, each member district may find it appropriate to apply portions of these procedures (e.g., the limitation that a student with a disability may not be suspended for more than 10 consecutive school days) to students with a qualifying disability pursuant to their Section 504 Plan. Districts that wish to apply IDEA procedures to Section 504 students should modify the following regulation accordingly.

IDEA Eligible Students are not Exempt from Suspension and Expulsion

A student identified as an individual with a disability pursuant to the Individuals with Disabilities Education Act (“IDEA”) is subject to the same grounds for suspension and expulsion which apply to students without disabilities.

Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been identified as a student with a disability pursuant to IDEA, and who has engaged in behavior that violated the district's code of student conduct may assert any of the protections under IDEA only if the member district had “knowledge” that the student was disabled before the behavior that precipitated the disciplinary action occurred. (20 USC § 1415(k)(5); 34 CFR § 300.534)

The member district shall be deemed to have “knowledge” that the student has a disability if any of the following conditions exists:

1. The parent/guardian has expressed concern to district supervisory or administrative personnel in writing, or to a teacher of the student, that the student is in need of special education or related services;
2. The parent/guardian has requested an evaluation of the student for special education pursuant to 34 CFR §§ 300.300 through 300.311; or
3. The teacher of the student or other district personnel has expressed specific concerns directly to the district's director of special education or to other supervisory district personnel about a pattern of behavior demonstrated by the student.

(20 USC 1415(k)(5); 34 CFR 300.534)

The district would not be deemed to have knowledge that a student is disabled if the parent/guardian has not allowed the student to be evaluated for special education services, or has refused services. In addition, the district would not be deemed to have knowledge if the district conducted an initial evaluation pursuant to and determined that the student was not an individual with a disability. When a district is deemed to not have knowledge of the disability, the student shall be disciplined in accordance with procedures established for students without disabilities who engage in comparable behavior. (20 USC § 1415(k)(5); 34 CFR § 300.534)

If, during the time period in which the student is subject to disciplinary measures under 34 CFR § 300.530, a request is made to evaluate the student for IDEA eligibility, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities. (20 USC § 1415(k)(5); 34 CFR § 300.534)

Suspension

Member districts of the El Dorado County SELPA who are receiving funds under the IDEA may suspend a student for no more than 10 consecutive or cumulative school days, as long as the removal does not constitute a change in placement. (20 USC § 1415(k)(1), 34 CFR §§ 300.530, 300.536; see also *Honig v. Doe* (1988) 484 US 305 Under California law, a student may not be suspended for more than 20 cumulative school days in a school year. (Ed. Code § 48903.)

- Bus and “in school suspensions”

Note: Whether a bus suspension or “in school suspension” counts as a day of suspension affecting the cumulative total depends on the unique circumstances of each case. (See *Analysis of Comments to the Federal Regulations*, (2006) 71 Fed. Reg. 156, pg. 46715.) For instance, whether bus transportation is part of the student's individualized education program (IEP). In addition, an “in-school suspension” or “supervised suspension classroom” would not count towards the 20-day cumulative limit described above as long as the student is afforded the opportunity to continue to appropriately participate in the general curriculum, receive the services specified in his/her IEP, and participate with nondisabled students to the extent he/she would have in the current placement. However, the district should be careful that such actions do not constitute a change of placement and should carefully monitor such suspensions.

The LEA Superintendent or designee may suspend a student with a disability for up to 10 consecutive or cumulative school days for a single incident of misconduct, and for up to 20 school days in a school year, as long as the suspension(s) does not constitute a change in placement as defined in 34 CFR 300.536. (Ed. Code § 48903; 34 CFR § 300.530)

The principal or designee shall monitor the number of days, including portions of days, in which a student with an IEP has been suspended during the school year.

The member district shall determine, on a case-by-case basis, whether a pattern of removals of a student from his/her current educational placement for disciplinary reasons constitutes a change

of placement. A change of placement shall be deemed to have occurred under any of the following circumstances:

1. The removal is for more than 10 consecutive or cumulative school days; or
2. The student has been subjected to a series of removals that constitute a pattern because of all of the following:
 - a. The series of removals total more than 10 school days in a school year;
 - b. The student's behavior is substantially similar to his/her behavior in previous incidents that resulted in the series of removals; and
 - c. Additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another, indicate a change of placement.

(34 CFR § 300.536)

If the removal has been determined to be a change of placement as specified in items #1 or #2 above, the student's IEP team shall determine the appropriate educational services to be provided. (34 CFR § 300.530.)

Services During Suspension

Member districts are required to provide " FAPE to all students, including any students with disabilities who have been suspended for more than 10 school days in a year.(20 USC § 1412(a)(1)(A), 34 CFR § 300.530.) The district is not required to provide a student who has been suspended for more than 10 school days in a school year for disciplinary reasons exactly the same services in exactly the same setting as the student was receiving prior to the imposition of discipline. (See *Analysis of Comments to the Federal Regulations* (2006) 71 Fed. Reg. 156, pg. 46716.) However, the services the student does receive must enable him/her to continue to participate in the general curriculum and to progress toward his/her IEP goals.

When a disabled student is removed for 10 school days or less, the member district does not have to provide services as long as the member district does not provide services to nondisabled students removed for the same amount of time.

Any student suspended for more than 10 school days in the same school year shall continue to receive services during the term of the suspension. School personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed as provided in 34 CFR § 300.101(a), so as to enable the student to continue to participate in the general education curriculum in another setting and to progress toward meeting the goals as set out in his/her IEP. (20 USC § 1412(a)(1)(A); 34 CFR § 300.530)

If a student with a disability is excluded from school bus transportation, the student shall be

provided with an alternative form of transportation at no cost to the student or his/her parent/guardian, provided that transportation is specified in his/her IEP. (Ed. Code § 48915.5.)

Interim Alternative Educational Placement Due to Dangerous Behavior

The district may unilaterally place a student with a disability in an appropriate interim alternative educational setting ("IAES") for up to 45 school days, without regard to whether the behavior is a manifestation of the student's disability, when the student commits one of the following acts while at school, going to or from school, or at a school-related function:

1. Carries or possesses a weapon. "Weapon" refers to a "dangerous weapon" as defined in 18 USC § 930 and includes any device which is capable of causing death or serious bodily injury. The term does not include a pocket knife with a blade of less than 2 1/2 inches in length.
2. Knowingly possesses or uses illegal drugs;
3. Sells or solicits the sale of a controlled substance as identified in 21 USC 812(c), Schedules I-V; or
4. Inflicts serious bodily injury upon another person. "Serious bodily injury" is defined as 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 USC § 1365).

(20 USC § 1415(k)(1)(G); 34 CFR § 300.530)

The student's IAES shall be determined by his/her IEP team. (20 USC § 1415(k)(1)(G), 34 CFR § 300.531)

On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the district's decision and provided the notice of procedural safeguards pursuant to 34 CFR § 300.504. (20 USC § 1415(k)(1)(H); 34 CFR § 300.530)

A student who has been removed from his/her current placement because of dangerous behavior shall receive services to the extent necessary to allow him/her to participate in the general education curriculum and to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

Manifestation Determination

The following procedural safeguards shall apply: (1) when a student is suspended for more than 10 consecutive school days; (2) when a series of removals of a student constitutes a pattern;

and/or (3) when a change of placement of a student is contemplated due to a violation of the district's code of conduct:

1. Notice: On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR § 300.504. (20 USC § 1415(k)(1)(H); 34 CFR § 300.530)
2. Manifestation Determination: Immediately if possible, but in no case later than 10 school days after the date the decision to take disciplinary action is made, a determination shall be made on whether the student's conduct in question was a manifestation of his/her disability. (20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

The member district, the student's parent/guardian, and relevant members of the IEP team (as determined by the district and parent/guardian) shall convene a manifestation determination meeting and review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents/guardians, and determine whether the conduct in question was either of the following:

- a. Caused by or had a direct and substantial relationship to the student's disability;
or
- b. A direct result of the district's failure to implement the student's IEP, in which case the district shall take immediate steps to remedy those deficiencies

(20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

If, at the manifestation determination meeting, the team determines that a condition in either #a or #b above was met, the conduct shall be determined to be a manifestation of the student's disability. (20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

3. Determination that Behavior is a Manifestation of the Student's Disability: When the conduct has been determined to be a manifestation of the student's disability, the IEP team shall conduct a functional behavioral assessment, unless a functional behavioral assessment had been conducted before the occurrence of the behavior that resulted in the change of placement, and shall implement a behavioral intervention plan for the student. If a behavior intervention plan has already been developed, the IEP team shall review the behavioral intervention plan and modify it as necessary to address the behavior. (20 USC § 1415(k)(1)(F); 34 CFR § 300.530)

The student shall be returned to the placement from which he/she was removed, unless the parent/guardian and member district agree to a change of placement as part of the modification of the behavioral intervention plan. (20 USC § 1415(k)(1)(F); 34 CFR § 300.530). As noted above, if a student is excluded from school bus transportation, alternative transportation must be provided at no cost, provided that transportation is

specified in the student's IEP (see section entitled "Services During Suspension", above). (Ed. Code § 48915.5.)

4. Determination that Behavior is Not a Manifestation of the Student's Disability: If, at the manifestation determination meeting, the team determines that the student's behavior was not a manifestation of his/her disability, the student may be disciplined in accordance with the procedures for students without disabilities. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

The student shall receive services to the extent necessary to participate in the general education curriculum in another setting and to allow him/her to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

Due Process Appeals

If the parent/guardian disagrees with any district decision regarding placement under 34 CFR § 300.530 (suspension and removal for dangerous circumstances) or 34 CFR § 300.531 (interim alternative placement), or the manifestation determination he/she may appeal the decision by requesting a due process hearing. The member district may request a hearing if the district believes that maintaining the student's current placement is substantially likely to result in injury to the student or others. In order to request a hearing, the requesting party shall file a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b). (20 USC 1415(k)(3); 34 CFR 300.532) The party filing the due process complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62.)

Whenever a hearing is requested as specified above, the parent/guardian or the district shall have an opportunity for an expedited due process hearing. (See 34 CFR §§ 300.507, 300.508 (a)-(c), and 300.510 through 300.514.)

If the student's parent/guardian or the district has initiated a due process hearing as detailed above, the student shall remain in the IAES pending the decision of the hearing officer or until the expiration of the 45-day time period, whichever occurs first, unless the parent/guardian and district agree otherwise. (20 USC § 1415(k)(4); 34 CFR § 300.533)

Readmission

Readmission procedures for students with disabilities shall be the same as those used for all students. Upon readmission, the member district shall convene an IEP team meeting.

Suspension of Expulsion

Each member district shall apply its own Governing Board's criteria for suspending the enforcement of an expulsion order to students with disabilities in the same manner as they are applied to all other students. (Ed. Code § 48917.)

Notification to Law Enforcement Authorities

The principal of a school or the principal's designee are required to notify law enforcement officials regarding a student's suspension or expulsion as follows:

- a) Prior to the suspension or expulsion of any student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities of any act of assault with a deadly weapon which may violate Penal Code § 245.
- b) Within one (1) school day after a suspension or expulsion of a student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any act by the student which may violate Education Code 48900(c) or (d), relating to the possession, use, offering or sale of controlled substances, alcohol or intoxicants of any kind;
- c) The principal or designee shall also notify appropriate city or county law enforcement authorities of acts by any student with a disability which may involve the possession or sale of narcotics or of a controlled substance or possession of weapons or firearms in violation of Penal Code §§ 626.9 or 626.10.

(Ed. Code § 48902.)

A principal or designee, or any other person reporting a known or suspected act under either subdivision (a) or (b), above, is not civilly or criminally liable for making a report unless it is shown that:

- 1) The report was false; and
- 2) The person making the report either:
 - a. Knew that the report was false; or
 - b. The report was made with reckless disregard for the truth or falsity of the report.

(Ed. Code § 48902.)

When a principal or designee reports a criminal act committed by a schoolage individual with exceptional needs (eligible for special education) he/she is required to transmit copies of the student's special education and disciplinary records for consideration by the authorities to whom he/she reported the criminal act. When sending records for this purpose, the member district,

principal. Or designee must still comply with all FERPA requirements, (Ed. Code § 48902.)

Report to County Superintendent of Schools

The LEA Superintendent is required to report to the County Superintendent of Schools when any special education student has been expelled or suspended for more than 10 school days. The report shall include the student's name, last known address, and the reason for the action. The County Superintendent will review the reports and determine whether either the interest of the student or the welfare of the state may need further examination. If so, the County Superintendent shall bring the reports to the attention of the member district's Governing Board and the County Board of Education. (Ed. Code § 48203.)

Legal Reference:

EDUCATION CODE

35146 Closed sessions (re suspensions)
35291 Rules (of governing board)
48203 Reports of severance of attendance of disabled students
48900-48925 Suspension and expulsion
56000 Special education; legislative findings and declarations
56320 Educational needs; requirements
56321 Development or revision of individualized education program
56329 Independent educational assessment
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245 Assault with deadly weapon
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626.10 Dirks, daggers, knives, razors or stun guns

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1412 State eligibility

1415 Procedural safeguards

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706 Definitions

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COURT DECISIONS

Schaffer v. Weast (2005) 125 S. Ct. 528

Parents of Student W. v. Puyallup School District, (1994 9th Cir.) 31 F.3d 1489

M.P. v. Governing Board of Grossmont Union High School District, (1994) 858 F.Supp. 1044

Honig v. Doe, (1988) 484 U.S. 305

Management Resources:

FEDERAL REGISTER

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

WEB SITES

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osep/index.html>

SUSPENSION AND EXPULSION/DUE PROCESS

~~Note: The following administrative regulation reflects the 2004 reauthorization of the federal Individuals with Disabilities Education Act (IDEA) (20 USC 1400-1482), implementing federal regulations, effective October 13, 2006 (34 CFR 300.1-300.818, added by 71 Fed. Reg. 156), and conforming state legislation (AB 1662, Ch. 653, Statutes of 2005). Because federal regulatory provisions related to discipline were amended and renumbered pursuant to 71 Fed. Reg. 156, it is likely that further state legislation will be needed to conform state law to the new federal regulations. Note that in cases where state California law provides greater protections to students, state California law supersedes federal law.~~

Applicability to Students on 504 Plans

~~Note: Neither state nor federal law requires that these IDEA procedures apply to students identified under Section 504 of the federal Rehabilitation Act of 1973 (“Section 504”) (29 USC § 794). However, in some instances, each member district may find it appropriate to apply portions of these procedures (e.g., the limitation that a student with a disability may not be suspended for more than 10 consecutive school days) to Section 504 students with an students with a qualifying disability pursuant to their Section 504 Plan. accommodation plan. Districts that wish to apply IDEA procedures to Section 504 students should modify the following regulation accordingly.~~

IDEA Eligible Students are not Exempt from Suspension and Expulsion

A student identified as an individual with a disability pursuant to the Individuals with Disabilities Education Act (“IDEA”) is subject to the same grounds for suspension and expulsion which apply to students without disabilities.

Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been officially identified as a student with a disability pursuant to IDEA, and who has engaged in behavior that violated the district's code of student conduct may assert any of the protections under IDEA only if the member district had “knowledge” that the student was disabled before the behavior that precipitated the disciplinary action occurred. (20 USC § 1415(k)(5); 34 CFR § 300.534)

The member district shall be deemed to have “knowledge” that the student has a disability if one any of the following conditions exists: ~~(20 USC 1415(k)(5); 34 CFR 300.534)~~

1. The parent/guardian has expressed concern to district supervisory or administrative personnel in writing, or to a teacher of the student, that the student is in need of special education or related services;
2. The parent/guardian has requested an evaluation of the student for special education

pursuant to 34 CFR ~~§§ 300.300 through 300.311~~; or

3. The teacher of the student or other district personnel has expressed specific concerns directly to the district's director of special education or to other supervisory district personnel about a pattern of behavior demonstrated by the student.

(20 USC 1415(k)(5); 34 CFR 300.534)

The district would not be deemed ~~to not have to have~~ knowledge that a student is disabled if the parent/guardian has not allowed the student to be evaluated for special education services, or has refused services. In addition, the district would not be deemed to ~~not~~ have knowledge if the district conducted an initial evaluation pursuant to ~~34 CFR 300.300-300.311~~ and determined that the student was not an individual with a disability. When ~~the a~~ district is deemed to not have knowledge of the disability, the student shall be disciplined in accordance with procedures established for students without disabilities who engage in comparable behavior. (20 USC § 1415(k)(5); 34 CFR § 300.534)

If, during the time period in which the student is subject to disciplinary measures under 34 CFR § 300.530, a request is made ~~for an evaluation of~~ to evaluate the student for IDEA eligibility, ~~student during the time period in which the student is subject to disciplinary measures pursuant to 34 CFR 300.530~~, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities. (20 USC § 1415(k)(5); 34 CFR § 300.534)

Suspension

~~Note: Pursuant to 20 USC 1415(k)(1), 34 CFR 300.530, and a 1988 U.S. Supreme Court decision (*Honig v. Doe*), m~~Member districts of the El Dorado County SELPA who are receiving funds under the IDEA may suspend a student for no more than 10 consecutive or cumulative school days, as long as the removal does not constitute a change in placement. (20 USC § 1415(k)(1), 34 CFR §§ 300.530, 300.536; see also *Honig v. Doe* (1988) 484 US 305 pursuant to 34 CFR 300.536. Education Code 48903-Under California law, specifies that a student may not be suspended for more than 20 cumulative school days in a school year. (Ed. Code § 48903.)

- Bus and “in school suspensions”

Note: ~~The Analysis of Comments to the federal regulations, 71 Fed. Reg. 156, pg. 46715, explains that whether a~~Whether a bus suspension or "in school suspension" ~~would count~~ as a day of suspension affecting the cumulative total depends on the unique circumstances of each case. (See Analysis of Comments to the Federal Regulations, (2006) 71 Fed. Reg. 156, pg. 46715.) For instance, such as whether bus transportation is part of the student's individualized education program (IEP). In addition, anAn "in-school suspension" or "supervised suspension classroom" ~~as authorized by Education Code 48911.1~~ would not count towards the 20-day cumulative limit described above as long as the student is afforded the opportunity to continue to appropriately participate in the general curriculum, receive the services specified in his/her IEP,

and participate with nondisabled students to the extent he/she would have in the current placement. However, the district should be careful that such actions do not constitute a change of placement and should carefully monitor such suspensions.

The LEA Superintendent or designee may suspend a student with a disability for up to 10 consecutive or cumulative school days for a single incident of misconduct, and for up to 20 school days in a school year, as long as the suspension(s) does not constitute a change in placement ~~pursuant to as defined in~~ 34 CFR 300.536. (~~Education Code~~ Ed. Code § 48903; 34 CFR § 300.530)

The principal or designee shall monitor the number of days, including portions of days, in which a student with an ~~valid individualized education program (IEP)~~ IEP has been suspended during the school year.

~~Note: As added by 71 Fed. Reg. 156, 34 CFR 300.536 lists new factors under which a series of removals would constitute a change of placement, as specified below. If the removal is determined to be a change in placement, 34 CFR 300.530 requires the IEP team to determine the appropriate services.~~

The member district shall determine, on a case-by-case basis, whether a pattern of removals of a student from his/her current educational placement for disciplinary reasons constitutes a change of placement. A change of placement shall be deemed to have occurred under any of the following circumstances: (~~34 CFR 300.536~~)

1. The removal is for more than 10 consecutive or cumulative school days; ~~or~~;
2. The student has been subjected to a series of removals that constitute a pattern because of all of the following:
 - a. The series of removals total more than 10 school days in a school year; ~~;~~
 - b. The student's behavior is substantially similar to his/her behavior in previous incidents that resulted in the series of removals; ~~;~~ and
 - c. Additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another, indicate a change of placement.

(34 CFR § 300.536)

~~3.~~ — If the removal has been determined to be a change of placement as specified in items #1 ~~or #2~~ above, the student's IEP team shall determine the appropriate educational services to be provided. (34 CFR § 300.530.)

Services During Suspension

~~Note: Pursuant to 20 USC 1412(a)(1)(A) and 34 CFR 300.530, a Member districts are required to provide "free appropriate public education" (FAPE) must be available to all children students, including any students with disabilities who have been suspended for more than 10 school days in a year. (20 USC § 1412(a)(1)(A), 34 CFR § 300.530.) The Analysis of Comments to the federal regulations, 71 Fed. Reg. 156, pg. 46716, clarifies that t~~The district is not required to provide a student who has been suspended for more than 10 school days in a school year for disciplinary reasons exactly the same services in exactly the same setting as the student was receiving prior to the imposition of discipline. ~~(See Analysis of Comments to the Federal Regulations (2006) 71 Fed. Reg. 156, pg. 46716.) However, the special education and related the~~ services the student does receive must enable him/her to continue to participate in the general curriculum and to progress toward ~~meeting the goals set out in his/her IEP goals.~~ ~~The Analysis of Comments, 71 Fed. Reg. 156, pg. 46717, clarifies that~~

~~When a disabled student is removed for 10 school days or less, services need not be provided the member district does not have to provide services when a student is removed for 10 school days or less,~~ as long as the member district does not provide services to nondisabled students removed for the same amount of time.

Any student suspended for more than 10 school days in the same school year shall continue to receive services during the term of the suspension. School personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed as provided in 34 CFR § 300.101(a), so as to enable the student to continue to participate in the general education curriculum in another setting and to progress toward meeting the goals as set out in his/her IEP. (20 USC § 1412(a)(1)(A); 34 CFR § 300.530)

If a student with a disability~~ies~~ is excluded from school bus transportation, the student shall be provided with an alternative form of transportation at no cost to the student or his/her parent/guardian, provided that transportation is specified in his/her IEP. ~~(Education Code Ed. Code § 48915.5.)~~

Interim Alternative Educational Placement Due to Dangerous Behavior

~~Note: 20 USC 1415(k) and 34 CFR 300.530 permit an alternative placement for 45 school days when a student with a disability, while on school grounds, while going to or coming from school, or at a school function, either (1) carries or possesses a weapon, (2) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance, or (3) inflicts serious bodily injury upon another person. "Serious bodily injury" is defined in 18 USC 1365 as 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. This alternative placement decision may be made unilaterally by the district.~~

~~Note: The term "weapon," as used below, refers to a "dangerous weapon" as defined in 18 USC 930 and includes any device which is capable of causing death or serious bodily injury. The term~~

~~does not include a pocket knife with a blade of less than 2 1/2 inches in length.~~

The district may unilaterally place a student with a disability in an appropriate interim alternative educational setting (“~~IAES~~”) for up to 45 school days, without regard to whether the behavior is a manifestation of the student’s disability, when the student commits one of the following acts while at school, going to or from school, or at a school-related function: ~~(20 USC 1415(k)(1)(G); 34 CFR 300.530)~~

1. ~~Carries or possesses a weapon. “Weapon” refers to a “dangerous weapon” as defined in 18 USC § 930 and includes any device which is capable of causing death or serious bodily injury. The term does not include a pocket knife with a blade of less than 2 1/2 inches in length.~~

~~1. —, as defined in 18 USC 930~~

~~2.~~

~~2.3.~~ Knowingly possesses or uses illegal drugs;

~~3.4.~~ Sells or solicits the sale of a controlled substance as identified in 21 USC 812(c), Schedules I-V; or

~~4.5.~~ Inflicts serious bodily injury upon another person. “Serious bodily injury” is defined as 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 USC § 1365). ~~as defined in 18 USC 1365~~

~~(20 USC § 1415(k)(1)(G); 34 CFR § 300.530)~~

The student's ~~interim alternative educational setting~~IAES shall be determined by his/her IEP team. (20 USC § 1415(k)(1)(G), 34 CFR § 300.531)

On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the district’s decision and provided the notice of -procedural safeguards ~~notice~~ pursuant to 34 CFR § 300.504. (20 USC § 1415(k)(1)(H); 34 CFR § 300.530)

A student who has been removed from his/her current placement because of dangerous behavior shall receive services to the extent necessary to allow him/her to participate in the general education curriculum and to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

Manifestation Determination

The following procedural safeguards shall apply: (1) when a student is suspended for more than

10 consecutive school days; ~~(2)~~, when a series of removals of a student constitutes a pattern; ~~and/or (3)~~; ~~or~~ when a change of placement of a student is contemplated due to a violation of the district's code of conduct:

1. Notice: On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR § 300.504. (20 USC § 1415(k)(1)(H); 34 CFR § 300.530)
2. Manifestation Determination-Review: Immediately if possible, but in no case later than 10 school days after the date the decision to take disciplinary action is made, a ~~manifestation~~ determination ~~review~~ shall be ~~made of the relationship between the~~ made on whether the student's conduct in question was a manifestation of his/her ~~disability~~ disability and the behavior subject to the disciplinary action. (20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

~~At the manifestation determination review, The the member~~ district, the student's parent/guardian, and relevant members of the IEP team (as determined by the district and parent/guardian) shall convene a manifestation determination meeting and review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents/guardians, ~~to and~~ determine whether the conduct in question was either of the following: ~~(20 USC 1415(k)(1)(E); 34 CFR 300.530)~~

- a. Caused by or had a direct and substantial relationship to the student's disability; or
- b. A direct result of the district's failure to implement the student's IEP, in which case the district shall take immediate steps to remedy those deficiencies

(20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

If, at the manifestation determination meeting, the manifestation review ~~the~~ team determines that a condition in either #a or #b above was met, the conduct shall ~~then~~ be determined to be a manifestation of the student's disability. (20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

3. Determination that Behavior is a Manifestation of the Student's Disability: When the conduct has been determined to be a manifestation of the student's disability, the IEP team shall conduct a functional behavioral assessment, unless a functional behavioral assessment had been conducted before the occurrence of the behavior that resulted in the change of placement, and shall implement a behavioral intervention plan for the student. If a behavior intervention plan has already been developed, the IEP team shall review the behavioral intervention plan and modify it as necessary to address the behavior. (20 USC § 1415(k)(1)(F); 34 CFR § 300.530)

The student shall be returned to the placement from which he/she was removed, unless

the parent/guardian and member district agree to a change of placement as part of the modification of the behavioral intervention plan. (20 USC § 1415(k)(1)(F); 34 CFR § 300.530). -As noted above, if a student is excluded from school bus transportation, alternative transportation must be provided at no cost, provided that transportation is specified in the student's IEP (see section entitled "Services During Suspension", above). (Ed. Code § 48915.5.)

~~Note: Education Code 48915.5 provides that, if a student is excluded from school bus transportation, alternative transportation must be provided at no cost, provided that transportation is specified in the student's IEP. See section entitled "Services During Suspension" above.~~

4. Determination that Behavior is Not a Manifestation of the Student's Disability: If, at the manifestation determination meeting, ~~the team~~ the team determines that the student's behavior was not a manifestation of his/her disability, the student may be disciplined in accordance with the procedures for students without disabilities. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

The student shall receive services to the extent necessary to participate in the general education curriculum in another setting and to allow him/her to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

Due Process Appeals

~~Note: The Analysis of Comments to the federal regulations, 71 Fed. Reg. 156, pg. 46723, clarifies that the burden of proof in due process hearings is on the party that is responsible for the issue going forward to the due process hearing officer, consistent with the U.S. Supreme Court's decision in Schaeffer v. Weast. Thus, if the district has requested that a hearing officer remove a student to an interim alternative educational setting, the burden of persuasion at the hearing is on the district.~~

If the parent/guardian disagrees with any district decision regarding placement under 34 CFR § 300.530 (suspension and removal for dangerous circumstances) or 34 CFR § 300.531 (interim alternative placement), or the manifestation determination ~~under 34 CFR 300.530(e)~~, he/she may appeal the decision by requesting a due process hearing. The member district may request a hearing if the district believes that maintaining the student's current placement is substantially likely to result in injury to the student or others. In order to request a hearing, the requesting party shall file a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b). (20 USC 1415(k)(3); 34 CFR 300.532) The party filing the due process complaint has the burden of persuasion by a preponderance of the evidence. (Schaffer v. Weast (2005) 546 U.S. 49, 56-62.)

Whenever a hearing is requested as specified above, the parent/guardian or the district shall have

an opportunity for an expedited due process hearing. ~~-consistent with requirements specified in (See 34 CFR §§ 300.507, 300.508 (a)-(c), and 300.510 through -300.514.)~~

If the student's parent/guardian or the district has initiated a due process hearing ~~under 34 CFR 300.532~~ as detailed above, the student shall remain in the ~~interim alternative educational setting~~ IAES pending the decision of the hearing officer or until the expiration of the 45-day time period, whichever occurs first, unless the parent/guardian and district agree otherwise. (20 USC § 1415(k)(4); 34 CFR ~~§FR~~ 300.533)

Readmission

Readmission procedures for students with disabilities shall be the same as those used for all students. Upon readmission, the member district shall convene an IEP team meeting ~~shall be convened.~~

Suspension of Expulsion

Each member district shall apply its own Governing Board's criteria for suspending the enforcement of an expulsion order to students with disabilities in the same manner as they are applied to all other students. (~~Education Code~~ Ed. Code § 48917.)

Notification to Law Enforcement Authorities

The principal of a school or the principal's designee are required to notify law enforcement officials regarding a student's suspension or expulsion as follows:

- a) Prior to the suspension or expulsion of any student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities of any act of assault with a deadly weapon which may ~~have violated~~ violate Penal Code § 245. (~~Education Code 48902~~)
- b) Within one (1) school day after a suspension or expulsion of a student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any act by the student which may violate Education Code 48900(c) or (d), relating to the possession, use, offering or sale of controlled substances, alcohol or intoxicants of any kind;
- The principal or designee ~~also~~ also notify appropriate city or county law enforcement authorities of acts by any student with a disability which may involve the possession or sale of narcotics or of a controlled substance or possession of weapons or firearms in violation of Penal Code §§ 626.9 ~~and or~~ 626.10. (~~Education Code 48902~~)
- c)

~~Within one school day after a suspension or expulsion of a student with disabilities, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any act by the student which may violate Education Code 48900(e) or (d), relating to the possession, use, offering or sale of controlled substances, alcohol or intoxicants of any kind. (Education Code 48902)~~
(Ed. Code § 48902.)

A principal or designee, or any other person reporting a known or suspected act under either subdivision (a) or (b), above, is not civilly or criminally liable for making a report unless it is shown that:

- 1) The report was false; and
- 2) The person making the report either:
 - a. Knew that the report was false; or
 - b. The report was made with reckless disregard for the truth or falsity of the report.

(Ed. Code § 48902.)

When a principal or designee reports a criminal act committed by a schoolage individual with exceptional needs (eligible for special education) he/she is required to transmit copies of the student's special education and disciplinary records for consideration by the authorities to whom he/she reported the criminal act. When sending records for this purpose, the member district, principal. Or designee must still comply with all FERPA requirements, (Ed. Code § 48902.)

Report to County Superintendent of Schools

~~Note: As amended by SB 1327 (Ch. 59, Statutes of 2006), Education Code 48203 requires~~
the~~The~~ LEA Superintendent is required to report to the County Superintendent of Schools when any special education student has been expelled or suspended for more than 10 school days. The report shall include the student's name, last known address, and the reason for the action.
~~Education Code 48203 specifies that it is the duty of the~~The County Superintendent ~~to examine~~
will review the reports ~~and, if any case exists in and determine~~ whether~~either~~ either the interest of the student or the welfare of the state may need further examination. If so, the County Superintendent, draw shall bring the reports to the attention of the member district's Governing Board and the County Board of Education. (Ed. Code § 48203.)

~~The LEA Superintendent or designee shall report to the County Superintendent when any special education student has been expelled or suspended for more than 10 school days. The report shall include the student's name, last known address, and the reason for the action. (Education Code 48203)~~

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COURT DECISIONS

Schaffer v. Weast (2005) 125 S. Ct. 528

Parents of Student W. v. Puyallup School District, (1994 9th Cir.) 31 F.3d 1489

M.P. v. Governing Board of Grossmont Union High School District, (1994) 858 F.Supp. 1044

Honig v. Doe, (1988) 484 U.S. 305

Management Resources:

FEDERAL REGISTER

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

WEB SITES

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

U.S. Department of Education, Office of Special Education Programs:
<http://www.ed.gov/about/offices/list/osep/index.html>

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ACCESS TO INSTRUCTIONAL MATERIALS

Each member district of the El Dorado County SELPA shall provide instructional materials to blind students or other students with print disabilities in a timely manner according to the state adopted National Instructional Materials Accessibility Standard.

Legal References:

EDUCATION CODE

56205(a)

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OVERIDENTIFICATION AND DISPROPORTIONALITY

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PROHIBITION ON MANDATORY MEDICINE

The El Dorado County SELPA and its member districts shall prohibit school personnel from requiring a student to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation for special education, or receiving special education services.

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DATA

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READING LITERACY

A. RATIONALE

The California Reading Initiative is intended for all students. Reading proficiency is an important goal for virtually all students who receive special education services. It is basic to ongoing school success and essential for successful participation in society. Without reading proficiency, students are excluded from full participation and the opportunity to achieve academic success in school.

B. POLICY STATEMENT

In order to improve the educational results for students with disabilities, the member districts in the El Dorado County SELPA ensure that all students who require special education will participate in the California Reading Initiative, just as do all other students in the El Dorado County districts. The SELPA and member districts will follow the Core Messages developed by the *California Special Education Reading Task Force. In order to facilitate that effort, the member districts assure that special education instructional personnel will participate in staff development inservice opportunities in the area of literacy, including:

- a. information about current literacy and learning research;
- b. state-adopted student content standards and frameworks;
- c. research-based instructional strategies for teaching reading to a wide range of diverse learners; and
- d. the California Reading Initiative and Special Education Reading Task Force Core Messages.

Each of the member districts will include special education staff in their curriculum materials selection process, in order to support alignment with State standards. Each member district will also include special education staff as appropriate in all staff development on phonemics and phonics, as well as in any additional state or regional training based on new legislation frameworks, and AB466 training. The goals of the member districts are to increase the participation of students with disabilities in statewide student assessments, to increase the percentage of children with disabilities who are literate, and to ensure that students with disabilities attain higher standards in reading.

In order to reach these goals, SELPA and the member districts ensure that students with disabilities will have full access to:

1. all required core curriculum including state-adopted core curriculum textbooks and supplementary textbooks; and
2. instructional materials and support.

*California Reading Initiative and Special Education in California
<http://www.calstat.org/readingmessages.html>

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Speech and Language Services Review

Issue One

Over a series of meetings, a group of superintendents, CBOs and special education directors reviewed all of the current regional classrooms and services to determine if the current structure continues to meet district needs. The SELPA was asked for recommendations and asked that the district superintendents consider alternatives to the current speech program to identify any potential instructional improvements, fiscal benefits or increased efficiencies. This proposal is structured to align with previous decision-making processes related to the OT, PT, Behaviorist, Inclusion Classrooms, and the Pollock Pines Speech Program. Pursuant to the SELPA Local Plan and policies, transition to a different speech model would need to be initiated by individual district(s) accepting Program Transfer request(s) from the current program operator (EDCOE).

Current Landscape

While speech and language services have been provided by EDCOE since the 1980s, the majority of COEs and/or SELPAs have moved away from providing speech and language services as a stand-alone service/program. Mirroring the model implemented in other counties is in no way the goal of SELPA Staff recommendation but rather to consider alternatives to the current program model. Decisions by similarly-situated agencies are simply data points. El Dorado County superintendents should independently consider and evaluate the benefits of the current model compared to alternative configurations.

Program Data

The historical state and El Dorado County SELPA speech and language service data demonstrate that elementary students account for a higher percentage of students receiving this service when compared to high school students. EDUHSD is the largest district in the SELPA but accounts for a much smaller proportion of students receiving SLS.

Speech Service County			
	16-17	17-18	18-19
COE Program Students with 415 Service	168	197	211
District Students with 415 Service	1268	1296	1287
Total Students with 415 Service	1437	1493	1498

District	16-17	17-18	18-19
Black Oak Mine Unified	65	79	84
Buckeye Union Elementary	332	320	311
Camino Union Elementary	42	38	41
El Dorado County Office of Education	2	9	8
El Dorado Union High	95	108	136
Gold Oak Union Elementary	43	46	48
Gold Trail Union Elementary	34	45	48
Indian Diggings Elementary	0	2	1



Latrobe Elementary	17	18	15
Mother Lode Union Elementary	126	113	91
Pioneer Union Elementary	26	26	20
Placerville Union Elementary	116	121	119
Pollock Pines Elementary	91	76	69
Rescue Union Elementary	274	294	293
Silver Fork Elementary	1	1	2
District Services Total	1269	1296	1287
Regional Programs	168	197	211
Total	1437	1493	1498

EDCOE employs or contracts for a total of 29.2 FTE: 21.3 FTE serving district students at district sites, 4.7 FTE providing infant and preschool services and 3.2 FTE providing services to students in county operated regional programs.

Allocated Support Costs (Based on allocation factors)						
Program	Instruction	Administration	Pupil Support Services	Maintenance and Operations	Total	Speech, Language & Hearing Specialists
Infant Program	448,690	-	-	-	448,690	235,857
Preschool Assessment Team	104,203	-	-	-	104,203	55,496
Preschool	846,185	104,886	130,418	58,886	1,140,375	233,082
Low Incidence & Adaptive PE	671,102	59,510	-	-	730,612	-
Moderate / Severe	1,692,575	352,249	208,668	128,668	2,382,160	150,205
LEAD	527,326	100,135	78,251	36,727	742,439	23,453
Autism	934,296	190,556	104,334	39,666	1,268,852	133,190
Transition & Workability	602,495	131,666	78,251	69,782	882,194	22,198
Community School RSP	235,583	16,365	-	-	251,948	22,198
District Services	2,548,002	158,709	-	-	2,706,711	2,368,050
Total	8,610,457	1,114,076	599,922	333,729	10,658,184	3,243,729





Options for consideration

1. Maintain the current structure and agreements for speech and language services.
2. Districts directly employ or contract to provide speech and language services for students in district programs. In order to determine if this alternative is a viable option, each district must necessarily analyze the data to identify any instructional improvements that might be achieved through integration with district services and programs and potential fiscal benefits from increased efficiencies.
3. Some districts may consider creating cooperative agreements to share cost and coordination of services. In addition to the considerations listed in bullet #2, districts should consider how the distance between districts could impact these agreements.

Issue Two

The Allocation Plan does not address how a district would be funded if a speech unit is transferred from the county office to a district. The transfer of a program from the county office to a district has not occurred in the history of the El Dorado County SELPA.

Background

The original 1997 task force noted that regional programs (including those operated by EDUHSD) are typically accessed equally by all K-12 districts. It was recognized that speech services funded “off the top” were an unequal distribution of services that should be addressed in the future. To date, the issue has not been revisited.

New Formula in 1998-99

Starting in 1998-99, special education funding came to the SELPA as a block grant, requiring the SELPA Superintendents to develop an allocation plan for the funds.

Funding is unique to each SELPA and is based on a snapshot in time. The formula is based on units operated in 1997-98. Appendix A shows the EDCOE SELPA units operated in 1997-98.

First Superintendent Task Force/Allocation Plan 1997

Speech services were included in the formula for regional program funding. The decision was to fund county office programs (SDC and Speech) “off the top” – using 1997-98 funding as the base. 46.50 “Units” operated by COE were determined to be the base (Unit = teacher/class with -0-, 1 or 2 aides). NPS funding received by the SELPA (based on 1997-98 costs) was put into a “pool” for shared reimbursements. The balance became a district per ADA formula that was equalized over time. Two other “Units” were determined to be regional programs. Pollock Pines was the only district operating speech, so that “Unit” was designated a regional program. EDUHSD was operating an SH SDC that was designated a regional program. Over time, additional classes have been added (growth units) and the Allocation Plan provides for a specific dollar amount of funding to accompany a growth unit.

Discussion of District Program Funding Options

The Allocation Plan provides for county offices and districts to receive unit funding as follows:

NSH Class with no aide COE	\$89,995
NSH Class with no aide District	\$80,116

These are historical rates based on statewide averages in 1997-98 with COLAs applied each year.



Options for consideration

1. Districts receive directly the district unit rate (80,116)/FTE and this amount is deducted from COE regional program funding.
2. Districts receive directly the COE unit rate (89,995)/FTE and this amount is deducted from COE regional program funding.
3. Deduct the agreed-upon unit rate from the COE regional program funding and add that amount to the District funding, which is distributed on an ADA/enrollment basis.

There are significant challenges with each of these options. Options 1 and 2 may not provide sufficient funding for districts. Additionally, Option 3 would continue an inequitable distribution of funding because of the varied sizes and SLS usage of districts in the county.

Recommendation

1. Over the next school year, individual districts should analyze the data provided, apply their own salary schedules and program assumptions, and evaluate the feasibility of any alternative that may benefit the district. This analysis and discussion should include district staff and stakeholders.
2. To honor the Superintendents' Councils' collaborative approach to decision-making, no district should initiate the program transfer process until SELPA Superintendents have finished the discussions and decisions regarding the regional program funding model.
3. By March 2020, the SELPA Superintendents should discuss and develop a process to allocate funding within the context of the revised Allocation Plan. This will allow any district choosing to initiate the program transfer process to complete it pursuant to SELPA policies and Ed Code by July 1, 2021.



Allocation Plan Revision Process

The SELPA Superintendent's Council completed the initial process of reviewing the regional programs and services. The next phase is to develop a sustainable regional program funding model to implement by July 1, 2020. To accomplish this goal efficiently and collaboratively, the SELPA recommends contracting for an independent assessment of the current Allocation Plan, and regional program model. Areas to consider may include:

1. Perform a fiscal review of the cost of regional special education programs.
2. Provide recommendations to reduce and contain the cost of regional special education programs.
3. Advise alternative delivery models that may be appropriate for a rural county with both suburban and sparsely populated areas, and provide any recommendations as appropriate.
4. Conduct a review of the Local Plan and appropriate policies, and provide any pertinent recommendations for change, if needed, with respect to governance.
5. Analyze the present AB 602 funding model El Dorado County Allocation Plan and make recommendations as appropriate.
6. Review COE special education operated programs and determine whether any programs would be more cost-effective if operated by participating districts, and make recommendations, as appropriate, regarding any other considerations that should be included with respect to this issue.

Recommendations

1. After determining specific areas of focus, contract for an independent assessment of the current SELPA Allocation Plan, and regional program model to be completed by October 2019.
2. Authorize the SELPA Executive Committee to solicit and vet proposals from qualified firms or individuals to complete the proposed study. The Executive Committee would subsequently make a recommendation to the full SELPA Superintendents' Council.



Consolidation of Federal Grants

Issue

Until 2018-19, CDE issued two separate federal grant awards: RS 3310 (general special education) and RS 3320 (preschool special education). Within our SELPA, RS 3310 has been administered through the SELPA Allocation Plan and RS 3310 has been directly allocated to the EDCOE preschool programs. Beginning in 2018-19, CDE has folded RS 3320 into RS 3310 and will not provide any funding detail going forward as to the how the new combined grant award would have been split between the two previous separate grant awards. Therefore, a locally defined methodology must be established within the Allocation Plan to provide for the continued funding of preschool programs.

Background

CDE designated RS 3310 as a Federal Local Assistance Grant to be expended on eligible special education costs for ages 3-21. RS 3320 was designated as a Preschool Local Entitlement Grant to be expended on eligible special education costs for ages 3, 4 and 5 (non-kindergarten). Federal guidance to CDE was that both awards are generated from IDEA, Part B, Section 611, and carving out a pre-school specific grant award via RS 3320 was not appropriate.

EDCOE operates site-based preschool and special day classrooms on 19 campuses across El Dorado County. Preschool age students with disabilities are served in a variety of settings, ranging from small classes with high levels of adult support to fully included programs. The Allocation Plan provides:

- RS 3320 funds are allocated for special education costs for children with disabilities ages 3-5.
- RS 3320 funds are allocated directly to EDCOE regional programs.
- RS 3320 funds are not included in the regional program classroom units funded by AB 602.

Recommendation

Amend the Allocation Plan to create and add-on to the regional program base for 2018-19 equal to the amount of the 2017-18 preschool grant (RS 3320) plus the applicable 2018-19 COLA. Then, going forward, the total regional program base will be annually adjusted as it has been historically. The projected results from this recommendation for 2018-19 forward are shown below.

Prior to 3320 Grant Consolidation	2017-18 (Annual)	2018-19 (May Est.)	2019-20 (May Est.)
RS 3320 Grant to Regional Preschool Programs	330,997		

3320 Grant Consolidation	2017-18 (Annual)	2018-19 (May Est.)	2019-20 (May Est.)
Regional Program AB 602 Allocation	6,918,903	6,975,526	7,687,365
COLA	81,577	149,245	188,022
Declining Enrollment Adjustment	(18,424)	(7,046)	(1,792)
Certification Adjustment/Low Incidence Revenue	(6,530)	3,457	-
Repayment of Accumulated Growth Contribution from RPs		52,652	
RP Transfer - Pollock Pines to EDCOE (one-time)		89,995	
Growth Request for DHOH Teacher (one-time)		98,288	
Growth Request for Pac Street Program (one-time)			144,822
Adjustment for PS/RS State Rate (one-time)		(5,749)	
Adjustment for RS 3320 Grant (one-time)		330,997	
Total Regional Program Allocation	6,975,526	7,687,365	8,018,417



Educationally Related Mental Health Services (ERMHS) Funding Pool Deficit

Issue

In 2011, AB 114 transferred from county mental health to education, the responsibility for providing mental health services to students with disabilities. The 2011-12 budget provided funding to SELPAs for Educationally Required Mental Health Services (ERMHS) to implement this mandate. Because expenditure of the new funding stream would be an important oversight measure of LEAs effectively discharging the new responsibility, ERMHS funding reserves have intentionally been spent down over time. The projection is that deficit spending in the pool can only be supported through 2019-20 (See table below). Since revenue to the pool is relatively fixed, ongoing expenditures must be restructured to create a self-sustaining pool.

Background

Allocation Plan language approved by SELPA Superintendents' Council re: the ERMHS funding pool provides:

- 1) An annual maximum allocation to LEAs in the SELPA of \$48 per ADA.
- 2) 100% reimbursement to districts for the room and board costs associated with mental health related residential placements (with back up from the Shared Risk Pool, if needed).
- 3) Annual funding for 1.0 FTE of behavior analyst services to regional program students.
- 4) An annual allocation of \$230,000 to support the delivery of ERMHS services to regional program students.
- 5) An allocation of \$20K for professional development to expand SELPA internal capacity.

ERMHS Distribution	FINAL 2015-16	FINAL 2016-17	FINAL 2017-18	Estimate 2018-19 (May)	Estimate 2019-20 (May)
Income					
ERMHS State	1,312,981	1,313,229	1,326,759	1,349,247	1,347,566
ERMHS Federal	252,410	250,327	251,544	250,563	250,563
PY Carryover	8,099				
Shared Risk Contribution (Residential)				283,569	279,437
Total Available Funding	1,573,490	1,563,556	1,578,303	1,883,379	1,877,566
Estimated Costs					
Residential/MH related full year estimate	141,520	189,218	255,667	534,132	530,000
Behavior Analyst (SELPA)	187,191	353,035	214,445	178,041	162,059
Clinician Regional Programs	230,000	230,000	230,000	230,000	230,000
District Allocation	921,913	934,850	1,038,773	986,828	978,907
Hold Harmless	111,931	106,105	-		
COE Charter	11,464	11,660	11,199	9,199	10,769
Professional Development	20,000	20,000	20,000	20,000	
PY Adjustments		12,696			
Total expenditures	1,624,018	1,857,564	1,770,084	1,958,200	1,911,735
Income less expenditures	(50,528)	(294,008)	(191,781)	(74,821)	(34,169)
Beginning Balance	721,656	671,128	377,120	185,339	110,518
Ending Balance	671,128	377,120	185,339	110,518	76,349



SELPA Superintendents' Council Meeting – 6-6-19
ERMHS Funding Pool Deficit – Attachment 9

Recommendation

- As shown in the budget table, the SELPA recommends re-allocating the \$20K allocation for mental health professional development, effective 2019-20.
- Superintendents will need to develop a long term plan to avoid continued deficit spending.

